

**DISAMBIGUATION OF COURTROOM TESTIMONY
INTERPRETED IN SPANISH AND ENGLISH
IN PUERTO RICO & FLORIDA**

Moisés Hernández Amateau

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University of Puerto Rico

Approved by:

Dr. Alma Simounet, Reader

Dr. Ann Albuyeh, Reader

Dr. Alicia Pousada, Director

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Dedication

This dissertation is dedicated to my mother, Raquel Amateau Anduz, z'l, who passed away on April 27, 2020. A zealous and demanding mother, a loyal wife, and a loving and grateful daughter to Ana Maria Anduz Bravo, z'l, and Morris Amateau Capeluto, z'l, she was a passionate flamenco dance performer, a world traveler, and a teacher of English as a second language in Málaga, Spain, having lived life on her own terms. She will be dearly missed by family, friends, students, and by me, her son.

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Abstract

Ambiguity is the presence of more than one meaning in any human spoken or written expression. Research in language and communication shows that natural languages are inherently ambiguous (Prior, Wintner, McWhinney, & Lavie, 2009). Such ambiguity can be found lexically at the semantic level, at the functional, and pronominally. It can also be found in the structural relationship that words have with one another within written or spoken utterance (syntagma). Speech utterances can also be ambiguous phonologically by words that read or sound alike (homographs and homonyms), and intonationally by the attitudinal information that is conveyed by language prosody. Other paralinguistic features such as body language (kinesics), situational contexts (pragmatics), and culture (dialogical references) play a role in the generation of ambiguity. Ambiguity can also occur when parties are not acquainted with the sociolects of individuals belonging to different identity groups as described by the discipline of discourse analysis.

Court interpreters are legally required to convey equivalent facts and concepts from one language into another with no additions, omissions, embellishments, or explanations. In doing so, they inevitably disambiguate expressions based on personal cultural knowledge, pragmatic and intonational observations, and knowledge of the sociolects of lawyers, law enforcement agents, and other groups, sometimes to the chagrin of lawyers litigating legal controversies.

Despite the importance that effective disambiguation has on the outcome of these legal controversies, little information on ambiguity and translational work is available, and much of the research is found in disciplines outside of the fields of translation theory or in court interpreting policy and guidelines in white and grey literature.

This dissertation attempts to fill a part of this void by analyzing twelve case histories of ambiguity that arose during Spanish-English interpretation of courtroom testimony in Puerto Rico and Florida. This case review relies on an autoethnographic approach to reap part of the personal experience as to how court interpreters go about recognizing and dealing with ambiguity.

The work explores existing language policy in U.S. courts and how the guidelines set limitations on the degree of discretion that interpreters can exercise in the translational work that they perform during court interpreting.

As a result of the case reviews, aspects of linguistic universalism versus relativism are examined and discussed, particularly as they pertain to fundamental legal fictions, and translational paradigms based on the assumptions of linguistic equivalence, hermeneutic uncertainty, cultural diversity, and linguistic ineffability.

Keywords: ambiguity, courtroom interpreting, disambiguation language policy, Puerto Rico, Spanish, linguistic universalism, linguistic relativism, translational paradigms of equivalence, translational uncertainty, intonation, prosody.

Author's biography

Moisés S. Hernández Amateau, J. D., has been a court interpreter for the Spanish language for more than 20 years. He is certified by both the Administrative Office of the Courts of the United States and the Florida State Courts System. Before his work with the courts, Moisés was a journalist, having worked for the Associated Press, United Press International, and other news media in Puerto Rico. He also served in government as director of communications for the Economic Development Administration of the Commonwealth of Puerto Rico, for the Federal Emergency Management Agency, and for the U. S. Small Business Administration. In 2018, he joined the Florida State Court System and at present lives in the city of Aventura.

CHAPTER 1: INTRODUCTION

1.0 Foreword

This dissertation explores certain aspects of interlingual ambiguity and logical fallacy (amphiboly) in the oral translation of courtroom discourse and testimony. The research focuses on lexical phenomena tied to inflectional intonation, and to semantic, syntagmatic, cultural or pragmatic referents. Prior to presenting the project itself, the dissertation reviews aspects of courtroom interpreting language policy in the United States of America. The work also reviews different translation theories under the paradigms of equivalence, uncertainty, and hermeneutics. Upon completion of the previous, a review of some of the literature on ambiguity will be presented. Once this foundational information is established, twelve lexical and syntagmatic samples collected during 20 years of translational work in Puerto Rico and the continental U.S. are analyzed within the framework of current language policies and generally acceptable translatology practices. The twelve samples are autoethnographic in nature. Other samples used are the work product of scholars and researchers. The latter are reviewed and cited in the dissertation for illustrative purposes.

In brief, the research findings suggest that not all interlingual *translatums* (end products) are effable (i. e., expressible) and that theoretical models in the field of translatology that are relied upon under current U.S. language policy guidelines are incapable in certain cases of delivering adequate strategies and techniques of disambiguation. In some instances, these policy guidelines may clash with what passes for generally acceptable translational practice. Consequently, further research into

ambiguity, amphiboly, intonation, and cultural mediation is necessary. The dissertation elucidates how such research can be useful in developing greater awareness of the problem among court interpreters, lawyers, and judges, and encourage the development of improved and uniform standards and protocols.

It should be noted that many of the more comprehensive reference materials required to improve our understanding in one of the more important areas of this research—intonation and prosody and their effect on the disambiguation of ambiguous and amphibolic meaning—were not available at the outset of the research for this dissertation. It soon became apparent that the reason for this unavailability is because the field is still very young. The same lack of information becomes apparent when dealing with structural ambiguity. Some of the more useful works in what is otherwise known as amphiboly (Oaks, 2010/2012; Ward, 2019) became available for review and consideration in this work towards the second half of 2019. Other publications by Buring (2016) and Fery (2017) are also of recent vintage.

The recency of these works underscores the importance that the topic has taken as of late. The importance of these two areas is not limited to phonological linguists. Scholars in Translation Studies and linguistic researchers and computer scientists engaged in descriptive work, in psycholinguistics, and in the development of computer-assisted translational work are keenly studying this subject.

One of the forces driving the new research on ambiguity, amphiboly, and intonation into natural languages is globalization. Civil strife, climate, and economic opportunity will continue to compel linguistic communities to migrate in search of better living conditions or to flee perilous situations. Such migrations will increasingly tax the

resources of host communities that are called upon to accommodate the influx of these speech groups. The 23rd edition of *Ethnologue* (Eberhard, Simons, & Fennig, 2020) has identified that at least 7,117 languages are spoken in the world, with ~90% of these spoken by fewer than 100,000 people. The linguistic diversity and the reduced number of competent speakers in some of these instances places a great deal of pressure on those called upon to oversee the intake of these individuals and to ensure compliance with fundamental and universally recognized rights, privileges, duties and obligations.

Another impetus is the dizzying pace of advances in computer science and artificial intelligence. In Germany, a government-sponsored research and development project has spun off software capable of distinguishing regional dialectal markers and nuances among Arabic speakers. This feature is being used to determine if their claimed national identities match the speech pronunciation typical of their country or ethnic group. This determination is being used to ascertain the truthfulness of persons claiming to be refugees seeking asylum from specific geographic regions.

Other work involved the CAT2 Machine Translation System first developed in 1987 as a side project to EUROTRA, which was in turn preceded by SYSTRAN. In America, the more visible computer assisted translation providers are offered by Google Translate and Amazon Translate. In Germany, another ambitious project by the name of VerbMobile seeks to implement a section that can sense intonational markers to detect levels of displeasure, satisfaction, or disappointment in the voices of individuals interacting with a machine.

Demand for more language service providers and for improved efficiencies in delivery is on the rise. The Globalization and Localization Association, citing *The*

Language Services Market: 2018 (DePalma, Pielmeier, & Stewart, 2018), foresaw that the global market would reach US \$46.52 billion in 2018 and increase to US \$56.18 billion by 2022.

The research in this work has also produced two interesting observations. First, there is no comprehensive taxonomy for ambiguity and amphiboly and their effects on translational work. Research on ambiguous and amphibolic phenomena has taken many different forms, each requiring different analytical approaches within different subdisciplines of language studies and linguistics. The closest to a taxonomy of ambiguity in the field of applied linguistics is to be found in Berry and Kamsties (2004), two engineers. Interestingly, their main concern is with writing less ambiguously and imprecisely and detecting ambiguity and imprecision in written specification requirement sheets. These two goals are equally useful in this dissertation which aims to provide tools to detect and identify ambiguous utterances in courtroom discourse, and to preserve (not eliminate) in the resulting *translatum* any ambiguity existing in the original utterance.

A second observation has to do with the way we look at ambiguity and amphiboly. Rather than taking the traditional view of the phenomena as an impediment to effective communication (as expressed by Berry and Kamsties and many others), researchers are increasingly regarding ambiguity and amphiboly as major reasons for the generative creativity and productiveness of natural languages. To this effect, Oaks (2010/2012) has made three important contributions in his two-volume book. First, he has listed an inventory (and a taxonomy of sorts) of parts of speech that appear in ambiguous utterances. Second, he presents an extensive sampler of ambiguous expressions found in

jokes and advertisements. Third, he provides demonstrations of how the information on parts of speech may be used to deliberately create structural ambiguity.

Oaks' greatest contribution lies in the analysis of the interplay of grammatical elements and forms found in ambiguous statements. To this effect, he devotes entire chapters to pragmatics and structural ambiguity, phonology, lexical form classes, auxiliary verb classes and clause types, morphological considerations, noun inventories, transitive verbs and verbs in general, the use of adjectives and adverbs, prepositions, conjunctions, pronominal modifiers, and other modifications. He further elaborates on additional syntactic considerations, including ellipsis and other reductions such as deictic expressions, questions, and indirect speech (such as exclamatory utterances, fixed expressions (or collocations), and the use of exclamatory language listed under the taxonomic category of prosody and intonation).

1.1 Overview

This dissertation is specifically focused on aspects of ambiguous linguistic phenomena and the different theoretical frameworks under which translational acts take place in U.S. courtrooms. Such frameworks are based on the language policy that the U.S. judiciary has adopted and adheres to. The policy is currently controlled by explicit and implicit directives derived from the Constitution, existing Civil Rights legislation, subsequent executive orders, regulations, and courtroom interpreter practice. The legal documents, judicial case law, and commentary that they have spawned, along with the grey literature penned by government policy makers, white papers produced by members of the interpreting community, scholarly research conducted by university academics, informal trade talk that practitioners pursue in social networks, and practices adopted by

in-house interpreting services, have had a twofold effect on language policy. One line of policy would have it that all courtroom translational acts place the linguistically disadvantaged on an equal footing with other English speakers in criminal cases; the second would seek to provide limited language proficiency speakers with equal access to government services, benefits, privileges and rights.

The dual goals of equal footing and equal access may at times be in opposition to each other and to other theoretical translational models which may place greater or lesser importance on the production of culturally mediated *translatums*. One of these two approaches can be said to be based on a strict literalism under the equivalency paradigm while the other may be better served by the dynamic equivalence of Nida that is more akin to the functional equivalence found under *Skopos Theory* or *purpose*-based models of translatology (Reiss & Vermeer, 2013), or the hermeneutics advanced by theorists such as Steiner that attempt to reconcile the uncertainty of meaning that is possible in culturally-bound language.

There is consensus that current government language policy upholds the dual functions and legal fictions of providing equal footing and equal access, but the latter goal may be in some instances be limited by restrictions inherent to the former in courtroom settings. It is also worthy to note that the sheer volume of position papers and research, and the growing population of over 40 million¹ speakers of Spanish in the United States (establishing that tongue as the second most widely spoken language in the U.S. after English), are likely to make the examination of these issues and matters extremely significant in U.S. society for the foreseeable future.

¹According to the 2018 American Community Survey of the U.S. Census estimates, this figure represents a little over 13% of the national population.

Needless to say, other world speech communities are gaining greater presence in American society, and their number and importance may expand in time. Among them are speakers of Brazilian Portuguese. Another group of languages posing challenges is increasingly being found among indigenous peoples from South and Central America. These persons are limited proficiency speakers of Spanish. They rely instead on pre-Columbian era languages to communicate.

Such linguistic demographic developments are producing an interesting phenomenon known as *superdiversity* (migrants that do not assimilate and retain ties to their cultural homelands and continue to speak in their vernacular). With improved international travel and communication, these migrants find it possible to live their entire lives in the host country while retaining ties to the homeland and remaining at the fringe of mainstream cultural life. Without a doubt, language policy in the U.S. will continue in a state of flux for many years, and demographic political pressures will shape linguistic and cultural outcomes as well as prevailing government policies.

1.2 Statement of the Problem

Much of the literature would suggest that oral and written translation is enshrouded in the romantic mystery of foreign speech and cultural idiosyncrasy. The word *bread* in French brings up mental images of a *baguette* while the American variety of English may conjure images of *sliced bread*. Because language can be culturally bound in so many ways, there are some who would argue that translatology is an art in the humanities. On the practical side, however, a growing number of theorists and researchers will argue that translatology is a science. Regardless of the perspective taken, translatology is increasingly important for governments and businesses as distances and

time zones shrink into one virtual “global village.” Accurate and effective interlingual communication is important because it ensures the fidelity of communicative content and adherence to the intent of parties engaged in trade, diplomacy, research, and conflict resolution. But effective interlingual communication begins by effective intralingual comprehension of meaning.

Ambiguity, amphiboly, and the multiple meanings found in an ambiguous or amphibolic expression when conveyed by way of the translational action of a court interpreter or translator can raise many important and interesting questions and situations. Have the multiple meanings present in the start language been identified by the interpreter? Can they all be conveyed into the target language? If not, how many meanings do come across, if any? Which ones are left out? Why are these meanings left out? Can any aspect of the ambiguous expression be preserved, or is it invariably disambiguated into a single meaning?² These questions are broadly phrased and include the many forms of ambiguous and amphibolic phenomena.

One more question needs to be raised. Do individuals always identify and recognize ambiguity and amphiboly, or do they overlook its appearance entirely? Kjelgaard and Speer (1999) and Berry and Kamsties (2004) argue that speakers do not readily identify ambiguous expressions when they arise. Berry and Kamsties (pp. 1-2) tell us that “unrecognized or unconscious disambiguation is that process by which [an individual] is totally oblivious to other meanings of some text...” By narrowing the

²Sometimes a phrase or sentence may carry several meanings, but the translation can only convey one of those meanings, which one may pick, or not. At other times, a phrase or sentence may have several meanings (let us say three), but only one meaning may be rendered in the translation, there being no way of preserving all three senses in one single expression. So then, we have three possible expressions resolving for the original statement.

focus, we can differentiate what happens in varying situations in which ambiguity is present. As computational engineers, Berry and Kamsties are addressing a longstanding concern with miscommunication in the preparation of requests for specifications and their implementation. As they see it, “ambiguity is a real world phenomenon that rears its ugly head in many disciplines including writing, linguistics, philosophy, law, and—of course—software engineering.” They go so far as to propose changing the term from ambiguity, which is limited to a duality of possibilities, to “multiguity” (2012, p. 11).

Oaks (2010/2012) on the other hand raises the same question but is more optimistic when he talks about his “heightened awareness” in contrast to the likely awareness that the general population may have about ambiguity. “When I see that a joke or advertisement deliberately exploits that double meaning, then I am reassured that my intuitions about the ambiguous nature of a particular structure are not merely accessible to me and other linguists, but to the larger community of native speakers of the language” (Oaks, 2010/2012, p. ix). His reference, however, to a “community of native speakers” still raises a red flag when the intralingual interpretation is dependent upon a non-native language community linguist engaged in a translational action that may be heavily dependent on culturally-bound knowledge, Bakhtinian dialogical markers, or other linguistic cues and markers such as the role played by prosody and intonation.

During the literature review stage of this dissertation, eight different linguistic categories were identified as being capable of producing ambiguous expressions. These are: semantic (i.e., range (mountain), range (plain), range (reach), morphological (homonyms); structural syntactic (amphiboly); grammatical multifunctionality (*run*, *staple* (verb), *run*, *staple* (noun); phonological ambiguity (i.e., *dogs bark*, *tree bark*);

contextual and pragmatic ambiguity (i.e., *it's cold* (“close the door; turn on the heater”); inflectional and intonational ambiguity (attitudinal, emotional); structural, culture-bound ambiguity (Whorf, 1956 in Carroll, 2011; Bhabha, 1994; Said, 1994); Bahktinian dialogical ambiguity (Hebrew *almah*, Greek *parthenos*³); metaphorical ambiguity (metonymy, allegory); and rhetorical devices (circumlocution, collocations, sociolects). Since Oaks correlates forms with functions, he subcategorizes the structural syntactic and grammatical taxonomic categories into one, breaking them down into their functional units, to craft a more nuanced sub-typology based on parts of speech.

All these taxonomies were used to parse and analyze the courtroom locutions featured in Chapter 4 of this dissertation. It should be noted in advance that the examples of locutions of ambiguity analyzed in Chapter 4 may have overlapping taxonomies of ambiguity, that is, they may fall under more than one rubric.

1.3 Framework of the Study

Historically speaking, much translational work has been developed and presented in binary terms. Cicero first raised the conflict between accuracy to content and fidelity to the oratorical and rhetorical force of the expression. The issue became more acute within certain genres as in the translation of prose versus verse. Will the strict sense of meaning of words in Homer’s *Iliad* and *The Odyssey* be matched to their historical

³The editors of *Nueva Biblia de Jerusalén Revisada y Aumentada*, (a Roman Catholic publication) explain that in Isaiah, Chapter 7.14, the Hebrew word *almah* (“maiden or recently married young woman”) was translated into the Greek as *Parthenos* (“the virgin”) (Ubieta López, 1998, p.1103, footnote at Chapter 7:14 (b); Alter (2019, p. 645, footnote 14) underscores that the phrase *the young woman* in Isaiah 7.14 “generated many centuries of Christological reading emphasizing the virgin birth, which is an overspecification of the original Hebrew.” He further states that in Proverbs, *almah* is represented as engaged in sex. Foster (2004) asserts that the meaning of *almah* “is not just a linguistics problem but also involves the early Patristics, some Church history, and some sense of chronologies and the early Councils of the Christian Church and the contexts in which these appreciations developed and their codification into creeds, dogma, and doctrines.

meaning, with the result of a prose version, or will the aesthetic criterion for rhymed verse be observed at the expense of content and historical accuracy? The French solution for the translation of poetry discards any attempt at rhyming. Another question would be between the option of producing a formally literal *translatum* even when stylistically speaking, it may sound stilted and foreign to our ears, or should a free style form be made making allowances for the conveyance of meaning in a domesticated style that is more pleasing to the ear of the listener? These ambivalences between content and oratorical force, prose and verse, the exotic and the domestic remain in effect at present, albeit, with new twists. More recently, the old binary tug of war between content and genre has evolved into a balancing act between source and target language-style modalities and collocations (Hatim & Munday, 2004; Vinay & Darbelnet, 1977), or the capture and conveyance of symbolic meaning as with the lamb of God or the seal of God, a more dynamically (Nida, 1964) functional medium. Lastly, some cultural referents inevitably lead to conceptual confusion. Such can be the case between the concepts of resurrection versus reincarnation, in which conceptual similarities swallow the intangible differences.

Equivalence is another fundamental concept that will be explored in greater detail. Is equivalence achievable or does linguistic uncertainty trump meaning? Do scientific, objective truths prevail or is truth political and based on doctrinal beliefs? When it comes to terminology, do lexical matches exist in specialized fields such as the law, which is, for the most part, very particular to the social and cultural institutions of each nation? If not, then the legal Anglo-Saxon (Common Law) concept of *community property* is not equivalent to the Civil Law (neo-Roman/Romano-Germanic) concept of *bienes*

gananciales.⁴ Many translators and linguists will argue that all languages are effable, that is, all message content which can be expressed in one language can arguably be said in another. Yet we will encounter instances in which an ambiguous expression in one language is forcefully disambiguated and loses its ambiguous character because of the particularities of the semantics, the syntax, or some other linguistic factor that controls the target language. Likewise, we will encounter situations in which the full preservation of all the senses contained in an ambiguous phrase is not possible. As popularly noted, something is lost in the translation.

Questions on the ineffable nature of language will in turn raise the romantic notion concerning the cultural and linguistic uniqueness of natural languages, which in turn may raise arguments of linguistic determinism. Lastly, other issues concerning the uncertainty of meaning based on semantics, pragmatics, culture, and ideology will be encountered.

In the movie *The Imitation Game*, British mathematician and cryptologist Alan Turing says, regarding cyphered enemy messages openly transmitted by radio and available for anyone to see but few to understand: “That’s the brilliant part. They’re not secret. Anyone can see the messages, but no one knows what they mean unless they have the key.” Then Turing asks his friend: “How is that different from talking? When people talk to each other they never say what they mean, they say something else, and you’re expected to know what they mean. I never do. How’s that different?” (Tyldum, 2014).

⁴Common Law is based on *stare decisis* or law that gives precedential authority to prior court decisions. Civil law is based on code that serves as the primary source of the law and proceeds from abstractions and general principles, or statutes that give secondary importance to *stare decisis* or Anglo-American case law.

1.4 Purpose of the Study

Foremost, this dissertation seeks to demonstrate the continued relevance of linguistic models of research to Translation and Interpreter Studies (T&I), a relevance that has been denied and rejected by important voices in the T&I field since the 1960s (Mounin, 1963, p. 5; Fawcett, 1997/2003, pp. iv, 1-2; Pym, 2010/2014, p. 9). Secondly, the research hopes to shed new light on ambiguity, an area of language that has been overlooked by many engaged in research in the field of legal translation and court interpreting. In so doing, it will raise awareness of a subject that poses considerable perils to effective interlingual communication, and the legal resolution of controversies.

1.5 Research Questions and Hypotheses

The research presented in this dissertation is guided by four major groups of questions related to ambiguity and amphiboly in the interpretation of courtroom proceedings and translation of legal documents:

The first group involves *recognition* of ambiguous and amphibolic expressions and the possible interpretation of more than one meaning to any given utterance. How do we know when the meaning of a statement is ambiguous? What are the indicators of different types of ambiguity?

The second group concerns the proper translational *management* of such an ambiguous expression. Is the ambiguity to be preserved, or should it be disambiguated? What are the implications of each option?

The third group pertains to the *method* by which ambiguity is to be disambiguated. Which criteria do we rely upon to decide if the disambiguation is proper or not? What objective phenomena will we identify and adopt for assessment? Are we to

use semantic markers, contextual references, cultural indicators, pragmatic considerations, ideological imperatives, or phonological and intonational cues? What are the philosophical and ideological premises underlying our rubrics?

The fourth and final group of questions addresses the designation of quality assurance *arbiters* to decide if the disambiguation is proper or not when objections are raised. What legal considerations do we need to bear in mind? Do we need to bring in ethnographic interpreters as expert witnesses to hermeneutically interpret and adjudicate cultural meanings? Will questioning be conducted in front of the judges of facts, or privately in chambers with the judge of law?⁵

Two general hypotheses are proposed in this dissertation and will be tested utilizing the evidence collected from courtroom interactions and the examples cited in the scholarly literature:

H1: Existing translational models are incapable of delivering adequate techniques of disambiguation under current U.S. language policy guidelines.

H2: Linguistic theory can play an important role in facilitating the understanding and treatment of ambiguity in courtroom translational practices.

1.6 Procedure

The dissertation reviews twelve (12) instances of oral and written translational acts and their end-products or *translatums* that have been identified over a 20-year stretch of time. The sample utterances were personally collected by the author of this work from

⁵There are judges of law. They are lawyers as we know them, and judges—those individuals who typically wear black robes, and sometimes white wigs. Jurors, on the other hand, are charged to act as the judges of facts. These jurors—selected from the population at large—hear the evidence, weigh the importance of the facts and testimonies presented, determine whether they are credible or not, and render verdicts. Judges uphold verdicts unless contrary to law, in which case they vacate them and preside over all other proceedings.

direct observation or from the direct observations of other interpreters and legal translators that shared these observations.⁶ The data come from actions in the U.S. Federal District Court of Puerto Rico, the Spanish-language insular courts of that U.S. possession, or from other court proceedings in the mainland U.S. Some instances occurred in open court, others in proceedings known as depositions, and still others appeared in written translation work. The underlying issues under dispute include situations involving law enforcement, sexual harassment, political or religious discrimination or civil rights. Other observations that inform the work are the result of direct observation of court practices in the State of Florida.

1.7 Definition of Key Terms

Tradition would have it that translators and interpreters are engaged in totally different activities that need to be studied separately. In contrast, we hold that the distinctions are less important than the shared characteristics. Many leading academics have made important contributions towards this view including David Crystal, Eugene Nida, Christiane Nord, Anthony Pym, Katharina Reiss and Hans Vermeer. A few of them would refer to scholars that study translation and interpretation as *translatologists*. In referring to practitioners, otherwise known as interpreters or translators, we will distinguish them from *translatologists* and call them *translationists*. The outcomes or products of translation activities, otherwise denominated as *translational acts or translational actions*, will be referred to as *translatums*.

⁶These samples are autoethnographic in nature. The researcher has lived through them directly, or other interpreters have shared them through Facebook postings or personal communications at social or professional gatherings.

1.7.1 Why Translatology?

The academic nomenclature of the subject matter of this research goes by several names, each claiming to own and monopolize the field and each claiming its own discursive space “that serves to define ‘that of which one can speak in a discursive practice’” (Foucault, 1972, p. 182). For Bassnett and Lefevere (1990, p. ix), the name of the field is limited to “Translation Studies,” apparently excluding interpretation or oral conveyances in multiple languages. However, proponents of the German school that has come to be known as *Skopa Theory* or the Purpose-based paradigm have included both the written and the oral practices as part of what they call “translational acts.” Russian Formalists, the Prague School of Translation, and the School of Translation of Tel Aviv are essentially descriptive (Pym, 2014, p. 63), with the latter engaged in research in both written and spoken translation.

The author of this dissertation prefers the term *translatology* as defined by David Crystal (2001, p. 344) as “the study of translation, subsuming both *interpretation* of oral discourse and *translation* (in the narrow sense) of written discourse” (our emphasis). It would be a disservice, however, to fail to note that the topic has been discussed extensively by many different academic and research theorists that have come with all sorts of interesting and divergent observations that may not necessarily conform to the arguments raised in this dissertation.

1.7.2 *Translational Actions, Translatums, Translationists and Translatologists*

As stated earlier, in this dissertation, we adopt *Skopa Theory* terminology. One term so adopted is that of *translational action* for referring to the process of conveying meaning from one language to another, and *translatum* for the *deliverable* or the resulting

outcome or product. These are the technical terms to be used when referring to both translation and interpreting activities and processes and their products (Reiss & Vermeer, 2013). Having adopted Crystal's *translatology* as the field that studies translation and interpreting, we define a *translatologists* as individuals engaged in the study and research of *translational acts* that result in the production of *translatums*, which are in turn the objective phenomena that *translatologists* study. Lastly, *translatums* are the products or work deliverables that *translationists* (otherwise known as interpreters or translators) produce for consumption by listeners or readers that depend on *translatums* for interlingual communication.

The reason why these new terms are adopted is based on the increasing evidence that demonstrates that the features that formerly distinguished and differentiated the work produced by interpreters from the work produced by translators are now blurring and vanishing. Translations traditionally have been held to be the products of translators engaged in written translational work derived from printed text. The boundaries between written translations and oral translation work is fading because of technology. Written work in the Internet of Things (IoT) is no longer permanent; it can change several times in a single day. This makes arguments about the permanence of written text moot. Moreover, written text also takes the form of dramatic scripts for theater, radio, television, cinema, and for songs, all prepared for oral consumption. Whereas oral translational work, formerly thought to be impermanent and unchangeable, is no longer lost in space nor immutable; it can be captured in written form by stenographers and through sound and video recordings, and it can be subject to corrections, amendments

and editing after the utterances, in courts of law, by judicial fiat, or by technical means as illustrated first by George Orwell in his novel *1984*.

A separate table of other important terms and definitions has been included in the Appendix. We hope this glossary will be helpful to the readers of this dissertation.

1.8 Significance of the Study

The research presented in this dissertation has both theoretical and practical value. In terms of theory, the dissertation represents a step towards the identification of a unified taxonomy on ambiguity and amphiboly on issues pertaining to *translatology*. In terms of practice, the findings can be applied to the design of curricula, the development of study methods and learning aids, the crafting of objective criteria for testing and assessment rubrics, the establishment of standards for certification of competence, recruitment, and selection of *translationists*, and the development of quality assurance programs to gauge the quality and performance of *translational actions*, *translatums* and *translationists*.

1.9 Structure of the Dissertation

This first chapter has laid out the general problem to be examined, namely the nature of ambiguity and its effect on meaning within the courtroom setting, and the autoethnographic procedure that was followed to collect data to validate or invalidate two hypotheses. Chapter 2 will review the scholarly and legal literature dealing with U.S. courtroom language policy and the mechanics of court interpreting, as well as the key concepts needed for the comprehension, analysis, and resolution of ambiguity and amphiboly by court interpreters. Chapter 3 will explain in detail the methodology of the study, how the translational corpora were obtained. Chapter 4 will analyze the findings,

utilizing both *translatological* and linguistic models. Chapter 5 will present the conclusions, implications, and limitations of the study.

CHAPTER 2: REVIEW OF LITERATURE

2.0 Introduction

Because of the multidisciplinary nature of the inquiry into ambiguity in legal settings in *translational actions*, the review of literature for this dissertation will necessarily be extensive and divided into various fields and topics. The first part of this chapter considers some of the scholarly and legal literature dealing with courtroom language policy and the mechanics of court interpreting. Sections 2.1-2.7 are dedicated to some limited aspects of U.S. language policy as it relates to translation and interpretation in the courts, court interpreting in Puerto Rico and the U.S. Virgin Islands, the roots of modern court interpreting, the nature of courtroom interpretation, the interpreter as expert witness, the distrust of language service providers by members of the legal community, and legal terminology. The second part of the chapter (sections 2.8-2.11) deals specifically with models of ambiguity, the definition of ambiguity, the relationship between grammar and meaning, and the link between intonation and meaning. These are all key concepts needed for the analysis and resolution of ambiguity by court interpreters.

2.1 U.S. Language Policy regarding the Courts

As a result of the populational rise of Hispanics in the U.S. and the transplanted presence of English in the Spanish-speaking island population of Puerto Rico, an ever-growing number of bilinguals are being recruited to deal with the linguistic demand for Spanish and English. In fact, the demand for Spanish interpreters far outstrips that of other languages in the United States. According to the Administrative Office of the Courts of the United States, for FY 2016, the number of instances involving Spanish in federal courts exceeded 260,000 events. Only one language, Mandarin, surpassed the

other eight languages in most demand, and the number of interventions barely exceeded 1,600 cases; the remaining languages hardly reached the thousand mark. This is a far cry from the nearly 300,000 cases involving Spanish.

A similar linguistic situation is being encountered by state courts. The greatest concentrations of monolingual or limited English proficiency Spanish speakers lie in the states that border with Mexico (i.e., California, New Mexico, Arizona, Texas). However, the rise in translational needs is not limited to the border states. Other metropolitan areas with large settlements of Spanish speakers include the state of Florida and the cities of Chicago, Las Vegas, and New York. Spanish-speaking communities are also dispersed throughout the eastern seaboard of the continental U.S. (e. g., Washington, D.C., Pennsylvania, New Jersey, and Connecticut).

Current U.S. language policy related to the courtroom sustains that court interpreting is not “culturally mediated translation” (Berk-Seligson, 2002, p. 40). Jon Leeth, the former Director of the Office of Court Reporting and Interpreting Services of the Administrative Office of the U.S. Courts, tells us that:

The Court Interpreters Act is not designed as an intercultural tool to integrate people into American society. It is an act designed to bring justice to those individuals just as if they were English speaking. It’s not designed to give them an advantage in the American judicial system. It is designed only to prevent miscarriages of justice. They have the same responsibilities as anybody else coming into federal court to say, ‘I don’t know what you are talking about. Could you make that clear?’ So, it’s on that premise and on that very firm foundation that we developed our certification test. (Berk-Seligson, 2002, p. 40)

Judges, courtroom interpreter supervisors, and individual interpreters are often not on the same page regarding the constraints imposed by the admonition against additions, omissions, embellishments, and explanations. Interpreters are hampered by the lack of uniform policies and practices and may confront ethical and professional dilemmas when forced to adopt or refrain from certain *translational* strategies and techniques in order to comply with the requirements of judges and supervisors.

2.2 Court Interpreting in Puerto Rico and the U.S. Virgin Islands

Many of the cases to be reviewed are taken from experiences in Puerto Rico. The coexistence of the English and Spanish speech communities in Puerto Rico began in earnest in 1898 following the Spanish American War. Puerto Rico became a territory of the United States, and Congress has had ultimate sovereignty over the island for more than a hundred years. While Spanish remains the language of the population at large and of its institutions of self-government, education, and business, English is prevalent in American federal government institutions that control all aspects of life in the territory. Approximately three-quarters of the population need the assistance of Spanish to English interpreters when cases are processed in federal venues such as the U.S. District Court for Puerto Rico or in federal administrative proceedings before executive branch agencies where in some instances the employees themselves have limited English proficiency.

The 1978 Court Interpreter Act was heralded as a victory for Hispanics and other language-disadvantaged groups in the continental U.S. (Dueñas, Vásquez, Mikkelsen, 2012); however, in Puerto Rico, it was viewed as a defeat. At the time, Puerto Rico in the

Caribbean was the only foreign language U.S. overseas territory.⁷ The local bar and many important members of the federal judiciary in the island had strived for many years to have criminal and civil cases tried in Spanish, the language that local territorial courts had adopted as the language of record for criminal and civil proceedings in the Island (Baralt, 2004). Thus the 1978 federal legislation was viewed as a setback.

The reasons for the opposition were fundamentally linguistic. In 1970, according to U.S. Census language surveys, about 53% of the population of the island and about 75% of defendants of criminal proceedings in the federal court did not speak English. This situation not only hampered the linguistic access of defendants to their own proceedings, but also made the selection of juries difficult and prevented many Spanish-speaking attorneys from practicing before the federal bar.

In the U.S. Virgin Islands, which also fall under the U.S. federal court system, the situation is somewhat different since most of the population speaks U.S. Virgin Islands Creole English, known locally as a “dialect” of American English. However, there is a sizeable Spanish-speaking community which migrated in three waves from the off-islands of Vieques and Culebra, beginning in the 1920s (Simounet, 2013). The most recent migration took place during World War II when as much as 72% of the land mass of Vieques and Culebra was expropriated by the U.S. Navy for military exercises. This led to the displacement of thousands of islanders who were re-settled in the island of St. Croix.

⁷The Philippines (another foreign-language speaking territory) had been granted its independence shortly after WWII. Chamorro, the indigenous language of Guam (another U.S. territory in the Pacific), had already been displaced by English by the time of the 1978 legislation.

There are other reasons that make St. Croix a unique multilingual community. Prior to the Puerto Rican diaspora, St. Croix had borne the settlement of many other linguistic and ethnic groups. In chronological order, the island was settled by Amerindians from Venezuela, Africans forcibly brought during the infamous Trans-Atlantic Slave Trade, and colonists from Spain, Holland, England, France, Denmark, and the United States. More recently, the island has had an influx of other down-islanders from the eastern Caribbean, along with Arabs from several Middle Eastern nations. This has led to the establishment of a multiethnic, multilingual community that relies on Standard American English “as the formal register and prestigious variety of English while Crucian English, an English lexifier Creole (Faraclas, 2012) left over from the time of slavery is the chosen variety for everyday interaction” (Simounet, 2013, p. 39).

This multiplicity of languages and ethnicities, the proximity of the British Virgin Islands, and the use of Received Pronunciation (currently known as the “Queen’s English”), along with the presence of families of Danish and French heritage from former colonial periods, has had a distinctive effect on the everyday language spoken by islanders. This is particularly true with place names and terms for flora and fauna, which may be pronounced with phonological and intonational features of the source languages.

The multilingual effect can also be heard in the courtroom. This writer has personally observed instances in which lawyers using Standard American English intonation and prosody to engage in debate with a witness abruptly switch to Crucian Creole to make a point with jurors. The sudden change of language variety and prosody can make the expression momentarily unintelligible to an interpreter engaged in oral translation to Spanish who is not familiar with local speech. One such occasion prompted

the interpreter to gingerly ask the speaker to repeat the utterance, apologizing all the while for not understanding the locution to avoid any semblance of linguistic jingoism or bias. The speaker also offered an apology which was quickly reciprocated by the interpreter to ensure that there was no display of favoritism toward the privileged Standard American English or distaste at the local expression that might be deemed offensive to local sensibilities. At other times, lawyers who speak with Received Pronunciation as a result of linguistic influences from the neighboring British Virgin Islands or because they were born and raised in other islands of the British Commonwealth may drop their speech volume, turning utterances into whispers which can hardly be heard or understood by interpreters accustomed to the louder American Standard variety.

2.3 Roots of Modern Courtroom Interpreting

There was a time when court interpreters and legal translators were commissioned by legal systems worldwide on an ad hoc basis. If you spoke the language needed, you were appointed simply as a matter of expediency with little concern for competency and adequacy. In the United States, one of the first instances took place in the late 18th century *In re Norberg* (1808), as cited by Dueñas, Vázquez, and Mikkelsen (2012, p. 158). With some languages that prove difficult for recruitment like Aymara or Guarani (Paraguay), Nahuatl (Mexico), Popti, (Guatemala), and Quechua (Peru), this arbitrary and pragmatic approach may still be in effect in many jurisdictions, tempered, however, by review of interpreter qualifications.⁸

⁸The need for interpreters for Languages Other Than Spanish (LOTS) is apparent in the case of the *United States v. Schooner Amistad*, 40 U.S. (15 Pet.) 518 (1841) in which 53 African slaves revolted in 1839 against a Spanish slave-trading ship near Cuba and later foundered off the coast of New England. The slaves were charged with piracy and murder and classified as salvage property. Local abolitionist groups

Over the years, however, the importance of *translational* work has come to be recognized by the courts, and the informal practices of the past are giving way to more structured approaches. Different bodies of legislation have come to shape and address many of the issues pertaining to courtroom interpreting. A major turning point was the Nuremberg Trials following World War II (Bellos, 2012). Nazi party operatives, German military officers, and German civilian leaders were tried for war crimes against humanity, and much of the groundwork for the way courtroom interpreting works at present was set up at that time. Thanks to the mass media, the proceedings became the focus of interest for millions of people throughout the world. Because the process was held in the languages of the prosecuting military authorities of Russia, Great Britain, France, and the United States, and the parties charged with the crimes frequently did not speak the languages in which they would be tried, a team of interpreters was assembled to provide language interpreting services in German, English, French, and Russian.

The establishment of the United Nations, the European Common Market and subsequent European Community, and other multinational bodies led to a rapid growth in the field of simultaneous conference interpreting. Other international policy decisions related to translation were adopted, including the 1969 Pact of San José⁹ which sought to create a terminological and procedural bridge between the Anglo-American Common Law tradition followed in the United States and the European continental Civil Law tradition followed by many countries in South and Central America and by Mexico.

organized their legal defense, hired an interpreter familiar with Mende, and raised funds for their material support. In 1841, the U.S. Supreme Court freed the rebels, and they were allowed to return to their homeland of Sierra Leone.

⁹On November 22, 1969, the Inter American Specialized Conference on Human Rights approved the American Convention on Human Rights, better known as the Pact of San José. It has been subsequently adopted by several nations and incorporated into the United Nations protocols.

In the United States, the 1978 Court Interpreters Act was the first major legislation dealing with language in the courts in the federal system. It led to additional legislation requiring individual states to adopt language access policies and provisions to redress important linguistic inequities with a significant and growing segment of the population—Hispanics. Initially the legislation sought to address serious lapses in constitutional due process rights for criminal defendants. However, in many ways, the Act was also the culmination of the Civil Rights movement spearheaded by Martin Luther King and other African-American leaders. The advances made by that movement on behalf of Black Americans would soon be adopted and modified by other minorities.

Court interpreters in federal and state courts of the United States of America are part of the scheme that has been developed over the years to enforce, secure, and ensure the rights of defendants to equal treatment under the law. This has further evolved to ensure equal access to rights and benefits. They have been commissioned with the twin tasks of ascertaining meaning in one source language and conveying it into one or more target languages. This is usually done in a bidirectional manner but sometimes by multilingual relay teams. The translational work is required to be done without additions, omissions, or embellishments.

Some jurisdictions such as Florida have added that the work is also to be done without “explanations, as cited by Rule 14.310 on Accuracy and Completeness of the *Florida rules for certification and regulation of spoken language court interpreters, 2016 edition* (p. 12), which states: “Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, summarizing, or adding anything to what is stated or written, and without explanation.”

In the performance of this work, interpreters are deemed to be expert witnesses pursuant to and within the confines of the law as established by the Federal rules of evidence. Dueñas, Vásquez, and Mikkelsen (2012, p. 85) assert that because court interpreting is conducted in a judicial setting, it is essentially carried out in an “adversarial” environment. Under these circumstances, they tell us, “Intervening to clarify ambiguities or offer suggestions about how to communicate effectively could be perceived as showing bias towards one party or another. In these cases, interpreters should refrain from offering advice or providing explanations.”

The purpose of providing court interpreters for defendants is to place limited English proficiency (LEP) individuals on an equal footing with English proficient defendants by ensuring that they are present in a court of law, both physically and linguistically. This aspect of the language policy finds its genesis in the constitutional requirements for due process and the Bill of Rights principle of equal treatment under the law. Other legislation, however, seeks to equalize access under the law to ensure the civil rights of LEPs and the benefits and privileges to which they may be entitled.

Equal footing or equal standing means equal linguistic treatment under the law; it is not necessarily synonymous with the concept of equal access. Equal access, on the other hand, may provide interpreters and translators with certain leeway to add, omit, embellish, and explain or “explicitate” (Steiner, 1998) language, when the purpose is to ensure understanding in the procurements of government services, benefits and rights.

The two goals are often seen as existing in conjunction to one another. This is not necessarily the case, and they may be at odds with each other in certain cases. In this latter sense, legal authorities may argue that language access to court proceedings need to

be at the same level as that received by an average English speaker. Anything beyond this basic access could be construed to be an unfair advantage. Others will instead argue that courtroom interpretation needs to provide a “meaningful equivalent” communication. Some may refer to this “meaningful equivalent” communication as “culturally meaningful” communication to ensure that LEP individuals have linguistic access to court proceedings. Meaningful equivalence might require translating the English expression of Friday the 13th into the Spanish *martes 13*—literally, Tuesday the 13th—both days equally inauspicious yet holding different etymological origins. It may also mean referring to a *D.U.I. charge* as *una acusación por conducir en estado de embriaguez*, which spells out the meaning of the English abbreviation into a *drunk driving charge*. To spell out the abbreviation as in the preceding example may be deemed to be an impermissible “explanation.” As Jon Leeth was quoted at the beginning of this chapter, defendants “have the same responsibilities as anybody else coming into federal court to say, ‘I don’t know what you are talking about. Could you make that clear?’” (Berk-Seligson, 2002, p. 40)

2.4 Nature of Courtroom Interpretation

A brief review of the ecology of courtroom interpretation is warranted. Court interpreters are expected to correctly understand facts, quantities, qualities, concepts, propositions, cultural references, logical propositions and relations, and nuances of speech denoting general thoughts and emotions that additionally mark social class, gender, level of education, linguistic competency, and physical or mental health as expressed in any given language. They are also expected to convey the equivalent denotations, connotations and illations into a second language (and sometimes into any

number of additional languages through multilingual relay teams) with no additions, omissions, embellishments, or explanations. This presupposes that language is effable, equivalence is possible, and culturally bound speech appeals to universal values or is marginally irrelevant.

The translational process encounters many environmental challenges in the form of bad acoustics, speakers with speech disfluencies who mumble or whisper their words, mangle the language with hems and haws, or speak at breakneck speeds of more than 250 words per minute, as well as unfamiliar speech varieties. In the United States, there are at least nine recognized regional dialects or speech varieties of American English, and world English varieties spoken by visitors and emigrants run into the scores without even counting the sociolects particular to different fields of knowledge.

Other difficulties encountered include the idiolects that individuals develop, or the inchoate nature of thoughts developed by speakers, including non-sequiturs, run-on sentences, incorrect or unusual use of metaphors and collocations, and malapropisms. Then too there are individuals who engage in the deliberate or accidental use of prevarication as a rhetorical device.

Further complicating the situation is the tendency among institutional and corporate representatives to speak in their own academic or professional trade jargons and pepper their speech with acronyms, abbreviations, and compound noun structures. Alcaraz and Hughes (2014, pp. 4-5) explain that legal English (which will be examined more closely in section 2.7 of this chapter) provides multiple lexical choices, as in the case of *asking*, *questioning*, *interrogating*, or *examining* (Crystal, 1995, 124). It often relies on archaic adverbs and prepositional phrases and redundancy in the form of

linguistic doublets such as “to aid and abet” and “part and parcel” and triplets such as “to tell the truth, the whole truth and nothing but the truth.”

Some of the archaic forms include instances of code switching among English, Norman French, and Latin, due to the influence of Roman law and a shared legal culture. Latin can be seen in the Production of Documents *subpoena duces tecum* (literally "under threat of penalty or punishment you will bring it with you."), and Middle French appears in the expression *Oyez, oyez, oyez!* (Hear ye!) which opens a session before the Supreme Court of the United States (Tiersma, 2000; Alcaraz and Hughes, 2014).

Alcaraz and Hughes (2014, p. 5) remark that “translators cannot always assume that Latin can be left untranslated” when engaged in a translational action, placing additional pressures. Regarding the use of archaic phrases in English legal speech, Cao (2009, p. 96), citing Zweigert and Kötz (1992, p. 275), points out that “contracts and wills in Common law in English may be drafted in a style of language that strikes the Continental jurist as positively medieval.”

Other features of legal language include the use of unusually long sentences, an abundance of restrictive connectors and parenthetical restrictions, and the use of lexical vagueness due to homonymy, synonyms, hypernyms, and hyponyms. Cao (2009, p. 58) further warns against semantic confusion when translating between European languages with Latinate vocabulary: “Words in these languages often look similar linguistically but turn out to be different in legal substance. False friends are also quite prevalent. Examples of false friends include *demand* in English and *demand* in French, as well as *domicile* in English, *domicile* in French, and *domizil* in German, which do not share the same meaning. We have mentioned earlier that the American English legal concept

community property is often treated as the equivalent to *bienes gananciales* in Spanish which opens the door to confusion with the other legal concepts in Spanish such as *comunidad de bienes*.

Another feature of legal language involves the formal and archaic register of diction. There are important reasons for this reliance on traditional forms of speech. Foremost among these is the clarity and certainty entailed by this vocabulary among those who understand the term. Alcaraz and Hughes (2014, p. 7) clarify: “As we have said, lawyers are reluctant to depart from these terms, precisely because having fallen out of ordinary use—if indeed they ever belonged to it—they are less prone to semantic change and so have the advantage of clarity and certainty to those who understand.”

This feature of certainty is, however, disrupted by trends to make legal language more accessible to lay people. Court language is sometimes made even more confusing for the public and interpreters alike when judges and other officers of the court bend to pressures to engage in simpler language promoted by the Plain English movement. They may change registers and alternate among traditional archaic forms, euphemisms, and contemporary colloquial expressions (Alcaraz & Hughes, 2014).¹⁰

These environmental factors are critical occupational challenges. Yet field observation of the work performed often suggests that supervisors and self-appointed trainers needlessly blame translational failures on interpreters. Interpreters are said to lack language proficiency, engage in unknown domains of knowledge, commit “stylistic errors” for “preferred meanings” and “grammatical forms,” “fail to conserve register,”

¹⁰Despite the simplifying results of the Plain English movement, a recent study by Hill and King (2004) indicates that German contracts do as much as American contracts yet utilize fewer words (cited by Cao, 2009, p. 97).

incur in “incorrect syntax” that “interferes with message,” and have “limited legal vocabulary” (Dueñas, Vázquez, and Mikkelson, 2012; Berk-Seligson, 2002).

Dueñas, Vázquez, and Mikkelson (2102) cite research conducted by Hale in 2004 that confirmed other studies’ conclusions regarding the tendency of Spanish interpreters to allegedly alter the illocutionary force of English tag questions. Hale reported that nearly 30% of the time, interpreters omitted or altered tag questions to render them “less coercive and less aggressive in tone than the original English version.” (Dueñas, Vázquez, and Mikkelson, 2102, p. 770).

This emphasis on “interpreter error” overlooks the fact that such behaviors should have been properly addressed at the time of certification of linguistic competence, which currently set the bar at 80%, making a 20% rate of error acceptable. They may also result from failures on the part of litigants and court personnel to provide the interpreter with advance case-material information in a timely fashion (e.g., deposition transcripts and pre-trial conference reports summarizing the evidence, witness lists, and other helpful information). Lastly, little is said about the pre-trial preparation of lawyers and witnesses alike in the use of interpreters, the nature of individual idiolects, or the insistence and reliance on linguistic acts that do not translate well, as with the case of jokes and metaphors based on sports.

Berk-Seligson (2002, p. 40) indicates that current U.S. Court Interpreter certification procedures make allowances for an error rate of up to 20%. This leeway, she says, “raises the very possibility that an interpretation may not always be accurate. The issue of interpreter accuracy [...] becomes salient when interpretations given by court interpreters are challenged in the course of the proceeding [...] usually [...] by bilingual

attorneys.” Typically, however, such challenges are routinely denied by judges. One exception occurs in Puerto Rico, where most of the judges and attorneys are bilingual. The fact that parties to litigation in the island are bilingually competent and proficient places greater demand on the *translational* skill set of interpreters in Puerto Rico. In other jurisdictions, however, interpreter proficiency and competence levels have been lowered. One instance occurs in the state of Texas where interpreter candidates may pass the test with an error rate of up to 30%. This trend toward a lowering of standards is not exclusive to the United States, as seen in International Standards Organization (2019):

Standards of legal interpreting training and practice vary widely and are subject to change with remarkable fluidity. In practice, current trends in several countries go in the direction of *deprofessionalism* (sic) due to the shortage of financial means, absence of specialized training and lack of awareness of the risks of using non-professional legal interpreters. (p. v)

Notwithstanding the above, the fact that interpreters pay so much attention to so many different elements taxes their memory, acuity, and processing skills along with their linguistic competence and their physical abilities to keep apace. It is truly remarkable that the interpreting work is ever performed in real time, given the notorious uncooperativeness of participants and the hostile interventions of attorneys.

Workloads also have a serious impact upon the system of justice in general and the many different parties involved. The demand for interpreters is expected to increase in the foreseeable future at a rate of 19% annually, according to the Bureau of Labor Statistics of the U.S. Labor Department (2019), despite the constraint on financial means noted earlier. The National Court Statistics Project (2019) reported that 95% of all cases

filed in the United States of America were in state courts. The number totaled 84 million cases in trial courts and 257,000 cases in appellate courts. Federal Court filings in District Courts amounted to 368,000 cases, Bankruptcy Courts received 795,000 cases, and Courts of Appeal responded to 60,000 cases. These are total caseloads for all parties, whether English monolingual or language minority. However, in the case of the federal judiciary, the Administrative Office of the U.S. Courts (2017) indicates that slightly more than 230,000 cases involving Spanish-speaking defendants were filed across all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. The *Court operations and case management report* for that year reported:

In fiscal year 2017, U.S. district courts used interpreters in 239,912 court proceedings, compared with 265,888 proceedings in the prior fiscal year. Overall, 130 different languages were used in court proceedings during 2017. Spanish remains the most frequently used language for interpreters in the courts, accounting for 96 percent of reported interpreting events. The top 10 languages that required interpreting were Spanish (230,036), Mandarin (1,211), Russian (883), Portuguese (864), Arabic (754), Korean (347), Mixteco (302), Haitian Creole (269), Foochow (251), and Vietnamese (233).

To get an idea of the number of cases in Spanish at the state level, we can refer to an American Bar Association (ABA) 2019 report. In response to the growing caseload of matters involving Spanish-speaking defendants, the ABA issued Resolution 110 dealing with what are known as the “Miranda warnings.” Authored by the ABA Hispanic Commission and made public for comment, the version unanimously adopted by the ABA House of Delegates indicated that this was “language geared to standardize a

Spanish-language Miranda warning.” The Miranda warning is read to approximately 900,000 suspects and defendants every year. It was first instituted 50 years ago by the U.S. Supreme Court in the historic case of *Miranda v. Arizona*. The outcome of that precedent setting case was that law enforcement authorities are required to advise persons taken into police custody about their Fifth Amendment right to not make any self-incriminating statement before being interrogated.

2.5 The Interpreter as Expert Witness

As already suggested, U.S. law views interpreters and translators as expert witnesses. Federal Rule of Evidence 604 states that “(a)n interpreter is subject to the provisions of these rules relating to qualification as an expert....” To such effect “(a)n interpreter must be qualified and must give an oath or affirmation to make a true translation.” (Federal Rules of Evidence, 2019). The way to qualify an interpreter as an expert is specified under the provisions of Federal Rule of Evidence 702. Experts are found to be qualified by knowledge, skill, experience, training, or education. Experts have to meet four criteria in their testimony: they should have scientific, technical, or other specialized knowledge that will help triers of facts understand the evidence to determine a fact; the testimony is based on sufficient facts or data; the product is based on reliable principles and methods; and the expert has reliably applied the principles or methods to the facts of the case.

The rule also speaks of a “true translation.” It does not speak of an “interpretation, even though the court, in a case that attempted to include translation expenses as a recoverable cost of interpreting, ruled that the two activities were different and distinct and did not grant the request for recovery of such expenses as costs. In any case, a true

“translation” is that which the interpreter is expected to render from the utterances made by any given witness. A “true translation” is one deemed to be “fair and accurate.” Rule 604 implements Rule 43(f) of the Federal Rules of Civil Procedure and Rule 28(b) of the Federal Rules of Criminal Procedure. Rule 43(f) states that testimony by a witness needs to be taken in open court unless otherwise provided by federal statute or any Federal Rule of Evidence. Federal Rule 28 of Criminal Procedure establishes that a court may select and appoint an interpreter. Therefore, interpreters usually perform duties in open court or in depositions that are official court proceedings, even if carried out away from court premises *per se* in the private offices of attorneys. The power to qualify and appoint interpreters is a power exercised under the faculty of the court to call its own witnesses. Interpreters are said to be needed for one of three circumstances: to interpret the testimony of non-English speaking witnesses, to assist non-English-speaking defendants in understanding the proceedings or in communicating with assigned legal counsel, and in such instances in which the witness or defendant is deaf.

2.6 Distrust of Language Service Providers

Despite the above listed rules and the growing body of research and practical experience and production of white papers and grey literature, the work of transferring meaning from one language to another has often been viewed by members of the legal profession with a healthy dose of distrust of the reliability of the *translational acts* and the resulting *translatums*. There are numerous good reasons for this. As Steiner (1998) puts it, users of *translatums* expect the process to be one like bookkeeping, “in which both formally and morally the books must balance” (p. 303). He goes on to explain that:

The translation machine attempts to maximize the coincidence between a word-for-word interlinear and the reconstitution of actual meaning. But although such linearity is absolute only in mathematics or symbolic logic, much of scientific, technical, and, perhaps, even commercial documentation approaches the model. (pp. 309-310)

The distrust often felt toward language service providers is embodied in an Italian phrase: *Traddutori, Traditori*, which means in English “Translators, Traitors.” Of unknown authorship, this expression was first found in a collection of Tuscan proverbs by nineteenth century writer Giuseppe Giusti, according to Davie (2012). Ever since, *Traddutori, Traditori* has been adopted worldwide to refer first to the sense of loss that takes place when a translation betrays the original expression in the source language and second, to the sense of distrust users express when called upon to rely on the accuracy and fairness of the translation (and the translator). There have been notorious news media reports of incidents that would support such reservations and conclusions concerning the potential betrayal on the part of foreign language interpreters used by U.S. armed forces in times of war. One such report revealed that an interpreter was collaborating with enemy combatants in detention during the war on terrorism in the Middle East.

The sense of betrayal felt by those who need to rely on the outcome of the translational action in courts of law can be particularly acute, especially when one considers the high stakes that are at risk: namely, life, liberty, and property. Additionally, concerns among lawyers regarding the use of interpreters can result from the very nature of the legal profession. Mellinkof (1963) and Schane (2006) note that the law is a profession based on words and that to surrender the control that lawyers hold over words

can certainly be unnerving and tantamount to unacceptable to them. Legal practitioners may have many valid reasons for feeling uneasy. As Steiner (1998) tells us, “We have seen that the theoretic equipment of the translator tends to be thin and rule of thumb” (p. 273). He gives the example of Wittgenstein’s question in *Zettel*, (1967, p. 121): “How is this joke to be translated (i.e. replaced) by a joke in the other language?” Wittgenstein noted that the problem could be solved, but there was no systematic method of solving it. He added: “It [will] be of extreme importance to understand how a solution can coexist with the absence of any method of solution.” *Translatologists* concerned with turning translation studies into a science have expressed that one of the purposes in so doing is to put an end to levels of dilettantism seen in the profession.

The sense of distrust that practitioners of law show toward the expert testimony provided by interpreters is mostly anecdotal in nature, although some documented cases do exist. One such case is the gross miscarriage of justice that took place in the 2007 case of *Juan Ramon Alfonzo vs. State of Florida* which led to the 2008 adoption in Florida of a formal certification process to ensure minimum standards of interpreting competence.¹¹ This distrust on the part of legal practitioners is compounded by their ignorance of the processes of interpretation and translation which are acquired for the most part through on-the-job training. The problem is further compounded by what lay people understand translation to be. Pym (2016) tells us that in the course of a project in the U.K. to use translation as a tool to teach foreign languages (Pym, Malmkjær, & Gutierrez-Colon, 2013), the proposal met stiff rejection from language teachers who expressed a preference for “communicative methods” instead. Pym remarks that, in their minds,

¹¹This resulted from a defendant changing his plea to guilty because of a faulty interpretation that indicated that he was being sentenced to fifteen months when in actuality the sentence was fifteen years.

translation was not a communicative activity. Instead, the language teachers believed that translation meant *literal* translation and had no place in the teaching of language.

Anecdotal evidence of Pym's assertions abounds. There are multiple narratives by interpreters encountering some instance in which they are told by an attorney or judge to avoid "interpreting" and stick to the "translation" of what the speaker is saying (Morris, 1995, 26). As Morris states, the ambiguous sense of the intralingual word for "interpretation" is what makes attorneys uneasy. She goes on to say that attorneys believe that they are the only ones entitled to exercise the act of "interpreting" language, insisting on a literal, word for word interlingual rendition. There are many arguments against the literal production of a *translatum*, including the phenomena of polysemous words, the adoption of noun-based content words for employment as adverbial intensifiers or as verbs, the reliance on metaphorical speech that is culture bound, the linguistic use of icons and other cultural symbols, the pragmatic contextual circumstances of speech, and the allusion to Bahktinian dialogics.

In *After Babel*, Steiner (1998) asserts that while meaning resides in the words of the source text, it is much greater than "the sum of dictionary definitions" (p. 276). The task at hand is therefore to have the translator "actualize the implicit 'sense', the denotative, connotative, illative, intentional, associative range of significations which are implicit in the original, but which it leaves undeclared or only partially declared simply because the native auditor or reader has an immediate understanding of them." (p. 276). Nevertheless, as we have already hypothesized in Chapter 1, legal constraints in courtroom interpreting and legal translation go against the addition, omission, embellishment, or explanation of *translatums*. This poses challenges to interpreters and

may pit them against legal directives as issued by the court or necessarily result in less desirable outcomes that will require a more active linguistic participation in the elucidation of meaning by attorneys, or on the reliance of linguistic and cultural experts capable and empowered to express opinions which courts are free to consider or discard.

Notwithstanding, interpreters and translators engage in a combination of activities that render what Dueñas, Vázquez, and Mikkelsen (2012) call “meaningful equivalence.” Steiner (1998) asserts that those engaged in translational activities assume:

[a]n analyzable understanding of the procedures by which ‘meanings’ are derived from, are internal to, or ‘transcend’ words. But it is just this understanding which translation claims to validate and enact (the circularity involved in the case makes Whorf so central and vulnerable). To put it another way: from Cicero and St. Jerome until the present, the debate over the extent and quality of reproductive fidelity to be achieved by the translator has been philosophically naïve or fictive. It has postulated a semantic polarity of ‘word’ and ‘sense’ and then argued over the optimal use of the ‘space between.’ (p. 275)

Returning to our Italian word play with *Traddutori*, *Traditori*, we observe another sense for those translational actions. The warning is clearly understood as expressing the betrayal that occurs when a translation fails to fully convey what the original utterance meant. This is often due to the plasticity of meaning, as described by Lacan, when he asserts that the grasping of meaning is akin to a tapestry cover thrown over a sofa but not nailed; the cover slips and slides and can never stay put in one place and so does meaning, or to the uncertainty of language in general as understood by Derrida (1967). It also calls to mind the words of José Ortega y Gasset regarding meaning quoted by Harris

in *The Linguistics Wars* (1993, p. 4): “Every utterance is deficient—it says less than what it wishes to say. Every utterance is exuberant—it conveys more than it plans.” However, there needs to come a point at which the interpreter or translator ceases to engage in the production of meaning and allows the parties intended to use the *translatum* and come to their own conclusions.

Therefore, when interpreters are told to translate rather than interpret, they cannot help it if they do in fact go ahead and ‘interpret’ instead of ‘translate,’ as attorneys and other lay people understand it. As Steiner (1998) expounds: “Every understanding is actively interpretative. Even the most literal statement [...] has a hermeneutic dimension. It needs decoding. It means more or less or something other than [what] it says” (p. 180). A bit later, he concludes, almost as a rephrasing of Ortega y Gasset’s maxim: “(we) mean endlessly more than what we say” (p. 281).

In this vein, *legal equivalence*—also known as *meaningful equivalence* or *functional or dynamic equivalence*—has been described as the conveyance of meaning from one language to another without any non-essential additions, omissions, embellishments, or explanations. This notion has been highly challenged from the earliest of times. Cicero remarked on the difficulty he encountered between producing an acceptable level of rhetorical authenticity and an acceptable level of accuracy or fidelity of content in the substantive portion of the expression.

Despite the difficulty in matching accurate content and rhetorical expressiveness, the fiction of natural equivalence or formal “literal” expression has become the preferred standard relied on. This standard, however, has often gone against the politics and ideology of the day. The latter situation has been the case for the most part with Biblical

translation, mostly because of efforts to forge a single, unified religious doctrine. The attempts to establish a Christian Biblical canon that upheld one sole interpretation over competing versions (among Catholic, Orthodox, Reformist, and Protestant views) was highly political and has led to the death of many a translator.

Interestingly enough, this inherence on the part of figures of authority would be observed again by Pym (2016) when he embarked on a project to collect in one work all the procedures, techniques, and strategies relied upon by translators and interpreters as “solutions” for the production of written and oral *translatums*. Pym discovered that “the historical relations between the lists effectively traced the development of an international Translation Studies – a long extended conversation between scholars, over and above the concerns of specific languages” (p. x). He also found that the development of these procedures, techniques, and strategies “were in fact highly politicized, seeking to advance agendas not just of various linguistic nationalisms but also of a few governmental regimes – the search became a history in which Hitler, Stalin and Mao all play roles” (p. x). This conclusion is hardly surprising when one considers the violent history of Bible translation as summarized by cultural paradigm scholars Bassnett and Lefevere (1990) and Freedman (2016).

Bassnett and Lefevere (1990) refer to *The Septuagint* as the first example of a work that was conveyed under the equivalence paradigm. The myth holds that this first Biblical canon was translated from Hebrew into Greek by more than seventy individual Jewish translators working independently, yet supposedly “all [the] translations turned out to be identical” (p. 14).

Commenting on *The Septuagint*, which he refers to as “The Old Testament,”¹²

Bassnett and Lefevere make several observations:

- The translator has “expertise.”
- Someone in “authority” “commissioned” the translator.
- There is “a need” for this work that makes it valuable.
- Readers “trust” that the translator will produce “a fair representation” of the “starting text.”

He nevertheless notes that as time went by, subsequent versions of the Hebrew canon “became so ‘Christianized’ that Jewish communities stopped using the translation altogether” (p. 14-15). Readers no longer acknowledged any expertise, authority, or trust; thus, the need was not being met by a trusted and authorized product that could be deemed to be a fair representation of the original.

Bassnett and Lefevere’s model on the ‘legitimacy’ of a *translatum* in many ways parallels the legal views espoused by the U.S. Rules of Evidence. The court determines the need on a case by case basis, qualifies and commissions the interpreter as an expert, charges the expert with producing a fair representation, and trusts that the output will be acceptable to the court. This concept of legitimacy having to do with the acceptability of a *translatum* has gone by many other names by different scholars including *adequacy*, *acceptability* (Toury, 1995), *adaptation* (Zellermayer, 1987), *lexical simplification*, *equivalent* (Catford, 1965), *equalization* (Schlesinger, 1989), *explicitation* (Blum-Kulka,

¹²“Old Testament” is a derisive reference to the Hebrew Biblical Canon as part of the supersession doctrine that holds that the “New Testament” replaced or superseded the “Old Testament.”

2004), *functionality* (Reiss, 1971), *similarity* (Croce, 1902), (Chesterman, 1996), *approximation*, as cited by Pym (2010/2014, pp. 25-27, 32,-39, 76-93).

2.7 Legal Terminology

Earlier in this chapter (section 2.4), when reviewing the nature of courtroom interpretation, the point was made that interpreters deal with confusing legal terminology that often utilizes structures from Latin and French. In this section, we will examine in more detail the translational problems that exist with legal terminology.

Legal language is not only characterized by a lexical vocabulary with highly specialized and specific legal meanings; it also partakes of the general speech of lay people that use language in a broader sense. Thus, while the word *intrigue* can specifically mean “to engage in a covert plot,” according to a definition found in a prescriptive legal dictionary, the general use found among lay people may include the meaning “to invoke interest” as in the phrase: *This article intrigues me*. (Tiersma, 2000, p. 115). Appropriate disambiguation will depend on both the linguistic context and the situational circumstances. The same phenomenon can occur at the sentence level, and Tiersma (2000, p. 124) distinguishes the literal meaning of a sentence from the utterance or speaker’s meaning.

Legal language also relies on a series of spoken and written genres which occur during certain stages of a legal proceeding. Whether written or spoken, these communicational genres assist in defining the legal problem or controversy and often by implication represent a stage in the proceeding and establish the framework of law in which the matter is to be resolved.

In civil procedures, claims are channeled by means of a formal *letter of notice* before proceeding to the more formal *complaint*. The concept of the complaint can take various denominations. In criminal procedures it is known as an *information* or *affidavit*. This is followed by an *indictment* listing and itemizing the facts that give rise to the formal charges in a criminal matter. As indicated these *indictments* or *pleadings* in the case of civil claims, are made up of assertions of facts, allegations of breaches of law, and presentation of controversies that can be *justiciable* (amenable to legal resolution). Presented by plaintiffs or petitioners, these documents require *answers* from *defendants* or *respondents* that are required to *raise defenses*.

Before actual trial proceedings on the merits, there is an intermediate process referred to as *discovery* in which the parties are entitled to an exchange of facts. These facts can be obtained by means of *depositions* taken in the form of orally posed questions and answers or by means of written *interrogatories*, *production of documents*, and *admissions of facts*. The discovery process allows the parties to learn about the controversy, the laws, the facts, the claims, the physical or material evidence, the defenses, the witnesses, the parties, and the testimonies.

The next stage, *resolution*, can be conducted in the form of *mediation* or *arbitration*, or by direct negotiation resulting in the production of written *settlement agreements* (in the case of civil controversies) that put an end to the controversy, and by *change of plea offers* (in the case of criminal charges), which are followed by a special hearing denominated *change of plea to guilty*, or *no contest* that results in an adjudication of guilt, a *dismissal* that can be *with* or *without prejudice*, a *withdrawal of process*, or a

withdrawal of sentence which is a conviction with a sentence that is held in suspense with no consequences on record for public notice purposes only.

The lengthiest and most complex legal process of all is *a trial on the merits*. This is mostly oral but is accompanied by the simultaneous production of a written *transcript* by a stenographer (court reporter) of all statements made on or for the record. The initiation of a trial follows an order that involves the filing of *the charging document* or accusations, a process of *jury selection* that includes *voir dire* (general questions) to determine a panel of potential jurors' suitability and fitness in terms of criminal background and personal, individual understanding of their role as triers of the facts, their general aptitude in terms of fairness and impartiality, and any present or future hardships that might act as impediments to the proper rendering of their duties. Once a jury is selected, sworn in, and charged with *jury instructions*, then both prosecuting and defense attorneys are free to present *opening statements*. These outline the facts, actions and conclusions that both the prosecution and the defense expect to present, prove and have admitted by the court as evidence for the jury to use and rely on in the course of their *deliberations* on the guilty or non-guilty condition of the defendant.

The final stage in any legal case is known as the *disposition* and can result in the production of both an oral and a written *opinion and order* or *judgment and sentence*. In most civil cases, the matter is resolved at this point unless an *order to comply* or an *injunction* is required to cease and desist or perform some specific action or when the court is required to engage in ongoing supervision and monitoring of a convict. In a criminal disposition, there are a series of additional actions and reports that may include a *pre-sentencing interview and report*, a *summary of criminal history* and *score sheets*, and

other documents setting directives for *parole, probation, community control*, or *incarceration and release*.

Each of the stages and accompanying oral and written texts described above may require the intervention of an interpreter or translator. This dissertation deals with one of the most challenging linguistic complications that will usually arise during the presentation of testimony: that of ambiguous propositions, whether lexical or structural, specifically those resulting from the use of intonation for grammatical and semantic purposes.¹³

In the heat of court proceedings, it may be easy for an interpreter to overlook the appearance of these ambiguous expressions and be unsuccessful in conveying the original meaning. On the other hand, there are times when an ambiguous expression is identified, and yet the same nuanced combination of meanings in the original expression cannot be reproduced in the interpretation. This is often the case with jokes, the untranslatability of which was noted by Wittgenstein in the course of his reflections on the philosophy of language (Bevis, 2013) and by Crystal (1969) in his observation that not enough research had been conducted on playful (ludic) language.

2.8 Models of Ambiguity in Translational Contexts

Ambiguity is a critical subject in the study of meaning and monolingual speech. In translational work, it becomes even more so. Its importance has been recognized by translators who incorporate ambiguity among the many arguments raised against the possibility of interlingual equivalence, using ambiguity as the spike that

¹³Although we will be reviewing other samples of ambiguity in the Spanish language that have come up in many different courtrooms in Puerto Rico.

nails shut the coffin on this traditional paradigm that has controlled the performance and quality of translational work for the last two thousand years. In what follows, we consider the *equivalence paradigm* against the *uncertainty paradigm* and the theories of *deconstruction*, and *hermeneutics* as theories that seek to distinguish and perhaps reconcile *equivalence* and *uncertainty*.

2.8.1 Equivalence as the Foundational Fiction for Translational Acts

We have already stated that *natural equivalence* is the foundational fiction that holds that natural language is inherently effable and that what we think and say in one language can be thought and said in another, even when much has been said to discredit the *equivalence paradigm* for translation work and emphasize its limitations. One such example from French used by Pym (2014, p. 33) would be the statement:

1A: *The first word of this sentence is made up of three letters.*

Were we to say this in Spanish in a formal interlinear word for word match, we would inevitably make the following false statement:

1B: *La primera palabra de esta oración está compuesta de tres letras.*

Even if we did not speak Spanish, by simply looking at the first word in sentence 1A and the number of letters in the first word of sentence 1B, we would be able to ascertain that sentence 1B could not possibly be a valid translation of sentence 1A, given that the first word in Spanish only contains two letters. Mary Snell-Hornsby calls this “the illusion of symmetry between languages” (cited in Pym, 2014, p. 38). Because of the above example and others, the fundamental concept of natural equivalence has evolved into what is known as *directional equivalence*. Pym tells us that it holds as one of its virtues a “lighter ideological baggage.” Pym states that under this revised paradigm,

“translators have a broader range of renditions to choose from.” He concludes that the directional equivalence paradigm is more compatible with the *Skopos* or purpose-based paradigm developed by the German schools of translation as an all-encompassing theory that would support Translation and Interpretation academics who claim their field as a science separate from linguistics.

Directional equivalence thus resolves the apparent “impossibility of translation” that structuralist linguistics posited. “Equivalence becomes so possible that there are many ways of achieving it” (Pym, 2014, p. 38). Despite these virtues, critics of the equivalence paradigm remain adamant, charging that the theory remains “unnecessarily binary” (Meschonic, 1973, 2003), makes the start text always superior (Vermeer, 1989a/2012), and is not “efficient” since “similarity is enough” (Chesterman, 1996, p. 74). The question, then, for purposes of this dissertation, can this be achieved without additions, omissions, embellishments and explanations?

Munday (2016) speaks to us about the many versions of *After Babel* (1975/1998) by George Steiner. Steiner advocates the *hermeneutic* approach as an act of “investigation into what it means to “understand” a piece of oral or written speech, and the attempt to diagnose this process in terms of a general theory of meaning” (p. 251). Munday explains that “this model [...] conceives of translation in a wide compass in which it shares features with acts of communication that are not limited to the interlingual,” and he goes on to quote Steiner as saying:

A ‘theory’ of translation, a ‘theory’ of semantic transfer, must mean one of two things. It is either an intentionally sharpened, hermeneutically oriented way of designating a working mode of all meaningful exchanges, of the totality of

semantic communication (including Jakobson's inter-semiotic translation or 'transmutation'). Or it is a subsection of such a model with specific reference to interlingual exchanges, to the emission and reception of significant messages between different languages... The 'totalizing' designation is the more instructive because it argues the fact that all procedures of expressive articulation and interpretative reception are translational, whether intra- or interlingually. (Steiner 1998, pp. 293-4)

Steiner's list of factors involved in a translation begins with the initiative of trust. It asserts that the action of understanding is an "aggression" and classifies this violence as 'incursive...extractive...invasive' and "appropriative" as if a burglary or a theft had taken place. This act of violence is followed by a process of linguistic transfer that occurs as an "incorporation," "assimilation," and "domestication." These considerations all have important consequences for the courtroom interactions that this dissertation plans to analyze.

We have thus seen that the natural equivalence theory and the concept of the effable nature of language that gave life to the concept of translation and interpreting has been discredited, only to be successfully replaced by directional equivalence which also poses theoretical difficulties to the work that court interpreters are called upon to convey meaning without the addition, omission, embellishment, or explanation of the source language. Despite the extensive reservations held by many academics, for lay people in general, natural equivalence is the underlying, 'common sense' concept of what it means to translate or interpret and going against this notion is counterintuitive. Based on this fiction, lay persons (along with legal scholars, judges and attorneys) give in to their

inclination to admonish interpreters to “just translate” and not “interpret.” Natural and directional equivalence is furthermore the good faith basis of all modern interpreting in medical, technical, engineering, and scientific translational actions.

Effable is a word formulated by philosopher Jerold Katz (1978) that means ‘expressible in words.’ Umberto Eco, an Italian humanist, translator, and writer, also wrote in 1995 that:

Many authors advocate a principle of effability, according to which a natural language can express anything that can be thought. A natural language is supposedly capable of rendering the totality of our experience—mental or physical—and consequently be able to express all our sensations, perceptions, abstractions up to the question why there is something instead of nothing. It is true that no purely verbal language ever entirely achieves total effability: think of having to describe, in words alone, the smell of rosemary. We are always required to supplement language with ostensible, expressive gestures, and so-called ‘tonemic’ features. Nevertheless, of all semiotic systems, nothing rivals’ language in its effability. This is why almost all projects for a perfect language start with natural, verbal languages as their model” (Eco, 1995, p. 23-24).

Despite this broad acknowledgement about the uncertainty of language in general and translational actions in particular, the issue of ambiguity as a subtopic of uncertainty has not been considered within the theoretical review of interpretation or translation studies until recently. Some might even argue that the existence of ambiguity undermines what is left of the equivalence paradigm under the new name of directional equivalence. The argument might go like this:

1. If there can be no lexical or structural equivalence between the words of one language and the words of another language,
2. If the prosodic and intonational features in one language are unable to convey grammatical and semantic nuances including more than 50 different emotions,
3. If dialogically, the concepts conceived in one language cannot find appropriate symbolic avenues in target language host cultures into which the translational action is taking place,
4. Or if instead these concepts are being appropriated by the target language and new meaning is being assigned; then:
5. One may conclude that language is essentially ineffable and that one cannot truly comprehend what is said in any given language when transferred to a host language.

2.8.2 Uncertainty of Meaning or the Deconstructive Paradigm

The presence of ambiguity would also support propositions by those advocating uncertainty paradigms that meaning in monolingual speech and writing is at best tenuous, always unstable and elusive, and definitely uncertain. In turn, this would lead to the proposition that interlingual communication is ineffable because even speakers of the same language are incapable of understanding each other.

Derrida's *deconstructivist paradigm* would then be the prevailing model for natural languages for intralingual and interlingual communication in general, and the entire foundation of modern empirical epistemology would break down. Human communication would be existentialistically nonexistent because it would be phenomenologically impossible to communicate.

2.9 Ambiguity

The issue of ambiguity has been raised without defining it. What is ambiguity? Empson (1930, p. 1) defines ambiguity as “any verbal nuance, however slight, which gives room for alternative reactions to the same piece of language.” This definition may work fine for many purposes, including much legal argumentation about any given set of facts in a controversy, but something slightly more specific for the analysis will be undertaken in this dissertation. Therefore, for purposes of this dissertation, the phenomenon of ambiguity will be defined as the presence of two or more meanings in any given human expressive utterance. The key feature of ambiguous expressions is that intra-linguistically, they cannot be disambiguated into any given single meaning. If one chooses one meaning, there can only be one set of logical conclusions and consequences, and if one chooses a different meaning, then a different set of conclusions and consequences is reached. Thus, for a statement to be ambiguous, the listener or reader must always be capable of inferring two or more meanings in any given expression in any given language.

This multiplicity of meaning is most often caused by universal semantic and syntactic aspects found in natural languages, but other many factors can intervene. These include pragmatic elements of discourse analysis, the use of dialogical icons that reference shared cultural knowledge, phonological and intonational features, and metaphors or other tropes used for the construction of meaning. This fundamental feature would seem to be part of the cognitive revolution that occurred 50,000 years ago among early *homo sapiens* (Harari, 2015), but the reason for its existence is not entirely clear.

As Juba, Kalai, Kannah, and Sudan (2011) state:

Natural language is ambiguous. One sentence could mean a variety of things in different contexts. At first thought, it is not clear that ambiguity serves any purpose, and communication may seem best when everything has the precision of mathematics with (ideally) exactly one interpretation. On such grounds, Wasow et al. (2005) call the existence of ambiguity in language surprising, and moreover, note that the relative *lack* of work or interest in the ambiguity of language by linguists is also surprising. Cohen (2006) discusses the various theories proposed for why language is ambiguous, but he concludes, “As far as I can see, the reason for ambiguity of language remains a puzzle. We simply don’t know why language is ambiguous.”¹⁴ (p. 1)

At a practical level, many might consider ambiguity in natural language as highly problematic. We shall see from the courtroom examples to be analyzed in Chapter 4 that in the case of legal controversies, ambiguity can totally impede the resolution of specific aspects of litigation in which life, liberty, and property are at stake, notwithstanding legal argumentation aimed at spinning and weaving alternative narratives for any given set of facts.

There is a growing body of recent empirical research that reveals the ways in which natural languages are inherently and pervasively ambiguous “at various levels” (Prior, Wintner, McWhinney, and Lavie, 2009; Piantadosi, Tily, and Gibson, 2012). Defining these “levels” is part of the mission of this dissertation. One level has to do with

¹⁴According to Chomsky (2008), ambiguity illustrates that natural language was poorly designed for communicative efficiency.

lexical ambiguity (Altarriba & Gianico, 2003). Another “level” often referenced is known as *structural ambiguity*. However, it is important to not confuse ambiguity with lack of specificity (whether the ambiguity referenced is semantic, phonological, structural pragmatic, or any of the other typologies that we have identified).¹⁵ According to Oaks (2010/2012) and Sennet (2016), vagueness of speech or text is not ambiguity; it is only insufficient specificity. Thus, a prohibition against the operation of “vehicles” in a park can prove to be problematic. Does the superordinate term “vehicle” include “strollers” and “baby carriages?” Are bicycles and tricycles used by children considered vehicles? Can gardeners at the park use wheel barrels to transport soil, gravel, and sod along with tools and other supplies?

Garden path sentences (grammatically correct sentences that seem ungrammatical or nonsensical due to the way they’re structured) are not ambiguous either, according to Oaks. An example would be: *The man who whistles tunes pianos*. Oaks also states that *focus ambiguities* should not be deemed to be structurally ambiguous “even as they take us by surprise when we discover that their emphasis is on a different part of the sentence than we have expected” (Oaks, 2010/2012, p. 19). An example would be: *I asked the little girl who is cold*.¹⁶

¹⁵Semantic ambiguity is based on polysemy; phonological ambiguity is based on homonymy; and structural ambiguity can mean that in the sentence “The mother of the boy and the girl arrived.” we don’t know whether the Noun Phrase consists of one head noun “mother” modified by the prepositional phrase “of the boy and the girl” (referring to one person) or two nouns = “mother” modified by the prepositional phrase “of the boy” and the second noun “the girl” (referring to two people arriving). The ambiguity is caused by not knowing which way to structure the Noun Phrase of the sentence because there are two possible structures.

¹⁶The ambiguity in this example is not only focus-based. Typologies of ambiguity may overlap and, in this example, it can also be structural. The problem isn’t the focus but rather how the structure of the sentence is built. Is it “I asked the girl X” X = “Who is cold?” or “I asked the girl” and “the girl” is modified by the description “who is cold” = the one who is cold and not some other girl.

Focus ambiguities are said to be common devices in humor. An example is taken by Oaks from the television series *M*A*S*H**. One protagonist is asked “Why are you always scratching yourself?” The answer we hear: “Nobody else knows where I itch.” Groucho Marx also regales us with a similar piece of humor when he tells us that he shot an elephant in his pajamas and then goes on to say: “How he ever got into my pajamas, I’ll never know.”

For Oaks (2010/2012), *metalinguistic ambiguities* are not structural in nature either. What Oaks means by the word *metalinguistic* is not entirely clear, although some might say that he could be referring to semiotics, kinesics, or gestural expressions, as sources or typologies for metalinguistic ambiguities. To illustrate the term *metalinguistic*, Oaks utilizes a jewelry chain store slogan: *Every kiss begins with Kay*. The homophonous forms K and Kay allow the interpretation of Kay Jewelry as the catalyst behind every kiss, or alternatively, that *kiss* begins with the letter *K* every time. Thus, we have a play on words that gives us two distinct meanings. We can only decide that the slogan is really referring to the jewelry store itself and not on K for kiss on the basis of the preceding denotational and connotational aspects of the audio, video, or print illustrations used in the advertisement that give us a pragmatic situational framework for disambiguation. Oak’s insistence that this example is metalinguistic is probably the result of his considering the pragmatic situational framework as being “beyond language” as a system (*langue*) or as a specific utterance (*parole*).

Regarding the role of intonation in creating ambiguity and disambiguating, Fery (2017) tells us that:

The relation between meaning and intonation is at least twofold. First, the tonal contour of a sentence is shaped by information structure. The informational role investigated in this chapter are focus, givenness and topic, as proposed by Krifka (2008). Second, the choice of specific tones and the way they combine is essential in communication. Intonation languages, meanings and illocutionary roles influence the tonal patterns of sentences, and conversely, the choice of tones has an influence on the pragmatic interpretation of sentences. Intonation has a different role from the other grammatical modules, without being completely separated from other parts of grammar. Rather, the part played by an intonation contour interacts with other grammatical components to produce specific nuances. (p. 136)

A review of the literature shows that scholarship on ambiguity has been widespread and specialized but not necessarily comprehensive until very recently (e.g., Buring, 2016; Fery, 2017; Oaks, 2010/2012; and Ward, 2019). By comprehensive, we mean that until the aforementioned studies, there was no single work that attempted to cover all the various “levels” or linguistic sub-disciplines that feature ambiguity as we understand it to appear phenomenologically.

One of the first works to engage in a comprehensive, if partial, review of ambiguity is Oaks (2010/2012). Oaks begins his work by remarking on the lexical incongruity concerning the word *disambiguate*. He notes that the word *ambiguate* does not officially exist even when computer searches show people are using the term. In his musings, he suggests that the official non-existence of the word *ambiguate* is likely due to our bias toward the word *ambiguity* which makes us believe that ambiguity is a

hindrance to clear and effective communication. “By this view we wouldn’t normally try to *ambiguate* something, at least not when communicating cooperatively with someone” (p. 3). Nevertheless, we do have the verb *to prevaricate*, defined by the 2016 edition of the *American Heritage Dictionary of the English Language* as: “to speak or write evasively”. Clearly, speakers who prevaricate may sometimes want to make ambiguous expressions.

The thinking about ambiguity as a phenomenon of natural language is evolving. Instead of viewing its very existence as a problem that impedes or thwarts effective communication, there are now those that argue that it is a crucial feature of natural language that makes for more efficient and effective communication (Piantadosi, Tily, Gibson, 2011). In Chapter 5, we will discuss “constructive ambiguity.”

Oaks notes that research on the more positive aspects of ambiguity is limited. Before Oaks’ work, there was an earlier volume on lexical ambiguity resolution edited by Small, Cottrell, and Tanenhaus (1988). This work offered works from the perspectives of psycholinguistics, neuropsychology, and artificial intelligence, produced at a time when these fields were just beginning.

One can further say that the topic of ambiguity and the roles prosody and intonation play in the same was neglected until Ward (2019) and Buring (2016). Before these two sources were published, the only other significant writings on the roles of prosody and intonation in ambiguous speech were Bolinger (1989) and Crystal (1969). Crystal, in his characteristically encyclopedic style, devoted a full 76-page chapter to summarize the work of preceding researchers on prosodic features from all disciplines

including translation studies, and made 15 references to the interaction of ambiguity, prosodic systems, and intonation in English.

Ambiguity in prosody is, in fact, such a recent area of research that there is no consensus on terminological definitions for key words like *intonation* and *prosody*. On the matter of notation of tonal contours, Fery (2017) reports that different systems have been proposed, including line notation from Ladd (2008); staggered lines of type in which ups and downs roughly indicate melody of voice (Bolinger, 1986); interlinear or tadpole notation used by Crystal (1969), O'Connor and Arnold (1973), Cruttenden (1986), and Ladd (2008); and finally the step notation used in American structuralism by Trager and Smith (1951) and Pike (1945).

Ambiguity, translational actions, and the law have nevertheless been on the map for legal scholars. In *The Oxford Handbook of Language and the Law* edited by Tiersma and Solan (2012), the issue is referenced several times by Solan (p. 88-92), Poscher (pp. 128-144), Bastarache (pp. 159-8), Tiersma & Solan (p. 352), and McAuliffe (pp. 213-4). In the *Routledge Handbook of Forensic Linguistics* edited by Coulthard and Johnson (2010), there are 17 references to ambiguity by Johnson & Coulthard (pp. 10-11), Bhatia (pp. 39-40, 49), Styall (p. 62), Finnegan (p. 70), Cao (p. 86), Drew & Walker (p. 108), Ainsworth (p. 122), Dumas (p. 366), Hale (pp. 443, 449, 452), Coulthard (p. 475), and Shuy (pp 561, 564-65, 568).

Ambiguity as a research topic continues to gain the attention of researchers in part because of the push to computerize translational actions in a world of increased multilingual contact between different speech communities and the economic pressures of producing cost-effective translational outcomes (Altarriba, & Gianico, 2003). It has

also been the object of research in new fields of knowledge such as psycholinguistics, neuropsychology, and artificial intelligence (cf. Small, Cottrell, & Tanenhaus, 1988).

Based on this extensive literature review, this dissertation advances what the author believes to be a unique proposition: that there are several sub-disciplines in linguistics from which ambiguity can be researched. Lexical ambiguity can be studied within semantics, morphology, and phonology. Structural ambiguity can be worked on within grammar and syntax. Light can be shed upon denotational and connotational ambiguity within the subdisciplines of pragmatics, discourse analysis, prosody and intonation, rhetoric and cultural studies, and dialogical references. In Chapter 4, the dissertation will make a small yet ambitious attempt to bring together what we know about these sources of ambiguity and offer actual instances encountered in the everyday speech that interpreters and translators deal with in order to illustrate and analyze how interlingual disambiguation actually occurs in the courtroom

2.10 Grammar and Meaning

In an *Introduction to Discourse Analysis Theory and Method*, James Paul Gee (2011a) tells us that language breaks down into ‘social languages’ otherwise known as sociolects. He further asserts that each social language has its own grammar that features two distinct ‘aspects’, one having to do with traditional units such as nouns, verbs, phrases and clauses. These are used in patterns otherwise known as *collocations* which help in establishing identities and specific activities. Gee adapts a sentence taken from Halliday and Martin (1993, p. 77):

1. *Lung cancer death rates are clearly associated with an increase in smoking.*

Halliday posits 112 different meanings for the seemingly unambiguous expression. He begins his analysis by arguing that lung cancer death rates can be a “compaction” of any of the following expanded pieces of information:

2a. [lung cancer] = rates (number) of people dying from lung cancer = how many people die from lung cancer

2b. [lung cancer] = rates (speed) of people dying from lung cancer = how quickly people die from lung cancer

2c. [lung] = [cancer death] [rates] = rates (number) of lungs dying from cancer = how many lungs die from cancer

2d. [lung] = [cancer death] [rates] = rates (speed) of lungs dying from cancer = how quickly lungs die from cancer

As for the clause ‘associated with,’ Gee goes on to find the following possible meanings:

3a. cause

3b. caused by

3c. correlated with

3d writer does not want to commit

Taking the following clause ‘increase in smoking,’ a nominalization, he asks if it means that people smoke more, or that more people smoke, or that more people are smoking more? He then goes on to say that taken together with death rates and increased smoking, there are seven possible meanings:

4a. increased smoking = people smoke more

4b. increased smoking = more people smoke

- 4c. increased smoking = more people smoke more
- 4d. the same people are smoking and dying
- 4e. the people smoking and dying are not all the same
- 4f. the situation being talked about is real (because)
- 4g. the situation being talked about is hypothetical (if)

Gee concludes that we do not speak and write in English alone but in specific social languages, and “the utterances of these have [...] meaning [...] thanks to being embedded in specific social discussions. Researchers in other fields (including Tiersma and Solan, Berk-Seligson, Cao, Crystal, Pym, Munday, Reiss and Vermeer, Snedeker and Trueswell, among others) would agree with Gee on this latter conclusion.

One question left unanswered in Gee’s analysis is the role that expressive inflection, intonation, or prosody may have, if any, in the disambiguation of the preceding sentences. Snedeker and Trueswell (2003) state that:

Much prior research on prosody and syntactic ambiguity has focused either on the speaker or the listener, but only rarely on the interaction between the two. This division of labor has led to some important advances in our understanding of prosody. We know listeners can, under certain circumstances, use the prosodic organization of an utterance to guide their interpretation of a phrase that has a global or local syntactic ambiguity. (p. 103)

Snedeker and Trueswell (2003) conclude (like Gee) that “taken together, these studies [on prosody and intonation and the disambiguation of ambiguous expressions] indicate that users of a language share some implicit knowledge about the relationship

between prosody and syntax, and are capable of using this knowledge to guide linguistic choices.” (p. 103)

Interestingly, it is not totally far-fetched to argue that discourse analysis shows itself to be the practical and empirically based side of Derridan deconstruction. Powell (2007) considers that the word deconstruction is impossible to define because any attempt at meaning will be met with indeterminate denotations and connotations. Nevertheless, he adds, the fact that meanings may be indeterminate does not mean that they are undecidable. One can say that deconstruction engages in a process of discourse analysis because “deconstruction looks at how a text makes meanings” (p. 32).

2.11 Intonation and Meaning

Bolinger (1989) tells us that one of the first sources of information about a person comes in the form of the speaker’s speech. He tells us that with the exception of children whose vocal apparatus is not mature and whose full repertory of intonational qualities is not yet available, “one generalization seems to be true of English and probably of most other languages: that the intonational configurations of which speakers avail themselves are the same for everyone, and that the differences are in frequency and modulation” Variations of this sort help us to tell not only who is speaking, but something about class, age, sex, occupation, physical build, and home area of the speaker.” (p. 9). Bolinger also tells us intonation can provide affective information. He tells us that a raised pitch in speech is an indicator of raised tension. “Our voice goes up when we are aroused by fear, anger, excitement, or intense interest” (p. 13).

Despite being one of the earliest researchers of prosody in linguistics, Bolinger was not entirely convinced about its grammatical features. His conclusion is

notwithstanding the fact that in English its most common realization appears in the form of questions. Bolinger declared:

Complementary questions require a thorough investigation on the grammatical side before we can say what intonational restrictions there may be but given the backup from gesture it is probably true that any intonation that serves with other questions may be employed with complementary one. Thus, *your name* with terminal fall and a straight face is apt to be taken as a command, ‘Tell me your name’; with raised eyebrows and/or a terminal rise, it is a question: ‘What is your name?’ (p. 113)

Crystal (1969) takes up the baton in his comprehensive work titled *Prosodic Systems and Intonation in English*. He first devotes an extensive chapter to a review of all preceding work, describes the differences in nomenclature of each linguistic contributor, and pursues a definition to clarify the distinctions between prosody on the one hand and intonation on the other. He further engages in efforts to distinguish between those features that are more akin to be the object of linguistic study *per se* and those that are least linguistic but still important enough to consider in any serious understanding of the topic. As to the limited functions of prosody and intonation in grammar, Crystal (1969) declares that scholars are not in agreement regarding the scope in which grammatical considerations may be entertained when analyzing the function of intonation in languages. Crystal adds that they do make references to grammar but differ as to the reach of its theoretical role. Crystal goes on to say that for “Bolinger (1958d, p. 37), the encounters between intonation and grammar are casual, not causal.” He then says that Quirk et al. (1964) “prefer[s] to talk of correspondences between the two as simply

‘tendencies’ in their statistical approach; but Harris (1951, p. 50) expects a correlation of contours with morpheme class sequences, Wells (1945, p. 34) and Pike (1945, p. 108) talk of some contours being more fundamental than others” (Crystal, 1969, p. 253).

Crystal asks himself “how much of English intonation ought one to describe with reference to grammar?” He then concludes: “There has been no clear answer, apart from general remarks to the effect that intonation delimits units in connected speech, and internally integrates units thus delimited...” (p. 253).

In response to Crystal’s critique, however, Snedeker and Trueswell (2003, p. 104) retort:

Only a few studies of prosody and syntax have examined how untrained listeners respond to the speech of untrained speakers (Allbritton et al., 1996; Lehiste, 1973a; Schafer et al, 2000a; Wales and Toner, 1979). Fewer still have explored this in paradigms where the listener and speaker are in the same room and have a common task, conditions that are more typical of naturally occurring speech (Keysar and Henly, 1998; Schafer, et al., 2000a).

They go on to note that “prosodic variation is influenced by several factors other than syntactic structure, including the length and stress pattern of words, speech rate, the presence of contrastive or emphatic stress and the prosodic marking of discourse focus.” (p. 104).

2.12 Conclusion

This ends the review of the scholarly literature that serves as the foundation of this dissertation. The following chapter will explain the methodology utilized in the analysis of concrete instances of ambiguity in the courtroom.

CHAPTER 3: METHODOLOGY

3.0 Introduction

This chapter reviews the definitions and history of autoethnography and provides a description of the autoethnographic process utilized in the analysis of case histories of ambiguity in courtroom settings. Following this, the chapter explains the nature of the data corpus and goes into the classifications that make up a closed taxonomy for ambiguity. Afterwards the chapter explains the design of the five analytical and descriptive tables utilized in the dissertation.

3.1 Autoethnography: The approach

As with other subject matters in this dissertation, there is no consensus on the definition or on the scope and reach of autoethnography. In fact, Ellingson and Ellis (2008) state that "the meanings and applications of autoethnography have evolved in a manner that makes precise definition difficult" (p. 449). A definition for autoethnography is not readily available in current dictionaries, perhaps because of the recency of the term.

Maréchal (2010) indicates that "autoethnography is a form or method of research that involves self-observation and reflexive investigation in the context of ethnographic field work and writing" (p. 43). Ellis, Adams, and Bochner (2011) define the term as "an approach to research and writing that seeks to describe and systematically analyze (*graphy*) personal experience (*auto*) in order to understand cultural experience (*ethno*)" (Paragraph 1). Autoethnography has also been defined as "insider ethnography," referring to studies of (culture of) a group of which the researcher is a member (Hayano, 1979), which happens to be the case of the author of this dissertation.

Ellis, Adams, and Bochner (2011) consider that the approach (which is a product of the postmodernist paradigms of uncertainty of the 1980s) treats research as a socially conscious, political act. It “acknowledges and accommodates subjectivity, emotionality, and the researcher’s influence on research, rather than hiding from these matters or assuming they don’t exist” (p. 274).

By adopting an autoethnographic approach to the subject matter of this dissertation, the author acknowledges that his speech, writing, values, and belief systems regarding the topic at hand will reflect the raw sensations of this working interpreter, the limited legal insight of a law school graduate, and the disciplined process and rigor of a graduate student in the science of linguistics and the very challenging subspecialties of translation studies, cultural studies, critical theory, philosophy of language, phonology, semantics, syntax, pragmatics, and discourse analysis.

The specific research topics of this dissertation and the issues that are highlighted have long been a source of existential anguish for this interpreter and dissertation writer. The actions, comments, and challenges of the different protagonists that are mentioned as participants in each of the incidents have served as fodder for the ruminations and reflections that latently fuel the passion lurching in the work. The conclusions reached are the researcher’s.

3.2 Autoethnography: The process

Ellis, Adams, and Bochner (2011, p. 276) explain that autoethnography combines aspects of autobiography and ethnography. While traditional ethnography attempts to observe and document all the recurring social events in a given community “for the purpose of helping insiders (cultural members) and outsiders (cultural strangers) better

understand the culture,” an autobiography tends to focus on “epiphanies” – critical moments that appear to have significantly impacted the author’s life trajectory. Often what is emphasized are times of existential crises that serve as learning experiences and change life noticeably. Such epiphanies reveal how an individual deals with intense situations and their lingering effects and feelings. Autoethnographies combine both perspectives.

The autoethnographic exercise in the review of translational ambiguity and amphiboly presented in this dissertation has been accomplished through an extensive review of memorable moments experienced in the courtroom as captured in memory, personal notes, and via consultations and fact-checking with interpreter colleagues.¹⁷ Equally important have been the many Facebook interpreter, translator, and language groups that have formed over the course of the last five years in which the author of this dissertation has participated. The members of each of these special interest groups have engaged in lively, daily conversations in which they share reports, articles, personal experiences, and anecdotes in sometimes very passionate and sometimes biased, even jingoistic ways that may border on the offensive, but always bear valuable information and insight. The present autoethnographic dissertation reflects a small slice of direct observation and participation in the online culture of active members of the translation and interpreting community. This participation afforded ample opportunity for the taking of field notes and for the analysis of cultural artifacts such as Facebook memes and discussion strings.

¹⁷Special thanks to Aimee Benavides and Claudia Villalba. Other court interpreter colleagues who will go unmentioned. They all made important contributions to the author’s research process.

3.3 Autoethnography: The product

Ellis, Adams, and Bochner (2011, p. 277) remark that in an autoethnography, case histories are presented in a story-telling or narrative fashion and include characters, scenes, and plot development. The story lines may be chronological or fragmented as warranted. They may include dialog and may include mental thought processes. Each case history narrative may be told in the first person as an eye-witness account of what was seen or lived through, in the second-person to describe moments that are felt too difficult to claim (Glave, 2005; Pelias, 2000; McCauley, 1996), or in an omniscient third person account “to establish the context for an interaction, report findings, and present what others do or say” (Ellis, Adams, & Bochner, 2011, p. 277-8).

When researchers write autoethnographies, they seek to produce aesthetic and evocative descriptions of personal experience. A significant aspect of this production involves the discovery of cultural patterns of experience. There are many ways to evidence these patterns with supporting proof. Proof can take the shape of observations expressed in field notes, the reconstruction of interviews and dialogs, and the collection of artifacts which in this case may include maps, memes, Facebook exchanges, and other public documents. Then the auto-ethnographer describes these patterns by storytelling techniques (e.g., character and plot development), by description, and by authorial voices. Thus, the autoethnographer not only tries to make personal experience meaningful and cultural experience engaging, but also, by producing accessible texts, she or he may be able to reach wider and more diverse mass audiences that traditional research (and researchers) disregard, a move that can make personal and social change possible for more people (Ellis, Adams, & Bochner, 2011, p. 278).

3.4 Case Histories as Linguistic Corpus

The dissertation reviews 12 instances of oral and written translational acts and the end-products or *translatums* that were produced which will be termed “case histories.” Insights into the process of deriving intralingual meaning and producing an interlingual product were provided by this author or were collected in exchanges freely shared by the participating parties. The sample case histories were identified and collected over a 20-year stretch of time from many legal actions and court proceedings in which the author of this dissertation or other interpreters participated. Whenever possible or appropriate, the sources of the raw data are identified. The case histories come from actions in the U.S. Federal District Court of Puerto Rico and the Spanish-language insular courts of that U.S. possession, or they represent experiences shared by interpreter colleagues on the U.S. mainland in federal, state, or county courtroom settings or in other administrative courts. Some instances occurred in open courtroom debate, others took place in more informal proceedings known as depositions, and still others were the result of written translation work on documents intended to be used as evidence.

The legal disputes from which the case histories may have been sourced from and taken run the gamut of issues in modern civil society, including law enforcement, family law, information technology and telecommunications, banking, housing, consumer claims, insurance, or health (including malpractice actions against hospitals, doctors, or pharmacies or having to do with clinical regulatory affairs). Other case histories may have been sourced from food and drug regulations, off-track betting, baseball or boxing sporting activities, postal services, sexual harassment, labor law, and political or religious discrimination suits.

The case histories were subjected to a qualitative examination which involved the identification of the features that make an expression or utterance ambiguous, the rules or standards by which it can be examined and disambiguated or parsed, and any conclusions concerning the process and the outcomes. This work utilized definitions of ambiguity, conceptual paradigms (models) of translatology, linguistic principles and theory, and considerations from the philosophy of language in order to arrive at a tentative taxonomy of ambiguity with practical implications for courtroom interpretation practices, policies and general practices.

3.5 Ambiguity and a Tentative Taxonomy

Berry and Kamsties (2004) wrote what is essentially a primer for the identification of ambiguity. The authors intended to assist engineers in the drafting of unambiguous specification sheets. They referred to ambiguity as a “real-world phenomenon that rears its ugly head in many disciplines including writing, linguistics, philosophy, law, and—of course—software engineering” (p. 11). In so doing, these engineering scholars systematically proceeded to identify a taxonomy of the ambiguous. In their scheme, they concluded that ambiguity only makes allowances for two interpretations: (1) the capability of being understood in two or more senses or ways and (2) uncertainty.

In their work, Berry and Kamsties decided to discard any further consideration of uncertainty as irrelevant to ambiguity and proceeded to identify four broad classes of what they termed “linguistic ambiguity.” These four classes of ambiguity were labeled as: lexical ambiguity, syntactic ambiguity, semantic ambiguity, and pragmatic ambiguity. They further observed that these classes of ambiguity were not mutually exclusive to any

given instance of ambiguity and that two or more classes of ambiguity might coexist within the same phenomenological manifestation, taking different combinations. We agree with this conclusion and extend it to other “linguistic” categories such as morphology (homonyms and homographs) and phonology (prosody and intonation), and those that are “non-linguistic” or “metalinguistic” conceptual categories such as pragmatics (discourse analysis), semiotics (culturally bound concepts), kinesics (gestural actions), Bakhtinian dialogics (cultural dialogs from the present with the past), allegoresis (metaphors, metonymy, similes, synecdoche, prosopopoeia, oxymorons, and irony) and phonology (prosody and intonation).

The present study relied on the preliminary taxonomy of Berry and Kamsties (2004) and built upon it to include the additional classes of ambiguity outlined in the preceding paragraph based on our observations of ambiguity in action in the courtroom. Namely, we observed that:

- (1) sentence prosody may lead to grammatical (structural or syntagmatic) ambiguity;
- (2) intonational stress can lead to the expression of attitudinal stances and nuances of meanings that may produce communicational ambiguity; and
- (3) meaning may be influenced by pragmatic considerations and culture-bound situations such as courtroom ecologies and other environmental considerations, references to literature and symbols across geographies and time, and other cultural concepts;

(4) the kinesics or non-verbal gestural activities (body language) that can stand as a class of its own and may be part of the cues used in the disambiguation of meaning tied to intonational stress.

The four sources of ambiguous phenomena identified by Berry and Kamsties (lexical, syntactical, semantics, and pragmatic) and the other sources of ambiguity identified by the research in this dissertation can each produce instances of what Berry and Kamsties refer to as “*multiguity*” of meaning—that is, the possibility of deriving multiple meanings from any given utterance or expression, as opposed to just two meanings as suggested by the prefix *ambi*-.

One of the sources of ambiguity that we identified as vital to the establishment of a taxonomy of ambiguity and a rubric for its identification and possible disambiguation was based on cultural understandings. There are many sources for determining intralingual meaning and conveying such meaning interlingually. Our initial source for intralingual and interlingual understanding was initially possible through the hermeneutic tools developed in the field of rhetoric and allegoresis. These sources were later complemented by the development of several analytical tools found in literary criticism, and in anthropology, sociology, psychology, structuralist linguistics, semiotics, pragmatics, and other methods and tools of analysis found in the field of critical theory.

To carry out the analysis of the sample case histories, we created a taxonomy of possible classes of ambiguous phenomena. These fall under the categories of:

- phonology (e.g., homonyms and dysfluencies in general);
- semantics (e.g., lexical polysemy);

- grammar and morphology (e.g., homographs and parts of speech holding dual roles as content or function words);
- syntax (for sentences and phrases); and
- prosody (for reviews of garden-path statements and other grammatical functions such as commands, questions, and statements, and for ascertaining language or dialectal speech variety);
- intonation (to detect emphasis, attitudinal sentiments, and other emotion linked indicia).
- the pragmatics of implied meanings or discourse analysis (as derived from environmental circumstances and other contextual indicators);
- the creative use of metaphorical language and other rhetorical devices;
- the referential use of cultural symbols, icons and artifacts;
- Bakhtinian dialogical references (sociolects, as in cases involving speech exchanges between insiders to a group, i.e. literary academicians, scientists, or even criminal co-conspirators); and
- kinesics or gestural actions (body language).

The taxonomy we would like to offer as a tool for evaluating ambiguity in the courtroom setting can be seen below in Table 1:

Table 1

A Taxonomy of Lexical Ambiguity and the Elements that Define its Nature

Lexical or Semantic Ambiguity, also known as Domain Ambiguity.	Based on polysemous words such that each has two or more meanings. Meaning is contextual. Implicit or denotative. Overt or covert.
Syntactic Ambiguity, also called Structural Ambiguity, Amphiboly, or Amphibology.	Based on the structure of syntagma: sentences and phrases (e. g., Hillary saw the pirate with the telescope.) Amphiboly. Double negative questions (e.g., You're not happy, are you? No.)
Intonational Ambiguity in spoken utterances, written texts, and interjections.	Attitudinal and emotive communication providing qualitative judgments. (e.g., Mmmm; Yeah, right!)
Phonological and Morphological Ambiguity	Homonymy, (e.g., Homophones), Homographs.
Morphological and Grammatical Ambiguity	Form-Function Correlation of Words (e.g., Julie recognized it by its unusual bark).
Pragmatic Ambiguity	Circumstantial (e.g., The bus! It's cold! I parked at 5 th and 3 rd .)
Rhetorical Ambiguity	Metaphors, Allegoresis, Similes Puns and other ludic material (e.g., Zack Galifaniakis interviewing Mathew McConaughey in "Between two ferns: The Movie," September 19, 2019, at lines 46:51, "Your dad died while having sex with your mom, and you've said you want to go out the same way. You and your mom need to set up some boundaries."
Bakhtinian Dialogical Ambiguity	Mismatched cultural knowledge as shared background information between two or more individuals (e.g., the concepts of resurrection vs. reincarnation).
Discourse Analysis Ambiguity	Gee's concept of Social languages.

3.6 Analytical and descriptive tables

A major methodological goal of this dissertation is to bring together samples of ambiguous phenomena, observe and break down the elements or aspects that lead to their ambiguous nature, and then contrast the start utterance against possible translational outcomes or *translatums*. A key aspect of this process is that it is fundamentally descriptive and non-judgmental. One way in which to do this is via the creation of taxonomic subcategories of the various forms in which ambiguity makes itself manifest. These in turn can be used to create tables to identify the elements that make expressions or utterances ambiguous. Only then can one go about creating a rubric to measure performance in the identification of ambiguous utterances.

Brookhart (2013, p. 4) defines a rubric as “a coherent set of criteria ... that includes descriptions of levels of performance quality.” Rubrics are often used to assess task performance to serve as indicators of learning outcomes. In this dissertation, however, we were more interested in setting down the criteria that would help in (1) the identification of ambiguity and (2) its intralingual conservation, an effort which would then establish the foundation for performance rubrics to be used with interpreters in the field. For this purpose, we created five analytical and descriptive tables to give structure to the observations.

Ideally, these tables should be as specific in nature as possible in order to identify the elements that characterize lexemes and syntagma with two or more meanings. Such tables should facilitate the identification and evaluation of the dimensions or characteristics of each ambiguous expression. They may also include criteria to ascertain if the *translatum* produced conveys the same multiple meanings that the original source

language expressed. These taxonomic subcategories and tables should help in the identification of ambiguous utterances and statements and serve to keep the analysis focused and relevant. They will also assist in determining on a case by case basis if effable transfer of meaning has been achieved or not.

The first step needed to detect ambiguity necessarily begins with an “intralingual” (Jakobson, 1959, p. 233) understanding of the original utterance or text. The paradigm developed by Gee (2011b) is to be used for this purpose. This paradigm focuses on understanding the form-function correlation of words (morphology, grammatical parts of speech, semantic meaning) in an utterance or text, tie it to the situated meaning (pragmatics) of the expressions, and determine if it is in alignment with the figured world views held by the parties involved in the exchange (the underlying ideological paradigm or *weltanschauung*). The understanding gained regarding the function that prosody and intonation have as supplemental sources of information is added to the understanding obtained from the preceding three sources of meaning. As Gee (2011b, p. 8) states: “Communication and culture are like icebergs. Only a small ‘tip’ is stated overtly. A vast amount lies under the surface, not said, but assumed to be known or inferable [illative] from the context in which the communication is occurring.”

Upon ascertaining meaning and spotting any ambiguity and possible disambiguation, there needs to be a comparison between the original intralingual understanding and the actual translational outcome or *translatum*. We begin with discourse analysis because it is the contention of this work that discourse analysis is what the human mind first engages in when an individual participates in a social interaction or observes others engaged in such interaction. More to the point, discourse analysis is what

jurors in a trial engage in. They observe the interaction of parties in adversarial litigation, consider the facts, listen to the arguments, assign weight and value to the information, and allot credibility to the testimony offered by witnesses. This information is used to reach a verdict that may favor one party or the other. The judge mediates, rules, and resolves procedural controversies and determines what is admissible as evidence and what is not according to legal rules and principles.

The interpreter or translator in such a proceeding will mediate between a LEP individual and the participants in open court testimony and other ancillary proceedings. Meaning will be ascertained, repackaged, and conveyed to the language of record of the court. This meaning will be obtained by considering the interplay of factors that involve grammatical units, the situated use and sense of these grammatical units, and the narrative intent of the parties expressing or making use of the grammatical units. It will further be influenced by supplemental attitudinal and emotional information conveyed by the intonation of speakers and the underlying *weltanschauung* or world view. Such information will be supplemented by the prosody of speakers which will give away information about their age, gender orientation, regional or national origin, social and economic status, state of health, their emotional or mental frame of mind, and their educational level, among other personal details.

Table 2 presents the information discussed above in an easy to understand format which will help in the preparation of a rubric for assessing interpreters' ability to identify and disambiguate ambiguous statements in court.

Table 2: Gee's 2011 Paradigm Applied to Court Interpretation	
Form-Function Correlations	<p>The interpreter/translator correctly grasps the central ideas and details of the spoken utterance or written text by relying on the range of meanings that can be ascribed to the grammatical units that are uttered or presented in writing (e.g., noun phrases, subjects of sentences, subordinate clauses).</p> <p>The form-function correlation will be taken in with the prosody and intonation of the parties allowing for the inference of additional emotional and attitudinal information (e.g., loudness of voice, or emphasis), and the demeanor (e.g., facial appearance or mien, and behavior), as well as the formal register of the speech.</p> <p>Special attention will be placed on the identification of ambiguity, whether accidental or intentional</p>
Situated Meaning	<p>The interpreter/translator will correctly “situate” the sense of the words with highly specific meanings dependent on the pragmatics of the situation and the domains of knowledge. This situated meaning will also correlate to prosody and demeanor of the parties.</p>
Figured World	<p>The Figured World is the intended paradigmatic narrative that individuals wish to give to their accounts, and the world views in which these accounts are based upon. The figured world or narrative aims at ‘spinning’ or ‘twisting’ the narrative to persuade us to reach specific conclusions. The interpreter/translator will correctly grasp the central ideas and details of the spoken utterances or written texts of the Figured world.</p>

Much of the research would suggest that ambiguous statements go unidentified until a controversy arises. Efforts have been made to produce a taxonomy of categories in which ambiguity may occur. This, however, is insufficient. As Berry and Kamsties (2004) have indicated, much of the effort to avoid ambiguity and controversy is preventive. Proofreading natural language for ambiguity is labor-intensive and expensive.

Furthermore, the review of literature has not produced any comprehensive way to go about the detection of structural ambiguity. Not at least until Oaks (2010/2012).

Oaks prepared a series of appendices which propose “formulas” for the deliberate production of ambiguous statements, an activity engaged in by both comedians and courtroom prevaricators. Table 3 summarizes some of the elements he identified as parts of speech along with the grammatical and syntactic rules that lead to the production of ambiguous utterances. The table rewrites formula instructions given by Oak (2019, pp. 491-501) to deliberately and methodically generate ambiguous expressions.¹⁸

¹⁸It also has the potential to be used in the development of software applications to mechanically detect ambiguity by means of optical scanners.

Table 3: Word Pairings with Competing Lexical Categories (Parts of Speech)		
The following combinations may produce ambiguous locutions.		
Noun/Adjective pairings that may be used as:	Proper names or adjectives as homonyms (homophones or homographs)	e.g., First Names: <i>Curt, Frank, Ernest (earnest), Harry (hairy), Mary (merry)</i> . Last names: <i>Green, Black, Brown, Long, Smart, Swift</i> .
	Count nouns and adjectives	e.g., <i>baron (barren), boulder (bolder), course (coarse), deer (dear), fowl (foul), grater (greater), horse (hoarse)</i>
	After nominals with inflection/contraction	(e.g., <i>The chief's brave. Your/you're safe</i>)
Noun predicates for clausal interpretation	SHOW and TELL followed by NP object/finite clausal object.	(e.g., <i>We showed them the company's safe</i>).
Interrogatives	<i>whose</i> and <i>who's</i>	(e.g., <i>Whose safe/Who's safe?</i>)
Verbs	CALL, CONSIDER, FIND, GET, HATE, LABEL, LIKE, LOVE, MAKE or WANT and integrate noun/adjective	(a) Designated verb plus noun/adjective word as head element (e.g., <i>We considered the Indian brave</i>) (b) Designated verb plus noun/adjective as head element after the possessive form 'her' (e.g., <i>We found her safe</i>) (c) Designated verb plus noun/adjective word as head element after the word 'one' (e.g., <i>He considered one safe</i>) (d) Designated verb plus noun/adjective word as head element after the word 'one' (e.g., <i>He considered one safe</i>)
	CALL, FIND, GET OR MAKE	Designated verb followed two noun phrases, the second homonymous or homophonous

		with an adjective. May need a premodifier such as “a little, no or any.” (e.g., <i>We found the man a little novel</i> , or <i>We didn’t find him any cleaner</i>)
Verb/Adjective Pairings	SVA (Subject + BE + Adverbial with subject as the head of a compound noun or after a noun premodifier	Turn the sentence into a yes/no question or negative statement. (e.g., <i>The window cleaner is outside</i> , becomes: <i>Is the window cleaner outside?</i> <i>The company safe is inside</i> becomes, <i>Is the company safe inside?</i>
	Noun/adjective after a verb that may both be transitive and intransitive	<i>Dye (die)</i> , <i>lead (led)</i> , <i>lye (lie)</i> , <i>meat (meet)</i> , <i>metal (meddle)</i> (e.g., <i>I know education matters</i>)
Wh-questions	Ask about the complement position.	Whether the subject complement (<i>What is he?</i>) or the object complement (<i>What did she make him?</i>). The answer could be either a noun or adjective (the ambiguity lies in the question).
Noun/Verb Pairings	Count noun vs. intransitive verb	<i>Bowl</i> , <i>bust</i> , <i>glare</i> , <i>crow</i> , <i>flea (flee)</i> , among others (e.g., <i>Turn for the better</i>)
	Non-count noun vs. Intransitive verb	<i>Dye (die)</i> , <i>lead (led)</i> , <i>lye (lie)</i> , <i>meat (meet)</i> , <i>metal (meddle)</i> (e.g., <i>I know education matters</i>)
	Non-count nouns vs. Transitive verb	<i>Batter</i> , <i>bait</i> , <i>grease</i> , <i>hail</i> , <i>jam</i> , <i>rest (rest, wrest)</i> , <i>steel (steal)</i> , <i>waste</i>
	Intransitive verb vs. Adjective	<i>Clean</i> , <i>cross</i> , <i>dim</i> , <i>dry</i> , <i>fast</i> , <i>finish</i> , <i>flatter</i> , <i>lean</i> , <i>marry (merry)</i> , <i>open</i> , <i>pour</i> , <i>pore (poor)</i> , <i>soar</i> , <i>(sore)</i>
	Transitive verbs vs Adjective	<i>Blunt</i> , <i>cross</i> , <i>clean</i> , <i>clear</i> , <i>dim</i> , <i>dirty</i> , <i>dry</i> , <i>empty</i>
	Count noun vs. Adverb	<i>Back</i> , <i>faster</i> , <i>forward</i>

	Count noun (article + noun word) vs. Adverb	<i>A back, a breast, a board, a cross, a float, a head, a loft, a loan, (alone), a pace, apart, a round</i>
	Non-count noun vs. Adverb	<i>All ready (already), backward, fast, fine, forward, fourth (forth), hard, low, slow, still, right, round</i>
	Quantifying noun vs. Adverb or Adverbial	<i>Pretty, real, more</i>
Verb/Adverb Pairings	For Predicate Positions	<i>Dead, just, pretty, clear</i>
Adjective/Adverb Pairings	For Attributive Positions	Look for BE or GET words (e.g., <i>The girl was forward.</i>) After FEEL, LOOK, SMELL, or SOUND (e.g., <i>The man looked fast.</i>)
	For Attributive/Predicate Positions	<i>Fast, last, low, sew (so, sow), hear (here)</i> Locate verb/adverb word following a causative or perception verb and a noun phrase. (e.g., <i>We helped the religious man fast, or The survivors saw the food last.</i>)
	Subject complement structure in 1, 2, 3 Negative construction or yes/no questions as premodifiers	Example structures: Determine if (1) Subject complement structure follows verbs BE, BECOME, REMAIN or TURN. (e.g., <i>It is stationary</i>) (2) Count nouns are preceded by “a little” or if placed after <i>this</i> or <i>that</i> in negative construction or yes/no questions. (3) Adjective forms integrate a possible determiner (e.g., <i>ajar, aboard</i>)

		(4) If noun/adjective uses suffix <i>-er</i> and follows verbs GET, GROW, KEEP (e.g., <i>We teach a novel idea.</i>)
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Table 4 (based on Bolinger, 1986) identifies elements of prosody and intonation and how these can contribute or not to the formation of ambiguous utterances.¹⁹

Table 4: Contribution of Prosody and Intonation to Ambiguity	
Prosody and Intonation Definition	Bolinger (1986) describes intonation as a non-arbitrary, sound-symbolic system with intimate ties to facial expression and bodily gesture (e.g., demeanor, kinesics), conveying underneath it all, emotions and attitudes” (Bolinger, 1989, p.1) He further tells us that “inter-language resemblances of sound and meaning are so far-reaching and so persistent in the face of relative arbitrariness and unintelligibility of the words and structures of a language that one does not know that there must be a common basis somewhere.” (1989, p. 1). This leads us to propose that attitudinal and emotional information found in either the English or the Spanish source language will need to be “interpreted” and conveyed into the target language if the full sense of the meaning of the original source language is to be preserved.
Performance Task	The interpreter or translator will identify and assess the emotional or attitudinal value as inferred from the prosodic and intonational

¹⁹Bolinger (1989, p. 85) recounts the tale of a radio announcer who enunciated the phrase “guarded by weak, old levees”. What listeners heard was “guarded by week-old levees” Bolinger states: “The error made sense, and the monosyllabic adjectives gave too little room for intonational maneuver (this would not have happened with the phrase “twenty, foot-high poles” versus “twenty-foot-high poles, given the extra syllables.”

	characteristics of the expression and the gesticulations of the speaker; in the case of written texts (e.g., depositions, text messages, etc.) the emotional and attitudinal value will be presumed contextually. Upon completing this intralingual analysis these values are to be conveyed in the target language <i>translatum</i> . These prosodic and intonational aspects are to be preserved and conveyed with special care taken against caricaturizing, diminishing, or casting aspersions on the speaker and the conversational style and register used.
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Table 5 considers performance criteria for determining if any given disambiguation of an ambiguous utterance is adequate and proper given the contextual circumstances and the prosody or intonation or if instead it is deficient. This will be the test as to whether a given *translatum* is effable or ineffable.

Table 5: Test to Determine if a <i>Translatum</i> is Effable or Ineffable	
Performance Criteria	The interpreter or translator detects the existence of an ambiguous utterance or written statement.
	The multiple meanings of the ambiguous expression are exhaustively identified, analyzed and assessed.
	Proposed <i>translatum</i> solutions match form-function correlations for each one of the multiple meanings identified.
	Proposed <i>translatum</i> solutions match situated meaning for each one of the multiple meanings identified.
	Proposed <i>translatum</i> solutions match figured world narrative for each one of the multiple meanings identified.
	Proposed <i>translatum</i> solutions match attitudinal and emotional prosodic and intonational meanings.
	The set of all possible meanings identified in the ambiguous statement have been matched by the proposed <i>translatum</i> .
	There is no need to warn listeners or readers of any discrepancy between the original utterance or writing and the <i>translatum</i> .
	The set of all possible meanings identified in the ambiguous statement have not been matched.

	One or more possible meanings found in the original statement have purposely and correctly been left out of the <i>translatum</i> because it is not relevant nor does it match the implicit social language in use.
	The proposed <i>translatum</i> falls short of providing the full information contained in the original statement.
	The proposed <i>translatum</i> provides information not contained in the original statement.
	The proposed <i>translatum</i> can only provide one possible meaning out of all the potential meanings contained in the original statement because of semantic, rhetorical or structural constraints.
	The interpreter fails to identify the existence of an ambiguous statement.

Lastly, Table 6 presents the differences and similarities between interpreters and cultural mediators. There has been a growing trend toward the incorporation of cultural mediation as integral to the activities performed by interpreters (cf. Wang, 2017). While there is consensus on the need for interpreters to be aware and trained in the cultures of their languages, the various codes of professional conduct that control interpreter performance do not encourage interpreters to become cultural advocates. Wang considers that cultural mediation is particularly appropriate in the case of medical and community interpreters. Nevertheless, the legal community frowns upon such conduct out of fear of providing NEP and LEP defendants with an unfair advantage in court proceedings. The language service is not meant to give the NEP and LEP defendant any advantage over other defendants with competence in the English language. Table 6 clarifies for court interpreters what their role should be.

Table 6: Interpreters and Cultural Mediators: Differences and Similarities of Performance (Source: Translators Without Borders, 2018)			
	Court Interpreters	Interpreters	Cultural Mediators
Verbally translate written information	YES ²⁰	NO	NO
Verbally translate spoken information	YES	YES	YES
Facilitate communication between two parties	NO	YES	YES
Cultural competence in source and target culture	YES	YES	YES
Provide additional support besides conveying information	NO	NO	YES
Remain impartial and neutral in any situation	YES	YES	YES
Adapt language to target audience	NO	YES	YES
Be sensitive & aware of the target group's situation	N/A	YES	YES

Tables 1-6 defines some of the elements that outline the scope and reach of the analysis and establish its objectives. In the next chapter, the analysis of the case histories utilizing these tables is presented, the status of our initial hypotheses is

²⁰ Some jurisdictions do allow and require interpreters to render brief sight translations, but do not encourage the practice and prefer to have parties bring their own written translations. Other jurisdictions do not allow sight translation of documents as a matter of policy. The tests administered by the Administrative Office of the U.S. Courts and the Consortium of State Courts examination do test for sight translation competence. Moreover, staff interpreters are often required to prepare written translations of documents whenever required by the courts.

evaluated, and conclusions are drawn regarding the implications and limitations of the research.

CHAPTER 4: ANALYSIS AND FINDINGS

4.0 Case Review Summary

This chapter will review 12 instances of oral and written locutions that have challenged the interlingual conveyance of meaning from Spanish to English or vice versa as a result of one or more overlapping categories of ambiguity. The locutions include single words, phrases, sentences, and snippets of dialogue. Each locution analyzed comes from a real speech utterance made in response to a question, as part of a colloquy or during an allocution or argumentation. The proceedings may have been during a trial or in an out-of-court setting such as a deposition. Other case reviews are from written translations of documents used as evidence. Most are taken from proceedings in Puerto Rico, a U.S. territory in the Caribbean. As noted earlier, the main language of its 3.1 million people is Spanish, but English coexists in all professional and occupational fields; it also happens to be the language of record of federal courts and U.S. administrative agencies. Other instances are taken from the Continental United States where nearly 40 million people speak Spanish as their first and sometimes only language.

Each one of these cases will be parsed to determine the nature of the ambiguity according to the taxonomic typologies identified in previous chapters. Overlapping taxonomies where the ambiguity is due to two or more categories will be noted wherever warranted. The full set of meanings contained in the original expression will be identified. This set of meanings will later be compared to the *translatum*. The purpose of the comparison is to determine if the full set of meanings in the original locution was preserved and conveyed in the resulting *translatum*. The *translatums* produced in

response to the original locutions will also be analyzed to determine which translational strategies were used for their production. If an objection was made against the *translatum*, it will be noted and discussed as part of the review.

One of the reasons why the issue of ambiguity became the subject of this dissertation is precisely because of the intervention of bilinguals of varying degrees of proficiency—mostly attorneys, but sometimes judges as well—who do not necessarily hold credentials as linguists and may have no formal knowledge, skills, and abilities for assessing the translational performance of trained interpreters. Such interventions occur because, as we have said in earlier portions of this work, both the English and Spanish languages coexist in Puerto Rico, and a significant percentage of the population is bilingual and highly proficient in both languages. Island attorneys are not the exception, particularly those who practice law in federal venues. This kind of bilingualism can also be observed in other continental locations in California, Florida, Texas, and New York, among others. Moreover, attorneys and judges have an obligation to exercise oversight in proceedings to ensure that miscarriages of justice never occur.

Another reason has to do with the supervisory exercise of performance reviews by supervisory interpreters. When these reviews deal with translational proficiency they may rely on improvised rubrics or criteria lacking in translational rigor, based solely on personal experience, or they may be affected by cognitive bias that reviewers are unaware of and for which they fail to properly take into account the circumstances under which the *translatum* was rendered. In any instance, much of what goes as standard translational performance is based on generally accepted practices that more often than not fail to take into account ambiguous phenomena.

Whenever necessary, the reader will be informed if any of the interventions in the case histories is deemed by the author of this dissertation to be unwarranted. It will be flagged as uncalled for, and reasons will be offered for such a judgment. If the intervention appears to be an attempt to undermine the translational outcome by questioning the competence of the interpreter and the reliability of the *translatum*, this prevarication will also be flagged and discussed.

It may be that ambiguous phenomena constitute a problem that goes beyond the set of knowledge, skills, and abilities expected from an interpreter, given the difficulties in its identification. Regardless, linguistic awareness should exist among law practitioners and court interpreters during multilingual proceedings. We have already mentioned some of the linguistic concerns earlier in Chapter 2. In the analysis of the ambiguous locutions in this chapter, some reasons for the concerns and the dissatisfaction with the translational outcomes will be analyzed, including cognitive bias on the part of the interpreter, the inherent difficulty in the identification of ambiguity, and the absence or lack of awareness of ambiguity and its pernicious presence in language.

Each case *translatum* will be analyzed against the official policy that precludes the use of additions, omissions, embellishments, or explanations. An assessment will be made to determine if the *translatum* adhered to some other generally accepted courtroom interpreting practice. If exceptions occurred, a review to decide if these were warranted or not and under what circumstances might such exceptions be allowed will be performed and discussed.

To reiterate, each case history will consist of an introduction that provides the original utterance or locution; relevant background circumstances; the set of possible

intralingual meanings from the source language utterance; the set of typological ambiguities observed in the source language utterance, and if there is any presence of two or more categories of ambiguity indicating overlap; the *translatum* that was decided upon; and whether the *translatum* produced conveyed the complete set of meanings or failed to do so in full or in part, making the original locution ineffable, in the first case, or deficient due to incompleteness in the second.

4.1 Case History 1: “La Ensalada de Camarones”

This first case history review has to do with the Spanish expression *ensalada de camarones*. In its most formal literal sense, the locution is a compound noun phrase that simply means *shrimp salad*.

4.1.1 Background

The utterance was found in a written report for the Commonwealth of Puerto Rico Department of Justice. The document is a form that Assistant Commonwealth State Attorneys use to collect facts and ascertain if a criminal offense has occurred. The form is used to determine if any conduct warrants criminal prosecution. The facts collected include verbatim testimony from witnesses and participants. If prosecution is warranted, the information is used to prepare another document known as a charging document. This document can be known under many names in English-speaking jurisdictions such as: *criminal complaint, probable cause affidavit, information, or indictment*.

In the case at hand, a police officer was being sued for excessive force and violation of civil rights. Several documents from his personnel file were being translated to be used as evidence in trial. One document summarized the facts of a brawl or fist fight at a pub in central Puerto Rico in which the officer was involved. The second report

involved another brawl between the officer and another individual at a crossroad and later at a hospital. These documents had become part of the police officer's personal file. They had been used previously for internal review purposes in disciplinary proceedings.

The officer whose identity remains undisclosed in this review was also known by his nickname of *El Negro*. Wearing civilian clothes (since he was off duty), he went to a restaurant and dance hall in a central mountain town during evening hours. While at the bar waiting to be served, an individual approached him. The individual asked the officer if he was there that night as a *camarón* (slang for undercover agent). The off-duty officer told the individual not to bother and to leave. The individual returned to his table, and then vociferated: "*El especial de la noche es ensalada de camarones, porque hay que acabar con todos los camarones*" (the special dish on the menu tonight is shrimp salad, because all shrimp have to be finished off). Shortly after, a physical altercation took place between the two men. This prompted the barmaid at the counter to tell the officer: "*Vete, negro, que te matan.*" The police officer left.

4.1.2 Issue and Rule

This case raises the issues of polysemy and metaphor. The word *camarón* means shrimp, but it is also a metonym for the word *undercover cop*. The locution *ensalada de camarones* is a noun group. It can be parsed into the head word *ensalada* (salad) and the postmodifier prepositional phrase *de camarones* (of shrimp). Its equivalent translation into English would be *shrimp salad*.

4.1.3 Analysis

In this instance, we cannot rely on the literal equivalent meaning of *camarón* as *shrimp*. To make sense out of the second statement and the ensuing scuffle, we need to

realize that we have an anaphora. To properly disambiguate the second expression, the receiver of the utterance must rely on the situational context. Reference must be made to the antecedent question: Are you here undercover? (*Estás de camarón?*). It is only then that it becomes clear that the metonym *camarón* is being used in both instances as a metaphor that stands for the qualities of another concept, that of *an undercover police* official. Thus, *shrimp* stands for undercover police work and the second expression is a *double-entendre* referring to law enforcement agents acting under cover or in disguise as plain clothes civilians.

In this instance, the ambiguous meaning contained in the single use of the metonym *camarón* is correctly disambiguated into *undercover* under Gee's criterion for discourse analysis disambiguation which takes into account the intended purpose of the interpellation—to uncover the agent's disguise if any and to disrupt the peace of the police officer at the restaurant when he first came in. The second use of the metonym *camarón* in the taunting pun uttered by the same individual was an overt act to goad the police officer into some reaction. Not knowing anything about the preceding exchange between the speaker and the police officer, the intended meaning of the word *camarón* would have remained ineffable to the Spanish-speaking diners at the restaurant (who might indeed believe that the special for the night was shrimp salad or shrimp cocktails). For English language speakers, the pun intended in the Spanish is not possible to grasp. There is no way of producing a *translatum* that conveys the double-meaning that the Spanish clearly conveys situationally without resorting to the use of a footnote to explain that the usage of *camarón* as an *undercover agent* needs to be culturally mediated as street slang.

4.2 Case History 2: “Vete Negro que Te Matan”

The second case history is the continuation of Case History 4.1.

4.2.1 Background

In Case 4.1, there came a point when the taunting and ensuing scuffle prompted the barmaid to tell the police officer to leave by saying in Spanish “*Vete, negro, que te matan.*”

4.2.2 Issue and Rule

This instance involves the use of a polysemous utterance that may possibly be a capitonym, a descriptor with two possible meanings (color and race) or a culturally mediated term of endearment in the Spanish language with widespread usage throughout the Spanish-speaking Caribbean Antilles, and South and Central America. The word *negro* is culturally ambiguous. As in other countries, in Puerto Rico it can be translated from the Spanish into English as *nigger* (denigrating), as *black* (descriptive of color), as *negro* (a construct of race), or as *dear* (a term of endearment), with each possible meaning requiring listeners to disambiguate the intended meaning by means of a combination of contextual and linguistic features that may include pragmatic, situational circumstances; antecedent and postcedent expressions; intonational and prosodic attitudinal cues, and the non-linguistic indicia taken from gestures and the demeanor of the speaker which cannot be determined from a written document.

4.2.3 Analysis

However, with the information that was available to the translator, a possible ambiguity was readily identified. The ambiguity was based on what Oaks refers to as a noun/adjective pairing: one in which the form-function correlation could be interpreted to

be a noun capitonym, and the other form-function correlation being other nouns used as descriptors or as terms of endearment referring also to an individual, in common usage by speakers of the Puerto Rican variety of Spanish.

In this instance, the translational solution was to leave the expression in the original Spanish and allow the lawyers to take note of the ambiguity. If disambiguation was relevant to the resolution of the legal controversy, they would have to argue their cases before the court or reach a stipulated agreement. A footnote alerting to the ambiguous nature of the expression was made by the translator at the time.

4.3 Case History 3: “Porque Me Llamó Negro”

The same case file produced this third review which also involves the word *negro*.

4.3.1 Background

This instance took place at a crossroads and a hospital. The officer was driving a personal vehicle while off-duty. He and another driver came to a stand-off at a crossroad. Neither one would budge and allow the other the courtesy of crossing first. Dismounting, the two men engaged in a confrontation that degenerated into violence. Police intervened, and both were arrested. They were later taken to a hospital to be treated for superficial cuts and bruises. While at the hospital, both began to fight again. When asked for exculpatory reasons for the second fight at the hospital, the officer said that the other man called him a *negro* (*nigger*).

4.3.2 Issue and Rule

In this instance, it was apparent that the police officer disambiguated the meaning to be the derisive English equivalent when he gave his testimony. The form-function correlation in this case was disambiguated by the officer as a derogatory noun intended to

denigrate him. He was positioned to give the word a situated meaning. He further used the word to fit his figured world narrative and raise an exculpatory argument. He was arguing that the other party spoke what in legal circles are known as “fighting words.” Fighting words can be raised as a defense in cases involving physical violence and battery.

4.3.3 Analysis

In this instance, the original expression in Spanish was retained even when it was clear that the intended meaning for the word *negro* by the speaker was *nigger*. Disambiguation of the expression would be left to the lawyers. The translator decided that the attorneys could argue the meaning of the word *negro* in the presence of the judge. This option was decided because the police officer’s nickname was *Negro*. The translator had no way of knowing if the individual involved in the fight was aware of the police officer’s nickname. Because the nickname and the descriptive noun *negro* can mean *black* or the noun caponym for the nickname, the interpreter reasoned that there was a possibility that the expression was ambiguous.

Guidelines for interpreters and translators in legal proceedings caution against adding, omitting, embellishing, or explaining oral and written translations. They furthermore require impartial performance of duties and prohibit bias. The meaning would be resolved by the triers of the facts. They would pass judgment on the credibility of the testimonies given.

4.4 Case History 4: “Mira Negrita”

The fourth case review highlights and contrasts subjective cultural norms and value systems between two different speech communities.

4.4.1 Background

A Puerto Rico government official alleged religious discrimination by coworkers at her place of employment. The employer was included in the suit for failing to provide a work environment free from religious discrimination. The Civil Rights Division of the U.S. Attorney's Office of the Department of Justice joined in the prosecution of the case. A U.S. attorney that did not speak Spanish was listening as the witness said: "*Yo le dije: Mira negrita...*"

4.4.2 Issue and Rule

The translation was "I told her, Listen sweetie..." prompting an angry objection and the following statement: "I heard him clearly say the N-word" for "nigger." The interpreter tried to explain that based on the situational context, customary cultural language usage, and the attitudinal intonation used by the speaker, a more appropriate translation would be to say "sweetie," or any other term of endearment.

4.4.3 Analysis

This case once more relies on discourse analysis tools for the disambiguation of meaning. The form-function correlation for the polysemous metonym "*negrita*" was properly disambiguated to match the situated meaning of the word. It correctly reflected the set of cultural norms and values of the Spanish language variety spoken in Puerto Rico. Moreover, the figured world of the speaker was taken into consideration by the interpreter who relied on the demeanor and the attitudinal frame of mind expressed by gestures and intonational features of the speaker. Altogether these elements matched the disambiguated meaning that was rendered.

However, the cultural mismatch between two speech communities with different value systems and a different outlook on racism prevented the attorney from accepting the rendered disambiguation. The derisive features of the racially charged word *nigger* in English prevailed in the mind of the objecting attorney due to American standards of civil speech and political correctness.

4.5 Case History 5: “Porque Nos Caían a Palos”

This case history also involves the intervention of a non-Spanish speaking lawyer and Judge.

4.5.1 Background

An assistant U.S. attorney (AUSA) objected to a translation of an utterance that was rendered in a criminal trial in Federal court in Puerto Rico. The AUSA spoke no Spanish but was relying on an English to Spanish language glossary for drug terms prepared by the U.S. Department of Justice. Most judges in the U.S. District Court for Puerto Rico, if not all, are bilingual in both English and Spanish. In this instance, however, a state-side visiting judge that only spoke English presided the trial.

The Government was prosecuting a defendant on charges of possession of a firearm and drugs. The chronology of events involved several young men milling about a corner in a neighborhood that only had one entrance to the *barrio*. As police cruisers drove into the neighborhood, the men scattered, and the police officers chased them. Later in the day police found drugs and a weapon on the roof of a house and an individual hiding nearby. The individual was arrested and charged with allegedly throwing the weapon and drugs on the roof. Once the prosecution completed its case, the defendant took the stand as the sole witness in his defense.

The defendant gave a different version of the facts. When asked why the youth at the corner fled upon seeing the police, his response was: “*Cada vez que viene la policía al barrio nos caen a palos.*” The *translatum* rendered was: “*Every time police come to the neighborhood, they beat on us with their clubs.*” The young Assistant U.S. Attorney objected to the translation, and a sidebar was held.

4.5.2 Issue and Rule

At the side bar, the prosecution argued that a drug glossary of Spanish terms indicated that the word “*palos*” meant “*to score*”. This would have required the rendition to state: “*Every time police come to the neighborhood, they come to score [drugs?]*”

4.5.3 Analysis

This instance was a case of semantic polysemy that could clearly be disambiguated by the pragmatic and situational circumstances. Gee’s Figured World conception would not have uniformed police officers visiting neighborhoods to brazenly *score drugs*. Moreover, the actual rendition offered by the interpreter would be likelier since it would adjust more closely to the exculpatory narrative intent of the defendant, i.e., that police would only come to harass and brutalize residents of the neighborhood, and perhaps even conduct false and illegal arrests, actions that would make it reasonable for them to run away and hide.

The word *palos* is a content word that can be used as a polysemous noun metonym with many semantic meanings. Some of the meanings are more in line with the literal meaning of “stick” or “tree.” *Palo* has other figurative meanings including “alcoholic beverage,” “homerun,” “to score,” or “lucky strike.”

4.6 Case History 6: “Manteca”

Case number 6 involves the use of metaphoric speech in the illegal drug world.

4.6.1 Background

Various metonyms are used by members or participants in the drug subculture. These slang terms often find their way into mainstream language through news media, the arts (cinema, music, literature), or educational campaigns to eradicate drug consumption.

In English, heroin is often referred to by one or more slang words that include the likes of *Horse*, *Big H*, *Brown Sugar*, among many others, with the latter expression *Brown Sugar* featured in a 1971 song by the Rolling Stones. Spanish has equivalent slang street-terminology. The word *manteca* is one such word used for referring to heroin.

4.6.2 Issue and Rule

Generally accepted practice in court interpreting has favorably viewed the translation of slang terms into their English or Spanish equivalents when warranted. This is in part what is meant by the “meaningful legal equivalent.” That is, sense for sense. In this instance, however, a bilingual U.S. District Court Judge questioned this practice. She insisted instead that the word be disambiguated into its formal, literal equivalent meaning. That would be word for word. This word for word translation would require rendering *manteca* in Spanish as *lard* in English.

Because the generally accepted practice for these cases would have been to render a sense for sense rendition, that would allow the interpreter to render *manteca* as *horse*, *brown sugar*, or any of the scores of similar metonyms. The question that needs to be answered in this case would be, *why did the judge insist on a literal translation?* Why did

she reject the generally accepted practice of disambiguating this slang metonym by a sense by sense rendition and require the interpreter to resort to a formal literal equivalence rendition word by word?

Each judge has the faculty of overseeing all proceedings to a case in which the judge presides. A judge is responsible for the orderly conduct of business. Moreover, while the court interpreter is considered an expert witness (pursuant to rules of evidence), a judge is not obligated to accept the opinion of an expert witness; moreover, they have the discretionary faculty of weighing and assigning credibility to testimony as long as their judgment is fair, impartial, unbiased, and free from passion, whim, or arbitrariness. Decisions need to be based on facts, deductive and inferential reasoning, and the law.

In this instance, the judge rose through the ranks of the court profession in Puerto Rico. She had been a public defender and then held positions as magistrate judge before her lifetime appointment to a judgeship. Furthermore, she was bilingual and a native speaker of Puerto Rican Spanish.

4.6.3 Analysis

The general admonition on the practice of court interpreting advises against additions, omissions, embellishments, or explanations. In this case, it was clear that the person on the stand was a cooperating witness. The witness had been part of a drug conspiracy that was being prosecuted. The domain of knowledge that he was testifying about involved drugs, drug paraphernalia, and drug trafficking in general. This situational context would be sufficient by which to disambiguate the word.

The judge, however, insisted that the translation had to be word for word as “lard” and not sense by sense. This would require the prosecutor to clarify meaning with the witness. The witness would have to explain what he meant by lard.

One may argue that the judge wanted the interpreter to follow the specific policy guideline against additions, omissions, embellishments, or explanations. This would insulate the interpreter from having to make judgment calls on linguistic matters that had a bearing on evidentiary issues. It would also place the burden for clarifying (and prosecuting the case) on the charging officials. By doing this, the interpreter would not be subject to any possible appearance of bias, ensuring that the linguistic intervention would be viewed as fair and impartial.

Dueñas, Vázquez, and Mikkelsen (2012, p. 85) specifically stated that: “Intervening to clarify ambiguities [...] could be perceived as showing bias towards one party or another. The authors further asserted that interpreters should refrain from advising or clarifying. Nevertheless, they coined the concept of “meaningful legal equivalence” which would make allowances for sense for sense translation.

It should be noted that during the last few years, government prosecutors have been bringing law enforcement agents to testify as expert witnesses regarding the specialized jargon used by drug dealers and what they refer to as “code language.” This recent practice might suggest that the generally accepted policy of allowing court interpreters to situate such slang content words as metonyms and render sense for sense or meaningfully legally equivalent *translatums* will come to an end as a generally acceptable practice.

Another argument that does not preclude the preceding would focus on the language knowledge of the jurors in the jury. In Puerto Rico, jurors in federal trials have to understand English. However, the dominant language of most is Spanish. Nevertheless, these jurors may not be familiar with Spanish slang terms for drugs, making clarification of both *manteca* and *lard* as *heroin* an important matter.

The change referenced in the paragraph preceding the last one can lead to other changes in generally acceptable practices used by interpreters. One that comes to mind involves the practice of having the interpreter ask for clarification. More on that in section 4.7.

4.7 Case History 7: “Me Ponía la Nuez en la Cola Hasta que me Sacaba la Miel”

The case review in section 4.6 concludes with the observation that the generally accepted practice of disambiguating polysemous words in accordance to Gee’s form-function correlations, situated meaning, and the intended world narrative of the speaker is subject to legal policy limitations. These limitations have been imposed by judges that read rules of evidence and criminal procedure with greater or lesser rigor and different understandings. We have also stated that the guidelines may be imposed to ensure standards of fairness and avoidance of appearances of impropriety, or to incorporate ways to illustrate unusual linguistic expressions.

As stated earlier, the reasoning behind court-imposed limitations may also result in the scrutiny of other generally accepted practices by court interpreters. One such practice involves the “interpreter needs clarification” request.

4.7.1 Background

A request for clarification always occurs during a consecutive interpretation of a witness during a direct or cross examination. Attorneys pose questions in the language of record (English); the questions are rendered into the language of the witness; the witness responds to the questions with answers in the secondary language; and the answers are rendered back into English by the interpreter. This process continues until the examination is complete. Or until an utterance is made that is not readily understood by the interpreter. In such cases, the generally accepted practice is to ask for clarification.

In this instance, the interpreter could not ask for clarification. The witness was a child. The testimony was being rendered remotely. The interpreter was rendering an oral translation of the questions posed by the judge and the answers given by the child.

4.7.2 Issue and Rule

Because the child's testimony was being recorded remotely in another room away from the presence of the interpreter, there was no way for the interpreter to ask the witness for clarification. Furthermore, even when the practice appears to be widespread, it is forbidden, as evidenced by Dueñas, Vázquez, & Mikkelsen (2012, p. 85).

There is, however, another rule in place for cases in which an interpreter cannot translate a word or phrase. The rule calls for the interpreter to repeat the original locution that was uttered. By repeating the locution, the interpreter flags the court that the word was left untranslated and requires clarification. This rule is taught to candidates undergoing the federal interpreter certification process.

The flag serves as a prompt for the questioner to ask the witness to explain the meaning of the locution. In such a case, the exchange can go as follows: "*You said you*

saw a man with a moustache and long patillas. What did you mean by patillas?” This exchange gives the witness a chance to supplement and correct the record. Alternatively, the interpreter may remember the proper translation and quickly state: *Correction for the record, the proper English word for the Spanish word patillas is... sideburns.*

4.7.3 Analysis

One advantage to these two rules is that they keep court interruptions to a minimum. Additionally, the process remains under the control of the examiner who is posing questions or the interpreter who remembers the proper rendering. There is no need for the court to consider and rule on any interpreter request for clarification. Plus, no exchange of words between the interpreter and the non-English speaker takes place (to which the judge and the parties are not privy). Dueñas, Vázquez, & Mikkelsen also say that this practice avoids the appearance of favoritism or bias.

As indicated earlier, the witness in this instance was a child. The child’s testimony was being offered through a remotely recorded video.

When asked what took place between the child and the defendant, the child said in Spanish that the defendant: *“Me ponía la nuez en la cola hasta que me sacaba la miel;”* A literal translation would be: *“He would place the nut in my tail until he got honey out of me.”* The defense argued that the locutions *nuez/nut*, *cola/tail* and *miel/honey* were euphemisms for the words *penis*, *anus*, and *semen*.

Because the interpreter did not have any way of asking for a clarification, each ambiguous word was disambiguated into its formal, literal, word for word equivalent. There was no sense for sense *translatum*. The parties would be allowed to argue the denotative, connotative and illative meanings of the literal words, present any additional

facts such as medical testimony of sexual intercourse or laboratory testing, or engage in further questioning for clarification. Jurors would reach their own conclusions without any interference or intervention by the interpreter.

4.8 Case History 8: “Bichote?”

This case shows how cultural disparities and the disambiguation of a locution by relying on the communicative intent of a speaker and not on what a listener should interpret can clash with courtroom expectations and pose unexpected complications.

4.8.1 Background

This case transpires in two separate instances or stages at different times: the first, a deposition, the second, a criminal trial. Depositions help litigants find out what witnesses have to say about a civil or criminal controversy. The purpose of the trial is to resolve conflicts and assign responsibilities. The prosecution hired the same interpreter for both occasions.

At the deposition, in response to questions, the witness used the word *bichote* to refer to what another individual told her. The witness was an older woman from the Dominican Republic who lived in Puerto Rico. The word that the woman used, *bichote*, is the English loanword *big shot* that has been domesticated into the Spanish variety spoken in Puerto Rico. The phonologically and morphologically incorporated loanword appears to end in *-ote*, the suffix that marks Spanish augmentatives (i. e., *abrazo*, *abrazote*/ *hug*, *big hug*).

As indicated the woman was not Puerto Rican, even though she lived on the island. When the time came for the woman to make use of the word, she would hem and haw and protest that she did not want to use a profanity. When she finally got around to

the word at the behest of the parties, it was not clear why she believed the word was a profanity. As a matter of fact, the context allowed the interpreter to translate the word as *big shot* because the word is not ambiguous *per se*.

4.8.2 Issue

Only the attorney for the defendant caught on to the actual mismatch in meaning and the reason that the woman believed that *bichote* was a profanity. After explaining, it became clear that the woman thought she was referring to the augmentative form of the Spanish word *bicho*. The generally accepted meaning of *bicho* among educated speakers of Spanish (including Puerto Rico) is *insect* or *creature*. In Puerto Rico, however, it is more often used as a vulgar reference to a man's penis (*dick*). In this instance, the suffix *-ote* is intended to turn a noun or adjective into an augmentative. Thus, it became obvious that the woman thought she was using the augmentative (i. e., *big dick*). At the time of the deposition, the original translation was not modified or corrected, but the discussion on the mismatched meaning was recorded.

Months later, the trial began. As the trial progressed, the woman was again asked to describe a conversation held with the defendant. The woman explained that she was demanding payment of money that the defendant had allegedly swindled from her. According to the woman's testimony, the defendant was saying that she could not repay the sum because she did not have the money with her. The woman was so insistent, however, that the defendant reportedly blurted: "*¿Qué quieres que haga? ¿Qué le pida dinero al bichote de la esquina?*".

"*What do you want me to do? Go ask the corner big shot for money?*" is the translation of the preceding outburst. But before quoting the defendant, she kept on

asking the court, *Do I really need to say what she said. She used a profanity and I'm not comfortable with that language.*” The court, however, was adamant. She would have to say what the woman had said.

In the meantime, the interpreter, who until that moment had forgotten all about the testimony taken at the deposition, recalled the misunderstanding over the term *bichote* and the explanations the parties had exchanged back then. When the woman finally blurted out what the court ordered her to testify, including the alleged profanity, the interpreter translated the following: *“What do you want me to do? Go ask the guy with the big dick to give me the money?”*

When this version was heard, a sudden silence fell across the courtroom. The jurors and the judge all spoke the Puerto Rican variety of Spanish. For a moment, the judge looked blankly at the interpreter. Then she called attorneys to a sidebar at the bench. It was later learned that the prosecutor gave an accounting of the deposition and the semantic mix up that the woman had engaged in at the time. When the sidebar was over, the judge instructed the jurors to adopt *big shot* as the intended meaning of the word. She explained that this was the meaning that was intended by the speaker that was being quoted by the witness, and not the profanity that the woman believed she had understood at the time of the exchange and which she repeated in her testimony.

4.8.3 Rule

The rule for disambiguation here is not clear. The facts featured in this case show that it was evident that the communicative intent of the producer did not match the meaning assigned by the receiver of the communication. It can further be said that the mismatched understanding and the resulting ambiguity was caused by morphological and

semantic confusion and insufficiency of shared cultural knowledge by one of the two parties.

It is further noted that the interpreter failed to catch on to the misunderstanding at the deposition. Thus, the misunderstanding was completely overlooked. Berry and Kamsties (2004) have stated that much ambiguity is likely to go undetected by participants in conversations. Very little has been said as to why this failure to identify ambiguous locutions happens. In this case, it may have been due to cognitive bias that confirmed existing beliefs, or undue influence from context and a failure to properly assess the delivery of the speaker. Or perhaps the interpreter was overzealous in rendering the communicative intent of the speaker and decided to overlook the misgivings of the speaker.

4.8.4 Analysis

This case shows that ambiguity may arise from conflicting understandings of a locution due to insufficiency of cultural knowledge regarding the semantics of a word and morphological considerations used in word formations. Having identified the ambiguous expression, the interpreter decided not to disambiguate in favor of the intended communication of the speaker (defendant) but instead render the understanding disambiguated and understood by the listener. The disambiguation rendered by the interpreter clashed with the commonly shared linguistic knowledge that the jurors and courtroom officials had for *bichote* or *big shot*.

The word also shows phonological similarities to another ambiguous word that is variously used to describe insects and other small animals and the profanity used to refer

to masculine genitalia. We have seen, as with homonyms (homophones and homographs), how phonological similarities can cause ambiguity.

The court disagreed with the disambiguation given by the interpreter. It called a sidebar with opposing counsel and the prosecution to privately clarify the incident and decide upon a course of action. Then the court instructed the jurors to understand the locution as a reference to some imaginary neighborhood *big shot* and not to some male with large genitalia. It decided that the form-function of the word as a domesticated loan word would prevail over the meaning that was understood by the witness that was retelling the conversation. This would mean that the communicative intent of the defendant would replace the received understanding that the witness had when she heard the locution.

4.9 Case History 9: “Yo Antes Era Marimbero, Ahora Doy Tumbes”

The following case history deals with metaphorical language that Cuban Spanish and the Spanish spoken in Miami have as their cultural and regional referents.

4.9.1 Background

This review focuses on the cultural insufficiency between a speaker and an interpreter. The slang terms are dialogical references to a sociolect that is only understood and shared by members of a specific cultural subculture. The title statement “*Yo era marimbero, pero ahora me dedico a dar tumbes.*” was made by a witness on the stand who had been asked to say what he did to earn a living. The scene occurred in a South Florida courtroom, as reported by De Jongh (2008, p. 20). De Jongh’s narrative refers to a personal interview with Alberto de la Cerra, a U.S. certified court interpreter (May 15, 2008). The exchange that took place resulted in the following:

Prosecutor: What was your involvement?

Witness: *Bueno, brother, yo era marimbero pero ahora soy tumbador porque es más fácil.* (Cuban slang for: I was a marijuana dealer but now I do rip-offs because it's easier.)

Interpreter: Well, brother, I was a marimba player but now I play the conga drums because it's easier.

Over the years, some interpreters have judged that the above *translatum* was mismanaged because a literal meaning of some of the words was used. This happened to be the opinion of Joelle Harpill, a court-certified interpreter for Spanish and for Creole based in Florida. In a personal conversation with this writer at a restaurant in San Juan, Puerto Rico, Harpill stated that the rendition should have been “*I used to sell marijuana but now I'm into rip-offs because it's easier.*”

4.9.2 Issue and Rule

The first word *marimbero* strictly speaking has one meaning in Standard Spanish, that of a person who plays the marimba, a musical instrument. The word *tumbe*, on the other hand, comes from the infinitive verb *tumbar* which is polysemous and, according to the *Diccionario de la Real Academia Española*, has fourteen different meanings including *to steal* and *to rob*. Spanish-English bilingual dictionaries, on the other hand, suggest more terms, among them, *to drop* and *to overthrow*. In the Cuban variety of standard Spanish, the word *tumbao* refers to the basic conga drum pattern (Moore,

2010; Peñalosa, 2009). This would explain the interpreter's reference to "playing conga drums."²¹

4.9.3 Analysis

The words in this locution are metonyms or euphemisms for criminal activities. *Marimbero* here means *marihuana pusher or seller* or a broader meaning as a drug peddler. *Dar tumbes* can be construed to mean that the person engages in theft, robbery, scams, swindles, or embezzlement. According to Hammil, the full phrase should have been translated as "*I used to sell marihuana but now I do rip-offs,*" as cited also by De Jongh.

Note that the English counterparts to the slang term of *rip-off* holds many different possible meanings. It must be noted that the multiple English words are not legal synonyms, since each word is associated with different degrees of criminality and severity that can range from a misdemeanor to a felony.

For example, *robbery*, is a more serious felony, since it may involve a physical confrontation and the threat of use of force, whereas *theft*, which can be a misdemeanor or a felony as in shoplifting, implies the surreptitious extraction or removal of property under cover of some underhanded mean, but in cases such as burglary, it is always considered to be a felony because of the unauthorized break in and entry and the potential consequences to individuals.

²¹Notwithstanding, many interpreters/translators are unaware of this special musicological meaning. This is illustrated by translations of the Celia Cruz song *La negra tiene tumbao* which render *tiene tumbao* as "*has its own rhythm*" and "*walks with grace.*"

Scams and *swindles* on the other hand require guile, manipulation, and gullibility, while *embezzlement* involves the betrayal of trust by an insider. They usually do not entail any risk of bodily harm to victims unlike robbery or burglary.

The term *marimbero* is also complicated. One rendering shows greater specificity to one drug (marihuana), while the other meaning is more generic (drugs) but potentially more serious because the unspecified word *drugs* may include a substance that has greater toxicity or addictive strength and is considered to be a more serious crime in contrast to dealings in marijuana.

Disambiguation in either which way places the rendition at risk of being limited and too specific or unspecific and too overbroad. In the opinion of this researcher, the interpreter that produced the initial rendition that was subject to criticism may have acted in the more appropriate manner. By retaining the literal, original Spanish words into English in a word for word rendition instead of the sense by sense rendition that De Jongh and Harpill propose, this would have allowed the prosecution to flesh out the meaning by doing its job and asking the speaker to clarify his meaning.

4.10 Case History 10: “Dos Chancletas.”

As with the preceding case, this one also involves insufficiency of cultural knowledge between a speaker and an interpreter for proper disambiguation.

4.10.1 Background

The interpreter in this instance is a native English speaker who acquired Spanish as a second language. The interpreter’s career began in the mainland U.S. Some years were later spent in South America before a shifting to working in Puerto Rico. In the

course of a trial, a witness was asked if he had any children. The man replied: “*dos chancletas*.”

4.10.2 Issue and Rule

The interpreter promptly rendered: *two sandals*. The entire courtroom burst out in laughter. The interpreter was flabbergasted.

This is an instance in which the form-function correlation and the metaphorical sense of the words do not match the situational circumstances of the question and response. Moreover, there is insufficiency of cultural knowledge of slang metonyms in the Spanish variety that is spoken in Puerto Rico. The speaker was in fact stating that he had two daughters. In Puerto Rico, the expression does not convey the dismissiveness that the term is supposed to have according to the digital platform of the *Diccionario de la Real Academia*. The lexicographers of the DRAE defines it as: *Mujer, en especial la recién nacida, i.e. Woman, especially a newborn*.

4.10.3 Analysis

This case shows us that interpreters who fail to engage in the generally accepted practice of disambiguating meaning by relying on form-function correlation, situational context, narrative intent, or metaphorical sense based on cultural information, run the risk of being laughed at or reproved, despite following the proper procedure for preserving the original, and flagging the need for clarification. The rendition “two sandals” was proper, given the circumstances, and the examining attorney had the obligation of asking additional questions to clarify the meaning.

4.11 Case History 11: “Polvo Cabrón”

The details of the incident that gave rise to this case history contain the elements that served as the genesis for this dissertation. The case involves a non-Spanish-speaking attorney from Washington D.C. who questioned the disambiguation given to the term *polvo cabrón* during a deposition. The term *cabrón* is a content word noun which denotes a *male goat*, but it can also be used as an expletive intensifier adverb or adjective to denote admiration or contempt. It is also used to refer to someone as a *cuckold*.

4.11.1 Background

The legal controversy in this case involved two women who worked for the same employer, a Puerto Rican law enforcement agency that investigated sexual crimes. One woman happened to be the supervisor of the other. The plaintiff claimed that her supervisor constantly engaged in remarks and innuendos of a sexual nature. This behavior made the plaintiff feel uncomfortable. The case was prosecuted by a civil rights attorney from the U.S. Department of Justice and a local attorney.

During the deposition, the deponent testified about one incident where her supervisor – who had recently returned from her honeymoon – described her sexual encounters with her new husband during the honeymoon. The attorney representing the defendant asked the deposing plaintiff to repeat what the supervisor had said that she found objectionable and offensive. The deponent quoted her supervisor as having described a sexual act in which she was involved as a *polvo cabrón*. The interpreter rendered the translation as *a great fuck*. At that point, the non-Spanish-speaking defending attorney objected to the rendition of the translation, claiming that the word *polvo cabrón* meant that the translation should have been translated as *an amazing fuck*.

The plaintiff's attorney further claimed that the interpreter had characterized the sexual act as merely *good*. The following is a stenographic transcript of the exchange.

In response to the question: "What did you tell Collazo at that moment?", the woman testified:²²

1. DEPONENT: So, I told him about the manner in which she would talk during the entire day, such as: "I had a great fuck". Well, she would speak about her positioning, like when she was on the lower end, he couldn't reach her.
2. MS. JACKSON: She said 'polvo cabrón'
3. MR. INSERTI: Uh-huh.
4. DEPONENT: 'Polvo cabrón '.
5. MS. JACKSON: I thought that meant like fucking, amazing fuck.
6. INTERPRETER: What did I say?
7. MS. JACKSON: Good fuck.
8. MR. INSERTI: Good fuck. Yeah, it's excellent fuck.
9. MS. JACKSON: It's like, fucking amazing fuck.
10. MS. ORTIZ: Alright.
11. INTERPRETER: Counsel, counsel ...
12. MR. INSERTI: Colloquially, Colloquially ...
13. MS. JACKSON: Is correct.
14. INTERPRETER: Counsel, if you want amazing fuck, that's fine with me. You're second guessing me into the translation.
15. MS. JACKSON: I'm sorry.

²²This is a reformatted extract from the actual transcription rendered by the court reporting agency.

16. INTERPRETER: That's okay.
17. MS. JACKSON: That's one of the ones I know, that's why.
18. INTERPRETER: Yeah, but it's not like an exact translation. These are all idiomatic expressions.
19. MR. INSERNI: Well, I ...
20. INTERPRETER: Because if the translation ... If I were to give you a literal
21. MS. JACKSON: It would be powder something.
22. INTERPRETER: it would say a "cuckolded (sic) powder".
23. MR. INSERNI: Exactly. We agree with you.
24. MS. JACKSON: I agree with you. I agree with you, but that's not what I've been led to believe that really means.
25. MR. INSERNI: Right. And colloquially and linguistically ...
26. INTERPRETER: But what did I say, it was an amazing fuck or a great fuck.²³
27. MR. INSERNI: You said good fuck.
28. MS. JACKSON: You said a good fuck. I mean, that's just not the same.
29. INTERPRETER: Okay. Well ...
30. MS. ORTIZ: Can we continue?
31. MS. JACKSON: Okay.

²³The complete transcript record reflects that the interpreter initially translated *polvo cabrón* as *great fuck*. However, the mental recollection of the interpreter was that he hesitated between the word *good* and *great* on account of the flat, monotone narrative of the witness, in accordance with the directive against adding, omitting, or embellishing, and his best recollection is that he did in fact use the adjective *good* instead of *great*. Nevertheless, the transcript record would suggest otherwise. We know not why. For years the interpreter believed he had said "good fuck" instead of "great" because the attorneys led him to believe that to be the case. It was only in retrieving the transcript for this dissertation that the false memory was dispelled.

4.11.2 Issue and Rule

The controversy hinges on how to disambiguate the meaning of the compound word *polvo cabrón* as used in this context. When listening to the expression quoted by the deponent, the interpreter is not only listening to the words but also considering words that precede and follow the expression, and other prosodic, paralinguistic, and non-linguistic features. Crystal (1969, p. 131) tells us that these three systems can be broken down into several elements. For prosody, he speaks of pitch directionality (tone), pitch range, pauses (vocalization), loudness, tempo, rhythmicity, and tension. For paralinguistic systems, Crystal notes overlap for tension and voice qualifiers. For non-linguistic features, he notes voice quality and vocal reflexes. Crystal further distinguishes between prosodic and paralinguistic features on phonetic and on functional grounds.

Crystal tells us that further notice should be taken of much of the work conducted on pitch and the ‘affective’ sense that utterances convey. Citing Pfaff (1954), Crystal tells us that “He found that the degree of success in assigning an emotion to a particular vocal effect depended to a large extent on what social group the listener belonged to. Other researchers referenced by Crystal include Dusenbury and Knower (1939), who had speech students and teachers recite portions of the alphabet while trying to feel a designated emotional state, and Davitz and Davitz (1959a, b), who also used the alphabet with various non-verbal patterns to identify emotions such as fear (confused with nervousness), love (confused with sadness), and pride (confused with satisfaction). Crystal goes on to say that in a larger experiment, the preceding researchers (1959b) “were successful at expressing emotions using the alphabet” in the utterance of fifty different feelings. Davitz and Davitz were said to have “found that the degree to which

one feeling is mistaken for another is related to the subjective similarity of the two, and that the stronger of the two similar feelings is more accurately communicated.” (cited in Crystal, 1969, pp. 71-2).

In this instance, the interpreter heard a relatively hushed, flat, monotone expression when the deponent quoted the supervisor as describing a sexual encounter as a *polvo cabrón*. The interpreter recollects hesitating at the disambiguation of the word *cabrón* as an intensifier before proceeding to disambiguate and translate the statement. The interpreter remembers thinking about the admonishment against adding, omitting, or embellishing the words of a witness. He further recalls making a deliberate choice to err on the safe side. Because the expression made by the deponent was heard as hushed, with a low, muted tone, and an apparent absence of excitement or anger or any other feeling despite the length and direction of the narrative being offered by the witness, the interpreter hesitated between rendering the adjective *cabrón* as *good* or *great*. Mindful of the general prohibition against additions, omissions, or embellishments, and further prevented from offering any explanation as to the reason for the choice of the *translatum*, when the objection was raised and the interpreter was challenged, the interpreter made the one and only suggestion available. That was to suggest that the objecting attorney proceed to question the deponent as to what her intended meaning was and, by that means, clarify and disambiguate the meaning (something that does not appear in the transcript).

The transcript of the subsequent exchange among the parties also shows that the interpreter was unsure about which word he had chosen to interpret the word *cabrón*. He

even asked if he had used the word *great* for *cabrón*, but the Washington, DC attorney and the local attorney both said he had used the word *good* for *cabrón*.

Lastly, it is important to note that the stateside, non-Spanish proficient attorney claimed to have knowledge as to the meaning of the word *cabrón*. Ervin and Osgood (1954), as cited by Pavlenko (2014, p. 18-19), would have us bear in mind that there are three types of bilinguals: *coordinate bilinguals*, or “speakers that learned their languages in distinct environments and have two conceptual systems associated with their lexicons; *compound bilinguals*, who acquired their languages in a single environment and therefore in a single underlying and undifferentiated conceptual system linking the two or more lexicons; and *subordinate bilinguals*, “typically classroom learners in which the second-language lexicon is linked to conceptual representations through first-language words” (p. 18-19). Pavlenko goes on to cite Ervin and Osgood (1954) as having argued that “only coordinate bilinguals can provide truly cross-cultural translations, yet the translation process would be marred by difficulties, because translation equivalents may have contextual or connotational differences, and non-equivalents may have only partially adequate translations” (p. 19). This hypothesis was buttressed by subsequent studies, one of which (Lambert & Rawlings, 1969) found that “coordinate bilinguals made more semantic distinctions between translating equivalents, had relatively independent association networks linked to translation equivalents, and experienced greater difficulty with translation than compound and subordinate bilinguals” (p. 19).

4.11.3 Analysis

The disambiguation of culturally bound polysemous colloquial expressions and idiomatic collocations (as seen earlier with the words *manteca*, *bichote*, *marimbero*,

tumbe, and *chancleta*) and the different situational outcomes that have resulted from their proper or improper disambiguation suggest that there is a need to develop a new strategy of disambiguation. This new strategy would be less confusing and antagonistic, and attorneys would be provided some space to participate in the process of disambiguation (despite reservations about self-serving agendas). Interpreters would be recognized and called upon to give expert witness opinion on the cross-cultural aspects of the *translatums*, by offering explanations as to their choice of words.

Interpreters should be prepared to face situations as presented in the preceding case history by relying on a procedural checklist against which they can elaborate a sound argument for their choices for disambiguation. In Crystal's exhaustive review of past work on prosodic features, an entire subchapter is devoted to twentieth-century American linguistics (Crystal, 1969, p. 44). A review of Crystal's catalog provides much interesting research on prosodic features that came after the time of the elocutionist (diction and articulation) tradition. Starting with Bloomfield, Ripman, and Malone, and continuing with Sapir, Whorf, and many others, Crystal's catalog is ripe with useful insights for creating cohesive formats or rubrics for analysis.

One significant drawback to this body of knowledge is the absence of uniform terminological meanings, due in part to the different specialized meanings that each researcher ascribes to such fundamental terms as prosody, intonation, pitch, and tone, to name but a few. The plasticity of terminological meaning is further affected by contemporary research in psycholinguistics, human language, communication theory, discourse analysis, and prosodics and intonation, which lacks uniformity in the terminology.

There do seem to be some tentative areas of consensus despite the above. One of the key points of agreement hinges on the uses of intonation for generating sentence types, such as statements, questions, and imperatives. This intuitive belief runs counter to many of the more outstanding contributors to the research in this field. Thus, Bloomfield is cited as noting that ‘We use features of pitch very largely in the manner of gestures, as when we talk harshly, sneeringly, petulantly, caressingly, cheerfully, and so on.’ (Crystal, 1969, p. 45). Again, Crystal tells us (p. 47) that: “For Pike (1945), intonation is attitudinal, a temporary meaning superimposed on the intrinsic lexical meaning of a word (p. 21), which was one of the considerations in the disambiguation of *polvo cabrón*. As with Bloomfield and with Bolinger before (who also holds reservations on the use of prosody and intonation for grammatical purposes), Pike believes there is no grammatical basis to intonation: ‘The distinctiveness of meaning ... must not be defined by the grammatical sentence type in which the intonations occur, but by the attitude of the speaker at the time the utterances are given’ (Pike, 1945, p. 10).

There is one afterthought that cannot be left unsaid. At least two supervisory interpreters in the federal court system thought that it was always clear that *polvo cabrón* meant *amazing sex* or *great fuck*. They defended this disambiguation as the best translational solution, arguing that this was the way women of a certain generation would use the word.

The best solution to this interpretative dilemma, however, would be to convey the same sense of ambiguity expressed in the original utterance. Such a solution to the problem can be elegantly simple. Florida Court Certified Interpreter and Supervisor Gloria Trujillo indicated in a personal conversation with this author that she was once

confronted by a similar linguistic situation. A witness described a vehicle as *un carro empinga'o*. Her solution: she referred to the vehicle as *A hell of a car!* The ambiguous meaning remained unaltered. The intonational stress was conserved. No decision had to be made as to whether the meaning of *a hell of a car* meant that the car was an outstanding vehicle or a piece of junk on wheels. Thus, *un polvo cabrón* could be rendered as *a hell of a fuck*. Similar translation problems may be solved in this manner.

4. 12 Case History 12: “Lo Matamos”

The following case history was shared by fellow federal court certified interpreter Aimee Benavides and was a significant stimulus for this dissertation. The incident clearly illustrates the importance of intonation in the disambiguation of meaning. It also illuminates the limitations of intonation in the disambiguation of amphiboly.

4.12.1 Background

Federal Court Certified Interpreter Aimee Benavides was interpreting for a witness in a jury trial. (A. Benavides, personal communications, November 3, 2019, and February 15, 2020). The witness testified that as he slept in his bedroom, he was awakened by the sound of the door being kicked open. As he saw two men come toward him, he stretched his arm to grab a weapon by the bedstand. One of the intruders made it first and struck him with the firearm. As he fell, losing consciousness, he testified that he heard one of the two men say “*Lo matamos.*” The sentence construction is such that there are four possible meanings. There can be no possible disambiguation. Intonation in this case was useless.

Ms. Benavides’ anecdote became public in a Facebook post published in a specialized string for court interpreters. The narrative was so striking that an effort was

made to contact her and ask for permission to report her story. Ms. Benavides indicated that she became aware of the ambiguous nature of the syntagma when an attorney tried to impeach the witness using a prior statement. Quoting the attorney, she relayed the following: “*Didn’t you say before that you heard him say, ‘Let’s kill him’ and now you’re saying, ‘We killed him’...*”

It was at that point, Ms. Benavides writes, that “I had to alert the judge that the witness wasn’t changing the words he said, but the meaning sounded different each time. I realized that I couldn’t state for a fact which meaning he intended. I had to put the ball in their court.”

4.12.2 Issue and Rule

Lo matamos is a sentence syntagma that, based on the morphological particularities of the Spanish language, can be broken down into the following equivalent S-V-P-DO that would read *We killed him*.

Bolinger in his discussion of Non-questions (1989, p. 144-170), tells us “that there is a rough correspondence between syntactic types such as the INTERROGATIVE and speech acts such as QUESTIONING:

Type	Act	Example
Interrogative	questioning	Is it good?
Declarative	stating	It’s good.
Imperative	commanding	Be good!
Exclamatory	exclaiming	How good it is!

In the Spanish phrase *Lo matamos*, we have all four possible meanings, and no degree of inflection will help in the disambiguation of the meaning. In this instance, *Lo matamos* could be translated into English as:

We killed him. (an unemotional declarative stating a fact)

Should we kill him? (a question, asking what course of action is best)

Did we kill him? (a question, seeking to ascertain a fact)

We killed him! (an exclamation of satisfaction, sorrow, surprise)

In this instance, there is no degree of inflectional intonation possible to disambiguate the sense of *Lo matamos* into any one of the four possible meanings that could be conveyed into the English. It would not even be possible for the victim himself to disambiguate the intended meaning by only making use of different intonational contour types. The only party that could possibly disambiguate the meaning would have to be the person who made the statement.

Thus, in the first statement that makes a matter of fact observation, we would have the following contour:

	ta		kill	
(1) Lo ma		(1a) We	ed	him.
	mos.			

The 'ed' appears separated because that's where the voice begins to drop from 3*** to 1*.

In the second locution, we have a question addressed to the second individual that broke into the house asking advice as to the proper course of action that should be taken, almost as if in a whisper.

	ta		we	kill	
(2) Lo ma		(2a) Should		him?	
	mos?				

The third locution, a question in which one speaker asks the other for confirmation, should show, as in the previous example, the different patterns or contours as shown in the examples just before for English and Spanish.

CHAPTER 5: FINDINGS AND CONCLUSIONS

5.0 Summary

Chapter 1 established that the overall research objectives of the dissertation were the demonstration of the continued relevance of linguistic models of research to Translation and Interpretation and the examination of the overlooked issue of ambiguity which complicates effective interlingual communication and the legal resolution of controversies.

Four groups of research questions related to ambiguity and amphiboly in the interpretation of courtroom proceedings and translation of legal documents were presented. The first group involved *recognition* of ambiguous and amphibolic expressions; the second concerned the proper translational *management* of ambiguous expressions; the third referred to the *method* by which ambiguity would be disambiguated (which is a more specific question implicit in the second question); and the fourth addressed the designation of *arbiters* to determine if the disambiguation was done properly.

Two general hypotheses were proposed and tested, utilizing 12 case histories collected from courtroom interactions:

H1: Existing translational models are incapable of delivering adequate techniques of disambiguation under current U.S. language policy guidelines.

H2: Linguistic theory can play an important role in facilitating the understanding and treatment of ambiguity in courtroom translational practices.

Chapter 2 reviewed some of the scholarly literature available on courtroom interpreting, translational in general, and ambiguity. In that chapter, it was determined

that the foundational model of equivalence was the fictional basis for all courtroom interpreting and translational analysis, and that ambiguous phenomena would be broadly classified under several different categories (Berry and Kamsties, 2004). It was further determined in the case of structural or grammatical ambiguity that the grammatical category could be further subdivided for purposes of analysis into parts of speech (Oaks, 2010/2012). Lastly, the two main categories of ambiguity under semantics and syntactics were broadened to include phenomena produced phonologically, inflectionally, pragmatically, culturally (ethnographically), and dialogically (referential mention of literary works and other cultural memes throughout the ages and geographies in any given utterance).

The present dissertation reviewed several categories of ambiguity. Two were the traditional categories: semantics (lexical meaning), syntax (i.e., amphiboly), and the effects of grammar (parts of speech). The other categories identified included: rhetoric (metonymy, allegoresis), morphology and phonology (i.e. homonyms such as *rack*, *wrack*, and abbreviations such as *R.A.C.* – Resident Agent in Charge, and homographs, *bark*, *bark*), discourse analysis (the analysis of content, relationships and identity in *parole*, or language in use) (Gee, 2011a, p. 8), and pragmatics (situational context or language interacting with situational circumstances). Lastly, special attention was given to intonation (i.e., attitudinal inflection), culture (linguistic determinism, ideology and worldview), and dialogical content (cultural memes and icons across geographies of space and time).

Chapter 2 also established the possible overlap of two or more categories of ambiguity in any given utterance. Additionally, mention was made that ambiguity was

inherent to language, and instead of viewing it as a drawback to effective communication, as Berry and Kamsties argued, it could be said to be a useful linguistic device to enhance and enrich communicational productivity, efficiency and economy of speech (Piantadosi, Tily, & Gibson, 2011). Thus, ambiguous phenomena may be viewed as having both positive and negative effects in the productivity of language and communication.

Chapter 3 explained that the methodology of the dissertation would be autoethnographic, allowing outsiders a peek at a limited sample of the work that certified court interpreters and legal translators perform. The autoethnographic focus allowed the researcher to rely on personal and shared experiences as sample case histories for review and for illustrative purposes.

Chapter 4 listed and analyzed each of the 12 selections chosen to serve as case histories, and a brief analysis was made for each. Itemized conclusions for each were also reached and presented.

This fifth and final chapter will outline and expand upon the conclusions reached regarding the 12 case histories analyzed in Chapter 4. The chapter will revisit the original research questions and the two hypotheses. Mention will also be made about the limitations of the present research and potential areas for further research.

5.1 Recognizing Ambiguity in the Courtroom

The first group of research questions for this dissertation addressed the issue of recognition. The following questions were asked: Are ambiguous expressions susceptible to detection in a conversation? What indicators help identify an utterance as ambiguous? Do ambiguous phenomena fall under one single taxonomic classification, or may there be occasions when multiple categories come into play? Lastly, were

ambiguous lexemes or expressions of amphiboly limited to two meanings as the prefix *ambi* suggested, or can a multiple of meanings in excess of two be present?

No surveys were carried out to address these questions. However, the case histories, inasmuch as they are representative of the odd and eccentric nature of the experience, do provide limited useful information. Gee (2011a) also provides samples of sociolects in which one sentence can be interpreted to have more than 100 different possible meanings.

Regarding detectability, Oaks (2010/2012) provided a baseline by suggesting that individuals are more prone to notice ambiguous phenomena when humor is involved. Because of this feature, he felt reassured that most individuals would be capable of detecting ambiguous speech in general. While none of the 12 examples of ambiguity reviewed was overtly humorous, Case 4.1, showed elements of sarcasm based on a *double entendre*; and Cases 4.8 and 4.10 were based on misunderstandings that could have comic effects due to incongruence based on cultural and dialogical references.

Case 4.1 was based on a colloquially polysemous word (*camarón*) that required parties to be privy to a specific sociolect and its related issues of identity and relationships. Again, in this instance, the humor was merely incidental.

Cases 4.8 and 4.10 likewise relied on a sociolect that only insiders would be aware of. The incongruous meaning mistakenly given to the terms used in both cases (*bichote* in Case 4.8 and *chancleta* in Case 4.10) acted as the triggers to the humorous elements.

Interestingly, in none of these cases was the ambiguous nature of each word used (based on semantic, discourse analysis, and cultural and dialogical references) apparent to the parties involved.

Even though Oaks felt reassured that lay people would be capable of detecting ambiguous speech, Berry and Kamsties (2004) were not so optimistic. In their experience, ambiguity leads to many misunderstandings in many fields, prompting them to prepare a primer on how to avoid multiple meanings.

Undetectable ambiguous expressions as foreseen by Berry and Kamsties were evidenced by at least one of the parties in Cases 4.1, 4.4, 4.5, 4.8, 4.9, 4.10, 4.11, and 4.12. The ambiguous feature in each case only becomes evident when contradictions begin to appear, alerting participants that something is amiss.

Cases 4.1 through 4.3 involved words that held two or more semantic meanings, so these fell under the category of semantic ambiguity. They had to do with the racially and negatively charged word *negro*, which could stand for a color, a race, a term of endearment, or a nickname. Volume 2 of the *Diccionario de la Lengua Española de la Real Academia Española* at page 1574 indicates that *negro* is an adjective that has as many as 20 different meanings, including several colloquial uses and several other compound terms.

The word *negro* did not only fall under the category of semantic ambiguity. The many colloquial verbal locutions for *negro* include rhetorical devices such as metaphoric references to signify bad luck, excessive work, hardship, irritability, and extreme difficulties. The color associated with death in Spanish (and in Western Culture in general) is black. Black also symbolizes power, authority, and evil. Black can be used to

denominate satire or morbid humor as in *black comedy*. In addition, *black* in English can refer to highly classified, clandestine military actions as in *black operations*.

Not all cultures share these meanings. For example, in the Middle East and the Far East, the color for death is white, not black. Failure to be aware of these cultural facts may lead to serious misunderstandings.

Interestingly enough, and perhaps because the work involved in Cases 4.1 through 4.3 involved a written translation and not an oral interpretation, the producer of the *translatums* was able to detect and alert the ambiguous nature of the terms *camarón* and *negro*.

The cases under review clearly show that more than two meanings are possible in semantic ambiguity, despite the lexical limitation to two that the prefix *ambi-* would suggest. In Case 4.12, the phrase *lo matamos* had four possible meanings: one communicating a fact (We killed him.); the second, a statement with an emotional degree of satisfaction or disappointment with the outcome (We killed him!); the third posing a question (Did we kill him?), and the fourth making a request for guidance (Should we kill him?).

In Case 4.12, we can also see that English language does not provide for any syntagmatic leeway for production of a single phrase that would bring together all four possible meanings inherent to the Spanish syntagma *lo matamos*. The four possible meanings expressed in the original Spanish require three different expressions in English that fail to convey the multiple meanings found in the expression of ambiguity contained in the original source language utterance.

5.1.1 Ambiguity as Humor

The reactions to linguistic witticisms and puns that evoke amusement are an undeniable phenomenon. Linguistic puns occur from the confrontation of unexpected outcomes. This incongruity happens when logic and familiarity do not seem to go together. Humor is activated when something (a situation or a play on words) seems to be both wrong and acceptable at the same time. This ambiguity is what makes the play on words funny, evoking laughter. The incongruity and subsequent trigger to laughter is what makes it detectable.

Evidence of the ability to view ambiguity as humorous can be seen in three of the cases studied. Case 4.1 had to do with an untranslatable and therefore ineffable play on words with the Spanish phrase *el especial de la noche es ensalada de camarones, porque hay que acabar con todos los camarones*. In Case 4.8, confusion came about between a perfectly respectable idiomatic domestication of a foreign borrowing regarding someone important and the more salacious reference to oversized male genitalia. In Case 4.10, a man referred to his daughters as “*dos chancletas*” in Spanish. When the interpreter rendered into the English the literal equivalent of “*two sandals*,” the jurors—mostly bilingual English and Spanish speakers from Puerto Rico—erupted in laughter because the interpreter had produced a literal meaning instead of a culturally idiomatic expression and, in the process, appeared to be clueless about the meaning.

5.1.2 Ambiguity as Problematic

Berry and Kamsties (2004) take it for granted that ambiguity and amphiboly become more complicated and complex when the subject matter is not humorous or nonsensical; and because they have reached this conclusion through personal experience,

the work they perform is meant to serve as a taxonomic primer to help in identifying ambiguous utterances. As they state in their work, the detection of ambiguity is time and labor-intensive and not always successful. Unlike humor, ambiguity in language dealing with ordinary circumstances is not readily incongruent and therefore not so clearly detectable.

One of the more problematic situations involved in overlooking ambiguity has to do with the potential for misunderstandings. Such misunderstandings can lead to disaster (in the case of engineering work), and legal conflict (in the case of contractual performance). In affairs of State, at its most extreme, it can lead to failed negotiations, breakdowns in communication, and war.

In this dissertation, Cases 4.6, 4.7, 4.9, 4.11, and 4.12 showed aspects of such features. In Case 4.6, the use of the slang term *manteca* presented a unique situation. The generally accepted practice among interpreters is to translate the jargon used in the sociolects of criminals with the equivalent jargon in the target language. The Puerto Rican Spanish slang term *manteca* in this case meant “heroin” in English, also known as *brown sugar* and *horse*, among others.

The issue with this case is that the judge broke with the generally accepted practice of allowing interpreters to translate criminal jargon directly and without further clarification by the sense by sense method. Instead, the judge insisted on having the interpreter translate the literal meaning of the term *manteca* as *lard*, its English equivalent, in word by word manner. Going against the generally accepted practice would make it seem that the judge wanted the witness to engage in the act of explaining the metonymic use of the word *lard* as code for heroin and limit the scope of linguistic

intervention of the interpreter. As a result, the judge had the examining attorney question the witness and ask what he meant when he spoke about *manteca*.

In Case 4.7, the testimony came from an underage male child who had been the victim of sodomy. The child used the words *nuez* and *cola*, metaphoric euphemisms for *penis* and *anus*. In this instance, the words were translated literally despite another generalized practice that allows interpreters to request permission to clarify meaning by direct questioning of the witness. In this case, the child was testifying remotely by video, and the interpreter did not have direct contact with the child to engage in any clarification process. Alternatively, the interpreter could have resorted to treating the euphemisms as child slang. Had this been the case, there would have been, in all likelihood, a vigorous objection from the defense.

In Case 4.9, an attorney asked the witness to describe his occupation. The witness responded in Spanish: *yo antes era marimbero, pero ahora me dedico a dar tumbes*. The interpreter in this case failed to disambiguate the utterance as slang for “I used to be a marijuana pusher, but now I do rip-offs”. Instead, he offered a literal rendition of the Spanish and indicated in English that the witness described himself as *a marimba* [musical instrument] *player who now engages in rip-offs*.

Several aspects of this utterance and the proposed disambiguation prove problematic. Had the interpreter translated *marimbero* as *marijuana pusher*, the rendition may have proven to be too narrow in meaning. Someone listening might argue that a more proper translation would be to say *drug pusher* involving any kind of drug. Likewise, the words *tumbe* and *rip-off* are equally ambiguous because *rip-off* can mean any of a series of criminal activities ranging from acting as a con man engaged in fraud to

armed robbery of muggings. This range of possible meaning and any one disambiguation would have serious implications for the jurors' frame of mind.

Case 4.11 proved to be exceptional. The intonation and voice inflection in this case may have an effect on the two cognitive biases mentioned earlier. The first bias has to do with the single-minded focus on disambiguation. The ingrained expectation to disambiguate all words and phrases leads to mistakes in the treatment of ambiguous phenomena. In this instance, all the parties involved in the actual rendering of the translation and the subsequent consultations made to query the appropriateness of the *translatum* were mistaken. They failed to rely on the more obvious and simple solution: to use an equally ambiguous and meaningless word in English to resolve for the term *cabrón* in *el sexo estaba cabrón*—i.e., *the sex was fucking crazy*. The meaninglessness of the expression would have forced the attorneys to ask for clarification. The interpreter would have preserved the senseless (and ambiguous) nature of the answer.

Case 4.12 was the only example of syntactic amphiboly reviewed. The pragmatics of the situational circumstances did not help in the disambiguation. Intonation and inflectional features were also not helpful in disambiguating the phrase *Lo matamos*. Moreover, the phrase encapsulated four distinct meanings in the Spanish that were not conveyed in the English due to deterministic language constraints.

5.1.3 Ambiguity as Prevarication

The deliberate production of ambiguous communications is common in prevarication and has become a technique that is skillfully used by some as a negotiating device. Elgindy (2014) of the Brookings Institution referred to it as “constructive ambiguity.” The term was recently heard by the author of this dissertation while listening

to a 2020 NPR news report on monetary policy by the U.S. Federal Reserve broadcast on WLRN AM radio in Miami, Florida.

Elgindy (2014, p. 1) defines the term and traces its origin as follows:

For those unfamiliar with the term, ‘constructive ambiguity’ is a negotiation technique first employed in the 1970s by Henry Kissinger, the godfather of American diplomacy (as well as the chief architect of today’s Middle East peace process); it is premised on the belief that ambiguously worded text can create opportunities for advancing the interests of both parties to a negotiation.

This concept became the hallmark of the Oslo Accords, along with the numerous protocols, memorandums and other micro-initiatives derived from it. (p. 1)

Elgindy further characterized the negotiating technique as a failure, saying that:

Whatever its virtues in other settings, in the context of Israeli-Palestinian negotiations, ‘constructive ambiguity’ has succeeded only in producing confusion and eroding trust between the parties. Throughout the Oslo process of 1990s, disagreements over how to interpret various provisions led to endless delays as well as the renegotiation and outright lack of implementation of signed agreements. (p. 1)

Prevarication is not limited to diplomacy. It is one of the many tools available for litigation in legal proceedings. To prevaricate is to speak evasively, to speak or behave in an indecisive manner, to delay, or to procrastinate. One limited and unintended example of prevarication would be Case 4.7 in which euphemisms for the words *penis* and *anus* were used. Another unintended instance of apparent prevarication occurred with Case 4.5 with the phrase *porque nos caían a palos*, in which a non-Spanish speaker relying on a

glossary with limited definitions confused the word *palo* with *score*. Otherwise, none of the cases reviewed appeared to be intended to be evasive or indecisive, to delay, or to procrastinate.

5.2 Managing Ambiguity in the Courtroom

Once an interpreter recognizes an instance of ambiguity, there are three possible solutions to its management. One solution is to disambiguate. Disambiguation may be appropriate if there are indicators to ascertain the intended meaning. The second option is to preserve the semantic or structural features of the ambiguous utterance because none of the possible meanings is more likely than the others. Under the third option, linguistic determinism (due to the structural and semantic features of the target language) prevents the preservation of the full range of ambiguities of the original utterance or forcibly disambiguates for some but not for others. Meanings are left out or additional meanings arise when none were present in the original. Such cases make interlingual conveyance ineffable.

5.2.1 Courtroom Expectations

The literature and case histories reviewed could suggest that the management of ambiguity and any resolution are directly correlated with courtroom expectations. There are two essential expectations: one deals with the speed and efficiency of the proceedings; the other deals with the expected outcomes. These expectations may skew the management of ambiguous phenomena at the cost of fidelity to accuracy and impartiality. They are identified here as situational bias and cultural bias.

5.2.2 Situational Bias

The tendency of interpreters to unthinkingly disambiguate speech and convey it interlingually as soon as it is heard to meet efficiency and expediency criteria in courtroom proceedings is likely correlated with any cognitive bias toward the disambiguation of meaning in accordance with situational expectations. This bias for speed and semantic expediency based on the immediate context comes into effect when the interpreter focuses on the single-minded goal of resolving a translational communicative problem by resorting to and relying on what makes the most apparent sense in the least amount of time. This can result in failures to recognize when a word, phrase, or sentence is ambiguous. We saw how this happened initially in Case 4.12 with the phrase *lo matamos*. It was not until an attorney impeached one *translatum* as contradictory with a previously proffered *translatum* that the ambiguous nature of the expression became acknowledged.

5.2.3 Cultural Bias

The single-minded purpose of disambiguating potentially ambiguous expressions to meet efficiency and expediency goals is not only based on what makes most apparent situational sense. It can also be due to differing cultural frames of reference and world views that are inherent to a speech community's language and cultural outlook as in the case of *bichote*. Personal cultural bias may lead to assumptions that result in some conclusions being reached at the expense of others that may be more appropriate.

One such example in phonology deals with the perceived loudness of speech and the attitudes that certain cultures associate with loud speech. Some speech communities may perceive high volume speech as a sign of rudeness, argumentativeness, or even

hostile and threatening behavior, while others see it as normal and expected. Spanish speakers from the Caribbean Antilles are famously known to be loud and boisterous, whether from Cuba, the Dominican Republic, or Puerto Rico, and members of these speech communities are expected to be loud and high-pitched in speech.

Differences in perception can exist even within a single language, depending on the sociolects of the speakers. One such intralingual example occurred to the author of this dissertation when he was touring Hampton Court Castle in Surrey, London and uttered: “Two tickets, please” in a tone and pitch typical of an assertive native speaker of American English. “You don’t have to shout at me, young man,” whispered the elderly woman at the booth. The ambiguity in this instance was attitudinal, with one party intending clarity of expression and the other party perceiving rudeness and possibly ageism. Instances such as the preceding resist translational action but may certainly have an impact on interpreters engaged in translational performance. We saw samples of cultural consideration in Cases 4.1, 4.2, 4.3 [all referring to *negro* and its variants], 4.6 [*manteca*], 4.8 [*bichote*], 4.9 [*marimbero* and *tumbes*], and 4.10 [*chancletas*].

5.2.4 Failure to Detect Ambiguity

One of the perils arising from the referenced sources of cognitive bias is the failure to detect an ambiguous statement or expression. Some of the case histories analyzed in Chapter 4 gave specific examples of situations in which ambiguity went undetected. The most salient example involved Case 4.12 with the phrase *lo matamos*. Ambiguity was detected in Cases 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, and 4.7, but not so in cases 4.8 [*bichote*], 4.9 [*marimbero*], 4.10 [*chancletas*], 4.11, and 4.12.

In some of the case histories, such oversights were inadvertent. In others, observers might speculate that the lack of detection of ambiguity was deliberate to ensure that the translational solution for the disambiguation fit the cognitive bias of the audience. The latter occurred in Case 4.8 in which the court instructed jurors to disambiguate the word *bichote* in a way more conducive to the continuation of trial proceedings by relying on the speaker's intended meaning as generally recognized by speakers of the Puerto Rican variety of Spanish and not on the perceived understanding of the receiving party. The court told the jurors that while the narrator of the event (a Dominican living in Puerto Rico) perceived the meaning to be a reference to male genitalia, the generally accepted meaning for the word in Puerto Rico was actually a phonologically and morphologically incorporated borrowing from the American variety of English *big shot*.

5.3 Methodology for Disambiguation

The third thematic group of research questions regarded the method by which ambiguity is disambiguated and posed the following questions: What criteria are relied upon to decide if any given disambiguation is correct or not? Do objective and observable phenomena exist to help in the identification of the most appropriate disambiguation? How do we adopt these criteria and develop performance rubrics to uphold or reject any given disambiguation? Which are the semantic markers, contextual references, cultural indicators, pragmatic considerations, ideological imperatives, phonological and intonational cues, or parts of speech that are needed to decide if the proposed disambiguation is appropriate or not?

As with most objective phenomena under scientific scrutiny, there usually are more questions than answers. The few answers proffered are based on multiple factors and variables that defy simple explanations.

Court interpreting and legal translation have traditionally been based on the fiction of equivalence and the notion that all languages are effable, an aspirational paradigmatic model that satisfies legal principles and theories and responds to the underlying assumption of personal responsibility. Yet the prevalence of ambiguity and the paradigm of uncertainty based on the paradox of the theory of determinist expression underlying an indeterminist theory of translation (Pym, 2010/2014, p. 93) would tend to favor a theory of translation based on hermeneutics.

Chau (1984), as quoted by Pym (2010/2014, p. 99) states that hermeneutic theories of translation provide the following insights: “that there is no truly “objective” understanding” of source language; that “prejudices” are unavoidable and can be positive; that “there is no final or definitive reading” and that “the translator cannot but change the meaning of the source text.” Lastly, Chau argues that “no [*translatum*] can represent its source text fully” and that “understanding is not always explicable.” This paradigm plays nicely into theories of communicational relativism, alternate facts, legal litigation and political argumentation. The problem for court interpreters arises when other competent speakers of the language adopt contrarian stands to the *translatums* proffered by the interpreters.

Given the preceding insights on ambiguity and theories of language determinism underlying indeterminist theories of translation, it falls upon legal professionals in charge of administering judicial proceedings to be aware of the shortcomings inherent to the

translational fiction of objective equivalence. An objective analysis of the case histories and the literature reviewed in this dissertation would suggest that linguistic indeterminacy in the form of ambiguity is difficult to detect, can be perceived erroneously as unambiguous at first blush, and when detected may have been so identified by a confrontation of contradictions when two or more disambiguated versions of the original source utterance fail to match in meaning that each offers. More importantly, though, even when identified, whatever disambiguation proffered remains uncertain and, at best, tentative. The certainty of objective phenomena remains elusive. Translational actions, similarly to the resolution of legal controversies, may never have the certainty of mathematical operations. The accounting books do not necessarily balance out.

5.4 Who is to be Arbiter

The fourth and final thematic group of research questions addressed the designation of arbiters to assure quality assurance with authority and legitimacy. Who decides how objections in the court should be handled? What legal considerations do we need to bear in mind?

We have consistently said throughout this dissertation that this final area is essentially controlled by a legal fiction under the paradigm of equivalence. Equivalence was defined in Chapter 2 as synonymous with the interlinguistic conveyance of meaning from one language to another to the exclusion of any additions, omissions, explanations, and embellishments. It presumes that all expressions in all languages are effable or communicable in other languages.

Furthermore, we see that court-mandated directives call for *translatums* to be idiomatic and to preserve the formal or informal register of the speech. This aspect is

biased toward the domestication of foreign speech. Such idiomatic domestication can mistakenly convey a false sense of familiarity by adding or omitting values and attitudes that are not necessarily present in the original culture from whence the utterances come. It can also mislead the listeners into mistaken beliefs concerning the level of understanding that speakers of other languages have regarding the nature of the proceedings in the dominant speech community (i.e., the language of record, otherwise known as the language of the court).

It is also noteworthy to mention that nothing has been said about inflection. There are anecdotal references that suggest that some judges frown upon any attempts at intentional and attitudinal inflection, considering it to be prejudicial mimicry.

5.5 Team Interpreting *En Banc*

As mentioned in Chapter 2 in many court proceedings, interpreters assigned to perform simultaneous interpreting do so in teams made up of two or three individuals. Generally accepted practice would have interpreters engaged in simultaneous interpreting work do so for stretches of time that are not to last more than 20 or 30 minutes.

The primary reason team interpreting is adopted is to avoid interpreter fatigue. Most, if not all, of the literature on interpreter fatigue argues that the number of mistakes in the interlingual transfer of meaning increases when interpreters are engaged in simultaneous work beyond the time limits just referenced. This literature (reviewed in Chapter 2) can also be said to suggest that the passive interpreters (reportedly at rest) are there to serve as an emergency backups, as active monitors of the rendering made by the active colleague, and as researchers of terminology. Given these multiple tasks (backup, monitor, and trouble-shooting researcher) and the presumption that the inactive

interpreter is also “resting” from the rigors of the preceding simultaneous work performed, it becomes necessary to ask if monitoring for ambiguity is also something that can be performed. The likely answer is no.

In consecutive interpreting, the practice is entirely different. When an interpreter is required to render the statements of a witness into the official language of record, the usual practice is to assign a single interpreter with no backup or monitor. Detection of semantic, contextual, or pragmatic ambiguity and amphiboly in the secondary language is left entirely to the sole court interpreter performing the consecutive interpretation. If there are no other participants familiar with the source and target languages, and the interpreter fails to catch the ambiguity, the translational rendering enters the record unopposed. This is what happened in Case 4.12 of *lo matamos*. It was not until the expression was translated differently and an alert attorney brought up the apparent contradiction during cross-examination that the ambiguity was detected.

In other instances, bilingual attorneys and judges who are not independently certified in the non-primary language may intervene. These two groups of court protagonists often have the benefit of scores of hours of familiarity with the facts and controversies of the case from their pretrial exposure to the details. Their knowledge of the facts and controlling law far exceeds the limited facts that the interpreters have about the procedure when they begin to render their *translatum*. Objections may be appropriate, yet the manner of making the correction can be disruptive and, in some instances, hostile.

Such uncertified bilingual attorneys and judges have no protocol to go by when raising objections to the translational performance. In some instances, the objections and discussions concerning the presumed discrepancy are made in open court. There may be

times when a call to sidebar is made to discuss the alleged error, a more appropriate solution. The tone of the objection can often be one of exasperation and impatience. No mention whatsoever is made about the limited exposure that the interpreter has received prior to the proceeding regarding the facts and controversies of the case other than those listed in the charging document.

It bears mentioning that non-linguistic considerations may be operating in the minds of these unofficial monitors when the objections are raised. None of the objecting parties are under oath to render a true and accurate translation, yet they freely and openly propose counter versions when questioning a *translatum*. Because they have different duties and functions and have not been validated as having any linguistic competency by peer review, their interventions may be skewed, biased, and even self-serving. Even when not, observers of the process may look askance at their intervention and see it with jaundiced eyes.

Despite the above reservations, such interventions are probably preferable to the alternative of allowing possible errors to go unchecked. Interventions by such bilinguals can serve to avoid potential misinterpretation of testimony and miscarriage of justice.

One possible solution is the designation of a spot checker or monitor, a sort of fact checker, editor, or proofreader, like those employed in the publishing industry. In those rare instances in which a second interpreter is assigned, there are no universal protocols for raising objections, and many of the existing protocols are tentative and do not lend themselves to easy implementation. Some of them can even be said to be primarily concerned with avoiding the embarrassment of the performing interpreter.

The standard practice is for the assisting interpreter to write down the omission, addition, embellishment, explanation, or misinterpretation of an ambiguous statement on a slip of paper that is then discretely delivered to the active interpreter. Any correction thereafter is to be made at the discretion of the active interpreter. Such interaction is possible only when the monitoring interpreter is seated beside the active interpreter. Any other intervention such as an interruption of proceedings to raise the objection can be viewed as an affront to the active interpreter.

A recent development to remedy situations such as these involves the use of third-party interpreters to monitor the active consecutive interpreter and raise timely objections through one of the attorneys to the controversy. Such third-party interpreter monitors are hired by the opposing party to a proceeding to verify the translational competence and accuracy of the *translatums* proffered by the active interpreter. Such monitoring interpreters are often paid separately by the hiring party, and they are given time to become familiarized with the facts and legal issues that are in dispute.

This practice is not widespread yet since it represents added costs that are not covered by the court nor even encouraged. The courts may also have reservations about the practice. Most judges are zealous advocates of their autonomy and independence of judgment and praxis. They are likely to resist the concession of any inherence that may question the competence of court-appointed staff interpreters. The practice of third-party interpreters has yet to become widespread and acceptable. Additionally, the opposing parties may object to the qualifications of the proposed third-party interpreter. This opens up an entirely new dimension of litigation that goes against the doctrine of simplifying

the controversies and encouraging the prompt resolution of conflict by concession and negotiated settlement.

5.6 General Observations

Two general observations stand out regarding courtroom translational action. The first has to do with the prohibition against offering explanations. In Case 4.8, involving the expression *bichote*, the court held a sidebar out of the hearing of the jury before addressing the jurors. An explanation of the confusion between the perceived reference to male genitalia versus the commonly accepted meaning of the term in Puerto Rico as referencing a *big shot* was made when the judge addressed the jury. It was the court in this instance that resolved which meaning would be given to the term and offered explanations.

In Case 4.12, in which the utterance *lo matamos* was made, reference was made to the essentially ineffable nature of this syntagma that has four possible meanings denoting factuality (we killed him), uncertainty (did we kill him?), intentionality (should we kill him), and incredulity or surprise (we killed him!), the latter which could intonationally be gleeful, regretful or an unexpected acknowledgement. The interpreter detected the ambiguity, brought it to the attention of the court, and explained the untranslatability of the expression during a sidebar with the judge and the attorneys, out of hearing of the jury. Once the ineffable nature of the syntagma was elucidated in sidebar and the four possible meanings spelled out, the judge asked the interpreter to stand before the witness stand (with the witness still in the box) and initiated a *voir dire*. This term refers to a series of questions raised to establish the truth of a matter.

The interpreter described the procedure to the author of this dissertation in the following manner: The judge asked, the words "*lo matamos*" do they mean just one thing or are there multiple meanings? Then I explained what the different meanings were.

"He asked, and can you determine, based on inflection, which meaning it is? I said no. It was pretty brief - but it allowed me to put on the record the multiple possible meanings, and the fact that I couldn't say for a certainty which one it was. Basically, it put it back to the attorneys to ask the witness, how he understood it when he heard it - since the witness isn't the one who said it at the scene of the crime, he heard one of the defendants say it to the other." (A. Benavides, personal communications, November 3, 2019, and February 15, 2020).

The second general observation is that the best managerial practice (given the speed of proceedings in court and the possibility of misinterpreting the original statement) is to preserve linguistic ambiguity whenever it appears and allow courtroom participants (judges and attorneys) to perform their duties to detect such ambiguity and question and clarify meaning.

Cases involving translational ineffability appear to occur more often in instances involving humor. This ineffability can be based on the grammatical or semantic nature of each language. In the case of humor, the tried and true method of conference interpreters is to advise listeners 'that the speaker has just made a joke that will not be translated, but you should please laugh to humor the speaker.'

The situation is more serious during courtroom testimony as seen in Case 4.12 involving the Spanish expression *lo matamos* and other constructions in Spanish using reflexive pronouns such as *se*. Oaks' two-volume analysis of the interrelationship of parts

of speech and ambiguity in English is a significant contribution. However, there is still a need for the collection of a corpus of amphibolic utterances in Spanish like *lo matamos* to identify the critical parts of speech that lead to confusion and uncertainty in that language. As stated in this paragraph, pronoun reference uncertainty appears to be one of the leading causes for this indeterminacy of meaning.

Regarding the amphibolic utterance *lo matamos* [Case 4.12] and the semantic and circumstantial uncertainty linked to certain words such as *negro* [Cases 4.1, 4.2, 4.3], the policy prohibition against explanations may need to be reconsidered. Who is to give the explanation? In Case 4.8, the court issued instructions to assign one semantic value over another to the word *bichote*, and in Case 4.6, the court insisted on preserving the generally accepted meaning of the Spanish word *manteca* for *lard* and did not give leeway for the use of *horse* or *brown sugar* as slang for *heroin*. Any explanation had to be elicited from the witness by the prosecutor through questioning. Lastly, in Case 4.12, involving the phrase *lo matamos*, the court relied on the interpreter as an expert witness.

5.7 Status of the Hypotheses

In Chapter 1, two hypotheses were proposed. Let us examine their status given what has been presented in this dissertation.

5.7.1 Hypothesis 1

H1: Existing translational models are incapable of delivering adequate techniques of disambiguation under current U.S. language policy guidelines.

The existing translational models currently relied upon are based on two premises that are taken as true. The first premise holds the legal and linguistic fiction that languages are effable; and that anything said in one language can be said in another

language. The second premise is based on the principle of equivalence; words, phrases and sentences in one language have matching counterparts in other languages and when not, a sense for sense locution can be constructed. The dissertation has analyzed cases that indicate otherwise.

While linguistic equivalence and effable meaning are held to be cornerstones for courtroom interpreting practices, several case histories in this dissertation undermine the solidity of the argument that interlingual communication can always be effable based on equivalent lexemes or equivalence of meaning. Much as linguistic recursion is a fundamental feature that promotes the productivity of all languages, ambiguity is likewise a linguistic feature that enhances the overall productivity and efficiency of languages by providing versatility and adaptability of meaning and word functionality. Linguistic adaptability in the form of polysemy and functional versatility among the parts of speech makes for humor, double-entendre, metaphor, metonymy, and allegoresis possible. This productivity enhancement is countered by uncertainty in the form of ambiguity.

Because ambiguity generates uncertainty of meaning (whether semantic, syntactic, grammatical, phonological, pragmatic, rhetorical, inflectional, cultural, dialogic, or kinesic), it necessarily opens the door to other translational models of analysis, models that do not overly rely on equivalence. Models that meet these particularities and work well with uncertainty include those based on hermeneutic approaches. Such approaches acknowledge and consider cultural and ethnographic particularities and historical references when considering original meaning and its interlingual conveyance.

Unlike equivalence-based translational theories, these frameworks acknowledge the paradox of uncertainty and indeterminacy of translation (Pym, 2010/2014, pp. 88-89). They are not cultural mediation, but *bona fide* efforts at conveying fundamental understandings. This has led hermeneutic approaches to feel comfortable with the proposition known as the *determinist theory of expression underlying an indeterminist theory of translation* (Pym, 2010/2014, pp. 92-93). Hermeneutic approaches acknowledge the possibility of linguistic and cultural determinism in which different languages ostensibly hold different views of the world.

Besides the hermeneutic approach, the principles of uncertainty and indeterminacy in translational activities have also served as the paradigmatic models leading to the formation of other, new translational theories. Foremost among these are the deconstructionist and cultural models. As with hermeneutics, these other approaches require that source languages be actively interpreted (Pym, 2010/2014, p. 99).

Active interpretation can take many roads, and some of these can be biased. Under the cultural translation paradigm advanced by Homi Bhabha, the concern is with “what this kind of mixed discourse, representative of those who have migrated ... to the West” [...] “might mean for Western culture” (Pym, 2010/2014, p. 139).

Equivalence paradigms for translational actions play an important role in the need to accommodate speakers of multiple languages in legal proceedings. Yet the model fails at times to account for all translational needs.

Short from engaging in culturally mediated *translatums* for the purpose of placing a non-English-speaking party at an advantage, there may be times when ambiguous phenomena are best disambiguated through hermeneutic approaches to translational

activities. This, however, raises a whole series of additional questions that this dissertation does not contemplate or intend to answer at this time, questions that are more appropriately raised and studied by legal professionals in charge of administering judicial proceedings or interested in the development of legal principles and practice. The rule of thumb for such procedural considerations is to keep the concept simple.

5.7.2 Hypothesis 2

H2: Linguistic theory can play an important role in facilitating the understanding and treatment of ambiguity in courtroom translational practices.

This dissertation has clearly established that many problems faced in translational practices and translational studies can benefit from the application of linguistic knowledge and theory, despite a strong current of opposition to such a stance within the field of Translation. Peter Fawcett acknowledged “the love-hate relationship between linguistics and translation theory” (p. x) in the foreword to his 1997 book *Translation and Language: Linguistic Theories Explained*. He went on to say that “Many linguists have no interest in translation theory, and some translation theorists are increasingly declaring that linguistics has nothing to offer their discipline.” He further declared that his posture was not one of skepticism toward linguistics, nor did he view linguistics as “the grand liberator, or the great oppressor of translation studies” (p. x). Instead, he posited, many aspects of translation theory can only be explained by linguistics. Translators lacking basic knowledge of the field would lack an important tool, he added.

This love-hate relationship, however, is still prevalent at present. Contemporary trade talk among professional interpreters and translators is rife with skepticism, hostility, and resentment toward linguistic forays into interpreting and translation studies. Fawcett

considered this stance as extreme. As he put it, “The relationship of linguistics to translation can be twofold: one can apply the findings of linguistics to the practice of translation, and one can have a linguistic theory of translation...” (p. x) This is the posture adopted by the present dissertation.

Relevant work supporting Hypothesis 2 is found in the applied linguistic research on parts of speech and ambiguity conducted by Oaks (2010/2012). Berry and Kamsties (2004) provided insight into the issues raised by ambiguity from the perspective of a STEM discipline. Moreover, they offered a tentative taxonomy of categories that has been expanded in this work and should be helpful in providing an analytical framework. Among the disciplines incorporated into this taxonomy, we have important contributions from phonology, semantics, syntax, pragmatics, and discourse analysis. Each one of these subdisciplines of linguistics has made important contributions to a better understanding of ambiguity and amphiboly.

Recent psycholinguistic studies (e.g., Piantadosi, Tily & Gibson, 2011) have served to reveal the extent and pervasiveness of ambiguity in all languages. The research has also contributed to an improved understanding of ambiguity as a positive linguistic feature that enhances the productivity of language.

Advances in computational linguistics also show great promise with new technologies for the management of large data sets of lexical corpora. These sets will prove useful for the development of multivariate computational models for the detection and superior management of ambiguous phenomena. Such advances will significantly reduce the labor-intensive aspect of translational work and provide important findings for translation/interpretation. Moreover, the work in this field is already proving useful in the

detection of language variety phonological features. Mention has already been made of German inroads into the description of dialectal speech varieties and the detection of attitudinal intonational features denoting satisfaction or displeasure.

It is important to state at this time that the review of case histories in this dissertation would not have been possible without a strong grounding in linguistics. Because of it, the author had a better understanding of the roles that semantics, syntax, intonation, and prosody play in both the generation of ambiguity and in its disambiguation. Moreover, the autoethnographic nature of the treatment provided insights into the inner workings of interpreters and translators that have important implications for human resource management, for policy formulation and supervisory practices, for litigation practice among attorneys, and for statutory consideration in the development of legislation for the administration of justice by lawmakers.

The work also has important implications for the field of translation and interpreting studies in many areas including training. It has already been stated that Fawcett (1998, p. 2) sees that there are two ways of relating linguistics to translational work. “In the first, subdivisions of linguistics as we mentioned earlier assist in the understanding of translational work. As such, sociolinguistics is one important subspecialty that helps in the intralingual disambiguation of source utterances and informs and guides in the production of *translatums* for target languages. The second approach, Fawcett tells us (1997, p. 2), is to apply linguistic theory to an entire concept of translation. Thus, purpose-based translational paradigms such as dynamic equivalence theory by Nida (1969); Functional Theory by Reiss (1971); and Skopos Theory by Reiss and Vermeer (2013) are prone to analysis from the perspectives of sociolinguistics. This

analysis can also be conducted with other translational theories such as hermeneutics and deconstruction (under the paradigm of uncertainty) and cultural and locational theories (under linguistic deterministic models).

5.8 Applications of the Findings

The findings of this dissertation have the potential for application in a variety of settings. At a minimum, they can be useful in the creation of greater awareness of ambiguity among court interpreters, lawyers, and judges, particularly concerning the problems inherent to translational work. They can also be utilized to show the need for the development of new translational standards and uniform protocols. Perhaps even more important is the raising of awareness of the occurrence of situational and cultural interpreter bias. It is one thing to purposively resolve an ambiguous expression to convey a specific and pre-established idea or concept in response to practical or ideological demands (as done with Biblical translation which aims at proselytizing readers). However, it is an entirely different matter to be unaware of the existence of any cognitive bias in the disambiguation of the ambiguous. Inadvertent bias is not to be confused with deliberately produced bias that responds to ulterior purposes.

This dissertation is additionally important as a warning to the producers of software for computer-assisted translation. Coders need to keep in mind the tendency toward bias in the disambiguation of potentially ambiguous statements and take steps to avoid incurring in the same when writing software code. Moreover, lessons about how parts of speech create ambiguity can help in the development of skills for the detection of ambiguity.

5.9 Limitations of this Dissertation

The work presented here is limited in several ways. First, it is based on the analysis of only 12 instances of ambiguity, and the samples for the most part posed problems involving semantic ambiguity in just two languages and a limited variety of these. A greater and more diverse corpus of multilingual ambiguous syntagma is necessary to conduct a more sharply focused study.

Second, the voice of the interpreter is only minimally heard. Originally, the project contemplated the development of a survey to collect interpreters' responses to a questionnaire about ambiguity in their courtroom experience. However, time constraints were a significant consideration, and this goal was postponed for a future project. Instead, the work took an auto-ethnographic slant to observe examples of ambiguity in the courtroom.

Third, mention has been made of the broad focus of this dissertation. The work identified numerous categories of ambiguous phenomena. Any one category would have warranted a dissertation exploring more specific aspects of ambiguity under that unique category. A wide net was cast on this occasion to establish a baseline that did not exist prior to this work except for the limited work conducted by Berry and Kamsties (2004).

Fourth, while extensive, the review of literature is not exhaustive. Time limitations, the constraints of the genre, and the limited human resources devoted to the research suggest that more is needed. Additional research on ambiguity is particularly needed in other modern languages other than English. Moreover, the research requires a comparative linguistics approach. Lastly, the research is fundamentally synchronous.

More diachronic research on ambiguity throughout the ages will offer a deeper perspective into the problem and assist in tracing a historical evolutionary timeline.

5.10 Future Research

Further research into ambiguity, amphiboly, intonation, and cultural mediation in translatology beyond the limited scope of this dissertation is necessary. Such research would be extremely useful for many purposes beyond court interpreting and legal litigation involving multiple languages. Moreover, those adhering to the translational and legal fiction of linguistic equivalence and effable interlingual speech would do well to follow up with research on the cognitive tendency to disambiguate at the cost of comprehension subject to situational and cultural bias.

One important area has to do with amphiboly. There is a need for a corpus of amphibolic utterances in Spanish similar to *lo matamos* to identify the critical parts of speech that lead to confusion and uncertainty in that language.

Further psycholinguistic research on the underlying attitudinal communication conveyed by prosody, intonation, and inflection in both written text and speech is also needed. The absence of knowledge in these areas does not mean that they are not present in the communicative act or in the translational action.

In closing, it is hoped that the findings and procedures modelled in this dissertation will be of help in applied research aimed at improving the training of courtroom interpreters and the evaluation of their performance.

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Appendix A: Terminology Related to Ambiguity

Amphiboly – Fallacy of relevance based on an ambiguous word or grammatical structure

(e.g., *Visiting relatives can be bothersome, Prostitutes appeal to Pope.*)

Anaphora – An expression that requires another antecedent or subsequent expression to give it context.

Apposition – Two elements, usually noun phrases, placed side by side

Confusables – Two or more words that are easily confused with one another (e. g.,

desert/dessert, allusion/illusion)

Deixis – Word or phrase that points at some unspecified object, location or time (e. g.,

this, that, these, those, now, then, there)

Homographs – Words with different origin, sometimes different meanings or

pronunciations (i.e., *dog's bark, tree bark*)

Homonyms – Words with the same spelling but different meaning

Homophones – Two or more words with the same spelling but different meanings and

spellings (e.g., *meat/meet, knew/new*)

Irony – Incongruity between what is expected and what occurs

Metonymy – The use of words in other than their literal sense

Prosopopoeia – representation of an abstract quality or idea as a person or creature

Simile – figure of speech expressing resemblance between things of different kinds

Synecdoche – Substituting a more inclusive term for a less inclusive one (e.g., *mankind* for *humankind*)

Toneme -- Any of the phonemes of a tone language by which tone conveys differences in lexical meaning

Trope – a figure of speech using words in non-literal ways such as a metaphor as a word or phrase used in a figurative sense

Appendix B: Additional Readings

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