Speak English or What?
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Speak English or What?
CODESWITCHING AND INTERPRETER USE
IN NEW YORK CITY COURTS

Philipp Sebastian Angermeyer
CONTENTS

Acknowledgments  vii

1. Indexicalities of language choice in small claims court  1
2. Challenging claims: Immigrants in small claims court  16
3. “I've heard your story;” How arbitrators decide  42
4. Only translating? The role of the interpreter  69
5. Testifying in another language: What’s lost in translation  101
6. Codeswitching in the courtroom  142
7. Language ideology and legal outcomes  191

Appendix: Transcription conventions  207
Notes  209
References  225
Index  241
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Speak English or What?
Indexicalities of language choice in small claims court

One evening in 2004, in a busy small claims court in New York City, two people were arguing in front of an arbitrator about the cause of a traffic accident in which their cars had collided in the middle of an intersection. The claimant, a West Indian immigrant, argued that the defendant had caused the accident by driving through a red light. The defendant, who was Haitian, claimed that the light had been yellow when she crossed the intersection. She was speaking in Haitian Creole, which was translated into English by an official court interpreter, who also translated the other participants’ English turns into Haitian Creole for her. After initial testimony, during which both claimant and defendant had narrated their versions of events to the arbitrator, the claimant was given the opportunity to ask questions of the defendant. Like many litigants in small claims court, he had appeared pro se, whereas the defendant was accompanied by an attorney representing her insurance company. The claimant’s questions, which eventually gave way to direct comments, aimed to raise doubts about her testimony, and in the process, questions about her truthfulness came to be intertwined with the issue of language choice, as shown in excerpt (1) (see the appendix for transcription conventions).

(1)

1 Claimant: You said that the light changed to what?
2 [Yellow?]
3 Interpreter: [Ou di ke] linyè (a te to-) tounen jòn?
   {'you said that the light (had) turned yellow’}
4 Defendant: (0.6) linyè a te vert,
   {'The light was green,’}
5 et puis lè m ap pase (anba l ap) tounen yellow,
   {'and then, when I passed underneath, it turned yellow.’}
6 Interpreter: The light was green but when I was
Not unlike an attorney would in cross-examination, the claimant in excerpt (1) seeks to expose contradictions in the defendant’s testimony in order to undermine her credibility. To do so, he juxtaposes a part of her courtroom testimony (limyè a te vert, ‘the light was green’ line 4) with a statement that she reportedly made to the police at the scene of the accident (the light was yellow, line 20). However, he does not simply point out that the two statements are contradictory, he also emphasizes that they were made in different languages. During the hearing, the defendant has been speaking Haitian Creole (albeit with occasional codeswitching), but at the scene of the accident, she allegedly spoke English. Because the claimant’s own version of the events depends on the claim that he himself had a green light and she did not, the implication of this juxtaposition is clear: When she speaks English, she is telling the truth, but when she speaks Haitian Creole, she is lying. Moreover, by exclaiming that she can speak English! (line 23), he implies that the act
of speaking Haitian Creole in court is deceitful in and of itself, irrespective of the words that are spoken. The presiding arbitrator rejects the claimant’s comments, but he does not explicitly object to the notion that language choice is connected to truthfulness.

This example highlights several of the issues that are faced by speakers of languages other than English in American courts and that are addressed in this book. For one, it speaks to language ideologies about speaking English and using an interpreter—that is, beliefs about language and how it should be used. As the use of English is the norm both in the legal institution and in American society more generally (Silverstein 1996), using another language in the public sphere is fraught with risks, as it constrains the ability to communicate with institutional agents and has the potential to associate the speaker with negative social attributes. In the American legal system, interpreter use is generally viewed as dependent upon a person’s inability to speak English, which is sometimes compared to a physical handicap (e.g., Pousada 1979). As Haviland (2003:769) notes, this notion of language handicap shows that English is seen as being “in the repertoire of skills of a ‘standard person,’ one who is socially and, perhaps, morally whole or ‘normal.’ ” Based on such ideologies, linguistic practices thus come to be associated with particular social attributes—that is, they are viewed as indexing particular social meanings (Silverstein 1979; Ochs 1992). As in excerpt (1), language use becomes a moral question, especially when a person’s language proficiency is in doubt, which is often the case with L2 learners of English. Both at the macrosociolinguistic level and at the level of the interaction, speaking a language other than English can thus come to index negative social attributes and contribute to the negative evaluation of the speaker’s moral character.

Excerpt (1) also illustrates several important aspects of court interpreting practice. In the initial question and answer sequence (lines 1–13), the interpreter translates in consecutive mode—that is, he is generally able to produce renditions of immediately preceding talk before another participant takes a new turn. By contrast, he does not translate the subsequent byplay exchange between arbitrator and attorney (lines 14–18). Finally, as the claimant gradually moves from questioning to commenting, becoming agitated and speaking mostly without pauses (lines 19–25), consecutive interpreting is no longer possible, but the interpreter is unable to keep up as he attempts to interpret simultaneously. While some of the interpreter’s words are inaudible on the recording, it is clear that he does not translate the claimant’s “accusation” that the defendant does in fact speak English (lines 23 and 25). Ironically this omission serves to further strengthen the claimant’s argument, since it seems to momentarily give in to the idea that the defendant doesn’t “need” a translation and understands what was said in English. As will be shown in Chapter 5, this distribution of consecutive and simultaneous interpreting modes, which is typical of court interpreting, systematically
disadvantages speakers of other languages. When they testify, they need to pause frequently to allow the interpreter to interpret consecutively, but these pauses make their testimony less coherent and easier to interrupt by others. By contrast, English speakers often do not pause, particularly if they address another English speaker, and so interpreters are forced to interpret simultaneously. However, as illustrated in excerpt (1), simultaneous interpreting of talk-in-interaction often leads to renditions that omit some of the source content, especially if multiple speakers overlap. As a consequence of this distribution of interpreting modes, speakers of other languages are less likely than English speakers to understand all of their opponents’ testimony. However, these potential problems with interpreting are generally not acknowledged by the legal system, which sees interpreting as a neutral event that does not alter the proceedings in any way.

The issues addressed in this book thus raise important questions about multilingualism in the legal system. Can you get a fair trial if you don’t speak the language of the court, or don’t speak it fluently? Or, put differently, how do linguistic differences between individuals affect communication in the courtroom and the ability of claimants, defendants, and witnesses to make their voices heard? These questions pose themselves in legal systems all over the world, but they are especially pertinent in places like the urban areas of the United States, where international migration has given rise to record levels of linguistic diversity. According to census figures, approximately half the population of New York City speaks a language other than English (LOTE, cf. García & Fishman 1997) as their primary home language. About a quarter of the population speaks Spanish, and another quarter speaks one or more of a large number of other languages, as there are approximately 30 other languages that are spoken by 10,000 or more people in the city. Like in other first-world legal systems, the response of the English-based courts to this linguistic diversity has been to rely on interpreting. This is based on the assumption that persons who speak another language can participate in proceedings to the same extent as English speakers, as long as they are assisted by a qualified court interpreter who translates accurately between the languages. In line with such legal perspectives, linguistic research on multilingualism in court has often focused on the impact of interpreting, with the aim of improving justice by identifying best practices for court interpreting and improving the training of interpreters (Berk-Seligson 1990; Colin & Morris 1996; Hale 2004). However, less attention has been paid to the sociolinguistic context of court interpreting or to the pragmatic differences between interpreter-mediated interaction and same-language talk. Sociolinguistic research on language use in the legal process has typically focused on intercultural interaction between speakers of different varieties of the same language. Such research has consistently shown that speakers of nonstandard or nonnative varieties are disadvantaged in the courtroom when their
cultural communicative practices are interpreted according to institutional norms (Gumperz 1982a, 2001; Eades 2008) or when their varieties are taken as indexical of stigmatized social identities (Jacquemet 1996). In line with the above-mentioned language ideologies that view the use of the standard language variety as normative (Silverstein 1996; Haviland 2003), legal professionals often blame lay participants for their inability to communicate in the standard language (Lippi-Green 1994). Taken together, these studies illustrate Blommaert’s observation (2003:615) that “differences in the use of language are quickly, and quite systematically, translated into inequalities between speaker.”

The impact of linguistic difference on equality before the law can be observed even in jurisdictions with multiple official languages, where the functional equivalence of different languages is institutionally mandated. Recent ethnographic research on courtroom interaction in bilingual jurisdictions has shown that the choice between co-official languages can also have profound pragmatic and legal implications, potentially altering courtroom procedures and affecting a litigant’s ability to argue persuasively in the particular cultural context of the hearing. For example, Richland’s (2008) study of a Hopi tribal court explores meta-pragmatic debates where language choice between English and Hopi is explicitly negotiated by the participants, revealing language ideologies that link the languages to particular forms of argumentation and jurisprudence. While there is a general assumption that speech in one language can be translated into the other without loss of meaning, some participants argue that certain matters can only be discussed in Hopi (p. 102), and Richland finds that language choice does have implications for the ability of participants to appeal to traditional Hopi notions of morality and responsibility. Similarly, Ng (2009a) finds that language choice in bilingual courts in Hong Kong has important consequences for the way trials are conducted. He identifies a “gap in the linguistic habituses” of English and Chinese (p. 159), as adherence to the juridical formalism of the British common law system is tied to the use of English and is much reduced when trials are conducted in Chinese. Ng argues that this has profound consequences for the ability of Cantonese speakers to participate in the proceedings, as the use of Chinese re-embeds disputes into their original Chinese-language social context, whereas the use of English removes them from it. Moreover, as interpreter use is also very widespread in nominally “English” trials, language choice is often more fluid during these hearings, as lawyers tend to elicit evidence in Cantonese, while more formal and monologic trial components, such as the judgment or opening and closing statements, are spoken in English (p. 238). The studies by Richland and Ng both point to a functional linguistic relativity, as language choice is shown to have implications for how participants can interact in the courtroom. In doing so, they challenge the notion of “literal” translatability that is prevalent in legal approaches to multilingualism—that
is, the belief in pragmatic and semantic cross-linguistic equivalence that Haviland (2003) characterizes as the ideology of “referential transparency” (see below).

The impact of linguistic diversity on justice thus clearly represents a central concern in the field of language and law, and this book aims to contribute to this growing body of work by exploring the pragmatic consequences of language choice and interpreter use in courtroom talk. The data analyzed in this book were collected in ethnographic fieldwork in small claims courts in New York City in 2003 and 2004, during which I observed over 200 court proceedings and tape-recorded 60 hearings that involved at least one speaker of a language other than English. To facilitate cross-linguistic comparison, my study focused on speakers of four languages that are frequently spoken in New York courts, and of which I have at least a basic working knowledge: Haitian Creole, Polish, Russian, and Spanish. As will be explained in detail in Chapters 2 and 3, small claims court differs from other courts because of its relative informality (Abel 1982a; Conley & O’Barr 1990; Merry 1990), and in New York, most cases are decided by volunteer arbitrators instead of judges. The court provides a venue for local residents to pursue claims of limited monetary value without having to hire an attorney. Typical small claims cases result from disputes between tenants and landlords, between workers and their former employers, between customers and business owners, or between parties involved in a minor automobile accident. As noted by Merry (1990:86), many of these disputes represent “weaker parties’ challenges to the hierarchies of authority controlling their lives,” and in New York, these weaker parties often have more limited proficiency in English than do their opponents. This makes small claims court an ideal venue for studying the impact of linguistic diversity on interaction in legal settings, as speakers of different languages and language varieties come to court, speak on their own behalf, and argue their case in a relatively informal manner. At the courts where I conducted my fieldwork, as in all New York civil courts, professional court interpreters are provided free of charge to all litigants who request them. Yet, as I discuss in more detail in Chapter 6, all of the participants I recorded also used some English alongside their other language, and consequently they can be described as limited L2 speakers of English and as incipient or limited bilinguals who engage in codeswitching between English and their L1. In fact, when these litigants interact with institutional representatives, they are often unsure about their language choice. Anticipating the need to speak English, but perhaps uncertain about their ability to do so appropriately, many come to court accompanied by family members or acquaintances who are prepared to translate or speak on their behalf, if needed. Others may request a court interpreter but still expect to use English when possible. As a consequence, court proceedings often begin with explicit language negotiation sequences (Heller 1982; Auer 1984, 1995). This is illustrated
Indexicalities of language choice in small claims court

in excerpt (2), from a dispute between a Russian-speaking tenant and her landlord. The claimant’s succinct question in line 4, which provided me with the title for this book, suggests both a preference for speaking English (in this context) and a willingness to accommodate to institutional practices. Prior to the question, she shows her orientation to talk in both languages, English and Russian. Her *uhm* in line 2 indicates that she wants to claim the next speaking position—that is, it suggests that she is preparing to respond to the arbitrator’s English question in line 1 even before she hears the interpreter’s translation in line 3. Her false start in line 4 (*ja žila* ‘I was living’) on the other hand initiates a response to the interpreter’s question in Russian. As can be seen in line 5, the arbitrator rejects her suggestion and asks her to speak Russian instead. This is then translated into Russian by the interpreter (line 6), and, to a bilingual participant, this translation of the request arguably also doubles as a reiteration. Finally, the claimant accepts this instruction and switches back to Russian (line 8), continuing where she had left off with her false start in line 4 (*ja žila*). (All name are pseudonyms.)

(2)

1  Arbitrator: Alright (.) why are you suing Green Realty?
2  Claimant: *Uhm-*
3  Interpreter: Počemu vy sudite *G- Green* (.) Realty?
   {‘Why do you sue Green Realty?’}
4  Claimant: *Ja žila*-(.) *speak English or what?*
   {‘I was living’}
5  Arbitrator: (.) No, speak Rus [sian please.]
6  Interpreter: [Govorite po-] [russki.]
   {‘Speak Russian.’}
7  Claimant: [Ah, okay.]
8  (.) *uhtm (.) ja žila v ploxix uslovijax,*
   {‘I was living in bad conditions’}
9  i [vos-]
   {‘and the 8-’}
10 Interpreter: [I was] living in a bad condition,
11 Claimant: Vos’maja Programma menja perevela v drugoj *building*.
   {‘Section 8 transferred me to another building’}

On the surface, it may seem surprising that litigants are told not to speak English, even though it is the language of the institution. But in fact, judges, arbitrators, court staff, and interpreters in New York small claims court routinely discourage L2 speakers from using English (Angermeyer 2008). This practice appears to be motivated in part by a belief that litigants are better off if they can speak in their L1. This perception can be seen as derived from the legal basis for court interpreting in the United States (the Court Interpreters
Act of 1978), which holds that individuals who do not speak the language of the court are denied due process unless they are provided with an interpreter. Accordingly, the failure to provide an interpreter may provide grounds for an appeal (Berk-Seligson 2000), so legal professionals may want to err on the side of caution, even in relatively informal legal venues like small claims court. However, as I seek to demonstrate throughout this book, the belief that litigants should speak their L1 is also grounded in language ideologies about communication and translation. It rests on the common assumption (named “conduit metaphor by Reddy” 1979) that successful communication requires a speaker to put his or her thoughts “into words,” and that these words can then be translated without any change in meaning by a competent translator, following Haviland’s (2003) ideology of “referential transparency.” In Chapter 5, I will show how this ideology may interfere with the goal of communication. But, as I argue in Angermeyer (2008), the institutional instruction to not speak English is also a “monolingualizing” practice. While bilingual litigants, like the claimant in excerpt (2), orient to talk in both of their languages, the court wants them to use only one language throughout the hearing—that is, to act as monolinguals and either speak only English or speak no English at all. The only participants who are permitted to use more than one language are the court interpreters. Nonetheless, many litigants resist this monolingual norm of language choice, as will be shown throughout this book. As speakers of languages other than English living in an English-dominated society, using both languages, and codeswitching between them, is part of their everyday linguistic practices, but when they do so in court, they risk being reprimanded by institutional representatives, as even minimal use of English may become ground for criticism of a litigant’s behavior in court.

While court staff may thus criticize L2-speaking litigants for using English, other participants often criticize them for relying on an interpreter instead. Such criticism was hinted at in excerpt (1) above, but it is often made more explicitly. Consider the following excerpt from a case with two Polish-speaking women who had sued their former employer for outstanding wages. A Polish interpreter is present in the room to translate for them. Like most claimants in small claims court, they appear pro se, but their former employer is represented by an attorney. The excerpt shows a routine procedure from the beginning of arbitration hearings, when litigants and witnesses are asked to swear to tell the truth. In line 3, the interpreter is shown translating the arbitrator’s initial question into Polish. The claimant responds with yes in English (line 4), to this question as well to the subsequent follow-up question, which is not translated (lines 5 and 7). Such minimal use of English is very common, even for litigants like this claimant who speak very little English otherwise (see Chapters 2 and 5). This should not be surprising, since responding yes to a yes/no question requires only minimal proficiency in English, particularly if the question itself has been translated as in (3). Nevertheless, the defendant’s
attorney takes this rather emblematic display of English as an indication that her request for an interpreter is not genuine. He asks the arbitrator to inquire about her competence in English (line 9), and then asks her himself when this request is ignored (line 10). When the claimant declares that she understands “a little,” the attorney responds with a comment that directly accuses her of not being truthful, speaking “a little bit more than you would like us to believe” (line 15).

(3)

1 Arbitrator: Do you swear the testimony you’re about
2 to give is the truth?
3 Interpreter: [Czy Pani przysięga] mówić prawdę i tylko [prawdę?]
   (‘Do you, Ma’am, swear to speak the truth and only the
   truth?’)
4 Claimant: [Yes.]
5 Arbitrator: For your case as well as ah (.) [Zofia’s case?]
6 Interpreter: [(Ah, for-)]
7 Claimant: Yes.
8 Arbitrator: Okay.
9 Def. Attorney: Ask her if she understands English?
10 (2.2) You understand [English?]
11 Arbitrator: [Uh:-] Uh-
12 Claimant: Uh, a little (bit).
14 Arbitrator: [Okay-]
15 Def. Attorney: [I think] a little bit more than you’d like us to believe
16 but [(that’s okay) {laugh}]
17 Arbitrator: [Well, no no no.] That’s unnee- [ssary].
18 Def. Attorney: [Okay.]
19 Arbitrator: They obviously feel more comfortable with a
20 [Polish interpreter and it’s their right.]
21 Def. Attorney: [ah okay I have (no problem with it).]

Such accusations as in excerpt (3) are by no means unusual, and they have been described in other studies of interpreter-mediated interaction in legal settings (see Maryns 2012:304). During my fieldwork, I observed multiple other occasions when a participant’s language proficiency became a point of dispute. This occurred especially in situations when a request for interpreting resulted in the postponement of a hearing because no interpreter was available. In such instances, opposing litigants or their attorneys sometimes insinuated that the request for interpreting had been made in order to delay the hearing, or they would try to convince the litigant to go ahead
without an interpreter. Similarly, the case from excerpt (3) had originally been scheduled for a different court date but was postponed when no Polish interpreter was available that day. However, this delay was hardly in the interest of the Polish-speaking claimants, who after all were suing for payment of outstanding wages. In fact, the defense attorney in excerpt (3) does not speculate what the claimant’s motive could be for “pretending” not to speak English, what she could stand to gain by doing so. Instead, his accusations are made simply to call her truthfulness into question. As can be seen in excerpt (3), the arbitrator rejects this attempt to discredit the claimant. First, he does not follow the attorney’s prompt to ask her (lines 9–10), and then he interrupts and rebukes him for his comments and asserts that the claimant is entitled to interpreter assistance (lines 17, 19, and 20). While the attorney’s criticism, like the claimant’s comments in excerpt (1), is thus rejected by the court, it still suggests that language choice can have profound implications for how a litigant is perceived by others. The examples show the potential of language choice to become part of so-called demeanor evidence, which legal decision makers draw on to evaluate a person’s reliability and truthfulness. In any case, such criticism can be understood as an indirect consequence of the court’s monolingual language policy noted above, which treats the use of court interpreters as incompatible with any additional use of English (Angermeyer 2008:393). Against this expectation of monolingualism, any use of English, no matter how minimal, can come to be interpreted as deceitful, but so can not using English, if other participants have evidence of the litigant’s L2 proficiency (such as from prior interaction outside of court, as in excerpt (1) above). Consequently, the language choice of immigrant litigants is inherently problematic, no matter which language they choose, or are told to use. This distinguishes the situation of L2 speakers from litigants whose L1 is English, and who do not risk being evaluated in this way (though they may of course be evaluated for their vernacular variety if it is perceived as nonstandard).

The examples show that practices of court interpreting affect legal proceedings in ways that go beyond the question of how closely the interpreters’ renditions relate to the source speech they translate. For one, interpreter use has profound pragmatic consequences that will be examined in detail in Chapter 5. Moreover, as shown in this chapter, language choice affects proceedings by indexing social meanings, at both micro and macro levels of analysis. As shown in the discussion of excerpts (1) through (3), language choice is indexical at the level of the interaction, where it can come to index a lack of credibility or cooperation if it is seen by others as contrary to expectations. Haviland (2003:772) notes that the language choice of bilinguals is often evaluated as a matter of volition. As he shows in his discussion of English-only regulations in the workplace, when bilingual employees speak the other language with each other (or codeswitch), their choice is interpreted
as a willful act of disobedience and not as a function of their habitual language practices. As will be shown throughout this book, the language choice of bilingual litigants in court is subject to similar interpretations, which likewise ignore practices of bilingual language use. At the same time, language choice in the courtroom is also meaningful at the macrosociolinguistic level, as it indexes social categories, especially in the context of language ideologies that view the exclusive use of English as normative (Silverstein 1996; Haviland 2003). In her study of Puerto Rican bilinguals in institutional encounters in New York, Urciuoli (1996:170) argues that speaking English provides an “important source of symbolic capital,” which is lost when people communicate in Spanish via an interpreter. Moreover, as Reynolds and Orellana (2009:220) note, when Spanish speakers rely on interpreting, this may function as a “metacommunicative cue,” raising doubts about their citizenship status. Legal professionals who are experienced with interpreter use may be aware of these indexicalities and may try to explicitly counteract them. For example, as cited by Mikkelson (2000a:95), the New Jersey Supreme Court Task Force on Interpreter and Translation Services recommends the following instructions for jurors: “Do not allow the witness’ inability to speak English to affect your view of the witness’ credibility. . . . Do not attribute any prejudice to the fact that the defendant requires a court interpreter.” Court staff and most arbitrators in New York small claims court take this same approach to interpreting, but it is not clear that such indexical interpretations of language choice can be avoided when a litigant’s credibility is evaluated.

Overview of chapters and methodology

The main body of this book consists of five chapters, which can be grouped into two parts. The first part focuses on the three groups of participants—litigants, arbitrators, and interpreters—while the second part focuses on specific aspects of their interactions, namely translation and codeswitching. Chapter 2 introduces the fieldwork setting while focusing on the litigants, their motivations for bringing disputes to small claims court, and the process that they have to go through to have their case heard. The chapter highlights the experiences of a few individual claimants whose cases can be seen as typical of litigants with limited proficiency in English, and of the types of disputes that bring them there, which often relate to housing or employment. These cases also provide evidence of the litigants’ expectations from the court, their sense of entitlement, and their understanding of the law. Chapter 3 describes the structure of arbitration hearings, a relatively informal type of court proceeding that represents the format in which small claims court cases in New York are typically decided. This chapter focuses on the demands that the arbitrators (who preside over these hearings) make of litigants, especially with
regard to narrative testimony, and it explores the ways in which litigants who speak a language other than English meet them or not. I show how hearings are affected by differences in the styles and attitudes of individual arbitrators, drawing on research on the discourse styles and legal ideologies of judges (Conley & O’Barr 1990; Philips 1998) and on interaction between legal professionals and laypersons more generally, especially with regard to the role of questioning in eliciting testimony. Chapter 4 then focuses on the court interpreters and on the institutional norms that govern their language use and their participation in court proceedings. In particular, court norms require interpreters to speak in the voice of the person whose talk they translate—that is, using a translation style that prioritizes formal equivalence to the source talk. I show that strict adherence to this rule may lead to miscommunication, as it leaves interpreters unable to identify speaker and hearer roles when these cannot be inferred from the context. Some interpreters avoid such misunderstandings by adopting a translation style that accommodates to immigrant litigants, for example by using reported speech when translating from English and by treating the LOTE speaker as their addressee, even when the source talk is addressed to someone else. These stylistic differences among interpreters correspond to differences in the understanding of their own role in relation to the other participants, as well as to different attitudes towards codeswitching and code mixing (Angermeyer 2005a, 2009).

Chapter 5 builds on the previous chapter’s discussion of translation styles and investigates how communicating through an interpreter differs from communicating in the language of the court. The chapter presents analyses of a few specific court proceedings to illustrate the consequences of the common distribution of interpreting modes. As noted in the discussion of excerpt (1), testimony in a language other than English is always translated in consecutive interpreting mode, whereas talk by English speakers is often translated in simultaneous mode. It is argued that this distribution has significant consequences for litigants and interpreters. For one, consecutive interpreting causes narratives to be fragmented, leading to frequent interruptions by other participants, especially by impatient arbitrators who perceive interpreting as “taking too long.” Furthermore, simultaneous interpreting places a higher cognitive demand on interpreters, restricting their ability to produce translations that match the propositional content of the corresponding source talk—what Wadensjö (1998) terms “close renditions.” In Chapter 6, I present a linguistic analysis of codeswitching, borrowing, and insertion in the speech of litigants and interpreters, relating these phenomena to the interactional and macrosociolinguistic contexts described in the previous chapters. It is shown that all litigants use English at some point, even if court officials ask them to refrain from speaking English if an interpreter is present, as shown in excerpt (2). Both codeswitching and insertion are interpreted as evidence of interpreted litigants’ efforts to participate in the part of the interaction that is
in English, as litigants are found to directly relate their own talk to that of the arbitrator and other English-speaking participants. This is illustrated with examples of insertion in which litigants repeat an English lexical item that had previously been used by another participant in English, even though a corresponding item from their L1 is available to them. It is argued that such “cohesive insertions” (Angermeyer 2002) can be interpreted as instances of accommodation, which relate to the speaker’s relative lack of social power and desire for social approval (Giles, N. Coupland, & J. Coupland 1991). At the same time, both codeswitching and insertion are shown to conflict with interpreting practices, as the litigants’ English utterances compete with the voice of the interpreter, while insertions challenge the boundaries between the languages that are presupposed by the task of translation.

Finally, Chapter 7 synthesizes the analyses presented in the previous chapters and discusses their implications for legal decision making. In particular, I restate the procedural practices about interpreting and language choice identified throughout the book, as well as the language ideologies that underlie them. I argue that these practices may affect legal outcomes as they constrain the ability of nonfluent English speakers to participate fully in court proceedings. However, the conclusion also generalizes beyond the courtroom to place the study in the context of multilingualism in the United States and other industrialized societies. In particular, I relate the interactional analysis of language-use patterns presented in previous chapters to larger patterns of language mixing and contact-induced language change observed in other sociolinguistic studies, taking the courtroom interactions as emblematic of accommodative pressures faced by non-English speakers in the United States. At the same time, the cross-linguistic dimension of my study also allows me to identify significant differences between Spanish speakers and speakers of the other three languages (for example regarding the training and availability of interpreters, and also the linguistic repertoires of arbitrators and court officials). This permits a nuanced characterization of the sociolinguistics of the courtroom and more generally of New York City and the United States, where previous studies have tended to focus on Spanish speakers alone.

This study thus brings together research in language and law with research on bilingualism and codeswitching on the one hand, and with research on interpreter-mediated interaction on the other. In doing so, it draws on the research methodology of conversation analysis (Schegloff & Sacks 1973; Sacks 1995), which has been applied to the investigation of courtroom talk (Atkinson & Drew 1979; Matoesian 1993; Komter 2013), including in informal legal settings (Garcia 1991; Atkinson 1992; Heritage & Clayman 2010), and which has been equally influential in studies of codeswitching (Auer 1984, 1998a; Li Wei 2002) and interpreter-mediated interaction (Wadensjö 1998; Bolden 2000; Roy 2000; Davidson 2002). Studies in conversation analysis use naturally occurring speech data to investigate the structural organization of
social interaction, which is believed to be orderly and systematic. Thus, in analyzing the actions of participants in conversation, conversation analysis seeks to answer the question “Why that now?” (Schegloff & Sacks 1973:299), focusing on how such actions relate to their prior interactional context but also how they set up a new context for subsequent actions by other speakers. Along these same lines, studies of codeswitching in bilingual talk have asked “why that language now?” (Auer 1998b:8), treating language choice as a meaningful feature of such interactions.

However, this study does not rely exclusively on the methodology of conversation analysis but draws more generally on sociolinguistic and linguistic anthropological approaches. In the analysis of interpreter-mediated interaction, it relies strongly on Goffman’s (1981) notions of footing and the participation framework, paying close attention to the different speaker and hearer roles that participants take at different points in the interaction. In addition, this study also draws on information that is external to the interactions themselves but that was collected through ethnographic fieldwork, using participant observation, interviews, and archival research in court records and publications of the court system. During 13 months of fieldwork, I conducted a total of 73 visits to court, visiting each courthouse at least 20 times. When possible, I made audiorecordings of hearings that involved speakers of one of the four LOTEs, but I also observed many other hearings that I did not record. During pauses between hearings or before a court session began, I was also able to conduct informal interviews with some arbitrators and interpreters, although generally not with litigants. On each visit in court, I took detailed notes of my observations and my conversations with people in court, and during each hearing, I kept notes about the participants and their interaction. After each visit, I wrote field notes based on the notes taken in court. The observations discussed in this book are thus based equally on field notes I kept during my visits to court and on the transcription and analysis of hearings I recorded.

Ethnographic analyses and conversation analysis-based approaches have in common that they rely on naturally occurring speech data as their empirical basis for analysis, and this requires a careful transcription of the audio-recorded interactions. In the transcription process, I sought the assistance of native speakers of the languages other than English, following Schieffelin (1990:31). I spent over 200 hours transcribing together with assistants, and approximately an equal amount of time transcribing and annotating on my own, to produce a total of approximately 16 hours of transcribed recordings. Working with assistants provided me with an invaluable opportunity to engage in dialogues with native speakers about the interpretation of linguistic and social practices observed in the recorded interactions. Observing their (often emotional) reactions to the recorded proceedings and discussing those reactions with them also greatly enhanced my understanding of the
cultural and interactional aspects of the legal proceedings, in particular the importance of cultural understanding for assessing the truthfulness of participants. Listening to and analyzing conflicts between English speakers and speakers of their own first language, my assistants often felt compelled to take the side of the LOTE-speaking litigants. As educated fluent bilinguals, my research assistants in many ways resembled the interpreters I encountered and observed in court, and several of them in fact expressed an interest in working as court interpreters. This, however, did not prevent them from criticizing the performance of interpreters or from expressing their own attitudes toward different linguistic varieties and practices of language use. Given the limits in my own proficiency in the respective LOTEs, it can be said that my research assistants took on the role of interpreters for me, improving my understanding of what litigants said while at the same time filtering and conditioning it. However, unlike the interpreters, they were able to review and reconsider their understandings and discuss them with me. The collaboration with native speaker assistants thus represented an additional ethnographic process in itself (Schieffelin 1990:31), providing an indispensable basis for the assessments and interpretations presented in this book.
Challenging claims: Immigrants in small claims court

Equality before the law is a basic human right and a founding principle of democracy. In the United States, equal protection of the law is a constitutional right that requires that all persons have the same access to courts and are treated equally by them. It follows that any person is entitled to take a dispute to court and file a lawsuit. In practice, however, this right is subject to practical and material constraints, as many people lack both the financial resources to hire an attorney and the legal knowledge to bring a dispute to court without the aid of an attorney. When small claims courts were introduced in the United States at the beginning of the 20th century, it was in recognition of such constraints, with the aim of improving and simplifying access to justice. According to Weller et al. (1990:5), “the formal civil adjudicative process was so complex, cumbersome, and expensive that it had become largely unusable by wage-earners or small business men who had wages or accounts to collect that were too small to justify the expense and delay of a formal civil proceeding.” Small claims court was conceived of as a new kind of court with simpler procedures that made it easier for individuals to appear pro se (without an attorney), thereby reducing the cost of going to court. Ruhnka and Weller (1978:95) note that “while the underlying purpose of the entire judicial system is to serve the public, this basic purpose is nowhere spelled out so clearly, or carried out so directly as in the case of small claims court.” Nonetheless, as research by Conley and O’Barr (1990) and Merry (1990) shows, such simplified access does not eliminate all barriers faced by individual litigants, many of whom continue to experience problems when trying to make their case in court. People differ in their beliefs about what disputes are appropriately dealt with in court and how, and they draw on different linguistic and discursive resources when they argue their cases. If their practices of presenting disputes differ from those expected by legal decision makers, their lawsuits are not likely to lead to the desired legal outcomes.
These caveats are particularly relevant for litigants with limited proficiency in English, the language of the court. Such individuals face both linguistic and cultural barriers when faced with the need to make a persuasive argument as pro se claimants or defendants. In fact, for claimants these challenges begin long before they arrive at the hearing, namely in the emergence of the dispute and in the steps taken toward its resolution. While legal anthropology views disputes as a universal category, methods of dispute resolution vary greatly between and within societies, based on the type of dispute and the relationship between the people involved (Nader & Todd 1978; Roberts 1979). Felstiner et al. (1980) argue that disputes emerge in a process of transformation, from the initial recognition of a perceived wrong (“naming”), to the attribution of this wrong to a responsible party (“blaming”), and the request for a remedy from this party (“claiming”). When the claim is rejected, it is transformed into a dispute, whose resolution may then be sought through any of a range of possible mechanisms. In New York City and elsewhere in the United States, small claims court is one such mechanism, but whether a dispute is brought there depends on a variety of factors, including the claimants’ legal consciousness (Merry 1990)—that is, their understanding and use of the law, which is shaped by cultural factors as well as by prior experiences with the legal system. These aspects cannot be explored in this study, yet they have to be borne in mind throughout the analysis. As an ethnographic study of small claims court, this book can only examine the cases that are brought there, but it cannot examine the processes of transformation that lead to the court proceedings, nor can it address disputes that are voiced elsewhere, or grievances that fail to be voiced at all. While their disputes originated outside of court, litigants came into the scope of this study only because they were in court, and especially because they or their opposing party spoke a language other than English. Consequently, the description of the participants of small claims proceedings has to begin with the description of the fieldwork setting, before turning to the litigants in the remainder of this chapter, and to their interaction with arbitrators and interpreters in the chapters thereafter.

**Linguistic diversity in New York City and in small claims court**

In New York City, small claims court is part of the city’s civil court. It differs from other small claims courts in the United States in a number of ways, most importantly in the frequent use of arbitrators instead of judges (cf. Ruhnka & Weller 1978; Weller et al. 1990; Whelan 1990; see Chapter 3), and also in that it permits the presence of attorneys. Each of the city’s five boroughs has a separate civil courthouse, which houses small claims court along with civil court and housing court. I chose three courts as sites for my fieldwork, the
small claims courts in Brooklyn, Manhattan, and Queens. This choice was based on the demand for interpreting for a variety of languages in the respective courthouses. Brooklyn and Queens are the boroughs with the highest number of inhabitants and they are linguistically the most diverse, being home to many recent immigrants from various parts of the world (see Table 2.2). As a consequence, the courthouses in both boroughs regularly provide interpreting for a wide variety of languages. In Manhattan, by contrast, the demand for interpreting is focused primarily on Spanish and varieties of Chinese. While I observed a range of proceedings at all three courthouses, data collection was driven primarily by my desire to audiorecord proceedings with participants who were speaking one of the four targeted languages other than English. Moreover, once I had succeeded in recording 20 proceedings with Spanish-speaking participants, I focused primarily on hearings with participants who spoke Haitian Creole, Polish, or Russian, as these occurred less frequently and in smaller numbers per court session (when I recorded cases with Spanish speakers, I usually recorded three or more cases in a row). Consequently, my attendance in court was in part determined by the ways in which the courts scheduled the availability of court interpreters, so I will describe these practices before going on to describe the disputes and the litigants that brought them to court.

At all three courthouses, cases that require interpreting are scheduled for specific dates when interpreters are available. The civil courts each have full-time court interpreters on staff to translate those languages that are regularly needed. These interpreters are generally present in the courthouse every day, but in small claims court, they have to work overtime, as the court is in session in the evening. As a consequence, interpreters are not available in every small claims session, and the civil courts in New York coordinate their availability. Depending on the demand for interpreting of particular languages at each courthouse, regular weekly, biweekly, or monthly appearances are scheduled to allow staff interpreters to predict and limit the amount that they work overtime, and to reduce the associated costs for the courts. This system makes it possible for interpreters of frequently requested languages to work in multiple hearings on a given evening instead of working on multiple evenings for one hearing at a time (and risking wasted hours due to adjournments). Table 2.1 shows an overview of regular interpreter availability in small claims court during the period of my fieldwork. As can be seen, the schedule varies significantly by borough and by language.\(^2\) Spanish, Cantonese, and Mandarin are the only languages for which interpreting is regularly scheduled at all three courthouses, and they are the only languages that are scheduled in Manhattan. At the courts in Brooklyn and Queens, several other languages are also scheduled on a regular basis, including the three other languages included in this study, Haitian Creole, Polish, and Russian. Where no regular interpreting is scheduled, interpreters are hired on a case-by-case basis, and
TABLE 2.1.
Scheduled regular availability of court interpreters in New York City small claim courts during the fieldwork period

<table>
<thead>
<tr>
<th>Language</th>
<th>Brooklyn</th>
<th>Manhattan</th>
<th>Queens</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spanish</td>
<td>Tuesdays</td>
<td>every other Monday</td>
<td>Thursdays</td>
</tr>
<tr>
<td>Russian</td>
<td>Tuesdays</td>
<td></td>
<td>one Thursday per month</td>
</tr>
<tr>
<td>Polish</td>
<td>Tuesdays</td>
<td></td>
<td>one Wednesday per month</td>
</tr>
<tr>
<td>Haitian Creole</td>
<td>Tuesdays</td>
<td></td>
<td>one Wednesday per month</td>
</tr>
<tr>
<td>Cantonese/Mandarin</td>
<td>Tuesdays</td>
<td>every other Thursday</td>
<td>Mondays</td>
</tr>
<tr>
<td>Korean</td>
<td>(Tuesdays)</td>
<td></td>
<td>Wednesdays</td>
</tr>
<tr>
<td>Greek</td>
<td></td>
<td></td>
<td>Wednesdays</td>
</tr>
<tr>
<td>French</td>
<td></td>
<td></td>
<td>two Wednesdays per month</td>
</tr>
<tr>
<td>Bengali, Punjabi</td>
<td></td>
<td></td>
<td>three Tuesdays per month</td>
</tr>
<tr>
<td>Hindi/Urdu</td>
<td>(Tuesdays)</td>
<td></td>
<td>three Tuesdays per month</td>
</tr>
<tr>
<td>Arabic</td>
<td>(Tuesdays)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Based on personal observation and information provided by court administrators.

a For Brooklyn, I included those languages for which an interpreter was present on at least a third of the dates when I observed (those in parentheses are below 50%). The court also had interpreters for Yiddish and Hebrew on staff, but the languages are not listed here because I didn’t observe interpreting for them at this courthouse.
b I did not observe interpreters in Queens on Mondays or Tuesdays, so the information given for Cantonese/Mandarin, Bengali, Hindi/Urdu, or Punjabi relies solely on information provided by court officials.
c Cantonese and Mandarin are grouped together because there was often only one interpreter present who could translate both varieties (as was the case with Hindi and Urdu).

des these cases may be scheduled on any day—that is, there is no expectation that the interpreter will work on more than one case per session.

The scheduling of interpreter cases makes it possible to estimate the overall frequency of interpreter use at the three courthouses during the fieldwork period. Small claims court is in session four nights a week, Monday through Thursday. As is evident from Table 2.1, the courts in Brooklyn and Manhattan designated an average of one in four sessions for interpreting, and interpreter cases typically amounted to at least half of the cases heard that evening, often a bit more. Consequently, at both courthouses interpreting cases constituted between one eighth and one fourth of all cases, or roughly between 10% and 20%. By contrast, the court in Queens had interpreters available almost every night, so the share of interpreter-mediated cases has to be estimated higher, between 25% and 50%. This greater demand for interpreting in Queens can be seen as a reflection of the greater linguistic diversity of the borough’s population, fewer than half of whom speak English at home (see Table 2.2).

The interpreting schedule shown in Table 2.1 reflects the demand at the three courthouses at the time of the fieldwork, yet it is best understood as a flexible and evolving guideline rather than a strict schedule. There were days when interpreters were unexpectedly absent, and I also observed that
interpreter cases were scheduled and heard on irregular dates. In Queens, some languages were not requested as regularly as the schedule suggests, while others were requested more frequently, so that interpreting was provided on additional evenings. For example, Spanish interpreters were present not only on Thursdays, as scheduled, but often also on Wednesdays as well, when they were needed in cases that required two interpreters (e.g., one party speaking Korean, the other Spanish). Arranging such cases was easier in Brooklyn, where interpreting for all languages was scheduled on the same night. The scheduling guidelines seemed to work well in Manhattan, where there is frequent demand for Spanish and Chinese interpreting, but rarely for other languages, making regular scheduling for them unnecessary. In addition to the scheduled languages listed in Table 2.1, I also observed interpreting or requests for interpreting for a variety of other languages, namely Albanian, American Sign Language, Burmese, Cambodian, Farsi, French, Fukiinese, Hebrew, Hungarian, Italian, Japanese, Pashto, Portuguese, Romanian, Serbian, Shanghainese, Slovak, Turkish, Twi, and Yiddish. As discussed in Chapter 4, interpreters for these languages were mostly freelance interpreters hired on a per diem basis.

These patterns of interpreter use in small claims court reflect the linguistic diversity of the city and its boroughs. Overall, Spanish is by far the most frequently requested language for interpreting in small claims court. All three courts had at least two different Spanish interpreters on duty whenever interpreting for Spanish was scheduled. For other languages, there was rarely more than one interpreter being used on a given court date, only in exceptional situations if the number of cases was unusually high. Of the interpreter-mediated proceedings I observed, 40% involved Spanish (74/182), but this number likely underestimates the actual share of Spanish interpreting overall, because I targeted cases with Russian, Polish, or Haitian Creole during the second half of my fieldwork. Nevertheless, the share of Spanish is without a doubt smaller than that reported by Berk-Seligson (1990:4) for the courts where she conducted fieldwork. For the other languages, the observed pattern of interpreter demand and availability in the three boroughs clearly corresponds to residence patterns. Most litigants bring their cases to court in the borough where they live, and so languages are requested most commonly in those boroughs where their speakers tend to be concentrated. Table 2.2 shows the distribution of linguistic communities across the three boroughs that were the focus of my research, based on responses about language spoken at home in the 2000 U.S. Census.

In line with the observed interpreting demand, the Census data show that, in all three boroughs, Spanish is by far the most frequently spoken language other than English (LOTE), and Chinese varieties are spoken by sizable numbers of speakers as well. In Brooklyn, Russian is particularly prominent,
TABLE 2.2.
Most common languages spoken at home, by borough (2000 U.S. Census), in percent of total population for language categories representing 1% or more of the population

<table>
<thead>
<tr>
<th>Language</th>
<th>Brooklyn</th>
<th>Manhattan</th>
<th>Queens</th>
</tr>
</thead>
<tbody>
<tr>
<td>English</td>
<td>53.3%</td>
<td>English 58.1%</td>
<td>English 46.4%</td>
</tr>
<tr>
<td>Spanish</td>
<td>18.0%</td>
<td>Spanish 24.9%</td>
<td>Spanish 23.3%</td>
</tr>
<tr>
<td>Russian</td>
<td>6.0%</td>
<td>Chinese 5.2%</td>
<td>Chinese 6.1%</td>
</tr>
<tr>
<td>Chinese</td>
<td>4.8%</td>
<td>French 2.2%</td>
<td>Indic languages b 4.5%</td>
</tr>
<tr>
<td>Yiddish</td>
<td>3.1%</td>
<td>Korean 2.8%</td>
<td>French Creole 2.7%</td>
</tr>
<tr>
<td>French Creole</td>
<td>2.7%</td>
<td>Italian 2.1%</td>
<td>Greek 1.9%</td>
</tr>
<tr>
<td>Italian</td>
<td>2.1%</td>
<td>Russian 1.8%</td>
<td>Tagalog 1.3%</td>
</tr>
<tr>
<td>French</td>
<td>1.6%</td>
<td>Polish 1.4%</td>
<td>French 1.2%</td>
</tr>
<tr>
<td>Indic languages</td>
<td>1.5%</td>
<td>Polish 1.1%</td>
<td>French Creole 1.0%</td>
</tr>
<tr>
<td>Polish</td>
<td>1.4%</td>
<td>Other Indo-European d 1.0%</td>
<td></td>
</tr>
<tr>
<td>Arabic</td>
<td>1.1%</td>
<td>Hebrew 1.1%</td>
<td>English 1.0%</td>
</tr>
<tr>
<td>Hebrew</td>
<td>1.1%</td>
<td>English 1.0%</td>
<td>Indic languages b 1.0%</td>
</tr>
</tbody>
</table>

a The category “Chinese” subsumes Mandarin, Cantonese, and other varieties.
b The Census keeps separate categories for Gujarati, Hindi, and Urdu and combines other Indo-European languages of the Indian subcontinent, such as Bengali, Marathi, and Punjabi, into one category called “Other Indic Languages.” Non–Indo-European languages of the Indian subcontinent, such as Tamil or Malayalam, are counted in the category “Other Asian Languages.” “Indic languages” in the table includes Gujarati, Hindi, Urdu, and the “other Indic languages,” the latter being the Census category among the four that has the greatest number of speakers.
c The census category of “French Creole” includes Haitian Creole.
d The census category “Other Indo-European” includes Albanian and Romanian, as well as Baltic and Celtic languages.

as are Korean and South Asian languages in Queens. However, Table 2.2 also includes languages like Yiddish, Italian, or Tagalog, for which interpreting is not requested frequently, despite the fact that they have large numbers of speakers. Where such a discrepancy exists, two explanations seem likely: Either the speakers of a particular language tend to be fluent in English and choose not to use an interpreter, or they don’t use the court at all. The first explanation seems likely in the case of well-established immigrant communities with few newcomers. For example, the few Italian speakers I observed in court were elderly people who had been living in New York for several decades. Bilingualism is also likely if English plays a prominent role in the country of origin, as may be the case with speakers of Hebrew or Tagalog. The second explanation seems particularly relevant in the case of Yiddish, which is spoken in Hasidic communities throughout Brooklyn. While Yiddish speakers can also be expected to be bilingual (Fader 2007), Hasidic Jews appeared to use the court very rarely, and only for disputes where the other party was from a different community.
In the scheduling and hiring of interpreters, courts presuppose that litigants speak standard languages that are clearly distinct and identifiable. With the exception of Chinese, where clerks distinguish between requests for Cantonese, Mandarin, and other regional varieties, interpreter scheduling is not sensitive to regional or nonstandard varieties (e.g., I found no indication that dialect differences were considered in assigning Arabic interpreters). Consequently, litigants may need to communicate in varieties that are rather distinct from their own vernacular. Of course this is also true for speakers of varieties that are perceived as varieties of English, such as English-lexifier Creoles of the Caribbean, such as Jamaican or Guyanese, for which interpreting is neither requested nor available, despite likely occurrences of miscommunication (Brown-Blake & Chambers 2007). By contrast, interpreting for Haitian Creole is now a routine occurrence, although in the 1970s and 1980s, New York institutions reportedly expected Haitians to speak French instead (see Laguerre 1984:29), and some Haitian litigants presented themselves as speakers of French instead of Haitian Creole (see below).

The categorization of language use according to standard languages may thus hide considerable differences between the varieties spoken by interpreters and litigants. On the other hand, when interpreters and litigants are members of the same immigrant community, they may speak the same nonstandard variety, even if the court categorizes their language use as belonging to a particular standardized national language. In one case that I recorded, two co-claimants spoke a language variety that suggested they had grown up in the area around Lviv, a territory that belonged to Poland before World War II but that is now part of the Ukraine. They had apparently asked for “Russian or Polish” interpreting and they received an interpreter who spoke both languages and who was from the same region. While the case was presented to me by court staff as a “Polish case,” the interpreter took me aside and warned me in an apologetic tone that the litigants were not speaking “normal Polish.” However, in line with the court’s categorization, I also classify the case as involving Polish interpreting for the purposes of surveying interpreter use. Like some cases with nonnative Spanish speakers, this case shows how the court (as well as researchers) may knowingly or unknowingly impose ethnic and linguistic categories that do not reflect the linguistic repertoire of the individual speakers, but rather result from language ideologies that impose categories of standard and national languages (cf. Haviland 2003; Conley & O’Barr 2005:153; Blommaert 2009). The impact of such practices may be lessened when interpreters are recruited from the same communities as the litigants. However, even then, there may be language ideological differences between interpreters and litigants, as shown in Chapter 6, in the discussion of the reactions of Spanish interpreters to English insertions used by litigants.
The LOTE-speaking litigants in the study

This study is based on ethnographic fieldwork and on the analysis of audio-recorded interpreter-mediated court proceedings. As noted in Chapter 1, my fieldwork included also interviews with court clerks, arbitrators, and interpreters. But with very few exceptions, I was not able to speak with litigants, because I generally had no opportunities to speak with them before or after their hearing. Consequently, the discussion in this chapter relies on the observation of court hearings, and my knowledge about the litigants’ background and life circumstances is limited to information that was presented in the hearings or could be inferred from them. In the following, I will first characterize the litigants with regard to their languages before turning to the disputes in which they were involved.

As shown in Table 2.1, Spanish is the most frequently requested language in New York small claims court. The Spanish speakers in court were from a variety of different backgrounds, from the Caribbean, Mexico, or Central or South America, representing the cultural and dialectal diversity found in New York City (Zentella 1997b; Otheguy & Zentella 2012). I observed and recorded Spanish speakers at all three courthouses, but especially in Manhattan, where the large majority were immigrants from the Dominican Republic, mostly residents of Washington Heights or adjacent neighborhoods. By contrast, the sample of Spanish-speaking litigants included very few New Yorkers of Puerto Rican descent, despite the fact that they continue to constitute the largest Latino community in New York City (Otheguy & Zentella 2012:6). This finding suggests that most Puerto Rican New Yorkers do not use an interpreter when bringing a case to small claims court but speak English instead, contrary to the findings of Urciuoli’s research conducted two decades earlier (see Urciuoli 1996). There is a rich sociolinguistic literature on bilingualism and codeswitching among Puerto Ricans in the greater New York area, dating back to the 1960s (Fishman, Cooper, & Ma 1971; Poplack 1980; Zentella 1997a). However, Zentella (1997a) detects signs of language shift toward English among her informants. The finding that few Puerto Ricans use Spanish in small claims court can be seen as a further indication of this language shift, or at the least of more widespread fluency in English.

Of the four languages I targeted for my study, Russian was the second most frequently requested, in line with the fact that Russian speakers are the fourth largest linguistic community in New York City, after speakers of English, Spanish, and Chinese (according to both the 2000 and 2010 Censuses). Most of the Russian speakers were observed at the Brooklyn court, as southern Brooklyn has been a center for Russian-speaking immigrants since the 1970s. Compared to most other LOTE-speaking litigants, a number of the Russian speakers spoke an educated standard variety of their language, and
one litigant went so far as to correct an interpreter who did not speak that way. At the same time, Russian-speaking litigants appeared on average to engage in codeswitching, code-mixing, and insertion more frequently than did speakers of other languages (see Chapter 6), pointing perhaps toward habitualized language mixing and the development of a New York Russian contact variety (cf. Gregor 2003). I observed fewer litigants speaking Polish or Haitian Creole than Spanish or Russian, and both languages were spoken mostly in the Brooklyn court, and to some extent also in Queens. Most Polish speakers were adults in their 30s or 40s who appeared to be recent immigrants and spoke Standard Polish. By contrast, Haitian litigants fell into two groups, based on the variety of Haitian Creole they used. Some litigants (and all the interpreters I recorded) spoke a variety that is characterized by French vocabulary items and a more French-like pronunciation (i.e., kreyòl fransiz; cf. Schieffelin & Doucet 1994:179) and that can be identified as the dialect of an urban elite. Other litigants spoke a more basilectal variety, with few or no French elements (i.e., a variety referred to as bon kreyòl or kreyòl rèk, among other terms; cf. Schieffelin & Doucet 1994:179).  

Throughout this book, litigants are characterized as speakers of a particular language, but it is important to note that they were often multilinguals whose repertoires included other languages (including L2 English) and that the language spoken in court was not always their L1, particularly not in its standard variety. For example, among the Spanish-speaking litigants I recorded, one was a native speaker of Brazilian Portuguese who chose to speak Spanish because of her L2 proficiency in that language and the limited availability of interpreting for Portuguese. Two claimants from Andean South America appeared to be speakers of an indigenous language (judging by slight L2 features in their Spanish), although in contrast to a case discussed by Haviland (2003), there was no indication that they would have preferred interpreting in a language other than Spanish, or that they would have been better served by it if it had been available. Similarly, some people who spoke Russian in court were not from Russia, but from successor states of the Soviet Union where other languages besides Russian have official status (e.g., Georgia and the Ukraine).

**Types of disputes in court**

Small claims court is often described as a venue for consumers involved in disputes with businesses. For example, Conley and O'Barr (1990:20–24) describe a hypothetical case, “a composite drawn from the experiences of the hundreds of litigants whose cases we studied,” in which a consumer sues a car dealer who refuses to fix a car under warranty. This hypothetical plaintiff is described as “you,” and thus Conley and O'Barr envision small claims court
as a venue where educated people like their own readers might go to seek re-
dress for a perceived wrong. In fact, this interpretation of the court’s role as a
venue for consumers may have contributed to the surge in academic studies of
small claims court that occurred in the 1970s, in the context of the consumer
protection movement associated with Ralph Nader (see Yngvesson & Hen-
nessey 1975:220). This view was also adopted by lawmakers seeking to reform
the court. According to Weller et al. (1990:7), “attention had shifted away from
efficient dispute resolution and toward a particular class of disputants, con-
sumer plaintiffs.” This focus on consumers contrasts with the earlier view of
small claims as an inexpensive court for poor people (Yngvesson & Hennessey

In New York City, small claims court is a venue for a large variety of
disputes, as any case can be brought to this court that involves a mone-
tary claim for less than $5,000. During my fieldwork, I observed over 200
disputes brought to small claims court. These disputes can be grouped into
a number of categories, depending on the nature of the dispute and the re-
lationship between the litigants. The most common types of disputes were
between landlords and tenants, between workers and employers, or between
business owners and their customers. Other disputes resulted from car ac-
cidents, from damage to property, or from failure to repay a loan, or some
other breach of a contract.¹¹ This categorization of cases is based on my
own observations; however, it reflects at least in part categorizations em-
ployed by the court system. When claimants file a claim, they need to fill
out a form, which includes boxes to check for different categories, including
for example “damage caused to automobile,” “failure to return deposit,” or
“failure to pay salary.” In addition, they are asked to write a short state-
ment giving a reason for the lawsuit (see below). On the date of the hear-
ing, this categorization provides the judge or arbitrator with a first sense
of what the case is about (see Chapter 3). One important reason for such
a categorization lies in the fact that different types of cases require differ-
ent forms of evidence. For example, a claim for damages requires bringing
estimates of the cost of repair, and a claim for return of security deposit
requires bringing a lease. In addition to this entextualized categorization
on the case file, court personnel also used an unofficial categorization in
talking about cases, which focused on the relationship between the litigants.
Merry (1990:37) made a similar observation during her research in small
claims court, where cases were described as “merchant/customer, employer/
employee, landlord/tenant, and so forth.” In these and other case descrip-
tions, the more powerful parties are named first, despite the fact that they
are usually the ones being sued, and court documents always identify the
claimant first. In view of this convention, I will not use these labels but will
generally list the weaker party first. In the following sections, I will discuss
each major category separately.
DISPUTES BETWEEN TENANTS AND LANDLORDS

Many cases in small claims court involve disputes arising from landlord-tenant relationships. Most commonly, these are cases brought against landlords for failure to return a security deposit. Other claims brought by tenants involve damages to property in the apartment or reimbursement for repairs. Less commonly, cases are brought by landlords who sue for outstanding rent, or over damage to the apartment. Some other cases involve sublease arrangements. Several of the disputes I observed had led to counterclaims, for example with a former tenant suing for the return of the security deposit and the landlord seeking additional damages for repairs to the apartment. Typical evidence in such cases consisted of a written lease, proof of rent payment, photographs of damage, and estimates of the cost of repairs. At times, the relationship between the litigants was very acrimonious, particularly where there had been a more personal relationship between landlord and tenant, such as in sublets and in other cases where landlord and tenant had lived in the same building. In such cases, the dispute often involved more than just money, but also arguments about noise, visitors, or privacy (“she was checking my stuff”). Some of these disputes between tenants and landlords could have been addressed in the housing part of the civil court rather than in small claims court, and sometimes arbitrators suggested that lawsuits should be filed there instead. In some cases the litigants were in fact involved in a separate lawsuit in housing court, or had been at an earlier time. For example, one landlord had successfully sued in housing court to have a tenant evicted, but when he did not return the security deposit, the tenant sued him back in small claims court.

The prototypical case involved an interpreted tenant suing an English-speaking landlord over the return of a security deposit (see excerpts (1) and (2)). On a few occasions, landlords used interpreters as well, but only in the cases where landlord and tenant lived in the same house, or where there was a sublease agreement. In a few such cases the landlord and the tenant required interpreters for different languages (e.g., Romanian and Haitian Creole, Spanish and Pashto). In a number of cases the tenants involved in the lawsuit were welfare recipients whose rent was subsidized through the federal program Section 8 (see, e.g., excerpt (2)). Disputes in these cases often resulted indirectly from practices of the welfare agency—for example, if the payment of rent subsidies had been stopped or delayed, and the landlord was seeking to recover the money from the tenant, either in court or by withholding the security deposit after the tenant had moved out. The Section 8 tenants I recorded were elderly speakers of Spanish or Russian who had lived in New York City for a long time but had limited proficiency in English.
DISPUTES BETWEEN WORKERS AND EMPLOYERS

Another frequent category of cases involved disputes about work. Some claimants brought lawsuits against former employers who allegedly still owed them wages. Several such cases involved people working in the restaurant industry, but there were also cases brought by construction workers, auto mechanics, and employees of beauty salons. Other work-related cases were brought by private contractors who had not been paid for work they had done, although such cases commonly involved disagreements about whether the work had in fact been done properly. Typical evidence in such cases involved contracts and timesheets, as well as photographs. I also observed a related case in which the owner of a check-cashing business sued both a customer and the customer’s former employer. The customer had cashed a paycheck at his business, but the check had bounced. The employer (a cleaning service) did not appear in court, and the customer, a Spanish-speaking woman, said that she was no longer working for the company and that it had changed ownership. Understandably, she felt that she was entitled to the money because she had worked for it, but the arbitrator decided in favor of the claimant, instructing the woman to return the money to the check-cashing office and to sue her former employer for outstanding pay.

In one typical case, two Polish-speaking construction workers sued their former employer for failure to pay wages. Their employer was also a Polish speaker but used English in court. The employer did not deny that they had worked for him, but they did not agree on the amount of money owed. The claimants brought their own handwritten records of what days they had worked, but the information on these did not match that on timesheets provided by the defendant, nor was it clear which work had been paid for and which had not. The claimants also provided evidence of bounced paychecks, but only for part of the amount they were suing for. In light of such inconclusive and contradictory evidence, the arbitrator suggested a compromise, but the claimants rejected this offer of mediation, insisting on being paid the full amount. The arbitrator proceeded to enter a judgment in their favor, but only at about 60% of the claim amount.

In cases brought by workers against employers, it was always the worker who used a court interpreter. Many of them had worked for employers who spoke the same language, but most of these defendants used English in court. Other claimants had worked for an English-speaking employer, particularly those who worked in restaurants. On average, the claimants in work-related cases seemed to know less English than interpreted claimants in other cases. It appears that many of these claimants spoke mostly the respective LOTE at work rather than English. This is true even of some Spanish-speaking claimants who worked for English-speaking employers,
as Spanish has become somewhat of a lingua franca in many workplaces in New York’s service industry, particularly restaurant kitchens (compare Callahan 2005; and Barrett 2006 for a comparable situation in the southwestern United States). As many of the workers were recent immigrants, especially among speakers of Spanish and Polish, the question of their immigration and employment authorization status also loomed large in the minds of many litigants. While arbitrators did not seek to find out whether a litigant was legally allowed to work in the United States, some litigants believed that this was relevant information for their case. In several cases, claimants stated that they were not undocumented immigrants but that their employers had thought that they were and therefore had believed themselves able to get away with not paying for the work. In one case I recorded, the defendant sought to discredit the claimant by accusing him of not having valid immigration documents.

**DISPUTES ABOUT CAR ACCIDENTS**

Another very common category of cases consisted of lawsuits arising from car accidents. Typically, these cases resulted from disagreements between the drivers’ insurance companies regarding liability in the accident or the cost of repairs. Claimants thus had to demonstrate in court that the defendant was responsible for the accident and that their car had sustained damages in the amount of the claim. The court requires claimants to bring either two estimates of damages or a paid bill. Other evidence included police reports, photographs of the scene, and witness testimony. These cases were different from others in two respects: The litigants did not have a prior relationship with each other, and the hearings usually involved the participation of an attorney representing the defendant’s insurance company. In fact, cases were often postponed if no attorney was present, as litigants were told that the insurance company would not pay if a defendant had appeared pro se. As a consequence of this policy, some attorneys specialize in representing insurance companies in small claims court, and they are in court very frequently, some of them every night. These attorneys often have little or no prior information about the dispute. Generally, they meet the litigants for the first time on the night of the trial, often calling out their names in the hallway or in the courtroom, before the calendar call begins.

As the parties are unlikely to have known each other prior to the car accident, these cases were particularly likely to involve a dispute between members of different ethnic and linguistic communities. Of the 33 car accident cases I observed, 16 were brought by LOTE-speaking claimants against English-speaking defendants, and seven had an English-speaking claimant facing an interpreted defendant, while three cases had each party using a different interpreter. By contrast, only four cases had both sides speaking
the same LOTE. In addition I observed three cases between two English-speaking parties, two of which involved an LOTE-speaking witness. Given that these cases almost always included an attorney representing the defendant, claimants who were not fluent in English (20/33) found themselves in a position that was structurally similar to that of the tenants or employees discussed above, in that they were opposed by a fluent English speaker in a socially more powerful position.

CUSTOMER COMPLAINTS

Another common category involved customer complaints. These were cases where customers of small or large businesses demanded a refund for defective merchandise or wanted to be reimbursed for damaged property. As mentioned above, these are the types of cases that are regarded as typical of small claims cases in the literature (cf. Conley & O’Barr 1990) and that small claims court is intended to deal with in the eyes of the court system (Weller et al. 1990:6). Most commonly, lawsuits were brought against auto repair shops, contractors, or stores that had sold defective merchandise. A special type of customer complaint involved lawsuits against small shipping companies that had failed to deliver shipments overseas. Typically these were shipments made by immigrant claimants to relatives in their country of origin (the Dominican Republic, Poland, or South Korea). Necessary evidence included receipts and sales contracts, as well as photographs, or estimates of damages. In one case that involved a claim of medical malpractice, a Russian-speaking claimant was told that she needed an expert witness to prove her case.

The disputes in these customer-complaint cases often have similar origins as do some of the work-related cases discussed above. For example, a dispute resulting from a disagreement over the work of a private contractor could result in the contractor suing the client if he did not get paid for his work. Alternatively, if the contractor had been paid up front, the client would sue for a refund of some or all of the money paid. With regard to interpreter use, these cases can be divided into two categories. Most commonly, cases were brought by claimants who used an interpreter against a business represented by a fluent English speaker. However, occasionally I also observed cases where an English-speaking customer sued the owner of a small business who required an interpreter, including several brought against Korean-speaking owners of dry-cleaning businesses. One of these set the “record” for the lowest claim amount: $4.50. The customer claimed that his pants had been returned to him uncleaned but that the dry cleaner would not accept them again without charging him a second time. When the arbitrator pointed out to him that the filing fee of $15 had exceeded the amount claimed, the claimant said that it was a matter of principle only. It seems likely that the
litigants’ limited ability to communicate with one another in the same language contributed to this escalation of the dispute.

OTHER DISPUTES

Apart from the categories discussed so far, there were a variety of other types of disputes, often between neighbors or acquaintances, regarding loans, sales, or personal injury. Many of these cases involved two parties who spoke the same language, and in most loan- or property-related cases I observed, both parties were speaking Spanish. Because of the personal relationship between the litigants, the atmosphere was sometimes particularly acrimonious, but arbitrators were also more successful with negotiating settlements between the parties. Out of 12 observed cases resulting from a loan, four ended in a settlement, which typically included a payment plan specifying the amount and frequency of installments that the defendant would pay to the claimant. Litigants in these disputes often did not have any written evidence. However, defendants typically admitted to owing the money even if the claimant could not prove it. The absence of written evidence may have given an additional incentive to arbitrators to try to find a mutually acceptable solution. Many of these disputes between neighbors, acquaintances, or even friends resembled the personal disputes described by Merry (1990) in her ethnographic study of lower courts in Massachusetts, in that the litigants had a long history of arguing with each other and thus brought up aspects of their relationship that arbitrators or judges deemed irrelevant to the case. For example, I observed a dispute between two women who were friends from the same town in the Dominican Republic. One had loaned money to the other’s husband, but when he left his wife and moved away, she proceeded to sue her friend for the return of the money. At the hearing, the two exchanged bitter and tearful accusations that suggested that the deterioration of the friendship (exacerbated by the claimant’s decision to go to court) overshadowed the importance of the financial matter itself. However, the defendant agreed to pay, and the arbitrator negotiated a payment plan between the parties.

Most disputes in small claims court fall into these case types, and such a classification of cases is expected by the court, as evidenced by the design of the claim form, which includes checkboxes for the most common types of claims. In Chapter 3, I show that these categories represent an essential starting point for arbitrators in their approach to the hearings. However, not all disputes can be categorized this way, as some involve multiple grievances at the same time, conflating issues such as damage to property, housing, and work. In such cases, it is particularly challenging for litigants to present a coherent narrative that conforms to the arbitrator’s expectations, as is shown in detail in Chapter 3.
Economics of court cases

The previous sections have provided an overview of the reasons why individuals bring cases to small claims court, and they show a clear pattern regarding the socioeconomic and sociolinguistic characteristics of the litigants. Most claimants sued a defendant who was wealthier than they were and who in many cases had control over some aspect of their lives. As landlords, employers, or business owners, the defendants were often socially and economically in more powerful positions than their opponents, and the same can be said of insurance lawyers who represented defendants in disputes about car accidents. Similarly, the prototypical cases of most categories involved an interpreted claimant opposing an English-speaking pro se defendant or defense attorney. Even if both sides were speakers of the same LOTE, the defendant would commonly not use the interpreter. Of 92 observed disputes in which one party spoke English and the other used an interpreter, 67 (73%) involved a LOTE-speaking claimant. Thus, while much of the linguistic research on court interpreting describes immigrants in court as defendants or witnesses in criminal trials (e.g., Berk-Seligson 1990:44; D’hondt 2004), the large majority of the LOTE-speaking immigrants observed for this study were actually claimants (157/220 [71%] when including inquests and hearings in which both parties spoke a LOTE, 63% if inquests are excluded). Thus, instead of being brought to court by others, they are the ones who turn to the court, seeking to gain redress for a perceived wrong. If we assume that individuals with limited proficiency in English are more likely to be poor, this finding corresponds to a general notion of small claims court as a legal venue for people with limited financial means, unable to hire a lawyer. In fact, while I did observe LOTE-speaking landlords or business owners, they were clearly outnumbered by Section 8 tenants (i.e., welfare recipients) and low-income workers (e.g., restaurant or construction workers making minimum wage), respectively. Taken together, these two observed patterns of court use demonstrate the connection between language use and social power in the context of continuous immigration to the United States. In the “linguistic market” (in terms of Bourdieau 1991) that is New York City, knowledge of English provides access to positions of power, including access to ownership of property or of businesses. Individuals with limited knowledge of English rarely attain such positions but are likely to be economically marginalized instead, limited to subordinate positions. However, as noted by Merry (1990:86), small claims court represents a venue where socioeconomically marginalized people can challenge aspects of the control exercised over them.

The power asymmetries that often exist between disputants outside of court are reproduced in court when the defendant is represented by an attorney. During my fieldwork, I observed 147 disputes in which both parties were present, and 45 of them (31%) involved the participation of an attorney. In
40 of these cases, the attorney represented the defendant, compared to only two cases with represented claimants and three cases in which both parties were represented. The litigants who did hire an attorney were generally the wealthier party in the dispute. Common clients of attorneys included employers sued by their former employees (four cases), business owners sued by customers (seven cases), or landlords involved in disputes with current or former tenants (seven cases). This contrasts with only three cases where attorneys had been hired by tenants suing a (former) landlord. Most commonly, however, attorneys are involved in cases concerning liability for damages (e.g., resulting from car accidents, 27 litigants).

The presence of attorneys in small claims court is controversial, as New York State differs from many other jurisdictions where small claims court is exclusively a *pro se* court (Weller et al. 1990:11). Where the presence of attorneys is prohibited, it is done so out of concern that a *pro se* (i.e., unrepresented) litigant will be in a disadvantaged position when facing a litigant represented by an attorney. Studying legal outcomes in Manhattan small claims court, Sarat (1976:367) found that any *pro se* litigant (claimant or defendant) was disadvantaged when facing an opponent represented by an attorney. By contrast, Weller et al. (1990:11–12) found that this disadvantage held only for *pro se* defendants, but not for *pro se* claimants. While the sample of observed cases and decisions in my study is not large enough to make statistically significant claims about the factors that influence legal outcomes, *pro se* claimants were found on average to be more successful when facing a *pro se* defendant than when facing a defendant represented by an attorney (see Chapter 7).

**Legal consciousness**

The finding that LOTE speakers in small claims court are more likely to be claimants rather than defendants contrasts with Merry’s ethnographic study of lower courts in Massachusetts, where she found that recent immigrants rarely brought disputes to court, and speculated that they did not feel entitled to do so (Merry 1990:27). When small claims courts were created at the beginning of the twentieth century, legal reformers conceived of them as places where immigrants could be “Americanized”—that is, socialized into American society (Harrington 1982:43). Arguably, the mere act of going to court suggests that such a socialization has already taken place to a certain degree, as the filing of a lawsuit requires some understanding of the role of the court, and an expectation that the court can provide redress in an ongoing dispute. At the same time, people differ in their understanding of what the court can and should do, and what types of disputes are appropriately addressed by it. Merry (1990) uses the term “legal consciousness” to describe
these attitudes and beliefs, and the court users’ perception of the law more generally. Merry’s study included small claims courts among other lower courts, but she focused on disputes arising from family or neighborhood problems, and noted that court staff often disapproved of the fact that such cases had been brought to court at all, referring to them as “garbage” cases. As shown above, the LOTE-speaking litigants I observed were mostly involved in very different types of cases, such as disputes about work, housing, or car accidents. Also, unlike Merry (or Conley and O’Barr), I was generally unable to speak with litigants about their experiences. Nevertheless, evidence for the legal consciousness of small claims litigants was often revealed during proceedings when they talked about their rights and entitlements, about their beliefs about what is fair and just and what is considered to be relevant evidence in court. While it seems inappropriate to generalize across all litigants, or even across groups of litigants with similar cultural backgrounds or with similar claims, it is nevertheless possible to point out certain tendencies that can be observed. To some extent, attitudes about what disputes are appropriately brought to court appeared to be culture-specific, especially with regard to the relationship between the disputants. For example, I did not observe a single dispute in which both parties were Haitian, and one Haitian claimant commented in testimony that he had hesitated to sue a West Indian man because the defendant’s wife was also Haitian. By contrast, I observed numerous cases in which both parties spoke Polish, Russian, or Spanish, and some of these disputes were between people who had previously been friends or acquaintances (see above). Moreover, the legal consciousness of claimants has to be viewed in contrast to that of the defendants. Cases resulting from work-related disputes were particularly telling in this respect. On several occasions, employers sought to justify disputed actions by referring to “company policy,” only to reveal practices that were unethical or even illegal.  

While community-specific patterns of court use may result from cultural practices, they may also relate to demographic and socioeconomic differences between the communities. As noted above, many of the speakers of Spanish and Polish I observed were relative newcomers with limited English proficiency who worked in low-paying jobs as laborers, cleaners, or restaurant workers, and who came to court because of disputes with their employers. Recent immigrants were also involved in disputes that revolved around issues of continuous migration and return migration and revealed close ties to the country of origin. For example, in several cases, claimants sued shipping companies because they had lost shipments made to relatives in the Dominican Republic or in Poland. Several other cases revolved around extended visits to the Dominican Republic, resulting for example in disputes with airlines or travel agents. By contrast, the majority of Russian-speaking litigants and some of the Haitian Creole- and Spanish-speaking litigants appeared to
have lived in New York for a considerable amount of time. Some were established as homeowners or business owners, while others had succeeded in obtaining Section 8 housing subsidies, which generally require a waiting period of many years. Among these, elderly litigants relied more strongly on the interpreter than did younger litigants. None of the Russian-speaking litigants I observed was involved in a dispute related to contact with people in their country of origin. Instead, their disputes related to events within the city’s Russian-speaking community, centered in southern Brooklyn. One litigant, who sued her dentist, commented that “half of New York” had already heard her story and that everyone had known her late husband, comments that suggest the degree to which she felt rooted in the city (but which the interpreter did not translate for the arbitrator).

The legal consciousness of claimants became particularly evident whenever their expectations contrasted with the expectations of arbitrators. This was often the case when a claimant was deemed as having sued the wrong person. Such lawsuits often revealed a tendency for litigants to personalize disputes, for example by suing the individual employee with whom one had had an argument instead of the company with which one had a contract. This often went along with accusations of rude behavior, as shown in the following two excerpts, (1) from a case with a Spanish-speaking claimant and (2) from a case with a Russian-speaking claimant who codeswitches extensively during her hearing and uses primarily English in this excerpt.

(1)

1  Claimant: Y cuando le reclamé que ya le había dejado el apartamento
    ‘(and when I protested that I had already left the apartment)’
2    [y que quería mi dinero yo +]
    ‘(and that I wanted my money)’
3  Interpreter: [And when I- and I wa-] I want- when I told him
4    that I had left my apartment I was claiming my money +
5  Claimant: = Me dijo que me vaya para el carajo
    ‘(he told me to go to hell’)
6    que él no iba a pagarme ningún dinero.
    ‘(that he wasn’t going to pay me any money’)
7  Interpreter: = he told me to go to hell cau-
8    because he wasn’t going to pay me any money.

(2)

1  Claimant: twenty seven August and I told to (.7) uh (.7) manager [I mean]
2  Interpreter: [mm hm]
3  Claimant: I (.7) got permission move to another (.7) ah building +
4  Arbitrator: Right=
Both examples are from cases in which an elderly female tenant with Section 8 subsidies was denied the return of her security deposit. Both report arguments with similar insults, but while the Spanish-speaking claimant in excerpt (1) argued with and sued her landlord, the claimant in excerpt (2) argued with an employee of the building’s managing agent, whom she proceeded to sue, only to be told that she had sued the wrong person. While arbitrators were generally not interested in hearing about insults, litigants often saw them as part of a larger pattern of behavior by the defendant, which had led them to sue in the first place. In fact, in describing the events that led to the lawsuit, several claimants characterized the defendant’s behavior toward them as abuse (see excerpt (10) in Chapter 3). This is illustrated in the excerpt (3), from a case brought by an elderly Russian woman against her dentist (some intervening turns by other participants are omitted).

(3)

Claimant: a u pensionera vot tak gresti iz glotki+
‘but taking it from the mouth of a retired person’

... 

Claimant: èto prosto nadrugatel’stvo.
‘it’s simply an abuse’

Another claimant, a South American restaurant worker, tied his former employer’s behavior toward him to his status as an immigrant. After working at the restaurant for several years, he had been fired from his job as dishwasher for allegedly drinking beer on the job. This job had paid $6.50 per hour, just above the minimum wage in New York State at the time, and the claimant had came to court to claim back payment for unused vacation time, $288 for one week. As shown in excerpt (4), he asserts that he has working papers, even if the restaurant manager may have thought otherwise. A short while later, he presented immigration documents, but the arbitrator did not want to see them. The claimant’s turn in excerpt (4) is self-selected, occurring while the arbitrator is reviewing documents.
The implied connection between immigration status and working conditions frames the employer’s alleged abuse as emblematic of the claimant’s living conditions in the United States. His legal challenge against the abuse thus represents not merely an attempt to resolve a dispute but an assertion of rights that he believes to have, but that have been denied to him. However, he is not certain that his understanding of his rights is correct. Throughout the hearing he repeatedly seeks confirmation that his actions are indeed reasonable and appropriate, as shown in excerpts (5) (with some turns omitted for space) and (6).

(5)

1 Arbitrator: But why are you paying- [you sue for two eighty eight?]  
2 Interpreter: [(xxx) ¿Por qué está demandando]  
3 Por doscientos ochenta y ocho dólares?  
{'Why are you suing for $288?'}  
4 Claimant: Por las vacaciones anuales a que tengo derecho.  
{'For the annual vacation to which I have the right'}  

... {10 seconds later}

5 Claimant: Me imagino que es legal.  
{'I imagine that it’s legal'}  
6 Interpreter: I imagine that it’s uh /legal what I’m doing  
7 Arbitrator: () And prior to that they were paying you a vacation?

(6) {ca. 6 minutes later}

1 Claimant: Eso yo creo que estoy con la legalidad, Señoría.  
{'I think I'm within the law, Your Honor'}  
2 Interpreter: =I think I am within legal [uh bounds to ask for this]  
3 Claimant: [Sólo es () una sola]
As can be seen in both examples, the claimant’s assertions of his rights are marked by hedging *(me imagino ‘I imagine’ line 5 of excerpt (5), and yo creo ‘I think’ in line 1 of excerpt (6)). In conversation analytic terms, both turns can be viewed as downgraded first assessments that invite a confirmation from the arbitrator as their response. However, the arbitrator does not respond to either of these first assessments but rather produces first-pair parts of his own, in the form of new questions. In excerpt (5), he asks a yes/no interrogative of the claimant, and in excerpt (6) he shifts footing even further by asking the defendant, the restaurant manager, to whom he had already suggested a compromise earlier in the hearing. By ignoring the claimant’s assessments, the arbitrator avoids both an affiliative and a disaffiliative response. Following Atkinson (1992), this can be seen as a way for arbitrators to preserve their neutrality. The actions of arbitrators and the ways in which they influence the proceedings will be discussed in detail in Chapter 3.

Excerpt (6) also illustrates another aspect of the legal consciousness of many Spanish-speaking litigants, namely the explicit assertions of telling the truth *(no vengo con mentiras ‘I’m not coming with lies’ in line 7 and estoy con la verdad ‘I’m with the truth’ in line 12). Other litigants made similar pronouncements of their own truth and honesty, and they emphasized the importance of having given one’s word *(soy una persona de palabra—roughly, ‘I stand by my word’). Invariably, arbitrators would take this as a reason to lecture claimants about the need to keep legally binding documents (compare excerpt (2) in Chapter 4). This divergence in attitudes toward disputes is reminiscent of the model of legal discourse proposed by Conley and O’Barr (1990:58–59) in their study of legal discourse in informal American courts, in which they distinguish between two contrasting orientations that participants
display in court, namely “rule orientation” and “relational orientation.” A rule-oriented litigant sees the law “as a system of precise rules for assessing responsibility” and consequently interprets the dispute solely in terms of such rules. In contrast, a relation-oriented participant focuses on notions of social need and entitlement. As Conley and O’Barr show, judges typically prefer a rule-oriented approach, but many litigants in American courts show a relationship-oriented approach toward disputes. In parallel to findings of earlier research that distinguished between “powerful” and “powerless” speech styles (O’Barr 1982), they view these approaches as related to gender, social class, and ethnicity, where the relational approach is most commonly found among “women, minorities, the poor, and the uneducated” (p. 81), whereas the rule-oriented approach can be viewed as “an acquired skill which is the property of the literate and educated business and legal class” and as an “instrument of class hegemony” (p. 80). The relevance of Conley’s and O’Barr’s model for the analysis of interpreter-mediated arbitration hearings will be discussed in detail in Chapter 3. Despite the fact that a relational approach can be found with many American-born litigants, many arbitrators (including Spanish-speaking arbitrators) framed the different approaches as a cultural contrast between what is done in America versus what might be customary in the claimant’s country of origin. This construction of cultural otherness is reminiscent of D’hondt’s (2009) study of “culturalization” in Belgian criminal trials, where he found that defense attorneys tended to attribute the conduct of immigrant defendants to cultural difference (see also Kadric 2001:38).

Challenges in filing a claim

Discrepancies between litigants’ legal consciousness and the expectations of the court system also play an important role in the filing process, particularly if they result in a lawsuit being filed against the “wrong” person (see the discussion of excerpt (2) above). Claimants initiate a lawsuit in small claims court by filing a claim at the small claims clerk’s office in the courthouse during office hours. This involves completing a “Statement of Claim” form, which requires stating the address of the defendant, the amount claimed, and the reason for the claim. The form is written in English, as are nearly all of the informational material and signs displayed in the offices at the three courthouses, with the exception of two informational signs in Spanish at the Manhattan courthouse. Claimants with limited fluency in English often come accompanied by a friend or relative who speaks for them, although in theory interpreters are also available to help with filing claims. In practice, this is limited to civil court staff interpreters who can be summoned from elsewhere in the building on short notice, which is generally the case with interpreters for Spanish, but often not with other languages.16 Unlike in the courtroom,
however, interpreters are called to assist in filing only if no communication between clerk and claimant is possible otherwise. For example, I observed a claimant who approached the clerk with the question “You understand Spanish, no?” When the clerk said no, the claimant proceeded in very labored English, and it was far from certain whether he understood everything the clerk said. At trial, an arbitrator or judge would most likely ask this litigant to speak through an interpreter. This observation corresponds to findings by Berk-Seligson (2000:212), who notes that, while the use of interpreters in the courtroom has become routine in recent years, the same standards for interpreting are often not upheld “at the front end of [the] judicial process” (e.g., at the crime scene or at the police station), sometimes with serious legal and social consequences. In this case, the frequent lack of interpreting reduced the likelihood that LOTE-speaking litigants file their claims in the legally appropriate manner, which is a prerequisite for a successful claim.

Many people who wish to file a claim are unsure about how to do so and ask the clerk for advice, often narrating their dispute in detail. Depending on the clerk’s personality and mood, and if the office is not too busy, this interaction may have parallels to an inquest hearing (see Chapter 3), with the clerk listening to the claimant’s story and assisting in framing it in legally relevant terms. It appears that some claimants perceive this interaction as a first hearing of their case, which becomes evident during their court hearing when they start by recounting to the arbitrator what the clerk told them. This shows that litigants, in particular ones speaking an LOTE, may not understand the institutional process and may fail to differentiate the roles of individual representatives of the court (cf. Liedke 1997:171). In any case, clerks cannot always give such careful assistance, especially shortly before closing time, when the office is crowded with people waiting in line. At such times, people in line were often nervous and insecure about how to proceed. If the clerk was busy, they would ask for advice from anyone else available, including from other people in line, or from me, and often they would ask the same question of several people, as if to assure themselves they were doing the right thing.

Given this nervousness and lack of understanding of the legal process that characterizes many of the people who want to bring a suit in small claims court, it is not surprising that errors are made that lead to problems on the day of the hearing. The most common problem that arises in filing a claim is the incorrect identification of the defendant (cf. Ruhnka & Weller 1978:175). It is not unusual for a claimant to sue a “wrong” person or company instead of the party that is legally responsible (see above). In addition, many claimants have problems identifying the defendant’s correct name and address. If an incorrect address has been given, the court will be unable to serve the defendant with a notice of the claim. This may ultimately lead to the case being dismissed unless the claimant is able to arrange for the notice of claim to be delivered to the defendant in person. Clerks do try to help claimants identify
the correct party to sue, and in doubtful cases they may suggest that claimants file multiple claims (e.g., against a company and against its owner in person). However, these efforts are not always successful, especially if the claimant did not bring the relevant documents (such as a contract or lease) and if there is a language barrier. During my fieldwork, I observed several cases in which claimants with limited English skills had sued the wrong person or had made some other mistake at the time of filing that led to the case being dismissed by the arbitrator. Such errors included filing a claim that belonged in a different court, failing to sue all relevant parties (e.g., in a car accident with three or more cars), or incorrectly describing the reason for the claim. In all of these cases, the claimants may well have had legitimate grievances, but the procedural errors caused delays and additional costs for them, requiring them to return to court multiple times, to pay filing fees a second time, and to experience additional delays (the filing fee was $15 or $20, depending on the amount sued for, and hearings were scheduled for approximately five weeks after the date of filing). One Spanish-speaking arbitrator told me that in her experience there are often errors with claims filed by Spanish-speaking litigants. On a night when I observed five hearings conducted by this arbitrator, she showed me the claim files of two that included errors. In one case, the names of two defendants were jumbled into one. In the other, the card stated “defective repairs, security deposit,” as the reason for the claim, whereas the claimant wanted to be reimbursed by her landlord for having had her apartment repainted. In addition, she had sued the managing agent instead of the landlord. The arbitrator had to dismiss the case but gave the claimant detailed instructions about how to proceed in order to file the appropriate lawsuit.

One extreme case is that of a Russian-speaking woman I observed over the course of several months as she tried to sue her former landlord for the return of her security deposit. Initially, she sued the company that manages the building (to which she had paid the rent), as well as one of its employees with whom she had had an argument when she asked for the return of her deposit (see excerpt (2) above). On her first court date, the defendants did not appear and so the case was sent to an arbitrator for a so-called inquest, which I was able to record. The claimant had brought her lease, from which the arbitrator determined that she had not sued the party who was legally responsible, namely the landlord. With the help of a Russian interpreter, he explained to her whom she needed to sue (a company), and he wrote down the name and address for her when she told him that she could not write in English. Several months later, I saw her again when her case came to trial in front of a judge. She had sued two companies, including the one identified by the arbitrator, and she had sued an individual whom she believed to be the landlord. In return, this person had countersued her for legal fees, and he was represented in court by an attorney who stated that the defendant was not in fact the landlord. The judge determined that the proper defendant was the company
that had also been identified by the arbitrator, and he dismissed the other two lawsuits. The company, however, had not been successfully served with the notice of claim (i.e., the letter with the notice was returned to the court as undeliverable). From the perspective of the judge, the proper defendant had thus not been informed and the case could not proceed, even though the counterclaimant’s attorney also represented both other companies, showing that the proper defendant was well aware of being sued. The judge postponed the case and told the confused claimant to inquire at the clerk’s office about having the notice of claim delivered to the defendant. Because the office was open late that night, she was able to go there straight away and have the interpreter help her. When the case was back on the calendar two months later, the proper defendant had been served, but this time the defendant’s attorney asked for a postponement, which was granted (each party is allowed to ask for one postponement). All in all, there were at least six court dates over a period of nine months until the case was decided. It thus appears that problems with correctly filing a lawsuit are often a consequence of a litigant’s inexperience with the legal system but may also be due to deceit on the part of the defendant. In either case, claimants with limited English skills seem especially likely to have problems in filing a lawsuit that is perceived by the court as an appropriate reaction to their dispute.

While this chapter has thus shown that LOTE-speaking litigants face considerable obstacles in bringing a dispute to court, the following chapters explore what happens when they succeed in doing so. Chapter 3 describes arbitration hearings, the most common type of proceeding in small claims court. The chapter describes the role of arbitrators and identifies different styles of arbitration, which affect the ability of LOTE-speaking litigants to make themselves heard.
"I’ve heard your story:" How arbitrators decide

Arbitration or trial: The choice of hearings in small claims court

When litigants arrive in small claims court on the day of their scheduled hearing, they are faced with a choice between two different procedures: a trial presided by a judge or an arbitration hearing led by an arbitrator. These types of hearings differ in a number of ways, most importantly in the qualification and training of the legal decision maker, but also with regard to the formality of the proceedings, their scheduling and length, and the legal significance of the decision. Each civil court has a number of judges, who take turns at presiding over sessions of small claims court, when they hear motions and conduct trials. By contrast, arbitrators are not employed by the court system but are attorneys who volunteer to hear small claims cases (see below). Some arbitrators serve frequently, as often as once a week or every other week, while others do so only a few times per year.

At all three courthouses where I conducted fieldwork, trials are conducted in large courtrooms, with the judge sitting on the bench and litigants below him or her, either standing in front of the bench or sitting at tables in the courtroom. The judge is accompanied by an armed court officer, who may move around the courtroom to transfer documents between judge and litigants. By contrast, arbitration hearings vary in the formality of their spatial arrangement, depending on the architecture of the courthouse and the preference of the arbitrator. While some hearings are held in courtrooms and are set up like trials, others take place in small deliberation rooms, with litigants and arbitrator sitting together around the table. Court officers are generally not present during arbitration hearings. This difference in formality is also related to differences in the legal status of the decision. A judge’s decision can be appealed, whereas an arbitrator’s decision is final. As a consequence, trials are tape-recorded by the court to
create a court record (in case of an appeal, the appellant has to pay for the transcript), while no court record is made of arbitration hearings. Unlike judges, arbitrators thus do not have to be concerned about any procedural requirements that could form the basis of an appeal, and this contributes to making arbitration hearings less formal and typically much shorter than judge-led trials. During my fieldwork, I observed both types of hearings, but I made audiorecordings of arbitration hearings only. The main reason for doing so was that I was primarily interested in observing the language use of pro se litigants who spoke a language other than English (LOTE), and the greater informality made arbitration hearings more suitable for this purpose. In addition, the focus on arbitration hearings was motivated by the fact that the large majority of cases in small claims court were in fact decided by arbitrators (see below).

The choice between going before a judge and going before an arbitrator is presented to litigants at the beginning of the court session (see Angermeyer to appear). All litigants who have a hearing scheduled for that night assemble in a large courtroom for the so-called calendar call. At the beginning of the court session, a court clerk sitting on the judge’s bench reads an announcement through a microphone, explaining court procedures and introducing the choice between judge and arbitrator.² This choice is presented as a tradeoff between rights and convenience, where going to a judge entails long delays and going to an arbitrator promises an “immediate” decision. Litigants are told that an arbitrator’s decision is final, while that of a judge can be appealed, but the announcement also emphasizes that an appeal “may be expensive and time-consuming.” The announcement does not address any other differences between trials and arbitration, such as the degree of formality or the average length of the hearing. At two of the three courthouses, a Spanish version of this announcement was sometimes given by one of the court interpreters. Speaking from the floor of the courtroom and without a microphone, the interpreter would tell litigants how to respond to the calendar call in English (Si Usted quiere ir ante un juez, diga “by the court” “if you want to go before a judge, say “by the court”).

Once the calendar call begins, the court clerk reads the names from the docket, and litigants are requested to respond with their name to indicate that they are present, and to add “by the court” if they want their case to be decided by a judge. Following their response, the court clerk instructs them what to do next, usually to go to a different room to wait for an arbitration hearing, or to remain seated until further notice. With both the announcement and the format of the calendar call, the court steers litigants toward arbitration. In the announcement, arbitration is presented as the default option, as the text proclaims that “most cases are heard by arbitrators,” and the downsides of going to a judge are emphasized. Moreover in the calendar call, the simple repetition of one’s name is taken as agreement to arbitration,
whereas the request for a judge-led trial has to be made explicit with the formulaic and nontransparent phrase “ready by the court.” As a consequence, it is not surprising that some litigants, particularly speakers of languages other than English or Spanish, do not fully understand the significance of their response to the calendar call. In fact, I observed several litigants who were sent to an arbitrator even though they had meant to request a judge (see Angermeyer to appear). A lack of understanding of the differences between judges and arbitrators was also evident during hearings when litigants addressed arbitrators as “Your Honor,” or referred to them as “judge,” which occurred frequently, especially with arbitrators who heard cases from the bench instead of sitting at a table with the litigants.

Court staff encourage litigants to choose arbitration because the court system does not devote sufficient resources to small claims court to process the caseload with judge-led trials. During the period of my fieldwork, the caseload at the courts averaged between 100 (in Manhattan) and 130 (in Queens) cases per evening. On any given night, some of the cases on the docket would be dismissed because of a formal problem or because the claimant had not come to court. Other cases would be adjourned for another date because of a litigant’s request. Cases where only the claimant had come to court were sent to an arbitrator for a so-called inquest, a preliminary hearing done in the absence of the defendant. If the arbitrator found that the claim had merit, a preliminary decision would be made, which could then be appealed by the defendant. The remaining cases were processed in order of their filing date and assigned to judges or arbitrators. The judge would typically not be able to decide more than one or two cases per night, while arbitrators would make several decisions each, often as many as five or even more. Consequently, most litigants who had opted for a judge-led trial would not have their case heard, forcing them to come back on one or more other dates until their case was the oldest on the docket. By contrast, many litigants who opted for an arbitrator would have their case decided on the same night, if the court had sufficient arbitrators available to process the caseload. All in all, the court system claims that 95% of all cases are heard by arbitrators, which is consistent with my observations.

The arbitrators

In the procedural instructions that precede the calendar call, the court clerk describes arbitrators as “court-appointed attorneys who volunteer their time to try small claims cases.” Attorneys do not have a direct benefit from volunteering, except that participation in arbitrator training counts toward fulfilling a requirement for continuing legal education. Also, it appears to be customary that candidates for judge in civil court serve as arbitrators before
they campaign for office. During my fieldwork, I observed approximately 50 different arbitrators, and I was able to talk to many of them about their motives for volunteering. Most felt that they were doing a form of community service, but they also admitted that as lawyers they were interested in the experience of viewing a case from the judge’s perspective. One arbitrator, a native speaker of Spanish, told me that she volunteered as an arbitrator in the hope of improving access to the justice system for Spanish-speaking litigants, as she felt that interpreters were not always reliable and that litigants were better served if the arbitrator could understand what they said in Spanish (see Angermeyer 2014).

Arbitrators varied significantly in their style and approach to conducting hearings. Some arbitrators clearly sought to give themselves the aura of a judge, for example one who referred to himself as “the court” (“Please tell the court what happened,” “the court has enough information”; see excerpts (12) and (14) below) and who used a mallet with which he hit the bench to signal the end of a hearing. By contrast, other arbitrators often made a point of stressing the differences between arbitration and trial by judge, both to me and to the litigants. In talking to me, some acknowledged that they were willing to hear a litigant out even if they thought that his or her case would be “thrown out by the judge” for insufficient evidence. They generally tended to explain the law to litigants and tell them what type of evidence they needed to prove their case, thus turning arbitration hearings into law lessons for the other participants. One such arbitrator told me that, in his view, arbitration was “not supposed to simply follow the letter of the law” but to do “substantive justice,” echoing the original directive that small claims courts are supposed to emphasize substantive law over procedural law (Yngvesson & Hennessey 1975). The different attitudes of individual arbitrators appeared to correlate with the frequency with which they volunteered. Those who served every two weeks or more often acted more judge-like and were often impatient, if not irritable, when dealing with litigants who were poorly prepared or who gave what they perceived as incoherent testimony. As shown below, they usually had formulaic ways of declaring a hearing to be finished, often cutting off litigants who wanted to continue their testimony (“Okay, I’ve heard this case. I will make my decision”). In contrast, arbitrators who served less frequently took more time to allow litigants to “tell their story” and often made a point of explicitly ensuring that litigants had said everything they had wanted to say (“Is there anything else you wanted to show me or tell me?”). They were also more likely to attempt to negotiate a compromise between the litigants, sometimes making it explicit that they would prefer not to have to make a decision, as shown in excerpt (1). The interpreter’s turns are omitted for clarity, but the excerpt shows that the arbitrator leaves many pauses to facilitate interpretation, something that many other arbitrators did not do (see Chapter 5).
Settlements were regularly suggested and often successful in cases between acquaintances concerning a private loan that was not repaid or a sale that was not fully paid. Also, in several cases, arbitrators suggested settlements in disputes between employers and employees, but these litigants never agreed. If litigants agreed to a settlement, the arbitrator set up a contract between the two sides, a “stipulation of settlement,” that specified the agreement as well as the penalties for breaking the agreement. Writing this stipulation usually took several minutes, after which it would be read to the parties and signed by both in front of the arbitrator. Hearings resulting in a settlement thus generally took longer than other hearings. The judge-like arbitrators who were concerned with processing cases quickly rarely suggested settlements. Sometimes settlements were suggested by one of the parties involved, generally the defendant or an attorney for the defendant, and in one case, a “fast” arbitrator refused to draw up a stipulation of settlement, even though both sides agreed to a compromise. To some extent, the distinction between different types of arbitrators also correlated with the setting in which hearings were conducted, even though it was generally not up to the arbitrators to choose a setting. In Manhattan, arbitration hearings were held in small rooms, such as those used for jury deliberations, and arbitrator and litigants were sitting together around a table. Because the Manhattan court has the largest number of arbitrators available, the majority of arbitrators there served less frequently than their counterparts in the other boroughs, and, by comparison, they tended to act less like judges. In Brooklyn and Queens, nearly all arbitration hearings were conducted in regular courtrooms. Arbitrators typically sat at the bench, especially those who served very frequently, while litigants stood or sat below them in the courtroom. The option of conducting hearings at a table was available to arbitrators in Queens, and occasionally this was done in Brooklyn as well. In both courthouses, the arbitrators who chose this option were less frequent arbitrators who were more likely to suggest compromises between the parties instead of emphasizing their own role as decision makers. While the setting of arbitration hearings was thus largely dependent on the architecture of the courthouse, it may well be that the architecture had an indirect influence on the style in which hearings were conducted, for example by making it more difficult for judge-like
arbitrators in Manhattan to project their authority to litigants who were sitting at a table with them.

The observed distinction between different styles of arbitration corresponds to distinctions observed by legal anthropologists studying the attitudes of judges toward the law. In their study of small claim courts, Conley and O’Barr (1990:111) found that “informal judges are highly variable in their conceptions of the law, their views of their role, and their approaches to problem solving.” To capture this variation, they propose a typology of the jurisprudence of informal court judges that distinguishes five different styles (“the proceduralist,” “the strict adherent to the law,” “the authoritative decision maker,” “the lawmaker,” and “the mediator”), which are based on their “different conceptions of the legal process, beliefs about the mandate of judges within that process, and decision-making styles” (p. 82). These five styles fall within the rule–relationship continuum that Conley and O’Barr see as organizing legal discourse more generally (see Chapter 2), with most types displaying rule orientation, and the mediator type taking a relational approach to disputes (pp. 106–109). In another study of legal ideologies, Philips (1998:49) examined the ways in which judges take guilty pleas and identified two distinct interactional strategies. One group of judges, whom she characterized as “procedure oriented,” were engaging defendants directly, providing them with legal information and seeking to “personally establish the defendant’s knowingness and voluntariness during the procedure.” In her view, this behavior contrasted with that of the second group of “record-oriented” judges, who were primarily concerned that “there be evidence in the written record . . . that the defendant was pleading guilty knowingly and voluntarily” but who did not personally check whether defendants had actually understood the legal implications of their guilty pleas. With regard to small claims court, Philips’s categorization of the behavior of judges corresponds most closely to the way in which different groups of arbitrators ask litigants to consent to the arbitration procedure (see below, and Angermeyer to appear). Philips’s (1998) analysis also shows that procedure-oriented judges devoted more time per defendant than did record-oriented judges (pp. 51, 54).

In small claims court, a hearing with a judge-like arbitrator thus resembles a trial by a “rule-oriented” (Conley & O’Barr 1990) or “record-oriented” (Philips 1998) judge, as the arbitrator is eager to make a quick decision based on an assessment of legally relevant facts. By contrast, a hearing with a “patient” arbitrator is more like a mediation session, conducted by an arbitrator who is more “relationship-oriented” (Conley & O’Barr 1990) or “procedure-oriented” (Philips 1998), who may suggest a settlement between the parties and emphasize the differences between himself or herself and a judge. This variation extends to all aspects of conducting a hearing, as will be shown in more detail below. While the distinction thus corresponds to the findings of previous studies, it is also one that court staff and arbitrators are aware of.
In particular, the clerks and court officers who interact with arbitrators during the court session regularly distinguish between what they refer to as “fast” and “slow” arbitrators. Being concerned with processing the caseload, court officials make it clear that they appreciate it if an arbitrator is able to hear six or more cases per evening. In one court, the clerk told one such arbitrator that she was his “best” arbitrator, and he had previously nominated her for an “arbitrator of the year” award given by the court. “Slow” arbitrators were sometimes teased by court staff, as shown in excerpt (2), or they felt the need to apologize if cases took an unexpectedly long time, as shown in excerpt (3). Because of this emphasis on the time spent per hearing, I will use the terms “fast” arbitrator and “slow” arbitrator whenever the distinction between arbitrator styles becomes relevant. Like the typologies proposed by Conley and O’Barr and Philips, these two styles of arbitration are best understood as endpoints of a continuum between the “fastest” and the “slowest” arbitrators.

(2) {From field notes: after all hearings are concluded, the arbitrator is talking to me and to a group of law students who observed the hearings; a court officer joins in}
Officer: {to observers, joking} It was his first time.
Arbitrator: {to observers} Do you have any other questions?
Officer: Yeah, why do you take so long?
Arbitrator: Because I’m thorough.

(3) {after conclusion of a long hearing}
Officer: That’s it for tonight.
Arbitrator: (1.4) That’s it? (.6) Oh, I’m so:rry that took so long but (.)
they didn’t stop
Officer: () No, no [don’t worry].
Arbitrator: [This lawyer] was a pain in the ass.
Officer: {laugh} Hey you may be on tape, watch yourself.

The different styles of arbitration also have important consequences for litigants who are not fluent in English. Clerks and court officers believe that cases with interpreters require more time (“the interpreters slow us down”), and thus they prefer to assign them to “fast” arbitrators. As a result, litigants who require the assistance of an interpreter are more likely than other litigants to have their case heard by an arbitrator who is intent on keeping the hearing short and who is impatient with interpreted testimony (see below, as well as Chapter 5). In my observation, this tendency is particularly strong when the courthouse has a shortage of arbitrators.
The small claims arbitrators varied not only in their approaches toward the law but also in their linguistic repertoire, as many were themselves bilingual. I observed several arbitrators who spoke Spanish, either as a first or a second language. In one courthouse, Spanish-speaking arbitrators occasionally conducted hearings in Spanish without using an interpreter (see Angermeyer 2014). With two exceptions, these were inquests—that is, preliminary hearings held in the absence of the defendant. More commonly, Spanish interpreters were used even if all participants were Spanish speakers. In such cases, litigants gave testimony in Spanish, which was translated into English, despite the fact that the arbitrator understood it, and the arbitrator then spoke English, which was again translated by the interpreter. When asked about this practice, interpreters, arbitrators, and court staff generally felt that it was more appropriate for hearings to be conducted in English. The Spanish-speaking arbitrators also noted that they were not familiar with legal terminology in Spanish, and one told me that in his view, speaking English helped to create some “distance” between him and the litigants. These comments point toward the fact that language choice indexes social identities and is subject to language ideologies, as discussed in Chapter 1 (see also Angermeyer 2014). In any case, the presence of Spanish-speaking arbitrators introduced a factor that set Spanish apart from the other languages used in New York City courts, as speakers of other languages had virtually no chance of encountering an arbitrator who could speak or understand their language.

The arbitration hearing

Compared to other types of courtroom interaction, arbitration hearings are informal in many respects, but they nonetheless follow a clear structure that is anchored by several required procedural steps. Arbitrators begin the proceedings by reading the litigants’ names off the case file. Once the identity of the participants has been established, the arbitrator asks the litigants to sign a consent form that states that they agree to have their case decided by an arbitrator and that they waive their right to appeal the decision. In making this request for written consent, some arbitrators give a detailed explanation of the legal and procedural differences between arbitration and judge-led trials. Other arbitrators assume that litigants already understand this distinction and take the litigants’ presence in the courtroom as an indication of their willingness to go along with arbitration. These arbitrators ask only for the signature on the consent form, without providing further legal information. As discussed in detail in Angermeyer (to appear), these differences between individual arbitrators are reminiscent of the findings of Philips’s (1998) distinction between “procedure-oriented” and “record-oriented” judges, where the former seek to “personally establish the defendants’ knowingness and
voluntariness” (p. 49), while the latter are concerned primarily with entering evidence of the defendant’s state of mind into the court record. Moreover, the differences in individual arbitrators’ approaches to consent are also consistent with differences in how they conduct the hearings, as “fast” arbitrators abbreviate the consent procedure and “slow” arbitrators do not.

Once they have consented to arbitration, litigants are asked to write their address on an envelope, which will be used to mail the arbitrator’s decision to them. As a final preliminary, litigants are asked to swear an oath that they will tell the truth. This oath arguably represents the moment when the arbitration hearing is at its most trial-like; however, arbitrators varied significantly in their phrasing of the oath formula. Those arbitrators who emphasized their role as decision makers and downplayed the distinction between arbitrators and judges all used oaths that were marked by formal legal language, including features like archaic phrases (“so help you God”), or conjoined phrases (“swear or affirm” or “the truth, the whole truth, and nothing but the truth”), that have long been identified as typical characteristics of legal language (see Mellinkoff 1963:121–2, 172, 394; Tiersma 1999:61–64). On the other hand, some versions of the oath were decidedly plainer (Do you swear to tell the truth in this proceeding?), perhaps in a conscious effort to live up to the promise of small claims court as an informal legal venue. These versions were used only by “slow” arbitrators, especially those who tried to broker settlements between the parties.

After the swearing of the oath, the arbitrator is ready to hear testimony from the litigants. This testimony phase of the arbitration hearing can be conceived of as consisting of “macro-turns” that determine who is allowed to speak when and in what order. Invariably, arbitrators ask the claimant to speak first and the defendant to speak second, once the claimant has presented the claim. Following these testimonies, both parties may also ask questions of the other side, but typically the arbitrator is the one asking questions and the litigants are confined to responding and giving testimony. This is characteristic of small claims proceedings in general. In contrast to adversarial proceedings, where testimony is driven by the questioning of attorneys, judges and arbitrators in small claims court take a major role in eliciting testimony from litigants and witnesses and in establishing the facts of the case (Atkinson 1992). Thus, they can be seen as taking on a more investigative and inquisitorial role than judges normally do in common law courts (Yngvesson & Hennessey 1975:223; Gibbons 2003:5). This can be understood as resulting from the fact that small claims court is primarily intended for pro se litigants, who have no attorney to conduct an examination-in-chief, and who also cannot be counted upon to conduct an appropriate cross-examination. However, if lawyers are present, as they often are in New York small claims court, they usually want to question the opposing party in a manner comparable to cross-examination at formal trials. Arbitrators generally try to limit
such questioning because it interferes with their own role and is perceived as causing unnecessary delays (see excerpt (3) above). Some arbitrators clarify at the outset who is going to speak at what time, in order to establish ground rules for the hearing and to discourage interruptions and arguments. Most arbitrators, however, proceed directly to the testimony phase, which invariably begins with the arbitrator asking the claimant to explain the case, often reading the claim amount and the basic case categorization from the court file card that arbitrators receive from the clerk. This is shown in excerpt (4) from a case with a “fast” arbitrator (the interpreter’s turns are omitted for clarity).

(4)  
  Arbitrator: Okay Mister Brown you brought this action +  
  (2.1) for four hundred and seventy four dollars +  
  (.8) it’s for non-payment + (1.0) of an insurance claim.  
  (.8) Please tell the court what happened.  

As shown in excerpt (4), the arbitrator’s initiating turn is typically a broad wh-question or functionally comparable request for an open-ended response (“what happened”). Research on questioning in courtroom interaction has noted that wh-questions are best suited for eliciting a narrative account from a witness (Woodbury 1984:225; Harris 2001:67), but they are rarely used in the adversarial system. Instead, research has consistently found that lawyers who question witnesses tend to use yes/no interrogatives or declaratives that are accompanied by question tags, particularly during cross-examination (Atkinson & Drew 1979:66; Danet et al. 1980; Woodbury 1984; Ehrlich 2001; Matoesian 1993; Eades 2008). Such closed questions have been characterized as controlling or coercive because they strongly constrain the range of acceptable responses (Danet et al. 1980; Woodbury 1984). In asking wh-questions, arbitrators thus act in a way that is less controlling or coercive than what would be expected of an attorney in an adversarial proceeding, and this can be considered as another feature that contributes to the relative informality of small claims court compared to other courts. Moreover, these wh-questions are true information-seeking questions, given that the arbitrators have no prior knowledge of the dispute before them (apart from the brief characterization on the file card). This contrasts strongly with typical courtroom questioning, where attorneys do have prior knowledge of the disputed events and design their questioning to elicit a particular narrative rather than to seek information they are unaware of (Atkinson & Drew 1979:173; Matoesian 1993; Harris 2001). Small claims arbitrators do use closed questions after the claimant’s initial narrative, when they ask follow-up questions to clarify aspects that are unclear or that may have been omitted from the narrative (see extract (5) below) or when they ask the defendant to confirm or deny specific details from the claimant’s testimony (see extract (6) below). However, even these
closed questions are often not as controlling as they would be in a formal trial. Moreover, Ehrlich and Sidnell (2006) show that the degree of control exerted by a question is not merely a function of the question form alone but depends strongly on the questioner’s ability to insist on a type-conforming response. Attorneys in court typically require such a response, and witnesses’ attempts to provide responses that are not type-conforming, such as a narrative response to a yes/no interrogative, may be stricken from the court record (Atkinson 1992:205). By contrast, small claims arbitrators typically do not insist on type-conforming responses, although they may reiterate a question that was not answered (compare also Atkinson 1992:207). The arbitrators’ use of different question types is illustrated in excerpt (5), from a case about a car accident involving a Russian-speaking claimant. As can be seen, the arbitrator begins with a broad wh-question (okay, what happened? line 1), prompting a short narrative from the claimant (lines 3–19), which is translated from Russian in consecutive mode by the interpreter (lines 4–20). The arbitrator’s follow-up question is a yes/no interrogative (did you have a stop sign? line 21) that seeks clarification of an aspect that was not addressed in the narrative.

(5)

1  Arbitrator: Okay, what happened? [Mister: (. ) Yashin?]
2  Interpreter: Čto proizšlo Mister Yashin?
   {‘what happened, Mister Yashin?’}
3  Claimant: Uh, ja exal s Coney Island, [povernul-]
   ‘I was driving from Coney Island (Avenue), turned’
4  Interpreter: [I was-] going from Coney Island
5  and [made a turn]
6  Claimant: [povernul] na 1 +
   ‘turned onto (Ave.) I’
7  Interpreter: (9) to I
8  Claimant: (9) proexal dvenadcatyj I na trinadcatoj [(xxx)+]
   ‘passed 12th (Street) and at 13th (Street)’
9  Interpreter: [And I passed] twelve,
10 and on thirteen +
11 Claimant: (9) Thirteenth Street, [on ne- on ne=]
   ‘he didn’t’
12 Interpreter: [Thirteenth Street +]
13 Claimant: =ostanovilsja na stop-line, koroče, [vyskočil +]
   ‘he didn’t stop at the stop-line, in short, he jumped out’
14 Interpreter: [He did not] stop on the stop
15 sign
16 (.8) and he darted out +
17 Claimant: i ja ego uda- uda- my stolknulis’ +
   ‘and I hit him- hit-- we collided’
The claimant’s turns in excerpt (5) illustrate an example of a successful initial narrative, as the Russian-speaking claimant succeeds in presenting the most important relevant facts. Despite its brevity, the account contains several characteristic elements of personal experience narratives as defined by Labov and Waletzky (1967), such as an orientation (lines 3, 6, and 8, beginning with *Ja exal s Coney Island* ‘I was driving from Coney Island Avenue’), a complicating action (*on ne ostanovilsja na stop-line, koroče, vyskočil* ‘he didn’t stop at the stop-line, in short, he jumped (darted) out’ in line 13), and a result (*my stolknulis’* ‘we collided’ in line 17). Finally, in contrast to many other interpreted litigants who are left wanting to say more (see below), he even manages to finish with a coda (*èto vsë* ‘that’s all’ in line 19). While this claimant’s testimony may not contain all the relevant information, it is presented in a form acceptable to the arbitrator. The arbitrator does not interrupt the claimant but merely adds a clarifying question (*did you have a stop sign?* in line 21) before turning to the defendant and asking him for his “side of the story.”

Compared to the testimony of claimants, that of defendants is often not a full narrative but instead represents a reaction to the claimant’s allegations (cf. Conley & O’Barr 1990:174; Hoffmann 1983:79). Arbitrators often make this explicit when they give the floor to the defendant. For example, arbitrators may ask factual questions to confirm allegations made by the claimant, or they may focus directly on the central accusation. This is shown in excerpt (6) from a case about another car accident, where the defendant was accused of driving the claimant’s car without permission. After the claimant has given narrative testimony (although apparently before he has said everything he wants to say), the arbitrator turns to the defendant and immediately asks him to address this point (line 4). The defendant responds by refuting the accusation, claiming that the claimant’s son gave him access to the car (lines 10–11).

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**Excerpt 5**

18 **Interpreter:** and we collided +
19 **Claimant:** *(*) èto vsë
   {*That’s all.*}
20 **Interpreter:** [And that’s it!]
21 **Arbitrator:** [Did you have] a stop sign?

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**Excerpt 6**

1 **Arbitrator:** (3.3) Okay? (1.0) now we will hear from *(*) Sergei.
2 **Interpreter:** Teper’ Sergei budet govorit’.
   {*‘Now Sergei will talk’*}
3 **Claimant:** A èto *(ne nado?)* {stands up holding documents}
   {*‘And is this not needed?’*}
4 **Arbitrator:** [Were you] authorized to drive the car?
5 **Interpreter:** I’ve got- *(*) Excuse me I’ve got some receipts as well
The testimony of defendants is thus largely driven by questions raised by the preceding testimony of claimants. While a defendant’s testimony may have a narrative character in some parts, especially if the defendant wants to present an alternative version of the events in question, it nevertheless has to be understood inherently as a response to the claimant’s testimony. As a consequence, the claimant’s testimony can be considered the most central part of the hearing. The claimant has the burden of proof, and in small claims court, part of that proof consists of presenting a coherent narrative. If the claimant does so, the defendant has the opportunity to refute it. But if the claimant does not present a coherent narrative, the defendant’s response is essentially immaterial. This is especially true of so-called inquests, preliminary hearings that are held if the claimant is in court but the defendant is absent. If the claimant’s testimony does not convince the arbitrator, the case is dismissed without the defendant needing to appear. If an inquest is decided in favor of the claimant, the defendant is allowed to appeal and bring the case to a trial or arbitration hearing.

**Unsuccessful narratives**

As noted above, arbitrators frequently use the term *story* to refer to a litigant’s testimony as a whole, particularly when they are signaling the end of a macro turn (*I have heard everybody’s story*), and “fast” arbitrators may do so even if the litigant wants to continue testifying, as shown in excerpt (6). However, not all disputes lend themselves to being narrated in court in this required manner. This is illustrated in excerpt (7), from a case brought by a Polish-speaking mechanic against a garage owner who had also been his
landlord. The dispute is presented to the court as a list of accusations regarding missing property (and later counter-accusations by the defendant that the claimant had stolen property from the job). The claimant begins by stating that his case is “about” missing items that include car parts, clothing, and other personal belongings, some of which he had intended to send to Poland. He appears nervous and agitated and speaks very fast and with few pauses, so that the interpreter is struggling to keep up her translation (as evidenced by her question in line 13 and her omission of the claimant’s speech in line 16). In a lengthy exchange of over two minutes (too long to be discussed in detail here), the arbitrator repeatedly expresses confusion about the claim and asks questions for clarification, but the claimant’s responses continue to confuse her. At the point shown at the beginning of excerpt (7), the arbitrator halts the testimony for the second time and appeals (indirectly) to the interpreter by speaking about the claimant in the third person (line 3). Now the claimant seems to be confused, too (line 10). Apparently he doesn’t understand why he keeps being asked what the case is about, when he has already testified for a while. He presents new information, namely that the defendant threw him out of the house and locked him out, thereby taking his belongings from him (lines 7 and 9) and leaving him without a place to sleep (line 14). However, this does not resolve the arbitrator’s confusion (see line 18), which appears to result from her inability to classify the case according to the common case categories (see Chapter 2). The dispute seems to involve a (possibly damaged) car, an apartment, missing belongings, and work that was done by the claimant, so it could fall into any of the major case categories. The arbitrator makes this need for classification explicit when she asks What is the relationship between these two people? (lines 20 and 21). As before, she is again referring to the claimant in the third person rather than addressing him. 

(7)

1  Arbitrator:  (3.0) Let’s start all over again

2  Interpreter:  (1.7) Jeszcze [raz zacznijmy]

   ‘Let’s start one more time’

3  Arbitrator:  [I am confused] about what he is complaining

5  Interpreter:  [O co] chodzi?

   ‘What is it about?’

6  Claimant:  Do czego dotyczy Pana skarga? (.) Mówił Pan

   ‘What is your claim about? Say it.’

7  Claimant:  wyrzucał mnie z domu, [zablokował mi zamki=]

   ‘he threw me out of the house, blocked the locks’

8  Interpreter:  [He threw me out +]

9  Claimant:  =wziął mi moje ciuchy, przyczynił sobie, no wszystko,

   ‘took my clothes, claimed possession, well, everything’
Instead of translating the arbitrator’s question about the relationship between the claimant and the defendant, the court interpreter, who is an experienced staff interpreter, steps out of her institutionally proscribed role and reprimands the claimant for the way in which he presents his testimony (lines 19 and 22), which she characterizes by alluding to a Polish idiom about “talking out of one’s ass” (line 28). As can be seen in lines 24–26, and 28, she then proceeds to give the claimant instructions as to what a proper testimony ought to be like. According to her, it should refer to specific dated events (stało się to i to, tego i tego dnia ‘this and this happened, this and this day’ in line 26), given in order (po kolei, line 25), and explain why the events happened and what their consequences were (przyczyna, skutek ‘the reason,
the outcome’ in line 28). In requesting this type of testimony, the interpreter gives voice to the institutional preference for what Conley and O’Barr (1990) term “rule-oriented discourse”—that is, testimony given “in chronological sequence” and “without . . . interjections of background information” (p. 63). The example shows how interpreters may align with the institution and may participate in establishing, maintaining, and communicating institutional norms to LOTE-speaking litigants (though ironically here by breaking the professional norms of court interpreting that prohibit interpreters from speaking on their own; see also Angermeyer in press). The interpreter’s comment in lines 19 and 22 (do północy stąd nie wyjdziemy ‘we won’t leave until midnight’) also illustrates how court staff are explicitly concerned with the duration of proceedings. The role of interpreters and the stances they take toward other participants will be discussed further in Chapter 4.

After this reprimand by the interpreter, the arbitrator reiterates her question, which had been left untranslated: “What is the relationship between /him and /him?” (line 2 of excerpt (8)). This question prompts the claimant to say that he used to work for the defendant (lines 4 and 6, interpreter’s translation in 8). The arbitrator then decides to categorize the case as a dispute between employer and employee (line 9), and she voices her disapproval about the fact that this could not be done earlier (line 14). Note that, in keeping with the labels commonly used in court (see Chapter 2), the arbitrator names the employer first, even though it is the employee who is suing.

(8)

1 Arbitrator: Ah co- could we go back for a second? (.)
2 What is the relationship [between /him and /him?] {pointing at litigants}
3 Interpreter: Jaki jest związek między wami?
   {‘What are the relations between you?’}
4 Claimant: Żaden. Pracowałem u tego-
   {‘None. I worked at this’}
5 Interpreter: No relationship
6 Claimant: u tego pana [pracowałem przede wszystkim. Zadnego związku
7 nie ma.]
   {‘I worked, I mostly worked for this man.’}
8 Interpreter: [I just worked for him, that’s it]
9 Arbitrator: Ah! [/employer employee!]
10 Interpreter: [No other relation]
11 (.) Czyli pracodawca pracownik, tak?
   {‘That is employer–employee, yes?’}
12 Claimant: (.) No tak.
   {‘But of course.’}
13 Interpreter: (.) [Yeah]
Following this categorization of the case as an “employer–employee” dispute, the arbitrator elicits testimony from the claimant through a sequence of closed questions about his work, residence, and ownership of missing items, reverting to addressing the claimant instead of speaking about him (see line 16). When she is finally satisfied with the claimant’s testimony, she comments *I think I have the story* and gives the floor to the defendant, asking him, *Now, what’s your version of the story?* These examples show again that a claimant is expected to present as testimony a chronological narrative of events, which accuse the defendant of legally relevant behavior that has resulted in a financial loss for the claimant. Evidently, the claimant in excerpts (7) and (8) struggles to frame his grievances in such a way, as the arbitrator keeps interrupting him as long as his testimony fails to conform to the required format. Like the interpreter, the arbitrator appears to blame the claimant for this problem, as suggested by her comment *that was like pulling teeth* in excerpt (8), as well as by other comments made throughout the hearing that are not included in the excerpts. This view of the testimony as resulting from the claimant’s incompetence lends itself to an analysis along the lines of the rules-versus-relationship model of courtroom discourse proposed by Conley and O’Barr (1990), particularly if contrasted with that of the Russian-speaking driver in excerpt (5). In this model, the Russian-speaking claimant can be described as a rule-oriented litigant who presents a highly factual account in chronological order, which states precise locations and does not include any extraneous information. Conley and O’Barr (1990:66) note that such a “rule-oriented account articulates better with the agenda of the law,” so it is not surprising that the testimony is accepted by the arbitrator. The Polish-speaking claimant in excerpts (7) and (8), on the other hand, can be characterized as giving a relational account, which describes the dispute in terms of social relations rather than legal rules. This includes information that is “significant to [his] social situation, but . . . irrelevant to the court’s more limited and rule-centered agenda” (p. 61). Note for example his comments in excerpt (7) that he had “nowhere to sleep” after the defendant “threw him out of the house” and “changed the locks.” Moreover, the claimant also speaks as if assuming shared knowledge of events and places (see, e.g., *no jak o co chodzi?* ‘well what do you think it’s about?’ in line 10 of excerpt (7)). Conley and O’Barr (1990) view these contrasting approaches as resulting form personal characteristics of individual litigants and as related to social class and gender. In particular,
they argue that rule orientation can be “characterized as an acquired skill which is the property of the literate and educated business and legal class” (p. 80). However, one reason why the testimony in excerpt (5) above is more rule-oriented than that in excerpts (7) and (8) lies arguably in the fact that the dispute lends itself better to being narrated in a rule-oriented manner. In cases about car accidents, as in excerpt (5), there is typically no personal relationship between the litigants, so their accounts are less likely to involve elements that an arbitrator would view as legally irrelevant. Moreover, blame in car accidents is routinely assigned in a rule-oriented manner even outside the courtroom, based on a lack of adherence to the rules of the road. By contrast, the case in excerpts (7) and (8) results from a complex relationship between the litigants, which cannot simply be ignored for the purpose of a rule-oriented account. This suggests that the rule-versus-relationship continuum is not simply a matter of discourse styles but also a question of the type of dispute being discussed.

Despite the difficulties experienced by the claimant in excerpts (7) and (8), he is ultimately able to present his case and to convince the arbitrator that it has merit. Arguably, this occurred because the arbitrator was willing to overcome her initial frustration and to take the initiative of eliciting testimony through closed questions, rather than to rely solely on the claimant’s own narrative. In doing so, she demonstrates a degree of patience that is not shared by all arbitrators (although she is not a typical “slow” arbitrator in all respects, such as in her treatment of the consent procedure). More often, LOTE-speaking litigants who gave relational accounts did not get multiple opportunities to “start all over again.” Instead, impatient arbitrators were more likely to ignore such testimony and dismiss the claims as fraudulent. This is illustrated in excerpts (9) through (11) from a case with a Spanish-speaking tenant who sued the company that owned her building for costs she had incurred after they had sued her for nonpayment of rent (allegedly in error). The tenant, an elderly woman, came to court accompanied by her adult son, who sometimes spoke on her behalf but also acted as interpreter, alternating with or parallel to the professional court interpreter. Like the claimant in excerpts (7) and (8), she appeared quite nervous and agitated, and when she gave testimony, she spoke very quickly, failing to pause to allow the interpreter to translate consecutively. Her testimony begins in excerpt (9), where she complains about having been sued by the landlord and states that she can prove that she had always paid the rent (lines 6–8). She then states that an attorney whom she hired determined that the landlord’s case was closed. While it is not clear yet what she wants to say further, she seems to express a general dissatisfaction with the landlord, whom she accuses of intentionally making things difficult for her (she had to hire someone, line 13; she has to fight just to get a lease, line 16).
When the claimant stops talking, the interpreter begins by translating the complaint about the landlord having sued the claimant. This confuses the arbitrator (a “fast” arbitrator), since she is the claimant in the case at hand, and he interrupts the interpreter and prevents her from continuing her translation. Similar to the arbitrator in excerpt (7) above, the arbitrator here
also requests a new “start” to the testimony, asking her to explain why she is suing the defendant (lines 19–21). In subsequent turns that are not shown, the claimant more or less repeats her testimony, and the arbitrator understands that she was sued first. However, after a few more turns in which the claimant and her son talk about what happened after she got sued (she felt abused, she fell on her way to consulting legal aid, it caused her stress, she went to see a psychiatrist), the arbitrator turns the floor over to the defendant (an agent who is representing the building owner), as shown in excerpt (10). By asking the defendant to “fill in” what he evidently perceives to be the gaps in the claimant’s testimony (line 10), the arbitrator is signaling that he no longer expects the claimant to give relevant testimony, and in contrast to the arbitrator in excerpts (7) and (8) above, he is not prepared to elicit such testimony from her through closed questions. Instead the arbitrator relies on the defendant to explain the claim, although it goes without saying that a defendant’s take on the dispute is not an adequate substitute for the claimant’s testimony.

(10)

1 Claimant: [Esto es un abuso (co- coxxx)]
   {'this is an abuse xxx’}
2 Interpreter: [and then I went to see a psychiatrist
3 and I [(xxx it) I can’t=]
4 Claimant: [Ya no lo consiento]
   {'I can’t take it anymore.’}
5 Interpreter: take anymore. I can’t take it.
6 Arbitrator: [Okay]
7 Interpreter: [This is] an abuse that they’re doing=
8 Arbitrator: [=Okay]
9 Son: [That’s] right
10 Arbitrator: (.0) Okay, so why- why don’t you fill me in here?
11 Defendant: (2.0) The reason why I’m here is that (1.6) to: (2.2) I was
   thinking about that this case have no reason to be here.
12 Because when we sue her [it was-]
13 Arbitrator: [Yeah why] don’t you explain
14 from your side

Following excerpt (10), the defendant explains her position that the case should be dismissed, because in her view all problems have been resolved after the first lawsuit in housing court. According to her, the tenant had owed money at one point, although she speculates that this may have been because of problems with rent subsidy payments. She also mentions repairs that were made to the apartment as a result of the housing court stipulation. (It should be noted that Section 8 rent subsidies require apartments to pass an
inspection, so it is possible that the delay of subsidy payments resulted from
the landlord’s failure to conduct required repairs in time.) On several occa-
sions during the defendant’s testimony, the claimant tries to interrupt and
refute the defendant’s claims, speaking in Spanish. For example, as shown
in excerpt (11), she denies the defendant’s claim about her “falling behind
in rent” and she is prepared to show evidence (hubo el cheque ‘there was the
check’ in line 3). However, the interpreter does not translate her comments
into English (nor does she translate the defendant’s English statements) but
instead tells her to be quiet and let the defendant speak (line 6). As in excerpt
(7) above, this shows again how interpreters may align with the goals and
policies of the court and participate in managing litigants who act in ways
they deem inappropriate.

(11)

1 Defendant: She start falling- [falling behind in the rent+]
2 Claimant: [Todas mis rentas- todas mis rentas]
   ‘all my rents, all my rents’
3 han sido pagadas los días tres (.) [hubo el] cheque
   ‘were paid on the third of the month, there was the check’
4 Defendant: [and +]
5 Claimant: y la prueba la tienen ellos.
   ‘and they have the proof’
6 Interpreter: Señora, tiene que dejar que ella hable.
   ‘Ma’am, you have to let her talk’

Despite being largely ignored by the other participants, the claimant
continues to talk after this point, with only selective translation by the inter-
preter but with supportive comments in English by her son. In ways that cor-
respond again to Conley’s and O’Barr’s concept of relational orientation, she
complains about being treated disrespectfully by the building company, and
her son argues that “it is something personal.” Multiple times she repeats that
she didn’t owe them money, and she notes that one rent check was returned to
her in error (this apparently triggered the legal action from the landlord). Fi-
nally, she expresses her feeling that her landlord is purposely harassing her to
get her to vacate the apartment (Quieren mi apartamento para rentarlo ‘They
want my apartment to rent it out’) and that she wants them to stop bothering
her.12 This seems to be part of her motive for suing the landlord, along with
costs she claims to have incurred because of the landlord’s legal action (in-
cluding stress-related healthcare costs). While she may thus have a legitimate
grievance and a well-founded fear of losing her home, it does not easily trans-
late into a legally relevant story (i.e., into a demonstrable monetary claim).
After the hearing concluded, the arbitrator told me in an aside that he thought the claimant’s claim was “bullshit,” and it appears that the interpreter shared this view. This attitude is reminiscent of Merry’s (1990:14) observation that legal professionals who work in lower courts speak of “garbage cases” or “junk cases” when disputes are marked by “ongoing relations and mutual accusations” and involve cross-complaints. In their view, these cases are “frivolous” lawsuits in which “people are simply ‘using’ the court to fight with each other.” While this claim against a building company differs from the interpersonal cases described by Merry, the claimant does frame the dispute in personal terms (e.g., complaining about “abuse” and lack of “respect”), and she displays emotion as she blames the company for “driving her crazy” to the point where she can’t “take it anymore” (see line 4 of excerpt (10)). The arbitrator’s reaction is clearly parallel to the attitudes of court staff in Merry’s study, who view “garbage cases” as cases “in which people seem crazy or irrational” (p. 14). His attitude was also similar to that of other arbitrators I observed during my fieldwork. Several of the “fast” arbitrators were prepared to characterize litigants as “not making sense” if they failed to present a compelling “story” in the brief time the arbitrator was willing to listen to them. This was especially common with LOTE-speaking litigants. As will be shown in Chapter 5, some arbitrators displayed considerable impatience with LOTE-speaking litigants, for example by frequently interrupting the interpreter before a question or statement was fully translated or by withdrawing LOTE speaker’s speaking rights altogether. That chapter will explore in more detail how interpreting alters the ability of litigants to “tell a story” and consequently to gain understanding and inspire empathy from arbitrators.

In contrast to “fast” arbitrators like the arbitrator in excerpts (9) to (11) above, other arbitrators were willing to hear litigants out patiently, to elicit testimony through questioning (as in excerpt (8)), or to explain procedural or evidential requirements to LOTE-speaking litigants, especially during preliminary inquest hearings. As noted in Chapter 2, these arbitrators also tended to view the litigants’ actions in court in cultural terms. This was particularly true of two Spanish-speaking arbitrators I observed in inquest hearings with Spanish-speaking litigants who had failed to bring important documents with them (e.g., a lease in a tenant–landlord case). These arbitrators emphasized that, personally, they sympathized with the litigant’s position, but that an “American” judge or arbitrator would likely not, absent the necessary proof. Both arbitrators juxtaposed the two cultures by focusing on what they saw as key concepts of dispute resolution, namely *la ley* (“the law”) in the United States and *la palabra* (“the word of honor”) in Latin American societies, thus echoing comments made by some Spanish-speaking litigants (see Chapter 2).
The arbitrator’s decision

The differences between the arbitrators’ approaches were particularly pronounced at the conclusion of hearings. As mentioned above, judges and arbitrators in New York small claims court don’t announce a decision at the end of a hearing but instead tell litigants that the decision will be mailed to them. Arbitrators typically come to a decision during the hearing, and they formalize it in writing after the hearing has been concluded and the litigants have left the room. As noted in the description of arbitrator styles at the beginning of this chapter, “slow” arbitrators often try to broker a compromise between the litigants instead of taking a unilateral decision (see excerpt (1)). But even if they do not suggest a settlement or cannot broker one, they typically do not conclude a hearing without asking litigants whether they have something to add. By contrast, “fast” arbitrators often conclude hearings by announcing that they have gathered sufficient information to make a decision. Once they have done so, they are usually unwilling to hear further testimony, even if litigants protest. This is illustrated in excerpt (12) from a work-related case, a dispute between a Spanish-speaking furniture salesman and his former boss, who was speaking Russian. The claimant was suing for sales commissions that he claimed the defendant owed him. During his testimony, the claimant showed sales receipts, contracts, and checks, and he convinced the arbitrator that he had in fact made the sales for which he wanted to receive a commission. When it was his turn to speak, the defendant agreed that the sales had been made, but when he wanted to explain why the claimant had not been paid the commission, he repeatedly got cut off by the arbitrator. According to the defendant, his ex-employee’s monetary claim was offset by several factors: The claimant had given discounts at his own discretion (which should reduce the amount of the commission); he had been given a company car, which he had not yet returned; and finally, he was fired when the boss discovered that he was issuing checks to himself. However, as the defendant tried to make these points in Russian, he kept being interrupted by the arbitrator, and as a consequence the interpreter translated only parts of this testimony. In excerpt (12), the arbitrator declares that the hearing is over (lines 1, 5, 9), but at this point, significant parts of the defendant’s testimony have not yet been heard (i.e., translated into English).

(12)
1 Arbitrator: I’ll tell you what, the court has enough information +
   [La corte tiene bastante información +]
2 Interpreter S: ‘the court has enough information’
3 [‘the court has enough information’]
4 Interpreter R: ‘I have obtained enough information’
5 Arbitrator: [upon which to make] its decision.
As can be seen in lines 8 and 10, the defendant protests against the arbitrator’s conclusion of the hearing and he claims that the claimant stole money from him. The interpreter translates only the beginning of his objection (‘I’m not finished yet,’ line 12), as she is interrupted by the arbitrator and then translates the arbitrator’s reaction into Russian (‘Ja zakončil ‘I’m finished’ in line 15) instead of finishing her translation of the defendant’s testimony. Consequently, the accusation of theft is not translated (see Chapter 5 on the tendency of interpreters to give preference to the arbitrator when several speakers compete for the floor). The arbitrator continues with his concluding remarks, and the claimant and the Spanish interpreter leave. The hearing thus ends without the defendant having had the opportunity to say everything he had come to say (‘èto ne vsè ‘that’s not all,’ lines 8 and 10). This experience echoes that of many witnesses and litigants in other studies of courtroom talk. Merry (1990:134) states that litigants complain about being rushed by the judges, who don’t take the time to listen to their stories. Conley and O’Barr (1998:67) note that a frequent complaint of witnesses in formal courts is “I never got a chance to tell my story,” and they report that many litigants in their small claims court study are similarly frustrated after their hearings. Conley and O’Barr (1990:128) argue that to many litigants, telling the story of their dispute is equally important or even more important than the legal outcome itself. In their view, narration has a therapeutic function, and it enables litigants to seek validation from the judge (p. 130). The notion...
that many small claims litigants feel unable to “tell their story” is ironic given that arbitrators frequently characterize the litigants’ testimony as a “story.” However, arbitrators and litigants have divergent understandings of what counts as a story in the context of the legal dispute. This is evident in excerpt (13) with another “fast” arbitrator, who claims to have “heard the story,” even as the defendant denies having told it. In response to the defendant’s protest and plea to continue, she insists that he has told his story (line 5) and explains that she considers his responses to her questions to constitute such a story (line 7).

(13)

1 Arbitrator: Well, I said that I’ve heard everything
2 and I’ve heard the story that you’re telling-
3 Defendant: I- I haven’t told the story yet! May I please
4 [have] thirty seconds? =
5 Arbitrator: [I-] =You /have!
6 Defendant: I haven’t!
7 Arbitrator: You /have when I’ve asked you the questions

Similarly to excerpt (6) above, the arbitrator in excerpt (13) had earlier asked closed questions of the defendant, following the claimant’s narrative testimony. Based on the evidence provided, she had apparently come to the conclusion that the claimant’s case had no merit, and so she did not invite the defendant to provide his own narrative. Court records show that the arbitrator decided in favor of the defendant, but, as the decision is not announced in court, the defendant nonetheless leaves frustrated for not having been able to say what he came to say. Conley and O’Barr (1990:128) discuss a very comparable case, where a plaintiff feels disrespected by a judge who ended her hearing after two minutes, while the judge justifies his decision by saying that “we don’t have time to get involved with all these details. She got her judgment. . . . She got everything she wanted.”

The examples suggest that the distinction between “fast” and “slow” arbitrators is not just a question of the arbitrator’s style of leading proceedings but relates to their understanding of the law. This corresponds again to the findings of studies by Conley and O’Barr (1990) and Philips (1998), which show that the manner in which judges interact with litigants correlates strongly with their ideologies about the law. The legal ideology of “fast” arbitrators became particularly apparent in the case of the Russian-speaking defendant shown above. Following excerpt (12), when the arbitrator has announced that the hearing is over, the claimant and the Spanish interpreter leave the room, but the defendant continues to speak to the arbitrator. He reiterates his accusation that the claimant stole money from him by issuing checks to himself, and this time the accusation is translated by the Russian
intermediary. However, as can be seen in excerpt (13), the arbitrator claims that this fact is not relevant to the case, and tells the defendant that he should file a lawsuit of his own against the claimant.

(14)

1 Arbitrator: He’s suing [you Sir]
2 Interpreter R: [On sudit] vas
   {‘He is suing you.’}
3 Arbitrator: Here [the court makes a decision] on /that issue=
4 Interpreter R: [I po étomu vopros (xxx)]
   {‘and on this question’}
5 Arbitrator: =Now if [you-] he stole money [from you you have to sue /him]
6 Interpreter R: [I]
   [esli on ukral den’gi ]
   {‘and if he stole money’}
7 u [vas, vy možete sudit’ ego=]  
   {‘from you, you can sue him,}
8 Arbitrator: [for your return of your funds=]
9 Interpreter R: [=dlja togo ětoby on vernul vași den’gi]
   {‘so that he returns your money’}
10 Arbitrator: [=That’s not the issue before this court at this] time
11 Interpreter R: No v dannýj moment ěto [ne vopros pered sudom]
   {‘but at the moment, this is not the question before the court’}
12 Arbitrator: [The court is adjourned] {hits mallet on bench}

The arbitrator’s comments suggest his motivation for concluding the hearing before the defendant has “told his story.” Evidently, he has a rather narrow view of what the case is about, as he considers only evidence that relates to the claimant’s claim about sales commissions but disregards any further information about the relationship between the litigants. This narrow approach to the case puts him in the position to make a quick decision as soon as the defendant acknowledges that the claimant had in fact made sales without receiving a commission. This approach of “fast” arbitrators shown in excerpts (12) and (13) combines features of two of the five types of judges that Conley and O’Barr (1990) distinguish in their ethnography of small claims courts, namely the “strict adherent to the law” and the “proceduralist,” which can both be characterized as highly rule-oriented approaches (pp. 107–109).

Like the “strict adherent to the law,” “fast” arbitrators view “the law as a set of inflexible neutral principles” and devote very little time to each case (p. 85). Like the “proceduralist,” they place “a high priority on procedural regularity” (p. 101), although they don’t devote time to explaining the procedure. The arbitrator in excerpts (12) and (14) also corresponds to the “proceduralist” type by speaking of himself as “the court” (compare Conley & O’Barr 1990:106).
Clearly, the approach of fast arbitrators runs counter to the notion of small claims court as a venue for informal justice where decisions are reached “on the basis of substantive law” (Yngvesson & Hennessey 1975:223). Given the arbitrator’s suggestion that the defendant should countersue the claimant for a refund of the stolen money (lines 5 and 8), a substantive approach would arguably have sought to factor the defendant’s arguments into any calculations of possible payments to the claimant (instead of expecting cross-complaints and then awarding money to both parties). This example suggests that “fast” arbitrators are able to hear cases quickly because they make decisions that follow from procedural rules, but leave no room for the consideration of other circumstances in the dispute. When claims do not lend themselves to a simple application of such rules, they are likely to be dismissed for “not making sense.” While it is difficult to assess the factors that influence legal outcomes, it does appear that “fast” arbitrators are considerably more likely to dismiss a claim than are “slow” arbitrators (see Chapter 7). As noted above, LOTE-speaking litigants are more likely to have their cases decided by these “fast” arbitrators because court staff are concerned about the amount of time taken up by interpreting. This case assignment policy thus affects the legal outcomes for litigants who rely on interpreters, independent of the process of interpreting. The consequences of interpreting itself will be explored in the following chapters, beginning with the discussion of the role of interpreters in Chapter 4, before investigating the consequences of language choice and of the distribution of interpreting modes in Chapter 5 and of codeswitching in Chapter 6.
Only translating? The role of the interpreter

The previous two chapters introduced the two main groups of participants in small claims proceedings: the litigants who bring disputes to court, and the arbitrators who hear these cases and make decisions about them. However, in the hearings that were the focus of this study, the interaction between these participants was mediated by court interpreters. Drawing on interviews and the analysis of transcription excerpts, this chapter describes who these interpreters are, how they view their role in the courtroom, and how they position themselves toward other participants. Combined with a review of legal interpreting guidelines and documents published by the court system, the chapter describes the court policies that give rise to common practices of court interpreting and identifies the language ideologies that form their basis. The findings will then also inform the analyses in Chapters 5 and 6, which explore in detail how interpreter-mediated court proceedings differ from ones conducted in a single language, and how interpreters react to the litigants’ use of codeswitching to English.

In examining the language use of interpreters, I will focus on a particular linguistic variable, namely on variation in the way interpreters represent the voice of the person they are translating (cf. Angermeyer 2009). As will be shown, this variation relates strongly to the interpreters’ understanding of their own role and of the task of court interpreting. In ways that can be seen as parallel to the approaches of arbitrators described in Chapter 3, it is shown that the interpreters’ choices have consequences for the ability of speakers of a language other than English (LOTE) to participate in the proceedings. Some interpreters primarily emphasize adherence to court rules and model their translations as closely as possible after the respective input. By contrast, other interpreters focus on facilitating communication between LOTE speakers and the court and make translation choices designed to enhance mutual comprehension. Depending on the pragmatic context, these two approaches
may be compatible, but often they are not, as will be demonstrated below. In describing this variation, I will follow common practice in translation studies in using the term *source* to describe the input for the interpreter and *target* to describe the corresponding output that the interpreter or translator produces (Toury 1995; Vinay & Darbelnet 1995). I will use *source speaker* to refer to the participant who provides the input for the interpreter and *target recipient* to refer to the participant for whom the output is produced.

The analysis in this chapter will draw on research on court interpreting (Berk-Seligson 1990; Morris 1995; Kadric 2001; Hale 2004; Shlesinger & Pöchhacker 2008; and others) but also on studies of interpreting in face-to-face interaction more generally, variously termed *dialogue interpreting* or *liaison interpreting* (Pöchhacker 2004:16). Research on dialogue interpreting has been conducted in a variety of settings besides court interpreting, in particular in medical interviews (Wadensjö 1998; Davidson 2000; Angelelli 2004; Meyer 2004) but also in other institutional settings, such as police interrogations (Wadensjö 1998; Berk-Seligson 2009) and asylum interviews (Inghilleri 2003; Jacquemet 2005a; Maryns 2013), as well as nonprofessional interpreting in a variety of contexts (Knapp & Knapp-Potthoff 1985; Müller 1989; Valdés 2003; Reynolds & Orellana 2009). While some aspects of interpreting are context-specific, others transcend their particular setting, most notably the organization of turn taking and the contrast between the modes of consecutive and simultaneous interpreting. Also, in contrast to written translation or conference interpreting, where translation is unidirectional, dialogue interpreters translate in both directions.

**Court interpreters**

During my fieldwork in small claims court, I observed 66 different interpreters for 27 different languages. I recorded a total of 17 interpreters, seven for Spanish (out of 17 observed), three each for Russian (6 observed), Polish (4), and Haitian Creole (4), as well as one interpreter for Romanian who translated in a hearing with two interpreters (the other one speaking Haitian Creole). Interpreting for each of the four targeted languages was observed at each of the three courthouses. During my fieldwork, I spoke with many interpreters while waiting after the calendar call or between hearings. I had the opportunity to ask many of them about their experience and training as court interpreters, as well as about their personal background. Some of them had worked as court interpreters for over a decade, while others had started only very recently. Nearly all were native speakers of the LOTE they were interpreting (except if they worked in more than one LOTE). Almost all spoke English as a second language, some of them with markedly nonnative syntax and phonology. Many were first-generation immigrants from the same countries or regions
as the litigants for whom they translated, but unlike many litigants, they were often university-educated and had a higher proficiency in English.

In addition to speaking with interpreters in court, I also interviewed court administrators and interpreter supervisors in order to better understand the legal and institutional context of court interpreting in New York small claims courts. I also consulted official documents about interpreting, such as the brochure *Court Interpreting in New York: A Plan of Action* published by the New York Unified Court System (2006), which details the institutional policies under which interpreters are examined, trained, and supervised. All court interpreters in New York state are required to undergo training and qualifying examinations, but these differ based on the languages they speak. The court system has developed testing materials for the assessment of court interpreters for a number of frequently requested languages. To be hired as Spanish interpreters, candidates are required to pass a competitive examination that tests their language proficiency in both English and Spanish, as well as their ability to translate in writing and to interpret in consecutive and simultaneous modes, into both English and Spanish. The oral component is audiorecorded, and all parts are then evaluated by a group of bilingual experts. Successful candidates are then ranked to enable the court system to hire the most qualified ones. Similar examinations exist for other languages as well, but candidates are not ranked, as the test is evaluated only on a pass/fail basis. At the time of my fieldwork, the court system had developed such examinations for 11 languages other than Spanish: Arabic, Cantonese, Greek, Haitian Creole, Korean, Italian, Mandarin, Polish, Portuguese, Russian, and Vietnamese (thus including all languages included in this study). Since 2006, similar exams have also been developed for Albanian, Bengali, Bosnian/Croatian/Serbian, French, Hebrew, Hindi, Japanese, Punjabi, Urdu, and Wolof (New York State Unified Court System 2011:4). Interpreters for other languages are assessed only in their proficiency in English but do not take language-specific exams in interpreting or written translation.

The different types of testing that exist for specific languages parallel differences in employment status and working conditions. Depending on the demand for their language(s) in a given area, court interpreters may be full-time employees of the court system, or they may be hired as freelancers (per diem). Each courthouse has full-time court interpreters on staff to interpret those languages that are regularly needed. For example, during my fieldwork, the Brooklyn civil court had eight staff interpreters for Spanish, two for Haitian Creole, and one each for Russian, Polish, Cantonese, Mandarin, Arabic, Hebrew and Yiddish, and interpreting for most of these languages was available weekly in small claims court (see Chapter 2). When interpreters were needed for other languages, they had to be ordered through the Office of Interpreting Services. As a consequence of such patterns of interpreting demand, many interpreters for Spanish are staff interpreters who work at
a single courthouse. When they work in small claims court, they typically work in a quick succession of hearings but still may not be able to fulfill the demand. By contrast, interpreters for other languages are on staff only if the language is spoken widely in the area served by the court. When these staff interpreters work in small claims court, they typically do not have more than two or three cases per session, and sometimes just one. While they are based in a particular courthouse, they may need to work in others as well (for example, the Russian and Polish interpreters from Brooklyn also interpreted in the Queens civil court). Finally, interpreters for less commonly requested languages are usually hired on a per diem basis (especially those who have not had language-specific testing). They work in many different courthouses and are rarely involved in more than one case per court session. Of the interpreters I recorded, the Spanish interpreters were all staff members, whereas I recorded both staff and per diem interpreters for the other three languages.

The more frequent the need for interpreting in a given language at a particular courthouse, the more likely it is that the court interpreter is an experienced and well-qualified professional who is available at regularly scheduled court dates. For example, a litigant requesting interpreting for Russian, Polish, or Haitian Creole at the Brooklyn court would have a full-time staff interpreter and would have his or her case scheduled for the next available Tuesday (see Chapter 2). By contrast, a litigant requesting interpreting for one of the same languages at the Manhattan court would likely encounter a per diem interpreter who may be less experienced, and the scheduling of the case would require coordination by the court administration. With languages that are rarely requested, scheduling may become a challenge if the court has no qualified interpreters readily available (e.g., a case with a request for a Twi interpreter was rescheduled several times until an interpreter had been found).

Despite these differences, all staff and per diem interpreters receive training on court procedures and on guidelines for ethical and professional conduct that have been adopted by the court (New York State Unified Court System 2008). Furthermore, interpreters are subject to administrative supervision by senior interpreters and other court staff, and they are required to adhere to a code of ethics with rules about appropriate behavior in court. This code emphasizes the need for interpreters to be impartial, to keep information confidential, and to refrain from giving legal advice. Most importantly, interpreters are required to “faithfully and accurately interpret what is said without embellishment or omission, while preserving the language level and/or register of the speaker” (p. 8). Moreover, the code stipulates that interpreters are supposed to speak in the voice of the person whose words they are interpreting, using first person to refer to him or her and using third person if they need to speak for themselves (e.g., “Your Honor, the interpreter cannot hear the witness,” p. 10). These guidelines are parallel to guidelines
for judicial interpreting in other jurisdictions in the United States and elsewhere (compare, for example, Berk-Seligson 1990; Mikkelson 2000b; Inghilleri 2012), which similarly emphasize the importance of neutrality and impartiality and treat them as inherently linked to translation accuracy (Inghilleri 2012:40). As will be argued further below, such guidelines are based on language ideologies about translation, particularly on the assumption that competent interpreters produce “verbatim” translations that are referentially equivalent to their source, in keeping with the ideology of “referential transparency” described by Haviland (2003).

By and large, court interpreters in small claims court were found to adhere closely to the code of ethics and related guidelines. However, as court interpreting in the United States has become more professionalized and interpreter training more standardized in recent years, there appeared to be an inverse correlation among staff interpreters between experience and professionalism (as defined by the court administration and professional organizations like the National Association of Judiciary Interpreters & Translators [NAJIT]). Younger, less experienced staff interpreters appeared to be far more likely to engage in recommended professional practices than were senior interpreters. For example, one Spanish interpreter, who had been working for less than a year, was the only interpreter I observed taking notes during a hearing. Other younger interpreters were observed referring to themselves in the third person (“the interpreter needs to clarify”) to reserve first-person reference for the voice of the translated speaker (see above). By contrast, some of the senior interpreters had a distinctive interpreting style and an assertive demeanor that contrasted with guidelines (see Angermeyer 2009). Both types of staff interpreters contrasted with per diem interpreters, for whom court interpreting was not a routine activity, particularly those for rarely requested languages. On one occasion, I observed a Pashto interpreter who was in court for the first time and appeared to be unfamiliar with the norms of professional interpreting, as she was consistently using reported speech when translating into English.

Besides such differences in experience and training, interpreters also vary in their attitudes toward the court and toward the other participants. To a large degree, these differences correlate with an interpreter’s status in court and with his or her language. In particular, the Spanish interpreters stand apart from interpreters for other languages in that they are almost always staff members at a particular courthouse and as such become more involved with its organization. Some pursue careers in the court administration, for example as clerks, or in the administration of interpreting services. Furthermore, the high demand for Spanish interpreting at the courts in Manhattan and Queens has consequences for the way interpreters interact with individual litigants. Whereas interpreters for languages that are less commonly requested have often only one case on a given evening and may
Spend time waiting together with the litigants in question, Spanish interpreters usually are very busy and are always involved in multiple hearings. As a consequence, they often work together with a particular arbitrator and process a quick succession of hearings, often five or more. In these cases, the litigants have little or no opportunity to interact with the interpreter before or after the hearing, and hearings begin with the question “who needs an interpreter?” Instead, interpreters talk to the arbitrator before and after the hearings, ranging from small talk to discussions of the legal merits of particular cases. Thus, Spanish interpreters and arbitrators often can be described as what Goffman (1959:79) calls a “performance team,” as they “co-operate in staging a single routine.”

By contrast, interpreters for less frequently requested languages often enter the courtroom together with the litigant. In these cases, there is little or no communication between interpreter and arbitrator outside the hearing itself, and the hearing may begin with the arbitrator’s question “who is the interpreter?” In fact, I observed one incident in Queens in which a female court officer got into a loud argument with a Romanian interpreter, apparently because she had thought that the interpreter was a litigant who was overstepping the spatial boundaries between the public parts of the courtroom and those that are off limits to litigants. By contrast, Spanish interpreters and other staff interpreters were often on a first-name basis with court officers. In arbitration hearings, staff interpreters are more experienced than arbitrators when it comes to understanding the workings of the court, and they are prepared to point out procedural problems to them (see Angermeyer to appear). This is illustrated in excerpt (1), from an inquest hearing with a Spanish-speaking contractor suing a client for unpaid work. The defendant has not come to court, so the arbitrator has briefly reviewed the claimant’s evidence and is prepared to make a decision (which the defendant will be able to appeal). As she starts to conclude the hearing, the Spanish interpreter asks whether the claimant has self-addressed the envelope in which he is to receive the judgment (line 2). When it becomes clear that the claimant has not yet done so, the interpreter does not wait for the arbitrator to speak, but instead he instructs the claimant himself (line 4) and explains the procedure to him (lines 7–8). The arbitrator (who understands Spanish) does begin to give the instructions herself (lines 5 and 6) but then abandons this attempt and lets the interpreter finish.

(1)

1 Arbitrator: Okay, thank you very much, thank you for coming in,
2 Interpreter: (.) Did he write the envelope?
3 Arbitrator: (.) Oh yes, the envelope.
4 Interpreter: (.) Tiene que escribir por [favor su nombre y dirección =] ‘You need to write please your name and address’
The role of the interpreter

The above observations show that interpreters differ in their relationship with other participants and with the institution, and consequently they may differ in the role they play in the interaction. This has been the focus of much research in studies of interpreter-mediated interaction, which have tended to characterize the interpreter as an intermediary between the other participants (or “between the communicating individuals and the institutional and socio-cultural positions they represent;” Pöchhacker 2004:59) but which have also explored how the interpreter’s own social identity as a bilingual factors into the interaction (Anderson 1976). Studies on court interpreting often align with legal guidelines in describing the interpreter’s role as limited to translation and hence neutral in the interaction (e.g., Hale 2004), but this view is problematized by researchers who view it as inevitable that the interpreter becomes involved in the coordination of interaction and hence in mediating between the other participants (Lang 1976; Knapp & Knapp-Potthoff 1985:452; Wadensjö 1998:7; Roy 2000). Moreover, the requirement of neutrality and impartiality in legal settings is understood as prohibiting the interpreter from taking sides in a dispute, but it does not generally extend to interactions between lay participants and the institution, where interpreters may side with the institution (Inghilleri 2012; Angermeyer to appear). In line with such considerations, interpreters in institutional contexts have been described as gatekeepers (Wadensjö 1998; Davidson 2000; Gómez Díez 2010) and as agents in social reproduction (Inghilleri 2003). By contrast, nonprofessional interpreters have been described as intermediaries (Knapp-Potthoff & Knapp 1987) or as socializing agents (Schieffelin & Cochran-Smith 1984).

The role of the interpreter can also be explored from the perspective of bilingualism and language contact, specifically studies that explore the identity of bilingual speakers vis-à-vis the communities in contact (see, e.g., Gumperz & Cook-Gumperz 1982; Auer 1998a; Heller 2003; Cashman 2005; Fuller 2007). As Valdés and Angelelli (2003:62) argue, “interpreters are individuals who, as the locus of language contact, have much to teach us about the nature of this contact and about the characteristics of bilingual individuals who broker interactions between monolingual members of groups in contact.” Court interpreters in small claims court are balanced bilinguals, but
they are also in an institutionally defined intermediate position between the communities. As employees of the court system, they are squarely placed in an institution that is affiliated with English and is instrumental in maintaining the social dominance of English in New York City. However, many interpreters are also members of a minority group as foreign-born native speakers of the LOTE. Anderson (1976:212) and Knapp and Knapp-Potthoff (1985:453) claim that interpreters are more likely to identify with fellow native speakers of their own first language than with other participants. Wadensjö (1998:277) speaks of “linguistic belonging” and claims that, in the context of interpreting, it overshadows the participants’ affiliations to other social categories. At the same time, though, Wadensjö acknowledges that “[i]nterpreters may feel a duality in loyalties, being associated with a minority group, and having relatively more access to the majority society than others associated with this group” (p. 289).

In informal interviews, I asked interpreters how they perceive their role and how it is perceived by others. Some referred to LOTE-speaking litigants as their “clients,” while others felt that the expectations and attitudes of other participants made it difficult for them to maintain and demonstrate the neutrality that the institutional norms demand of them. For example, one interpreter said that, in formal courts, she felt that some LOTE speakers trusted her more than they did their own lawyers. Most interpreters took for granted that in disputes between two speakers of different languages, they would be associated with the person who spoke their language. One multilingual interpreter told me that this became fully apparent to him when he was involved in a case in which the opposing parties were speakers of two different LOTEs, both of which he speaks and translates for. He felt that, because he spoke both languages, the parties viewed him with suspicion, as a potential ally and a potential traitor at the same time. In his view, this contrasted with cases involving one English-speaking side, where everyone would consider him to be an ally of the LOTE speaker (his “landsman,” as he said), as well as with cases in which both sides spoke the same LOTE, where everyone would respect his neutrality.

The notion of the LOTE speaker as “client” suggests that interpreters could act as advocates for litigants. It has been noted that interpreters can play such a role (see Lang 1976), and Knapp and Knapp-Potthoff (1985:453) contend that there may be situations in which interpreters want to come to the aid of a weaker party. As I have argued throughout the analysis, there is reason to consider LOTE-speaking litigants as the weaker party, with respect to both their status as participants in the interaction and their social standing vis-à-vis the defendant (see Chapter 2). However, the interpreters I observed did not engage in activities that can be understood as advocacy for LOTE speakers. On the contrary, some of the Spanish interpreters expressed little sympathy for Spanish-speaking litigants and held negative attitudes toward
them, which were amplified by differences in social class, country of origin, and variety of Spanish spoken. As noted in Chapter 2, many of the Spanish-speaking litigants I observed came from the Dominican Republic, while some of the interpreters were from countries such as Argentina, Venezuela, or Spain that are not sources of mass migration to the United States. In interviews, some of these interpreters made negative comments about Dominican Spanish, and they often “corrected” litigants’ nonstandard lexical choices in Spanish (see Chapter 6). As Spanish interpreters were generally full-time staff interpreters who identified with the goals of the institution, their disapproval of litigants’ behavior also extended to legal argumentation and courtroom behavior. As noted in Chapter 3, some staff interpreters admonished litigants for speaking out of turn or for not presenting their case in the expected manner, and they concurred with arbitrators in viewing the difficulties of LOTE-speaking litigants in cultural terms. This can be illustrated with excerpt (2), which is from a dispute between two Spanish speakers about the price of contracting work done by the claimant, under a verbal agreement. After they have each narrated their version of events, the arbitrator notes that they should have had a written contract before the work was started. When the claimant explains that they did not set up a written contract because of a family relationship between them, the arbitrator interrupts him (and the interpreter) and, in a textbook illustration of the rules-versus-relationship paradigm proposed by Conley and O’Barr (1990), she tells him to conduct business in writing in the future (lines 19, 21, and 23). In translating these comments, the interpreter animates the arbitrator’s voice with strong emphasis and increased volume on futuro ‘future’ (line 22) and todo ‘everything’ (line 24). In contrast to the arbitrator’s own voice, the interpreter’s tone of voice is reminiscent of a teacher talking to a child, which gives the impression that she personally endorses the recommendation.

(2)

1 Arbitrator: That’s why I said had you [had it in] writing +
2 Claimant: [Okay]
3 Interpreter: Por eso [le digo a Usted que si lo hubiera=]
   {‘that’s why I say to you that if you had’}
4 Arbitrator: [you wouldn’t be here]
5 Interpreter: =tenido por es/crito +
   ‘had it in writing’
6 Claimant: Uh-hm
7 Interpreter: () no estuviera aquí
   {‘you wouldn’t be here’}
8 Arbitrator: (.9) Okay? (.8) [Good night.]
9 Claimant: [Eh (xxx)]
10 Arbitrator: Yes?
In talking about Spanish-speaking litigants to me (but also to arbitrators), several Spanish interpreters expressed frustration about the litigants’ frequent lack of understanding of what was required of them in court. These interpreters could be said to align themselves with the institutional preferences for rule-oriented legal discourse, and some of their actions can be understood as attempts to educate litigants accordingly. This suggests that interpreters could act as socializing agents who introduce novices to a culture they are unfamiliar with, as has been observed by Schieffelin and Cochran-Smith (1984). However, court interpreters generally do not engage with individual litigants over an extended period of time, so that true socialization into courtroom practices cannot take place. Instead, interpreters experience a succession of different litigants who engage in the same criticized behavior (see, e.g., excerpt (10) in chapter 5), and this is only likely to increase their frustration.

In excerpt (2) above, the interpreter’s tone of voice created the impression that she aligned with the arbitrator. Another Spanish interpreter achieved a similar effect by using first-person plural in translating the voice of an arbitrator. As shown in excerpt (3), he translates the arbitrator’s *my advice* as *aconsejamos* ‘we advise.’ While this could be read as representing the arbitrator’s voice in a “royal we,” it also invites the interpretation that the advice is given by both the arbitrator and the interpreter. This is strongly reminiscent

| 11  | Claimant: No se estuvo por escrito por que se tomó en cuenta que- |
| 12  | interpreter: We didn’t do it in writing because |
| 13  | [we took into consideration+] |
| 14  | Claimant: [Eh, ciertos (lazos)] [familiares que había.] |
| 15  | ‘certain family (ties) that existed’ |
| 16  | Arbitrator: [Sh sh sh!] |
| 17  | Interpreter: [no no no, let me-] |
| 18  | because we- we are even () re/lated, to some extent= |
| 19  | Arbitrator: =Excuse me! + |
| 20  | Interpreter: () Disculpe + |
| 21  | ‘Excuse me’ |
| 22  | Arbitrator: in the future + |
| 23  | Interpreter: en el fu/turo + |
| 24  | ‘in the future’ |

get everything in [writing].

interpolator: [:] [¡/todo es] por escrito! |

‘everything is in writing’
of Berk-Seligson’s (2009) study of bilingual police officers acting as Spanish interpreters in police interviews, where she found numerous comparable examples and argues that by using *nosotros* ‘we’ to translate *I*, the interpreter takes the footing of a co-interrogator (pp. 51–54).

(3)

1 Arbitrator: Ma’am? Ma’am?  
   {addressing the defendant}
2 My only advice to [you] +
3 Interpreter: [Lo que] le aconsejamos  
   {'What we recommend to you'}
4 [es que] +  
   {'is that'}
5 Arbitrator: [is if-]
6 Claimant: [Five] months!
7 Arbitrator: if you’re going to move +
8 Interpreter: si se va a mudar +  
   {'If you’re going to move . . . '}
9 Arbitrator: do so
10 Interpreter: hágalo  
   {'do it'}

The view that the interpreter in excerpt (3) is aligned with the arbitrator is also supported by the seating arrangement in the courtroom, as the interpreter sat next to the arbitrator at a table, with both facing the Spanish-speaking litigant. By contrast, other interpreters typically sit or stand next to the litigant, facing the arbitrator. In addition, the hearing in excerpt (3) was the final one of at least four successive hearings in which the arbitrator and interpreter worked in tandem, remaining in their seats all along, as each new set of litigants took place across from them. Moreover, in both excerpts (2) and (3), arbitrators and interpreters closely coordinate each other’s turns, especially during the final “teaching” sequence, when there is no overlap, but frequent pauses after short clauses, which are sustained by a “continuing” intonation.

**Direct translation versus reported speech**

As seen in excerpt (3), the identity of interpreters and their relationship to other participants can be related to variation in their language use. For example, Berk-Seligson (1990:103) argues that interpreters may avoid overt expressions of agency to deflect blame from individuals with whom they sympathize.8
Another stylistic feature particularly relevant to investigations of the interpreter’s role is the choice between direct and indirect translation—that is, whether interpreters translate another person’s speech in the first person or in the third person. In direct translation, interpreters speak in the voice of the person whose speech they are translating (the source speaker), whereas in indirect translation, they speak in their own voice about the source speaker, often using reported speech. If a male witness says in Spanish *juro decir la verdad* ‘I swear to tell the truth,’ this can be rendered in direct speech as *I swear to tell the truth*, or in indirect speech as *he swears to tell the truth*. In addition, the rendition could be introduced by a reporting verb and hence framed as reported speech, which itself can be direct (*he says: “I swear to tell the truth”*) or indirect (*he says he swears to tell the truth*), as noted by Bot (2005:246), who describes these forms as representations rather than translations. Like indirect translation, reported speech also refers to the source speaker in the third person, whether in the main verb or in the reporting verb only, and hence contrasts primarily with direct translation. The choice between these variants can thus be seen as concerning the interpreter’s relationship to the source speaker, but more generally it is also tied to the interpreters’ understanding of their own role within the participation framework of the interactional situation.

The choice between direct and indirect translation has received considerable attention in the legal sphere. In many jurisdictions, legal guidelines for court interpreting explicitly require interpreters to use first person to refer to the participant whose speech they are translating (see Berk-Seligson 1990:232, 237; Edwards 1995:83). For New York state courts, the *UCS Court Interpreter Manual and Code of Ethics* specifies that court interpreters shall “utilize the first person singular when interpreting” “to ensure that all parties are properly identified for the record” (New York State Unified Court System 2008:10). Furthermore, when speaking for themselves, they are required to use the third-person singular, as in “Your Honor, the interpreter cannot hear the witness.” Similarly, the *Code of Ethics and Professional Responsibilities* of NAJIT, which is binding for its members, states that “Court interpreters are to use the same grammatical person as the speaker” (Canon 5, “Protocol and Demeanor”). This normative character of direct translation in court interpreting is also present in other countries. For example, it is included in the interpreting norms established by the Canadian Supreme Court (Bergeron 2002:228), as well as in the recommendations presented by Moeketsi (1999:174) for court interpreting in South Africa, or by Colin and Morris (1996) for Great Britain (as quoted in Wadensjö 1998:241). This legal requirement to use first person to represent the voice of the source speaker is strongly tied to language ideologies about the legal status of translated speech, specifically the belief that interpreters can and do produce “verbatim” translations whose propositional content is identical to the source talk,
what Haviland (2003:767) describes as the ideology of “referential transparency.” Based on this ideology, the interpreter’s words take the place of the LOTE speaker’s testimony—that is, legally, they are the words of the LOTE speaker (see Berk-Seligson 2000:225). Consequently, official transcripts of trials do not include utterances made in a language other than English (cf. Berk-Seligson 1990:31; Haviland 2003:768), as the voice of the interpreter has become the voice of the person whose speech is being translated. For the same reason, bilingual jurors in the United States are often instructed to disregard Spanish-language testimony and take the interpreter’s English translation as the sole legitimate form of testimony (cf. Tiersma 1999:177).

Given this emphasis on direct translation in legal guidelines, it is not surprising that the court interpreters with whom I spoke in small claims court denied using reported speech and dismissed it as an unprofessional practice. This view is echoed by authors in interpreting studies, who often characterize direct translation as an index of professionalism in interpreting (e.g., Berk-Seligson 1990:65). Harris (1990:115–116) notes that first-person usage is “one of the first things interpretation students have to be told to be consistent about.” As a professional norm, it can also be understood as part of a professional register of court interpreters, in contrast to nonprofessional interpreting, where the use of reported speech is prevalent (see, e.g., Bot 2005:239). Along the same lines, Knapp and Knapp-Potthoff (1985:451) see the use of reported speech as characteristic of what they call “language mediation” events (“Sprachmittlertätigkeit”)—that is, nonprofessional “natural translation” in which the mediator plays an active role in the interaction. Empirical studies on nonprofessional interpreting in institutional contexts often contain examples of reported speech, but not of first-person reference to the source speaker (see, e.g., Valdés 2003; Meyer 2004).

The use of direct speech thus indexes the court interpreter’s professionalism and adherence to legal norms, but from the perspective of interactional analysis, it also has to be seen as projecting a participation framework and defining the interpreter’s own role within it. This has been explored in detail by Cecilia Wadensjö (1998) in her book *Interpreting as Interaction*, where she draws on Goffman’s (1974; 1981) work of frames and footing to describe the choice between interpreting styles as one of “replaying” versus “displaying.” In Wadensjö’s model, direct translation is characterized as an act of “relaying by replaying,” which is “re-presenting the whole appearance of another person’s utterance” (p. 19). In Goffman’s (1981:144) terminology of participant roles, the interpreter is limited to the role of “animator” of the translated utterance, its “sounding box,” and does not speak as the “principal” “whose position is established by the words that are spoken.” Moreover, relaying by replaying also positions the interpreter as the recipient rather than the addressee of a given source utterance, although other participants may break this footing, just as they may fail to recognize that the interpreter is not the
principal (see below). These characterizations separate the physical components of speaking and hearing from their interactional components. As Goffman (1981:144) writes, “animator and recipient are part of the same level and mode of analysis . . . not social roles in the full sense so much as functional nodes in a communication system.” This reduction of the interpreter’s language use to its physical components makes it possible to see the interpreter as functioning as “invisible” (Berk-Seligson 1990:54) or as a machine-like conduit, which is often held as the ideal for interpreting in the legal context, as noted by Pöchhacker (2004:147).

The implications for the participant roles are very different when the interpreter interprets in reported speech, referring to the source speaker as he or she. Wadensjö (1998:19) describes such third-person reference as “relaying by displaying”—that is, “presenting the other’s words and simultaneously emphasizing personal non-involvement in what they voice.” In this mode, interpreters explicitly mark the source speaker as the author and principal of the reported speech, while at the same time occupying these positions themselves in the reporting frame or quotative. With “displaying” mode, interpreters thus introduce their own voice, and so we can speak with Bakhtin (1981:324) of a double-voiced discourse that “serves two speakers at the same time and expresses simultaneously two different intentions,” namely the intention of the translated source speaker as well as that of the interpreter himself or herself.

Wadensjö’s understanding of displaying mode as a distancing move, “emphasizing personal non-involvement” with the words of the source speaker, is widely shared in interpreting studies (cf. Harris 1990; Shlesinger 1991:152; Morris 1995:35; Mason 1999:152). In particular, this choice may be prompted by a fear that in direct translation, the interpreter could be misunderstood as being responsible for the content (i.e., as the principal, in Goffman’s terms). Berk-Seligson (1990:116) notes that “the pronoun yo (“I”) can be a dangerous word,” and Wadensjö (1998:239) cites a powerful example of a misunderstanding in which a LOTE speaker mistook the interpreter as expressing her own opinion when using first person in translation. On the other hand, indirect translation can also be related to advocacy, because interpreters who argue on behalf of another person will need to use first person to refer to themselves (comparable to an attorney who will say my client is innocent, rather than I am innocent). This has been pointed out by Lang (1976:338), who describes first-person translation as incompatible with an interpreter’s assumption of the role of an intermediary (see also Inghilleri 2003:258). Below I will show factors that influence the interpreter’s choice between direct and indirect translation, and the consequences of their choices. However, first I will show that a full understanding of the distinction between direct and indirect translation requires consideration of the addressee role, in addition to the role of the speaker.
**Addressee status in interpreting**

Most linguistic treatments of the contrast between direct and indirect translation, such as those by Wadensjö (1998) and Bot (2005), focus on the roles of interpreter and source speaker, and especially on the contrast between first and third person to represent the voice of the source speaker. However, a shift in footing (or “deictic shift”) between these two modes also affects the participant roles of other participants, such as the addressee of the source talk and the recipient of the interpreter’s target rendition, both of whom may be referred to by second-person singular forms. In dialogue interpreting, when there are only two participants besides the interpreter, these two roles generally overlap (unless the interpreter is being addressed). That is, when one speaker asks a question, it is usually addressed to the other-language speaker who depends on the interpreter’s rendition to understand it. However, the roles do not always overlap when more than two participants are involved in the interaction, as is often the case in court interpreting. In particular, the roles of source addressee and target recipient diverge when the interpreter interprets interaction between two English speakers for the benefit of an overhearing LOTE speaker. For example, when an arbitrator asks a question of an English-speaking witness and the witness responds, the interpreter interprets this so the LOTE-speaking litigant can follow the proceedings. Such passages are often interpreted simultaneously, in whispering or “chuchotage” mode (see Chapter 5). In Goffman’s terminology, the LOTE speaker in such situations is the recipient of the interpreter’s target rendition, but in the role of an overhearer, not as the addressee of the arbitrator’s source question or the witness’s response. This can be illustrated schematically, as shown in Figure 4.1, where participants are labeled as speakers A, B, and C, and I for interpreter, and with dotted arrows pointing to the addressee of an utterance and solid arrows pointing to its primary recipient (see Angermeyer 2005a:211, modifying a schema introduced by Knapp & Knapp-Potthoff 1985).

The scenario schematized in Figure 4.1 has consequences for the use and interpretation of second-person address forms. When the source speaker (S\(_A\)) uses *you*, it is not to address the target recipient (S\(_B\)) but to address another participant (S\(_C\)). Consequently, when the interpreter interprets in “replaying” mode, second-person forms refer to the addressee

```
1. S\(_C\) → S\(_A\)
2. I → S\(_B\)
3. S\(_C\) → S\(_A\)
4. I → S\(_B\)
```

**FIGURE 4.1.** Interpreting for an unaddressed recipient (overhearer)
of the source talk (here $S_C$), in line with legal guidelines that require the interpreter to use the same grammatical person found in the source (see above). Moreover, if the source speaker refers to the target recipient, it is in the third person and will be rendered as such by the interpreter. By contrast, when the interpreter uses “displaying” mode, second-person forms refer to the target recipient (here $S_B$), and third person will be used to refer to the source addressee ($S_C$). This can be illustrated with excerpt (4), in which a Spanish interpreter shifts from “replaying” to “displaying” mode while translating a claimant’s testimony from English into Spanish for the benefit of an overhearing Spanish-speaking defendant. The dispute is about a car accident, and the claimant uses a diagram to describe the defendant’s actions that he believes led to the collision (see Angermeyer 2009:18). In doing so, he refers to the defendant in the third person (he’s hit me right here, line 3). As can be seen, the interpreter first interprets in direct speech, referring to the claimant in the first person and to the defendant in the third person (él me dio aquí ‘he hit me here’ in line 4). A moment later, he changes his stance toward the participants, engaging in a deictic shift that changes how he refers to the claimant and the defendant. Now he refers to the source speaker in the third person and addresses the overhearing Spanish speaker with the polite form of address (see Usted le dio por aquí ‘you hit him from here’ in line 10). In addition, the interpreter signals this deictic shift by framing his translation as reported speech (él dice que ‘he says that,’ line 9). For clarification, all pronominal references to the claimant are in bold, and references to the defendant are in small capitals.

(4)

1 Claimant: Uh, he’s travelling from this way, {pointing at diagram}

2 Interpreter: Él estaba [viajando hacia aquí.]
   {‘He was traveling towards here’}

3 Claimant: [and he’s hit me right] here.

4 Interpreter: Él me dio aquí.
   {‘he hit me here’}

5 Claimant: (.) I traveling [from this way],

6 (Attorney): [(xxx-)]

7 Claimant: (.7) and going to the Jackie [Robinson Parkway.]

8 Interpreter: [él venía de la otra] manera,
   {‘he came from the other way’}

9   él dice que Usted iba de aquí, él venía de aquí,
   {‘he says that YOU came from here, he came from here’}

10 hizo una izquierda, Usted le dio por aquí.
   {‘made a left, you hit him here’}
Excerpt (4) illustrates that, contrary to how they are often described in interpreting studies or in legal guidelines to interpreting, deictic shifts between direct and indirect translation do not involve merely the interpreter’s reference to the source speaker (i.e., the choice between “I-form” and reported speech) but affect the entire constellation of participants. In fact, in some cases it may well be the desire to use second person to address the target recipient that triggers the deictic shift for reference to the other participants as well.\(^{11}\) Importantly, in situations like those schematized in Figure 4.1, the target recipient is often the only person in the room who speaks the LOTE, and thus constitutes the entire audience for anything said in that language. Consequently the target recipient is likely to feel addressed by any second-person pronoun uttered in the LOTE, especially if he or she is unfamiliar with professional interpreting norms, and if the interpreter is whispering (see excerpt (5) below). As I argue in Angermeyer (2009), interpreters have to negotiate between two different sets of interpreting norms, on the one hand the norms of the institution and on the other hand the expectations of lay participants, who are likely to be more familiar with nonprofessional interpreting that relies on reported speech. Deictic shifts that involve the use of second-person pronouns for an unaddressed target recipient may thus be understood as a form of accommodation to community norms of nonprofessional interpreting.\(^{12}\) This may well be the case with the interpreter in excerpt (4), a man in his 50s with many years of experience as a professional court interpreter. In a quantitative analysis of interpreting styles, he (“Jorge”) was found to frequently use reported speech when translating into Spanish, but never when translating from Spanish into English (see the data in Table 4.2). Jorge effectively used two different sets of interpreting norms, depending on the target language and target audience.

Given these findings, Wadensjö’s contrast between relaying by replaying and relaying by displaying can be described as shown in Table 4.1, which

<table>
<thead>
<tr>
<th>Participant</th>
<th>Source-centered interpreting (direct translation, relaying by replaying)</th>
<th>Target-centered interpreting (reported speech or indirect translation, relaying by displaying)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source speaker</td>
<td>First person</td>
<td>Third person</td>
</tr>
<tr>
<td>Interpreter</td>
<td>Third person</td>
<td>First person</td>
</tr>
<tr>
<td>Target recipient</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ if addressed by source talk</td>
<td>Second person</td>
<td>Second person</td>
</tr>
<tr>
<td>▪ if not addressed by source talk</td>
<td>Third person</td>
<td>Second person</td>
</tr>
<tr>
<td>Other participant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>▪ if addressed by source talk</td>
<td>Second person</td>
<td>Third person</td>
</tr>
<tr>
<td>▪ if not addressed by source talk</td>
<td>Third person</td>
<td>Third person</td>
</tr>
</tbody>
</table>
shows the grammatical person used for a given participant in each interpreting style. The inclusion of second-person reference into the model reframes the contrast between replaying and displaying modes as one between a source-centered and a target-centered approach to interpreting. In other words, in “relaying by displaying,” person marking in the interpreter’s speech is determined by participant relations in the target, that is between the interpreter and the person receiving the translation. Consequently, first person always refers to the interpreter, second person always refers to the target recipient, and third person refers to any other participant. By contrast, in “relaying by replaying,” person marking is based on the participant relations in the source talk, with first and second person being reserved for the source speaker and the source addressee, no matter what their role is in the target. This can lead to miscommunication when the participant relations of the source talk are not clear to the target recipient (Angermeyer 2005a). Such miscommunication happens frequently at the beginning of a new “macro turn,” for example when the arbitrator addresses the defendant for the first time, after the claimant has presented an initial narrative. This can be seen in excerpt (5), from a dispute between a Polish-speaking landlady and her tenant (see Angermeyer 2005a:215). The arbitrator poses a question to the defendant, addressing her as you (line 1), yet once the interpreter has translated this question in direct speech (line 3), the claimant evidently feels addressed and responds (line 4), even though the defendant has already begun responding to it herself (line 2). This shows that, for a person with limited proficiency in English who is focused on the interpreter throughout the interaction, the use of address forms may override other contextual cues about participation status, such as gaze direction or other participants’ turn attempts.

(5)

1 Arbitrator: {addressing the defendant} Do you have a lease with this lady?
2 Defendant: () I have uh-
   Interpreter: {for the benefit of the Polish-speaking claimant}
3 =Czy ma Pani umowę z tą panią?
   {‘Do you, Ma’am, have a contract with this lady?’}
4 Claimant: No ja to nie [mam umowy-]
   {‘But I don’t have a contract.’}
5 Interpreter: [Nie nie] nie, Pani. Ja tylko tłumaczę co pani pyta.
   {‘No no no, Ma’am. I’m only translating what the lady is asking’}

The claimant’s response in line 4 prompts the interpreter to step out of her institutionally mandated role to reprimand the claimant for speaking out of turn (line 5). In doing so, she uses first person to refer to herself (ja); thus
she is now breaking the very interpreting norms she upheld in her previous turn, where a deictic shift could have prevented the misunderstanding from occurring in the first place. The interpreter’s metalinguistic comment in line 5 (‘I’m only translating what the lady is asking’) can be understood as an attempt to “explain” the institutional norms, but it also provides evidence of underlying language ideologies. The Polish interpreter characterizes her earlier adherence to direct speech as “only translating” (i.e., as talk that is nothing more than translation). Her comment can thus be taken to imply that an alternative, target-centered approach that engages in deictic shift to avoid ambiguity would be more than just translating.

Examples such as excerpt (5) show an inherent shortcoming of direct speech in court interpreting. Forced to limit themselves to “replaying,” professional court interpreters are unable to assign the participant role of overhearer to their recipients, making misunderstandings likely whenever the role assignment is not clear from the context. However, as shown in Angermeyer (2005a), this particular Polish interpreter actually sometimes managed to mark the role assignment without overtly breaking professional norms, namely by exploiting the Polish distinction between familiar and formal forms of address. In two hearings, she consistently used the familiar form (ty) when target recipients were not addressed by the source speaker and the courteous form (Pani/Pani) when they were being addressed (see Angermeyer 2005a:219). Unlike in excerpt (5), where she uses the courteous form Pani for an unaddressed recipient, these other uses did not lead to miscommunication. When asked, she denied that the usage of ty was intentional, and it may perhaps be attributed to the fact that it occurred during simultaneous interpreting, when interpreters are pressed for time and optional marked features like politeness may be elided (Angermeyer 2005a:220).

As Clark (1992:222) points out, speakers must assign participant roles to their audience members with each utterance they produce. In dialogue interpreting, interpreters are generally relieved from this task when only two primary participants are present, because the hearer role of the target participant is unambiguous. However, the findings of this study show that, when more than two primary participants are involved in an interpreter-mediated interaction, role assignment becomes a necessary part of the interpreter’s task. The analysis thus provides further support for Wadensjö’s (1998) claim that talk-coordinating activities form an inherent part of the dialogue interpreter’s task that is inseparable from “pure” translational activities (see also Chapter 5).

**Motivations for deictic shift**

In the above section, I have shown that the choice between direct and indirect translation can be understood as a choice between source-centered and
target-centered interpreting—that is, between interpreting that focuses on replaying source speech and interpreting that focuses on the understanding of the target recipient. Consequently, the choice relates directly to how interpreters view their role in the courtroom and their relationship to the other participants, especially to fellow LOTE speakers. In the remainder of this chapter, I will further outline factors that influence the interpreters’ choice between the two styles, drawing on both quantitative and qualitative findings.

In Angermeyer (2009), I conducted a quantitative analysis that explored the use of indirect translation in transcribed data from 15 interpreters. Tokens were defined as pairs of corresponding source and target utterances. Of a total of 5,908 utterance pairs, 2,213 included first-person reference to the source speaker in the source utterance. Of these, 1,645 also had first-person reference in the target (74.3%), 161 had third person instead (7.3%), 359 had no reference to the source speaker (16.2%), and the remaining 48 were ambiguous or unclear. These tokens were coded for a variety of factors, including interpreter, source speaker, direction of interpreting, and topic, which were then tested for statistical significance in a multivariate analysis, using the Goldvarb 2001 software (Robinson, Lawrence, & Tagliamonte 2001).

Direction of interpreting (coded together with source speaker) was found to be the most significant factor predicting the use of indirect translation. As can be seen in Table 4.2, interpreters used third person only 1% of the time when they translated from an LOTE into English (14/1,138). By contrast, they used it in 14% of tokens when translating from English into the LOTE (147/1,027). This finding can be explained in a number of ways. For one, if third-person reference can be taken to indicate the interpreter’s noninvolvement with the voice of the translated speaker (following Wadensjö 1998), then the findings suggest that interpreters have little reason to disassociate themselves from LOTE-speaking litigants and more reason to do so with arbitrators, attorneys, or English-speaking litigants. However, the different rates of indirect translation can also be seen as resulting from pragmatic differences between interpreting into English and interpreting into the LOTE. Importantly, interpreting into English occurs only during the LOTE speaker’s testimony, so that the identity of the source speaker is never in doubt (see the discussion of excerpt (7) below). Furthermore, interpreting into English occurs nearly always in short consecutive mode, which gives interpreters more time to produce close renditions of the source talk rather than summaries or paraphrases (see Chapter 5). In addition to such pragmatic factors, the differences can also be attributed to institutional norms and ideology. When interpreting into English, any break with institutional norms is more likely to be noticed by supervisors or other court staff than it would be when translating into the LOTE. Consequently, it is not surprising that 10 of 15 interpreters avoid indirect translation altogether in this environment. Moreover, the only interpreter who uses it with any kind of regularity at all (15%) is a per
diem interpreter rather than a staff interpreter (“Jerzy”), and he engages in several instances of self-correction toward direct translation, showing that he is well aware of the institutional norms (see Angermeyer 2009:12).

The findings thus show that the interpreters in this study largely adhered to institutional norms, especially when translating into English. However, all interpreters used indirect translation at least once, and they differed greatly in the extent to which they used it when translating from English into the LOTE, as shown in Table 4.2, where interpreters are identified by pseudonyms (note that “Ivan,” the only interpreter with a rate of 0% in the table, did use indirect translation when translating an utterance that did not have first-person reference in the source). While most interpreters used third-person reference only sparingly, three interpreters used it in the majority of the cases when they translated from English (Jorge 81%, Yves 63%, and Jerzy 57%), accounting for over two thirds of all tokens in this environment (102/147). As noted

The table includes only tokens with first-person reference in the source and excludes those where reference in the target is unclear or ambiguous. Data from less frequent categories of source speakers (e.g., attorneys) are not shown but are included in the total figures for each interpreter. Interpreters are ordered in descending frequency of third-person use (see Angermeyer 2009:10).
in Angermeyer (2009:21), these three interpreters are men in their 50s with an assertive, self-assured demeanor. The two staff interpreters, Jorge and Yves, were both observed as they interrupted participants who did not give them sufficient time to translate, something that most other interpreters did not do (see Chapter 5). Jerzy was observed as he interrupted an arbitrator to make sure that the Polish-speaking litigants had truly understood a settlement proposal (see Angermeyer 2009:22 and below).

In addition to the factors discussed so far, Table 4.2 also shows that the interpreters’ rates of third-person usage differ based on the category of source speakers. Specifically, indirect translation is more common when interpreters translate the voice of an English-speaking litigant (21%) than when they translate the voice of an arbitrator (9%). Moreover, when arbitrators are divided into two groups based on their legal ideology and courtroom demeanor (see Chapter 3), indirect translation is used significantly more with “fast” arbitrators (16.8%) than with “slow” arbitrators (5.8%) (see Angermeyer 2009:14). Both findings can be interpreted with reference to Wadensjö’s (1998:19) notion that indirect translation indicates the interpreter’s personal noninvolvement with the voice of the source speaker, as both categories of source speakers are likely to take confrontational stances towards the LOTE-speaking target recipients, which may prompt the interpreters to disassociate themselves from them. In the dataset, any English-speaking litigant is the opponent of the LOTE-speaking target recipient, and thus there are by definition disagreements between them. And, as shown in Chapter 3, “fast” arbitrators often interrupt the litigants’ testimony, leaving them frustrated about not being able to say what they want to say. Given that direct translation carries with it the risk that the interpreter is falsely identified as the author of a message, interpreters may thus engage in deictic shift to avoid being blamed for an unwelcome message. The same explanation is also relevant for the final factor that was found to be statistically significant in favoring the use of indirect translation, namely the topic of an arbitrator’s speech. When arbitrators (“fast” or “slow”) spoke about their decision-making role, interpreters used third person more frequently (17.8%) than when the arbitrators spoke of other topics (6.9%). This corresponds to findings by Berk-Seligson (1990:115), who observed that many interpreters “systematically avoid” first- and second-person pronouns during sentencing. However, rather than using indirect translation, the interpreters in Berk-Seligson’s study achieved such avoidance by changing from active to passive voice. This can be found in my data as well, as shown in the following excerpt from a case with a Russian-speaking claimant. As noted in Chapter 3, arbitrators in New York small claims court do not generally announce their decision but rather have it mailed to litigants in writing. Exceptions to this policy are made when cases are discontinued for procedural reasons, as in excerpt (6). As the arbitrator announces this using first-person plural (we’re gonna discontinue in line 1), the interpreter renders
this with an agentless passive construction (delo budet prervano ‘the case will be discontinued,’ line 4).

(6)

1 Arbitrator: We’re gonna /discontinue this without prejudice so you can [sue the right party]
2 Claimant: [Čto tak on-] ‘what is he-’
3 Interpreter: Vy- uh- Delo budet prervano ‘you- the case will be discontinued’
4 s- s pravom vozvrata ‘with the right of return’
5 Arbitrator: Okay?= 
6 Interpreter: =čtoby vy mogli sudit’ pravil’no-
7 ‘so that you can sue the right-’

This shows that indirect translation is just one of a range of moves that interpreters can use to avoid alignment with the source speaker. In fact, as noted above, the omission of first-person reference in the target is actually more frequent than full deictic shifts to third person, as 16.2% of all tokens with first person in the source had no reference to the source speaker in the target. In contrast to indirect speech, such reference avoidance does not involve a deictic shift of the entire participation framework, and therefore its relationship to the interpreter’s stance is less likely to be detected by others.

Other contextual factors for deictic shifts did not lend themselves to quantitative analysis because the relevant environments were too infrequent. However, given the above findings about the need for interpreters to assign participant roles, it is not surprising that deictic shifts are found to occur in situations when there is a potential for misunderstanding of speaker roles, such as when a new speaker self-selects, or in situations of overlap when multiple participants compete for the floor. This is shown in excerpt (7), where an English-speaking defendant is asking for the arbitrator’s permission to respond to the testimony of a Spanish-speaking claimant (line 4). As can be seen in line 6, the interpreter uses third person in translating the defendant’s speech.

(7)

1 Claimant: Y el trabajo está allí y se puede ver.=
          ‘and the work is there and it can be seen’)
2 Interpreter: =The- the work is there and it can be see- (.) sh- seen.
3 Arbitrator: [Okay.]
4 Defendant: [Can I] say something?
5 Arbitrator: Yes.=
6 Interpreter: =Que si él puede decir algo.
          ‘Whether he can say something.’}
As noted above, such pragmatic motivations for deictic shifts arise only when the interpreter is interpreting from English into the LOTE, because hearings never involve situations in which an English-speaking target recipient is the overhearer of talk between two or more LOTE speakers. This parallels findings by Cheung (2012:80–82) in Hong Kong courts, where interpreters used reported speech to distinguish speakers after a speaker change, but only when translating into Cantonese, not when the target language was English (functioning as the language of the court). By contrast, some other contexts for deictic shifts are not limited to one interpreting direction. Excerpt (5) above shows that interpreters may step out of their institutionally proscribed role and break interpreting norms when they or others are experiencing frustration about communication problems or about another participant’s action. Above it was noted that staff interpreters generally align with the goals of the institution, and so moments of frustration arise in particular when litigants fail to follow desired practices. An example of this is shown in excerpt (8), a rare use of reported speech by a Spanish staff interpreter translating into English. At the end of an exceptionally long hearing (close to an hour), the interpreter (“Isabel”) prefaces her translation of the defendant’s turn with a comment to the arbitrator, communicating her annoyance about the fact that the defendant’s “last point” turns out to be a repetition of something he has said many times before (*He’s asking the same question*, line 9). In doing so, she refers to the defendant in the third person and then proceeds to use indirect translation (*They had agreed for quedamos ‘we agreed’*), one of very few instances where she does so (see Table 4.2). In addition, her rendition does not show that the defendant is describing a hypothetical scenario (*‘if we agreed’*).

(8)

1 Arbitrator:  (3.1) Anything else?
2 Interpreter:  ¿Algo más?
   {'Anything else’}
3 Arbitrator:  (2.6) Yes?
4 Defendant:  (.8) El último punto (xxx) +
   {'The last point’}
5 Interpreter:  (1.1) Last point+=
6 Defendant:  =Si quedamos- yo le compré todas sus cosas,
   {'If we agreed -- I bought him all his things’}
7 si quedamos que me faltaban esas tres,
   {'if we agreed that I was missing those three’}
8  (2.6) otra vez la pregunta ¿por qué?
   {'again, the question is why?’}
9 Interpreter:  (.7) *He’s asking the same question. They had agreed on ah
10 that he was gonna buy the three ah remaining items,
11 why did he bring all this- this about?
Similar moments of frustration may also prompt judges, arbitrators, or attorneys to address the interpreter instead of the testifying litigant or witness (cf. Berk-Seligson 1990:61; Hale 2004:191). Examples of this could be seen in Chapter 3, in the discussion of excerpts from a hearing in which an arbitrator grew increasingly frustrated with her inability to categorize the Polish claimant’s testimony. As shown in the excerpts, the arbitrator repeatedly addressed the interpreter and used third person to refer to the claimant (What is the relationship between him and him?). Once the communication difficulties were resolved, she proceeded to address the claimant directly (When did you come to work for him?). By contrast, some other arbitrators and attorneys were found to phrase their questions for litigants as addressed to the interpreter (“can you ask him that?”) even in situations in which there was no sign of frustration or of a communication problem. This practice has been observed in other studies of court interpreting (cf. D’hondt 2004:139; Christensen 2008), and Urciuoli (1996:100) claims that it is the norm in the interpreter-mediated interactions she observed in various institutions in New York City. However, this is not the case in small claims court today, as most arbitrators and attorneys address LOTE-speaking litigants directly. This finding suggests that professionals who are experienced in communicating through an interpreter (which is certainly true of frequently serving arbitrators and insurance lawyers) may well learn to avoid this practice that treats LOTE speakers as nonparticipants.

One case in which English speakers often addressed the interpreter was that involving the Polish freelance interpreter Jerzy. He was recorded in a lengthy hearing that involved two Polish-speaking women who had sued the owner of a restaurant where they had worked. The restaurant owner was represented by an attorney, who also questioned the claimants, in addition to the arbitrator. As noted above (see Table 4.2), Jerzy is the only interpreter who regularly used indirect translation when interpreting into English, and this practice may have influenced the arbitrator and the defense attorney to sometimes address him instead of the two Polish-speaking claimants. This is suggested by excerpt (9), where the arbitrator initially addresses one of the claimants as you (line 1) but then uses third person to refer to her (line 6) after the interpreter has used indirect translation (line 5). Meanwhile, the interpreter’s use of third person may be motivated by the fact that both claimants speak in response to the question (lines 3 and 4), so that the interpreter’s turn can be understood as summarizing two source utterances rather than translating them each separately.

(9)

1 Arbitrator: What kind of work do you do?
2 Interpreter: Jaką pracę wyścic robili tam?
   {'What kind of work did you (pl.) do over there'}
This illustrates that the projection of a particular participation framework is not solely the choice of the speaker but also has to be seen as relating to prior uses by other participants. The same is true for the interpreter’s choice between direct and indirect translation, as it becomes more difficult for interpreters to sustain the professional norm of direct translation when they are being treated as an interlocutor by other participants. In fact, when interpreters are addressed by other participants who mean to ask a question of a LOTE speaker, they routinely engage in a deictic shift by addressing the target recipient in their rendition.

The analysis has thus shown that deictic shifts from normative direct translation to indirect translation are conditioned by a variety of contextual factors. However, many of the examples given above suggest that they are perhaps best understood as a reaction to some kind of interactional trouble source, and it is by identifying these trouble sources that examples of deictic shift can be used to shed light on the interpreters’ understanding of their own role in the interaction. These trouble sources may be purely pragmatic (such as the need to identify participant roles), or they may be located in the participants’ stances toward each other or toward the court (compare Wadensjö 1998:202). When the interpreter is translating into the LOTE, such a trouble source may be a litigant’s confrontational stance or a “fast” arbitrator’s curt interruption, as both of them are likely to be met with disagreement by the target recipient. When the interpreter is translating from the LOTE, trouble sources often involve the source speaker’s failure to adhere to institutional norms, for example by repeating testimony (see excerpt (8) above), by speaking out of turn (as in excerpt (5) above), or by failing to pause for consecutive interpretation (see Chapter 5). Thus, while these deictic shifts represent violations of the legal guidelines for court interpreting, they occur in contexts in which interpreters affirm their alignment with institutional goals. This is true for all of the rare instances of deictic shift in English that are produced by the staff interpreters in the sample, but it is not always true of those produced by Jerzy, the Polish per diem interpreter mentioned above. When Jerzy uses indirect translation to interpret the voice of two Polish claimants, the trouble sources that he reacts to are not rooted in institutional norms but rather in problems of communication. When he breaks with professional interpreting norms, it is often in the attempt to check and enhance the target recipients’ comprehension and to ensure their full participation in the interaction.
In such moments, he speaks about the claimants on their behalf rather than speaking as them. This became especially clear toward the end of the hearing, when the arbitrator suggested a compromise about the disputed amount of outstanding wage payments, as shown in excerpt (10). Prior to the excerpt, the claimants had been unable to support their claim with written documentation or witness testimony, while the defendant had indicated that he was willing to pay a portion of the claimed amount. These developments prompt the arbitrator to propose a settlement, and the interpreter translates this into Polish using indirect translation (arbiter in line 3, and on in lines 17 and 24) as well as direct reported speech (on mówi gwarantuję ‘he says I guarantee’ in lines 6 and 8). In using reported speech, Jerzy disassociates himself from the settlement offer and from the implied suggestion that the claimants’ testimony alone is not sufficient to substantiate the claim. However, the participant roles become blurred when the arbitrator himself uses reported speech (lines 26–29) to paraphrase the defendant’s position. The interpreter translates this verbatim, using the same reporting frame as before ((on mówi ‘he says’ in lines 30 and 31), but without making explicit that third person now refers to the defendant rather than to the arbitrator. Consequently, he could be misunderstood as attributing the defendant’s position to the arbitrator, although the claimants’ reactions do not suggest that this is the case (see line 34).

(10)

1 Arbitrator: Do you want me to ask these people whether they want me to try to /pursue () a settlement offer?
2 Interpreter: (.6) Czy wy chceci, żeby arbiter przeprowadził negocjacje, {‘whether you want the arbitrator to conduct negotiations’}
3 żeby jakoś domówić z gospodarzem?
{‘to somehow make a deal with the restaurant owner’}
4 Arbitrator: (9) I guarantee you, the offer will be less+
5 Interpreter: uh [on mówi]
{‘he says’}
6 [than what-] than what you’re [suing for.]
7 Arbitrator: [gwarantuje że]
{‘I guarantee that’}
8 pieniędze+
{‘the money’}
9 Claimant 2: Jak [gwarantuje?]
{‘How, he guarantees?’}
10 Interpreter: [będzie mniej] pieniędzy aniżeli tutaj jest (.8)
{‘it will be less money than is here’}
11 Arbitrator: [But if it’s ca-]
12 Interpreter: [że będzie mniej] pieniędzy.
{‘that it will be less money’}
As shown in lines 14 and 19, one of the claimants refuses the proposal, insisting that the defendant owes them exactly the amount they are suing for. In translating the claimant’s speech into English, the interpreter is using direct translation (us in line 20), although he does not interpret all of the claimants’ turns, many of which overlap with the arbitrator’s talk or the interpreter’s rendition of it (lines 10, 14, and 21). In the turns following this excerpt, both claimants and the defendant reiterate their positions; seeing that the claimants are not interested in a settlement, the arbitrator announces that the hearing is over, as shown in excerpt (11). At this point, the interpreter intervenes
to check the claimants’ understanding of the situation, a very unusual move that violates legal guidelines for court interpreters and would be considered unprofessional by staff interpreters. As can be seen in line 4, he addresses the arbitrator in his own voice (hold on), instead of interpreting the arbitrator’s prior turn or the claimants’ protestations (lines 2 and 3). In doing so, Jerzy uses first person to refer to himself and the third person to refer to the litigants (I wanna ask them again). Evidently, he wants to verify that the claimants understand their options before refusing the settlement offer, and so he engages them in a discussion about settling the case (lines 4–28), which culminates in an assessment that the evidence boils down to conflicting oral testimony (line 24). The claimants repeatedly accuse the defendant of not telling the truth (lines 2, 5, 26, and 29), yet it also appears that the first claimant doesn’t recognize that there is a need for additional proof (line 21). Meanwhile, the second claimant proposes a postponement in order for the claimant’s former supervisor to testify (lines 7, 9, 11, and 13), a possibility that had been raised earlier but that had not been pursued by the arbitrator and is not translated by the interpreter now. Both claimants continue to appear unwilling to accept a partial payment, and so the interpreter abandons his intervention (lines 27 and 30) while making no effort to interpret the claimants’ comments into English. Finally, the arbitrator interrupts (line 28) by turning the interpreter’s attention to an administrative matter (claimant 2 had not yet given her written consent to arbitration).

(11)
1  Arbitrator: So [the uh] hearing [is over], I’ll render my award–=
2  Claimant 2: [On kłamie!] (‘He’s lying!’)
3  Claimant 1: [(On xxx xxx)]
5  Claimant 2: [On kłamie!] (‘He’s lying!’)
6  Arbitrator: [Okay.]
7  Claimant 2: [No niech-] niech Tatyana [przyjdzie] =
   {‘But let- let Tatyana come (to court)’}
8  Interpreter: [Czy- czy-]
   {‘if- if—’}
9  Claimant 2: =niech przyjdzie jako menadżer.
   {‘let her come as manager’}
10 Interpreter: czy chcecie, żeby on
    {‘do you want him to’}
11 Claimant 2: [Tatyana]
12 Interpreter: [z nim prowadził] negocjacje albo jak?
    {‘conduct negotiations with him or what?’}
The turn sequence in excerpt (12) is highly unusual in the dataset, as it consists of an extended untranslated byplay in a language other than English, which is not understood by the English-speaking participants and therefore temporarily excludes them from the interaction (see Angermeyer 2009:22). During the exchange, Jerzy reiterates points made earlier by the arbitrator, but he is not framing them as a translation. While this gives the impression that he personally thinks that accepting a settlement offer would be a good
idea, he is not telling the claimants what to do. Instead, he is taking a very active role in ensuring that his prior translations have been understood. Nonetheless, his actions are in violation of New York’s *Court Interpreter Manual*, which states that interpreters shall “not simplify or explain statements . . . even when the interpreter believes that the . . . person is unable to understand . . . If necessary, the LEP [Limited English Proficiency] or deaf or hard of hearing person may request an explanation or simplification” (New York State Unified Court System 2008:8). Surveying U.S. ethics codes for court interpreters, Mikkelson (1998:22) notes explicitly that they do not see it as the interpreter’s responsibility to “ensure that the defendant understands the proceedings.” As noted by Morris (1995:26), this is seen as the prerogative of judges and lawyers, who do not want interpreters to take “an active role in the communication process” or “to convey their understanding of speaker meaning and intention” to the other-language speaker. This approach ignores the fact that it is difficult for participants in interpreter-mediated discourse to monitor their interlocutor’s comprehension across a language barrier. As discussed in detail in Chapter 5, interpreter-mediated interaction differs from same-language discourse in various ways that impede the communication between the interlocutors, including the fragmentation of discourse and the frequent lack of back-channeling feedback. Consequently, neither arbitrators nor LOTE-speaking litigants may be aware that a misunderstanding has occurred, and so they are unable to initiate clarification questions. As Wadensjö (1998:198) notes, understanding is a cooperative activity, and in interpreter-mediated discourse, it cannot occur without the cooperation of the interpreter, who is ultimately best positioned to recognize instances of misunderstanding. However, to do this, interpreters need to participate in a collaborative checking of their own understanding of the source talk, which requires them to engage with the source speakers as participants in their own right (Davidson 2002:1297). As a consequence, some scholars of court interpreting have argued that interpreters should be given more latitude to avoid misunderstandings (Morris 1995; Mikkelson 1998), but it does not appear that such considerations have entered into legal policies on court interpreting.

Baraldi and Gavioli (2012:2) argue that the coordinating activities of interpreters affect the ability of participants to actively participate in the interaction, “empowering (or failing to empower) them as agents. . . . Particularly in asymmetric situations involving . . . migrants seeking asylum or defendants in courts, active participation cannot be taken for granted and sometimes takes place only if it is actively empowered in the interaction.” Like the different ideologies of arbitrators described in Chapter 3, the different interpreting styles described in this chapter thus have consequences for LOTE-speaking *pro se* litigants and their ability to succeed in court. The verbatim norm of direct translation is designed to meet the needs of the legal system, as it represents the LOTE speaker’s voice in English in the court record.
But when interpreters insist on following the same norm also when they interpret from English into the LOTE, they may confuse and alienate LOTE-speaking participants by failing to clarify the identity of the source speaker, or by confronting them with talk in their language that is not addressed to them, even though no other possible addressee is present. Similarly, interpreters who reject the lexical choices or linguistic varieties employed by litigants (see Chapter 6) are emphasizing the inadequacy of the litigants’ linguistic repertoire and legal preparedness in the courtroom and in the English-dominant society as a whole. Given these consequences, the adherence to the institutional norms of court interpreting and to prescriptive language ideologies causes these interpreters to assume the role of gatekeepers (Davidson 2000; Jacquemet 2005a) who reproduce the legal system’s control over litigants as well as the subordination of minority-language speakers by the dominant-language group in general.

By contrast, interpreters who accommodate to LOTE-speaking litigants emphasize and actively protect the litigants’ right to participate in the interaction to the fullest degree by helping them gain the floor, by treating them as addressees when translating from English, by ensuring that other participants acknowledge and facilitate the translation process (see Chapter 5), and by accepting nonstandard or code-mixed varieties when these are used by litigants (Chapter 6). Anderson (1976:216) notes that interpreters have obligations to both sides that may not be entirely compatible. However, for Jorge and Yves, two of the exceptional interpreters, it appears that they are. By using direct translation when interpreting into English and reported speech when translating from English into the LOTE, they are simultaneously able to display adherence to the institutional norms of court interpreting (in English) and to accommodate to the needs of LOTE-speaking litigants, as well as distancing themselves from English speakers who act in a confrontational manner toward them. Their interpreting style thus illustrates the way in which interpreters can mediate between participants and by extension between the spheres of the different linguistic communities that are in contact in the courtroom. They are bilinguals who know how to act appropriately in both spheres, transforming the speech of other participants in ways that recognize the needs of the respective target audiences.
Testifying in another language: What’s lost in translation

The previous two chapters have shown how the ability of litigants who speak a language other than English (LOTE) to make themselves heard in arbitration hearings is influenced by the ideological choices of arbitrators and interpreters, some of whom are accommodating toward the litigants while others prioritize adherence to court rules, irrespective of how that constrains the participation of LOTE speakers. Similarly, many previous studies of interpreting in legal settings have explored the ways in which the performance of the interpreter affects the nature of the interaction. In particular, they have identified various features by which interpreters’ renditions may alter the pragmatic force of an examiner’s question or a witness’s testimony. In addition to the deictic shifts discussed in Chapter 4, such features include the omission of discourse markers (Hale 2004), the changing of question types (Rigney 1999; Hale 2004; Morris 2008), the use of passive instead of active voice (Berk-Seligson 1990), the changing of indirect to direct reported speech (Lee 2010), as well as the omission or introduction of hedging and other elements of speech style that may influence perceptions of the source speaker’s credibility among judges or jurors (Berk-Seligson 1990; Hale 2002, 2004; Gómez Diez 2010; Lee 2011). In assessing the impact of interpreting, these studies rely on the comparison of the interpreter’s target utterances to corresponding source utterances, and thus they ultimately align with a traditional concern of translation studies (and interpreter training) with translation equivalence, also described as “accuracy” or “fidelity.” As noted in Chapter 1, translation equivalence is an elusive goal, especially if it is defined as formal equivalence between lexical items and grammatical structures of the two languages involved, as the structural differences that exist between any two linguistic systems make consistent formal equivalence impossible (see, e.g., Lee 2009). Nonetheless, lay observers and legal professionals tend to view interpreting as producing
renditions that are entirely parallel to the source (Haviland 2003). In this, they follow what Wadensjö (1998:22) characterizes as a “talk-as-text” approach that sees meaning as inherent in linguistic form, so that the interpreters’ activity is regarded “solely as [the] production of equivalent texts” (p. 36). Alternatively, scholars have argued for an equivalence of effect rather than of linguistic form (Nida 2004). Wadensjö (1998:24) argues that this requires a “talk-as-activity” approach to interpreting, which recognizes that “meanings are continuously established and re-established between people in actual social interaction.”

However, even if interpreters were able to produce perfectly equivalent renditions of source talk, interpreter-mediated interaction would still differ from same-language talk because it alters the ways in which the participants take turns at talk and monitor their own understanding and that of their interlocutors. In fact, to explore how these aspects of interaction are affected by the involvement of the interpreter, it is important to distinguish between two different communicative situations that litigants encounter in the courtroom, based on their status in the participation framework of the interaction. As noted before, litigants can be actively involved in the interaction as speaker or addressee (e.g., when giving testimony during an examination), or they may be unaddressed recipients of interaction between other participants (e.g., between the arbitrator and the opposing party). In Chapter 4, I showed that these two communicative situations have different implications for interpreting, specifically regarding the use of direct speech. In addition, they also correlate strongly with the interpreter’s working mode—that is, with the choice of consecutive or simultaneous interpreting.

In consecutive interpreting, the source input for the interpreter is delivered in chunks and with pauses that allow the interpreter to translate before the delivery of the input resumes. These pauses often occur at turn boundaries, so that the interpreter’s speech holds the floor before another speaker can take a turn. Alternatively, speakers may pause within extended turns. By contrast, simultaneous interpreting is characterized by “non-stop delivery of the source text and parallel production of the target text” (Alexieva 1997:157)—that is, interpreters have to listen in one language and speak in the other language at the same time. As the source input is uninterrupted, the interpreter does not hold the floor in the participation framework of the source speech. The direction of interpreting is typically constant during simultaneous interpreting but changes frequently during consecutive interpreting when the interpreter alternates between the languages as different source speakers take turns.

In U.S. courtrooms, consecutive interpreting is generally used when LOTE speakers interact with a judge or attorney, for example when they are giving testimony (Berk-Seligson 1990:38). This is sometimes called “witness interpretation” (Méndez 1997:88). Simultaneous interpreting is used when
the interpreter interprets interaction between two English speakers for the benefit of a LOTE-speaking overhearer, such as for example an exchange between a judge and an attorney, or an examination of an English-speaking litigant or witness. This has been termed “proceedings interpretation” (Méndez 1997:88), and it is often done in whispering voice (“chuchotage”) so that the interpreter’s voice is not heard by others, or by the court’s recording equipment (Berk-Seligson 1990:49). As noted, this distribution correlates partially with the direction of interpreting, as interpreting from the LOTE into English is always conducted in consecutive mode and simultaneous interpreting is always done from English into the LOTE. The same distribution of interpreting modes is found in many other jurisdictions, including for example Austria (Kadric 2001:80), Belgium (D’hondt 2004:134), or Denmark (JacobSEN 2012:218). This regular distribution has important consequences for the LOTE speaker’s ability to participate in the hearing, which will be explored in this chapter. Crucially, interpreting fulfills very different purposes during these two situations, and the pragmatic characteristics of the two modes influence the extent to which the LOTE speaker’s communicative needs are being met. In particular, consecutive interpreting is used in interactions in which LOTE speakers attempt to get their point across, answer challenging questions, give credible testimony, and narrate their “story” (a crucial aspect of a successful claim in small claims court, as shown in Chapter 3). Simultaneous interpreting is used when LOTE speakers need to understand the testimony of an opposing party or of a witness, or need to be aware of legal arguments exchanged between legal professionals. In these situations, comprehension is crucial for the LOTE speaker’s ability to challenge others’ testimony, refute accusations, or understand legal charges. Because of these systematic differences, the two situations will be discussed separately, beginning with situations in which interpreters mediate interaction between LOTE speakers and English speakers, before turning to the situation in which LOTE speakers are overhearers. In both situations, the ability of LOTE speakers to participate in the hearing is compared to that of English speakers in the same situation, considering both (near-)native speakers and English learners with limited proficiency (i.e., LOTE speakers who do not use an interpreter and speak in L2 English instead).

The LOTE speaker giving testimony: Miscommunication and disputed language choice in a sample case

In Chapter 3, I discussed the need for litigants to present testimony in narrative form, and I provided evidence that arbitrators prefer testimony given in a discourse style that has been described as rule-oriented by Conley and O’Barr (1990), as they look to classify disputes according to certain categories and
then follow a protocol about required evidence. The example of a successful narrative was from a Russian-speaking claimant who had sued for damages in a car accident. It was argued that claimants in such disputes are likely to present their case in a rule-oriented manner and thus to get their point across successfully, because car accidents are limited to one single event and disputants do not have a prior relationship with each other. In the following section, I will discuss extended excerpts from a case that is very much parallel to the case discussed in Chapter 3, in that it also involves a claim about a car accident, also brought by a Russian immigrant in his 50s. However, this claimant gave testimony twice, with two different arbitrators, once speaking in Russian through the interpreter and once speaking in L2 English. This occurred by coincidence, after the first arbitrator discovered a conflict of interest midway through the proceedings, but it resulted in creating a test case for comparing interpreter-mediated testimony to testimony given in the language of the court, which will be discussed in detail in this chapter. Both hearings differed from most other hearings in my dataset in that they were conducted in a large, crowded courtroom that was used as a waiting room for other litigants whose cases were yet to be processed. Throughout the hearings, court officers were heard making loud announcements to the crowd, calling out the names of litigants whose cases were ready to be heard by arbitrators elsewhere in the building. As a result, the noise level was very high, a factor that several participants commented on during the hearings and after they were over. As will be seen below, this had a significant impact on the court interpreter’s ability to do her job.

The first hearing begins with a brief disagreement about language choice, similar to a case discussed in Chapter 1 (see also Chapter 6). As shown in excerpt (1), the arbitrator, who also has a police report in front of him, asks closed questions that seek to establish the basic background facts of the accident (lines 5, 10, 12, 13, and 14), and the claimant, “Mr. Bessonov,” responds in English, answering yes to confirmation-seeking questions (lines 4, 11, and 15) and stating the location of the accident (lines 7 and 9). The claimant speaks slowly and haltingly, with a false start (line 7) and pauses (see lines 7 and 9, and the long pauses after the arbitrator’s initial question and again in line 22 in excerpt (2) below). His English is marked by a Russian accent, as evidenced in particular by the pronunciation of accident as [aksidjɛnt] in line 7. This form is also used habitually in Russian by the interpreter (instead of the standard form avarija). Perhaps in response to such features of nonnative language use, the arbitrator directs the claimant to speak in Russian (lines 16 and 17), despite the fact that his use of English has not caused any communicative difficulties. The interpreter, who has “tuned out” of interpreting mode after line 6, translates the arbitrator’s directive into Russian. In doing so, she engages in a deictic shift that introduces her own voice (ja vam budu perevodit’ ‘I will translate for you,’ line 19).
Testifying in another language: What’s lost in translation

1. Arbitrator: Where- where did- where did the accident take place?
2. Interpreter: Gde proizoshel akcident?
   \{‘where did the accident occur.’\}
3. Arbitrator: (8.4) Mister () Bessonov?
4. Claimant: [Yes.]
5. Arbitrator: [Where] did [the accident take place?]
6. Interpreter: [Bessonov, gde proizoshel akcident.]
   \{‘Bessonov, where did the accident occur.’\}
7. Claimant: Akcident was on ah Yellowstone Boul- Yellowstone Boulevard. (1.1)
9. Claimant: Sixty (.) [seven]
10. Arbitrator: [Eighth] Road. \{reading off police report\}
12. Arbitrator: And the accident- I got it. \{unclear to whom\}
   Court officer: \{[loudly calling the name of a litigant in another case]\}
13. Arbitrator: [And the accident date was March-] March twenty ninth of O three, correct?
   Court officer: \{[loudly calling the name of another litigant]\}
15. Arbitrator: [Speak in Russian Sir!] \{overlap with officer’s announcement\}
16. Interpreter: [Gоворите по-русски.]
   \{‘Speak Russian.’\}
17. Arbitrator: If you need an interpreter, [then be interpreted.]
18. Interpreter: Esli vam nuzen perevodchik, ja vam budu perevodit’.
   \{‘If you need an interpreter, I’ll interpret.’\}

The arbitrator’s response to the claimant’s use of English is typical of institutional attitudes to interpreter use in that it discourages litigants from speaking English if an interpreter is present (see Chapter 1) and treats the request for an interpreter as an act that cannot be revoked.² During my fieldwork, I observed incidents where litigants wanted to withdraw their requests once they realized that it caused their hearing to be postponed by several weeks. Court clerks generally did not allow this and insisted that once an interpreter had been requested, the hearing could not proceed without one. Arbitrators varied in their response, but several of the small claims court judges I observed were particularly adamant about insisting on interpreter use. One judge repeatedly interrupted a litigant whenever he answered short questions in English. She gave very specific instructions (“You have requested an interpreter, therefore you must testify in your native language, which I assume is Russian”) and grew increasingly angry with each “infraction” by the litigant, viewing even intrasentential codeswitching with Russian as the matrix language as a
violations of “the rules which I put forth regarding testifying in Russian.” This example illustrates an observation by Haviland (2003:772), who points out that courts tend to view the language choice of bilinguals as “purely a matter of volition,” so that violations of language rules (in this case speaking English instead of using the interpreter) are considered “willful acts of disobedience.”

The arbitrator’s wording if you need an interpreter (line 17) shows that interpreting is understood as being assigned based on an absolute need, independent of a person’s ability to communicate in L2 English at a given moment. However, in this particular case, both parties were Russian speakers, so it is possible that the Russian interpreter’s presence was in fact requested by the defendant or his attorney rather than by the claimant. Nonetheless, the soft-spoken claimant complies with the instruction and begins his testimony in Russian in excerpt (2), line 22. The interpreter interprets his first clause into English, but this appears to prompt the claimant to continue in English himself, as he resumes his testimony (line 24). In doing so, he treats the interpreter’s English utterance like an instance of codeswitching during a language negotiation sequence in bilingual speech (see Chapter 6), and he accommodates to her language choice instead of returning to Russian. But, following a loud interruption by a court officer, he does revert to Russian midsentence (line 25), codeswitching between the subject (the driver) and the verb phrase (povernul nalevo ‘turned left’).

(2)

20 Arbitrator: (2.7) Where were you- How do you say the accident took place?
21 Court officer: [(calling the name of another litigant)]
22 Interpreter: [Kak () vy govorite] proizošel aksident?
{‘How are you saying the accident occurred?’}
23 Court officer: [(calling the name of another litigant)]
24 Claimant: (3.1) Ja š- Ja šël prjamo na zelënyj svet +
{‘I was going straight on green light.’}
25 Interpreter: I was going on re- on green light +
26 Claimant: and () in front of me (.8) +
27 Court officer: [(calling the name of another litigant)]
28 Claimant: uhm, the driver povernul nalevo.
{‘the driver turned left’}
29 Interpreter: Vy govorite libo po- [russki, libo po–anglijski!]
{‘Speak either Russian or English!’}
30 Claimant: [A ja vam govorju. Okay.]
{‘But I’m telling you. Okay’}
31 Interpreter: Govorite [po-russki.]
{‘Speak Russian’}
Testifying in another language: What’s lost in translation

The claimant’s intrasentential codeswitch prompts the interpreter to break the interpreting frame, asking him for consistency in his language choice (line 26) and then telling him herself that he should speak Russian (line 29), thus fully aligning with the arbitrator’s request made in (1). The claimant’s apologetic reaction (lines 27 and 28) suggests that codeswitching between Russian and English may be a habitual mode of communication for him, which he expects the interpreter to be able to understand. Evidently, he treats the interpreter as an interlocutor. Like her, he is a Russian–English bilingual, and he expects to be able to draw on his bilingual repertoire when speaking with her. However, from this point on, he complies with her request and uses monolingual Russian, with some brief exceptions where he codeswitches to English (see excerpts (4), (5), and (7) below).

The left turn: Challenges of telling the story through consecutive interpreting

When the claimant resumes his testimony as shown in excerpt (3), immediately following the previous excerpt, he starts over, repeating almost literally the wording of his initial clause in excerpt (2). He thus begins his narrative in a way that is entirely parallel to the “successful” testimony quoted in excerpt (5) in Chapter 3, namely with the orientation element of a narrative (Ja šël na zelënyj svet po Yellowstone ‘I was going on a green light on Yellowstone (Boulevard)’ in line 30). He is reporting on an accident that occurred when he and the defendant were coming from opposite directions and the defendant made a left turn into oncoming traffic, leaving the claimant too little time to slow down in order to avoid a collision. The liability rests on the question of whether the defendant should have waited before making his turn, or whether the claimant was driving too fast. As the claimant speaks, the interpreter sets in to translate each time he has completed a clause, prompting him to pause. This illustrates the turn-taking format of short consecutive interpreting mode, where source speakers subdivide their turns into chunks that can be translated by the interpreter (see also lines 22 and 23 above). Apparently the claimant perceives this consecutive interpreting as an interruption, as he sometimes begins new clauses, only to abandon them because of overlap with the interpreter (see i- ‘and’ in line 33, and mašina- ‘car’ in line 52 below). Also, in line 33 he feels compelled to once more repeat his orientation clause (na zelënyj svet tam po Yellowstone Bul’varu ‘on green light there on Yellowstone Boulevard’) right after the interpreter has translated it, but also after the testimony has been interrupted by noise (an announcement made by a court officer).
As can be seen, the claimant, speaking in Russian, wants to explain how the accident happened, but the interpreter omits crucial parts of his testimony and pragmatically misrepresents others. For example, in line 36, she renders the claimant’s mašina ‘car’ (line 35), as the car. From a talk-as-text perspective (cf. Wadensjö 1998:22), this is potentially a correct translation, as Russian does not have articles. However, the choice of the definite article in English suggests that the speaker is referring to something that has been identified in prior discourse, and this is not the case here.³ The claimant is narrating the story from the perspective of the moment in which the accident
occurred. He was driving straight, he had a green light, and, literally in front of him, an as-yet-unspecified other car (driven by the defendant) made a left turn, causing the accident by turning across oncoming traffic. However, the arbitrator misunderstands this part of the testimony. Apparently he takes the interpreter’s *in front of me* ah, the car to a mean *the car in front of me*—that is, a (third) car, driving ahead of the claimant in the same lane and same direction and then turning left. This interpretation seems likely given that he asks repeatedly whether the claimant made a left turn as well (lines 38 and 46–47) and asks about the car “in front of” the claimant’s car (line 54). The interpreter is unaware of this misunderstanding, and it seems likely that she has misunderstood the claimant herself (compare her surprised reaction in excerpt (7) below, when a statement by the claimant does not conform to her understanding of the accident). As pointed out by Hatim and Mason (1997:41–42), interpreters are at a disadvantage compared to translators of written texts in that they do not have the complete “text” available to them, but instead translate one chunk of source speech at a time. As a consequence, they risk misunderstanding the meaning of a chunk when they don’t have sufficient context available and don’t seek confirmation of their understanding from the source speaker (see Davidson 2002). In excerpt (3), the misunderstanding of the claimant’s testimony is also enabled by the interpreter’s omission of the adverb *bukval’no* ‘literally’ used by the claimant (line 35). As the misunderstanding centers on the question of what was *in front of* the claimant, namely the car or the left turn, *literally* makes sense only with respect to the event (it happened literally in front of him) rather than to the car (the car was literally in front of him when it started the turn).

The miscommunication is exacerbated by inaccurate and incomplete translations produced by the interpreter, especially her omission of a crucial part of the claimant’s testimony. In lines 39 and 41, she mistranslates the arbitrator’s previous question by failing to ask about a left turn (compare *Did you proceed to make a left as well?* in line 38 and *vy prodolžali exat’?* ‘You proceeded to drive?’ in line 41). In Wadensjö’s (1998:107–108) terminology, this can be described as a “divergent rendition,” in contrast to a “close rendition” in which a target utterance matches the prepositional content of the source.  

In response to the interpreter’s phrasing of the question, the claimant then describes the moment in which the accident occurred (line 43). He braked but did not have enough space to stop before hitting the defendant’s car. The interpreter begins her translation before the end of the claimant’s turn (*I braked*, line 44), and her intonation makes clear that she intends to continue speaking. However, she is interrupted by very loud noise in the courtroom, as a court officer is calling out the names of litigants in another case whom he wants to send to a different room. The interpreter stops speaking, and the other participants are silent for five seconds. However, while the officer is still making his announcement, the arbitrator is the first to speak again. He does
not wait for the interpreter to resume speaking, but instead he rephrases his own earlier question, asking *did you make a left-hand turn?* and adding *before the accident took place* (lines 45–47). Given that the interpreter had mistranslated his first version of this yes/no interrogative, the claimant’s response did not answer the arbitrator’s question and so he asks it again. Evidently the arbitrator also does not realize that the claimant is no longer talking about what happened *before* the accident (the orientation) but about the accident itself (the complicating action). Crucially, in lines 48 and 49, the interpreter does not resume her interrupted rendition of the claimant’s testimony but rather chooses to translate the arbitrator’s new question instead. As a result, the arbitrator remains unaware of the claimant’s initial description of the accident, and an opportunity to resolve the misunderstanding is lost.

The arbitrator’s turn in lines 45–47, where he rephrases his earlier question, also illustrates a tendency of arbitrators to be impatient with litigants’ testimony and to ask new questions before the answer to a first question is fully translated. While they may not be aware of the fact that the translation is not yet complete, their actions are in effect interrupting the testimony and may result in the loss of information. Such interruptions are quite common in the data, especially with “fast” arbitrators (see Chapter 3). Ironically in some cases, the arbitrator’s follow-up question inquires about a point that the
litigant has already conveyed in the LOTE but that has not yet been translated.\textsuperscript{5} By asking such follow-up questions, the arbitrators thus interrupt the flow of narrative testimony and unnecessarily delay the receipt of desired information, despite their overt intention to conduct the proceedings more quickly. But while such interruptions can be attributed in part to an individual arbitrator’s style in conducting hearings, they also have to be seen as resulting from the pragmatics of interpreter-mediated and intercultural interaction. Discussing his observations in Belgian courts, D’hondt (2004:140) notes that consecutive interpreting is characterized by a structural ambiguity in turn allocation when extended source turns are being subdivided into smaller chunks. Each time the interpreter has finished interpreting a chunk of source speech, the previous speaker expects to continue speaking, but other participants may misunderstand the completion of the interpreter’s utterance as a transition-relevant place and begin their own turn. As a consequence, judges falsely believe that an answer is complete when, in fact, the witness was only pausing to let the interpreter translate. This ambiguity arises from the fact that the interpreter often does not convey turn-taking cues that could signal that the source speaker intends to continue holding the floor (Sacks, Schegloff, & Jefferson 1974). Moreover, the cues that speakers rely on to organize turn taking have to be regarded as culture-specific, to some extent, and may thus be misunderstood by interlocutors.\textsuperscript{6}

As the hearing continues (see excerpt (4)), the claimant does not attempt to resume the untranslated part of his prior responses but instead responds to the arbitrator’s new question by denying that he made a left turn and stating again that he went straight, now placing strong emphasis on the Russian word \textit{prjamo} ‘straight’ (line 50). He begins another sentence with the word \textit{mašina} (line 52), which suggests that he wants to continue his turn by explaining the movement of the defendant’s car. However, he pauses when the interpreter begins to interpret his previous words, and when the interpreter has completed her translation, the arbitrator once again treats this as a transition-relevant place and asks a new question (\textit{whose car was in front of your car?}). As a result, the claimant does not finish the statement that he had begun in line 52, nor does he return to the untranslated description of the accident that he had given in line 43. Instead, he is compelled to once again respond to a new question by the arbitrator. The long pause that precedes his answer suggests that the claimant is somewhat puzzled by the question, and he responds by rephrasing his earlier description of the events leading up to the accident. However, his testimony is again misrepresented by the interpreter, who again omits translating an important adverb (\textit{vdrug} ‘suddenly’ in line 57) and then renders \textit{na svetofore} ‘at the light’ (line 57) as \textit{it was on red light} (line 61), prompting the claimant to correct her in English (lines 62–63). This correction represents the first instance where the arbitrator’s attention is drawn to a mismatch between the claimant’s testimony and the interpreter’s rendition of it.
In excerpt (5), the arbitrator now tries to identify the role of the defendant in the accident, unaware that the claimant has already mentioned the defendant’s car several times. With a sound of frustration in his voice, the claimant responds before the interpreter has finished translating, and this time he uses a different preposition, navstreču ‘toward’ (lines 69 and 71), instead of pered(o) ‘in front of,’ which has arguably been at the core of the misunderstanding (see lines 35 and 56, as well as his own use of in front of me in English in lines 24 and 82). He thus takes a step back in his attempted narrative, adding an orientation clause (Ona šla navstreču mne ‘it was coming toward me’) to the complicating action (i povernula nalevo ‘and it made a left turn’), which he has already presented several times before but which is now for the first time explicitly associated with the defendant. However, once again, the interpreter’s rendition does not help to clarify the ongoing misunderstanding as she translates it was on opposite side of me (line 72) when ‘it was coming toward me’ would better convey the source meaning in English. A short while later, she renders navstreču ‘toward’ as ‘in opposite direction’ (lines 85–86), which is closer to the source but apparently still not sufficient to clarify the relative movements of the cars to the arbitrator. The arbitrator’s continued
confusion is evident by his asking yet another question (lines 73 and 74) and finally by stating explicitly that he is “lost” (line 87). Faced with this lack of understanding, the claimant responds by repeating core elements of his testimony. For example, in line 84 he uses almost exactly the same words as he had in line 71, and by now he has stated four times that he was going straight (see prjamo ‘straight’ in lines 22, 50, 56, and 80) and five times that another car was making a left turn (see povornulapovornula ‘turned’ in lines 25, 35, 71, and 84, as well as povorot ‘(a) turn’ in line 57).

The arbitrator’s comment in line 87 brings the persistent communication problems to the forefront. Evidently, the claimant has not been successful in his efforts to tell the “story” of the car accident. In fact, instead of
giving narrative testimony of the type shown in Chapter 3, he continues to be limited to responding to questions by the arbitrator, and these questions continuously demonstrate the arbitrator’s lack of understanding of how the accident occurred: *Did you proceed to make a left as well? Did you make a left-hand turn? Whose car was in front of your car? Where did the other car come from that you’re suing? What compass direction were you going at the time of the accident?* Moreover, these interrupting questions can all be characterized as closed questions, as they are either yes/no interrogatives, or narrow *wh*-questions that request a brief response, rather than a narrative account (Woodbury 1984). In Chapter 3, it was noted that such question forms can be considered as relatively controlling, since they constrain the range of acceptable answers. By contrast, narrative testimony is best elicited by broad *wh*-questions (beginning with *how* or *why*, for example). In her study of narratives in courtroom testimony, Harris (2001) shows that closed questions often prevent witnesses from narrating at all, or else cause their narratives to be highly fragmented. Such fragmentation reduces narrative coherence and thereby makes a witness’s account less persuasive. Harris notes that examining attorneys in formal trials ask questions to which they know the answer, and their goal is to elicit specific statements from the witness that serve to tell the story that the attorney wants to tell, not the story of the witness. By contrast, arbitrators in small claims court have no prior knowledge of the case, so their questions seek information. Yet, in the style of courtroom examination, the arbitrator in this case asks primarily closed questions and in so doing contributes to a fragmentation of the claimant’s narrative that makes his testimony appear less coherent and less persuasive than an unfragmented narrative would be (cf. O’Barr 1982:76). Of course, as noted above, the claimant’s narrative is already fragmented by consecutive interpreting—that is, both by the need to pause for the interpreter and by the structural turn-taking ambiguity that arises after chunks of interpreting and makes it difficult for the claimant to hold the floor. Wadensjö (1998:234–235) points to this fragmentation as a “trouble source” that contributes to miscommunication in consecutive interpreting. In particular, she notes that “[s]tory-telling is perhaps another discourse activity which the necessary fragmentation of interpreter-mediated talk would make more difficult. The interruptions may make primary interlocutors lose the thread” (Wadensjö 1998:235).

The claimant thus faces considerable obstacles in his attempt to narrate his claim, and these are exacerbated by certain divergent renditions produced by the interpreter, as well as by the noise level in the courtroom that continues to distract and interrupt the participants. Given these circumstances, it is perhaps not surprising that the claimant has not succeeded in telling his story to the arbitrator, who now explicitly states his frustration and lack of understanding (*I’m lost* in line 87), repeated here at the beginning of excerpt (6). Perhaps to explore other sources of information about the accident, the
arbitrator now briefly engages in byplay with a defense witness (an insurance adjuster) who shows him a report (lines 88–90), and to whom he had already made an aside comment before (line 58 above). He then turns back to the claimant to ask another question, with a tone of exasperation in his voice (lines 91 and 94). In contrast to previous questions, it is less controlling and is suited to eliciting a new version of the testimony.

The arbitrator’s question goes to the central issue that claimants have to address to win their case: proving that the defendant did something “wrong.” In response, the claimant now explicitly states the reason why he thinks the defendant is liable, namely that he didn’t let him pass (mašina dolžna byla menja propustit’ line 96). However, he continues to refer to the (defendant’s) car rather than to the driver, which somewhat obscures the defendant’s agency. The interpreter again produces a divergent rendition (line 97–98), which does identify an agent, but not one that is easily identifiable (they instead of ‘the car’). In addition, her translation is markedly nonnative and unidiomatic, as evidenced by the copula absence in they supposed, and especially by her mispronunciation of green as [grid]. The arbitrator’s reaction, and in particular the tone of his voice, gives the impression that he is annoyed, but his choice of pronoun you suggests that this annoyance is directed at least in part at the claimant, as it addresses the claimant and not the interpreter (at least on the surface). However, the interpreter’s reaction in line 100 suggests that she takes the arbitrator’s question as a threat to her face. She shows no acknowledgment of having made a mistake, just like she did when the claimant corrected her for saying the light was red instead of green (see excerpt (4) above). Her
response thus clarifies the lexical item in question, but it is not clear whether this improves the arbitrator’s understanding of the claimant’s testimony. In the following turn, shown in excerpt (7), he asks a new question that shifts the focus to the specific damages to the car but is phrased in a way that suggests he still does not understand which car drove into which other one.

(7)

101 Arbitrator: (0.8) What part of your car and the other car came in contact
102 [with each other?]
103 Interpreter: [Kakaja čast’ vašej mašiny i kakaja čast’ drugoj mašiny
104 skontaktirovali?
{‘what part of your car and what part of the other car came into contact?’}

Court officer: {calling the name of another litigant}

105 Claimant: (1.3) se- se- seredina i bliže k pravomu krylu moja +
{‘the middle and closer to the right wing of mine’}
106 Interpreter: The middle of my car (.) and closer to-
107 [čego?]
{‘What’}
108 Claimant: [right side.]
109 Interpreter: to right side of my car.

Court officer: {talking to bystander close by}

110 Claimant: (1.7) and it hit right side (1.5) toj mašiny.
{‘and it hit right side of that (the other) car.’}

{Noise from a court officer’s walkie-talkie}

111 Interpreter: (.) and (1.1) [/vy udarili?]
{‘and- /you hit (him)?’}
112 Claimant: [udar-] ah, my udarilis’ dve mašiny.
{‘hit- ah, we collided, (our) two cars.’}

113 Interpreter: (.) and we-

Court officer: {speaking on walkie-talkie close by}

114 Interpreter: (1.3) this car hit another car.

Court officer: {speaking on walkie-talkie close by}

115 Interpreter: (1.0) Right side.
116 Arbitrator: I’m not interested in the other car, I’m interested in what you-
117 Interpreter: Menja ne interesuet drugaja mašina
{‘I’m not interested in the other car’}
118 menja interesuet vaša mašina.
{‘I’m interested in your car.’}
119 Claimant: (1.0) Byl udar v serедину i s pravogo boka.
{‘There was an impact to the middle and the right side.’}
120 Interpreter: the impact was in the middle of the [car-] {overlap with officer}

Court officer: {very loudly calling the name of another litigant}

121 Interpreter: (1.1) and on the right side
Testifying in another language: What’s lost in translation

The claimant answers by identifying the parts of his car that were involved (lines 105 and 108) and, briefly switching to English, states how the impact occurred. The interpreter is surprised about this testimony and asks him to confirm that he was indeed the one who drove into the other car (line 111). He confirms, albeit with some hedging. As the interpreter is about to translate this crucial part of testimony, she is interrupted once again by a loud noise, just like in excerpt (3) above. When she resumes, she produces a rendition (*this car hit another car*) that reveals her continuing failure to understand how the accident occurred. Despite the claimant’s use of the first-person plural subject pronoun *my* (and her initial rendition of it in line 113), the interpreter now omits all first-person reference to the speaker. Her translation is so vague that it is impossible to tell which car hit which other car, as neither *this car* nor *another car* can plausibly be identified as referring to the claimant’s car. The arbitrator again attributes this vagueness to the claimant. At this point, he abandons the attempt to elicit testimony from the claimant and turns to the defendant. In Chapter 3, I showed that some arbitrators react to communication problems by dismissing LOTE-speaking claimants as “not making sense” and then turn to the defendant instead. While the arbitrator in this case does not make this attitude explicit, his actions suggest that he has given up on the claimant and no longer expects him to present a credible claim. However, as the defense attorney begins to make the case, the claimant catches a lucky break: The arbitrator discovers that he has a conflict of interest, and he recuses himself from the case. The hearing thus ends without a decision having been made.

The analysis of the claimant’s interpreter-mediated testimony has shown evidence of persistent miscommunication, which can be attributed to a convergence of factors. An analysis that follows the talk-as-text paradigm might be tempted to blame the arbitrator’s misunderstanding of the case primarily on the interpreter’s divergent renditions and on learner errors in her L2 English. However, while it is certainly possible that a different interpreter (or the same interpreter under different conditions) could have interpreted the testimony in a way that resulted in successful communication, it is clear that structural problems with consecutive interpreting also contributed to the misunderstanding. As shown, the claimant’s testimony is fragmented by the need to pause for the interpreter and by repeated interruptions in form of the arbitrator’s closed questions. In addition, the interpreter’s performance is also particularly affected by the noise in the courtroom, as court officers continue to make loud announcements or speak on walkie-talkies in close proximity to the bench where the hearing is taking place. This noise causes interruptions in the interpreting process, as in excerpts (3) and (7), and it interferes with her ability to hear other participants’ speech (see lines 75–76). While the interpreter can be faulted for not seeking to improve her own understanding and for not interpreting overlapping talk by the claimant, these actions can
be understood as resulting from professional ideologies of court interpreting that promote adherence to the hierarchical turn-taking rules of courtroom talk and discourage the interpreter from speaking on her own behalf (which would be necessary in order to check her understanding with the claimant, cf. Davidson 2002). In summary, it seems clear that misunderstanding in this example cannot simply be attributed to a single trouble source.

The left turn, part 2: Telling the story in L2 English

Luckily for the claimant, the arbitrator’s failure to understand his testimony did not lead to a dismissal of the claim. Instead, a second hearing of the case was conducted a short while later, in the same room but with a new arbitrator. As can be seen in excerpt (8), the claimant reverts to speaking English and succeeds in presenting an uninterrupted narrative that is understood by the second arbitrator, despite the fact that his English is far from fluent. Unlike the first arbitrator, the second arbitrator does not insist that the claimant speak in Russian and use the interpreter. After a few initial closed questions about the accident date and about the car, the arbitrator uses a broad wh-form to request an open-ended narrative response about the circumstances of the accident, as shown in line 1. As the interpreter interprets the arbitrator’s question into Russian, the claimant begins his response in English and continues in English for his entire testimony. In contrast to the examples above, neither the interpreter nor the arbitrator interrupts his narrative, although the court officers continue to make disruptive announcements (lines 3–11).

(8)

1 Arbitrator: Now ah (1.1) tell me how the accident happened.
2 Interpreter: Rasskažite, kak [proizošel aksident]

{‘Tell how the accident happened’}
3 Claimant: [I was going on] the Yellowstone Boulevard.
4 straight
5 (1.0) on the- (1.0) on the- (.6) it was green light
6 (1.6) and in front of me car-
7 in front of me [car]

Court officer: [calling the name of another litigant]
8 Claimant: (.8) coming on my side (.6) opposite side
9 it’s ah did left turn (.9) on the green light and
10 Arbitrator: (1.6) Okay?
11 Claimant: () we hit each other.
12 Arbitrator: Okay. (1.1) So you were both going in the opposite direction
13 and the other car made a [left] turn.
14 Claimant: [Yeah]
Unlike the first arbitrator, the second arbitrator quickly grasps the circumstances of the accident (the defendant making a left turn into oncoming traffic). Evidence of successful communication can be seen in lines 12 and 13, where the arbitrator explicitly restates his understanding of the claimant’s testimony. This represents what has been described as “formulation” in conversation analysis, a turn in which a speaker formulates the “gist” of a prior speaker’s turn in order to demonstrate understanding and to “have that understanding attended to, and as a first preference, endorsed” (Heritage & Watson 1979:138). In fact, the claimant does endorse this understanding by confirming the accuracy of the formulation (line 14). In addition to this explicit negotiation of understanding, comprehension is also enhanced by the arbitrator’s use of okay (in lines 10 and 12 in excerpt (8), as well as lines 21, 24, 28, and 36 in excerpt (9) below), which signals his receipt of the claimant’s testimony. Okay functions to show acknowledgment and agreement with prior talk and simultaneously shifts the focus along to “next-positioned matters” (Beach 1993:338). Fittingly, okay is found prefacing the arbitrator’s follow-up questions in excerpt (9) below, and in line 10 above it occurs during a pause at a crucial junction in the claimant’s testimony, namely between the description of the circumstances leading to the accident and that of the collision itself. As such, it can be considered an example of a response token, or back-channeling token, by which listeners give feedback to speakers, claim understanding, or acknowledge receipt of their talk, especially during extended turns, such as narratives (Gardner 2001).

Research on courtroom talk has found that such response tokens are rare in witness examination, as noted by Heritage and Clayman (2010:175), who suggest that this may be because questioners are eliciting testimony for the benefit of an overhearing jury, not for themselves (another factor may be that questioners have prior knowledge of the information being conveyed). By contrast, Atkinson (1992:201–202) finds that response tokens are used by the small claims arbitrators he observed in his study, and this is true also for some of the arbitrators in the data examined here. However, when arbitrators listen to interpreted testimony, they produce tokens that respond to the interpreter’s speech, not to that of the LOTE-speaking witness, and interpreters generally do not attempt to render such receipt tokens into the LOTE. This can be seen in the only example of a receipt token from the hearing quoted above (line 60), where the arbitrator uses right? in response to a rendition by the interpreter in which a chunk of testimony is repeated from earlier. This finding corresponds to other research on response tokens in interpreter-mediated interaction. Davidson (2002:1274, 1277) claims that markers of acknowledgment are “not easily found” in interpreter-mediated interaction, and he argues that communication problems in interpreted discourse are largely the result of “difficulty in establishing reciprocity of understanding between the primary interlocutors.” Similarly, Wadensjö (1998:236–237) includes “non-standard back-channelling” in her list of “trouble sources” that
may lead to miscommunication in interpreter-mediated interaction (see also D'hondt 2004:141). Clearly, these claims appear to be supported by the contrast between the misunderstanding in the interpreted interaction in excerpts (3) through (7), where receipt tokens are almost entirely absent, and the successful communication found in excerpts (8) and (9), where they are abundant. The contrast is underscored by the fact that the sequential placement of response tokens during narratives, like okay? in line 10, parallels that of interpreter turns in consecutive interpreting, as they occur after chunks of testimony but before the claimant’s turn is complete. Unlike interpreter turns in consecutive interpreting, however, such response tokens are not interruptive, as the speaker does not claim the floor but recognizes that the prior speaker has not yet finished his or her turn. In fact, forms like okay? in line 10 draw attention to the incompleteness of the prior turn and prod the speaker to complete it, which is why Schegloff (1993:105) proposes the term “continuer” to describe such tokens of acknowledgment.

Excerpt (8) thus shows that the arbitrator actively participates in the negotiation of mutual understanding rather than placing the burden of communication solely on the claimant. Once the basic facts of the accident have been established by the claimant’s narrative, the arbitrator inquires about specific details that are relevant to determine the litigants’ liability, and he does so using closed questions (see Chapter 3), to which the claimant responds in English. In quick succession, the arbitrator asks at what time the claimant became aware of the defendant’s intention to turn (lines 15–16, and 19), what the distance was between the vehicles (lines 21, 24–26, 28–31, 36, and 38), whether the light was green (line 40), what their respective speeds were (42), and finally what the speed limit was on the road where the accident occurred (line 46). At this point, the defendant speaks up for the first time, responding to the question before the claimant does and accusing him of having driven too fast (line 47). While it is not the defendant’s turn to speak, it becomes clear that the claimant’s “story” is now sufficiently established that it can be challenged. This was clearly not the case in the hearing with the first arbitrator.

(9)

15 Arbitrator: (.8) When the other- did you see the other car start to make the
16 left turn?
17 Claimant: (.6) It’s- it’s was ah extremely short time was standing little bit
18 then make ri- right to the left turn.
19 Arbitrator: The first time you saw that other car, it was moving or stopped?
20 Claimant: When I saw the car was s- stopped.
21 Arbitrator: Okay. (9) And, how far from the [inter-]
22 Claimant: [I- I was] far a little but he turn-
23 he turn- he wanted to turn quickly but (1.1) [it didn’t happen]
24 Arbitrator: [Okay.]
But let me ask you this, when you first saw him stopped, how far away from the intersection were you?

Claimant: (2.0) I was around (2.3) maybe hundred feet?

Arbitrator: Okay (.5) And where was your car in relation to the intersection when the other car made the left turn?

(1.6) Where was the- where was your car [when the other car made that- made the left turn?]

Interpreter: [Gde vaša mašina byla po otnošeniju] k perekrëstku, {'Where was your car in relation to the intersection'}

kogda on [sdelal] levij povorot. {'when he made a left turn.'}

Claimant: [It-] It was already close, in front of me car made left turn.

Arbitrator: Okay, how close were you to the intersection is what I'm asking.

Claimant: It was already maybe like uh thirty feet?

Arbitrator: Thirty feet from the [intersection?] [Yeah]

Claimant: (.) Light was still green.

Arbitrator: (2.5) What speed were you moving?

Claimant: (6) Speed forty-five miles.

Arbitrator: (6) On Yellowstone Boulevard?

Claimant: Yellowstone.

Arbitrator: What was that- what is the speed limit there?

Defendant: Thirty.

Def. attorney: Sh (xxx) {whispered}

Arbitrator: Not you. I'll get [to you]

Claimant: [I- I-] Uh:-

Arbitrator: [You don’t know?] [I (I don’t know)] exactly.

The above excerpts provide evidence of a sharp contrast between the two hearings with respect to the claimant’s testimony, both in his performance and in its reception by the two arbitrators. In the first hearing, the claimant speaks mostly Russian (after being told to do so by the arbitrator) and his testimony is translated by the interpreter. However, there are clear signs of communication breakdown between the participants. As noted above, the claimant’s narrative is fragmented by consecutive interpreting and is interrupted by controlling questions that show the arbitrator’s failure to understand and at the same time constrain the claimant’s ability to respond in narrative form. In addition, the interpreter produces some divergent renditions, and the hearing is repeatedly interrupted by loud announcements.
made by court officers. Until the moment that the arbitrator recuses himself, the claimant seems destined to lose the case, simply by virtue of not having been able to tell “his story.” By contrast, the excerpts of the second hearing show no signs that communication is failing, or that the claimant’s testimony is in any form inadequate. Being given a second chance, the claimant now speaks English almost exclusively, and he is not interrupted, as the interpreter limits herself to translating occasionally from English into Russian, when the claimant hesitates to respond to a question (lines 32–33). The case proceeds without further communicative problems between arbitrator and claimant, and when the arbitrator renders his decision, it is in favor of the claimant (although not for the entire claim amount, due to disagreements about possible prior damage to the car).

The comparison between the two hearings raises questions about the consequences of communicating through an interpreter or speaking in a second language. While it is clear that multiple factors play a role in determining whether a litigant is able to successfully narrate a claim, it suggests that using an interpreter for this task is not necessarily preferable over giving testimony in L2 English. Of course, speaking in an L2 carries a risk of miscommunication with it as well, as has been shown in several studies. For example, Gumperz (1982a) shows in a case study of a perjury trial how grammatical and pragmatic interference from Tagalog causes the English testimony of a doctor of Filipino origin to be misunderstood and perceived as not truthful by native speakers. Psycholinguistic research by Lev-Ari and Keysar (2010) suggests that native speakers perceive nonnative speakers as less truthful because of processing difficulties, whereas Lippi-Green (1994) argues that the comprehensibility of nonnative speech is greatly affected by the attitude of the native listener. Blommaert (2001) analyzes narratives of asylum seekers in Belgium who use L2 varieties of Dutch, French, or English and notes that “[n]arrating in a second, third or other foreign language may considerably reduce the set of resources which speakers can select for structuring their story and thus for ‘making their point’.” He argues, though, that these reduced resources do “not pre-empt the fact that they make their point” (p. 418) or produce narratives that, “despite ‘errors’ . . . can be narratively complex and display obvious patterns of coherence” (p. 423). However, their Belgian interlocutors judge these narratives based on specific cultural and institutional expectations to which the speakers have little or no access. Drawing on Hymes (1996), Blommaert uses the term “narrative inequality” to describe such power asymmetries.

Narrative inequality is clearly also experienced by litigants who speak in their L1 but communicate through an interpreter. While they may not be as limited in their linguistic resources as they would be when speaking in L2 English, their ability to “structure their stories” is severely reduced by the need to pause for consecutive interpreting and by the likelihood of being
interrupted by other speakers at turn transition points in the interpreting process. As shown above, this leads to a fragmentation of the narratives that reduces their coherence and is likely to make them less persuasive. Consequently, it is not surprising that some litigants resist this fragmentation and speak without pauses, especially when becoming agitated, or when arbitrators want to end the hearing. When this happens, they are almost always interrupted by interpreters who insist on consecutive interpreting mode. This is illustrated in excerpt (10), an excerpt from a case between two women from the Dominican Republic concerning a private loan. Halfway through her initial testimony, the claimant is agitated and continues speaking while the interpreter translates (lines 3 and 5), effectively inducing a temporary shift from consecutive to simultaneous interpreting mode (lines 2 and 4). She does then pause in lines 5, 10, and 14, but only after being interrupted by the interpreter, and after producing source “chunks” that consist of multiple clauses (first in lines 1, 3, and 5, then in lines 8–10, and finally lines 12–14). The Spanish interpreter does manage to keep up with her, but in line 17 he breaks the interpreting frame and complains that she is making it difficult for him to translate.

(10)

1 Claimant: que no me contestaban el teléfono, ‘that they didn’t answer the phone’
2 Interpreter: [that they weren’t answering my calls]
3 Claimant: [que no me han abierto la] puerta ‘that they didn’t open the door’
4 Interpreter: [they would not-]
5 Claimant: [han pasado] () muchas más problemas () entonces- ‘many problems occurred, so’
6 Interpreter: they just wouldn’t open the door,
7 there had been too many problems.
8 Claimant: me puso que iba a reci-
9 cuando recibieran el dinero de los income taxes que me iba pagar. ‘when they got the money from income tax they would pay me’
10 [xxx cuando recibió xxx]- ‘xxx when he got xxx’
11 Interpreter: [So he told me when he got his] income tax refund he would ah pay me=
12 Claimant: =Recibió el dinero de los income taxes, del cheque grande no
13 me pagó ‘he got the money from income tax, from the big check he didn’t pay me’
14 después [que cuando (llegó el pequeño-)] ‘after that when the small one came’
With his comment in line 17, the interpreter affirms his preference for consecutive interpreting in the translation of witness testimony, in line with institutional guidelines that mandate it in this situation (New York State Unified Court System 2008:7). As shown, this directive causes an interruption of the testimony, as the claimant begins to laugh, perhaps out of embarrassment (lines 18, 21, 23, and 27). This then prompts the arbitrator to inquire what happened (line 20), and she laughs as well. The interpreter responds to the question, commenting that this is a routine occurrence (line 22), which he attributes to LOTE-speaking litigants in general (they line 25), not to the particular claimant in this case. After more laughter from the arbitrator and the claimant, the hearing continues with a new question by the arbitrator, and so the claimant does not continue her narrative where she had left off in line 14 (‘when the small check came’). Consequently, the failure to adhere to the fragmenting format of consecutive interpreting has nonetheless resulted in a fragmentation of her testimony.

Ng (2009a:161) describes a comparable situation in a case from his study in Hong Kong courts, where an interpreter similarly breaks the interpreting frame and interrupts a witness to ask him to make pauses. However, the witness resists this explicitly, complaining that the pauses in consecutive interpreting let him forget what he wanted to say (“But after I stopped, I forgot. Stop and go, stop and go, right?”). In the bilingual legal system of Hong Kong, litigants may choose to have their trial conducted in English or in Cantonese, and so this litigant is able to opt for a Cantonese trial, instead of participating in an English trial with the help of a Cantonese–English interpreter:

15 Interpreter: [He got the big check from the] income tax and he didn’t pay me.
17 {to claimant} Tiene que dejarme traducir, amiga.
{‘You have to let me translate, my friend.’}
18 Claimant: Sí, [perdon] {giggles}
{‘Yes, excuse me.’}
19 Interpreter: [Okay]
20 Arbitrator: {laughs} What happened? [What did I miss?]
21 Claimant: [(xxx xxx for you)] {laughing}
23 Claimant: {laughing}
24 Arbitrator: She started speaking [English?] {laughing}
25 Interpreter: [They don’t] stop!
26 Arbitrator: Oh, okay. Ha ha ha ha (. ok)
27 Claimant: {laughing}
28 Arbitrator: Why don’t you tell me- did- did you have anything else you want to show me?
Testifying in another language: What’s lost in translation

interpreter. By contrast, LOTE-speaking litigants in New York small claims court do not have the option of a trial in their L1, so they cannot avoid the fragmentation of their testimony unless they are able to speak in L2 English, as the claimant in excerpt (8) above. This puts LOTE-speaking litigants at a disadvantage compared to English-speaking opponents, who are able to give unfragmented testimony. Moreover, this narrative inequality extends to the participants’ ability to understand the testimony of their opponents. As excerpt (10) shows, unfragmented testimony is more difficult for interpreters to translate than testimony divided into chunks. Yet interpreters are routinely faced with this challenge, when they interpret the testimony of an English speaker for an overhearing LOTE speaker, and this often leads to incomplete translations, as will be discussed in the following section.

The LOTE speaker as unaddressed recipient: Following the proceedings

As noted in the introduction to this chapter, court interpreting has two different functions, which arise in two different situations. On the one hand, interpreters mediate the interaction between a LOTE speaker and an English-speaking judge, attorney, or arbitrator, as shown in the previous sections of this chapter. On the other hand, interpreters are also given the task of enabling a LOTE-speaking litigant to understand the rest of the proceedings—that is, to interpret when English speakers interact with one another. In cases in which one party speaks English and the other does not, this situation arises when English speakers narrate testimony, when they are being questioned by an arbitrator or attorney, or when there is an exchange between an arbitrator and an attorney. In all of these situations, LOTE speakers are unaddressed recipients of other participants’ talk, and the English speakers design their talk for each other, not for the overhearing LOTE speaker. Consequently, they often do not take the presence of the interpreter into account but interact with their interlocutors in the same way as they would if no interpreter were present, narrating without pauses, or responding immediately to their interlocutor’s turns. As will be shown in the following section, this leads to the use of simultaneous interpreting mode, which poses considerable challenges to the interpreters and has implications for the ability of LOTE speakers to follow the proceedings and understand claims made by the opposing party.

The need to understand the opponent’s testimony is especially important for defendants. As shown in Chapter 3, they don’t always get to narrate their own “story” but rather are asked to respond to questions about the claimant’s testimony and refute accusations made by the claimant. While the majority of cases had LOTE-speaking claimants (see Chapter 2), some did involve English-speaking claimants and LOTE-speaking
defendants. In such cases, the claimant’s initial narrative testimony was interpreted into the LOTE for the benefit of the defendant. This is illustrated with excerpt (11) from a case brought by a landlord against his Spanish-speaking tenant who had failed to pay the rent in full after he had raised it. Like excerpts (8) and (9) above, the excerpt illustrates the absence of fragmentation in narratives given in English. In response to the arbitrator’s initiating question (line 1), the claimant begins to narrate his claim in line 3 and continues throughout the excerpt without interruption. In fact, he takes an extended turn that continues beyond the excerpt shown, as he narrates for 1 minute and 12 seconds before the arbitrator asks him a new question.

(11)

1  Arbitrator  Okay, Mister Singh, what [happened?]
2  Interpreter:  [¿Mister Singh] [que pasó?]
               {'Mr. Singh, what happened?’]
3  Claimant:    [Well]
4   actually, she’s- she’s been my tenant
5   [since last four- four and a half years.]
6  Interpreter:  [Ella ha sido inquilina] por cua- [cuatro años y medio.]
               {'She’s been a tenant for 4 ½ years’}
7  Claimant:    [And since she has moved in.]
8   [I had /never (.) raised her rent for four and a half years.]
9  Interpreter:  [despues de (xxx se xxx) nunca le he subido la renta.]
               {'since xxx I have never raised the rent on her’}
10 Claimant:    (.6) But uh [lately]
11 Interpreter:  [pero] ultimamente
               {'But in the end’}
12 Claimant:    last year she was-
13 Interpreter:  pero el [último año- el año pasado, (ella se]    
               {'but the final year- last year, she’}
14 Claimant:    [she just got married, that’s what was told to me].
15 Interpreter:  ca[só].
               {'got married’}
16 Claimant:    [So,] (.7) she was only gonna be there
17  [with her husband and her child that came in this country.]
18 Interpreter:  [solamente iba a estar con su esposo y] niño
               {'she was only going to stay with her husband and child’}
19  [que vinieron al [país.]
               {' who came to the country’}
20 Claimant:    [so] I didn’t raise her
21  [rent for a little while but in April]
Throughout the narrative, the interpreter interprets simultaneously into Spanish for the defendant, but this does not lead to fragmentation of the claimant’s testimony. Unlike in consecutive interpreting, the interpreter never takes a turn in the participation framework of the primary participants (as the claimant responds to the arbitrator’s question). Throughout the excerpt, the interpreter’s utterances all overlap fully or partially with talk by the claimant. However, in contrast to the case in excerpt (10), where a relatively brief occurrence of such overlap prompted the interpreter to interrupt the claimant, the interpreter in excerpt (11) does not object and interprets in simultaneous mode. While he speaks in a low voice (though not whispering) and not all of his translations are clearly audible in the recording, it appears that he is able to produce a relatively close rendition of the claimant’s testimony. His translation does omit two clauses that are not part of the core narrative of events but instead convey the claimant’s epistemic or affective stances (that’s what was told to me in line 14, this is silly in line 24)—that is, clauses that could be categorized as evaluative in Labov’s (1972) narrative framework.

The selection of the consecutive or simultaneous interpreting mode has been described as being the choice of the court interpreter (Jacobsen 2012), but a comparison of excerpts (10) and (11) suggests that the distribution is
largely determined by institutional policy and by the behavior of the other participants. Consecutive interpreting occurs when speakers pause to give the interpreter time to translate, and simultaneous interpreting occurs when speakers do not make such pauses. As seen in excerpt (10), LOTE speakers are expected to make pauses in their testimony, so interpreting from the LOTE into English is nearly always done in consecutive mode, and this is in fact required by court guidelines (New York State Unified Court System 2008:7). By contrast, English-speaking participants often do not pause for the interpreter, as seen in excerpt (11), and they are not expected to. When an arbitrator or attorney asks questions of a LOTE-speaking litigant or witness, these are usually short enough to permit consecutive interpreting even without deliberate pauses, because the addressee is not likely to take a turn before the interpreter has spoken (unless he or she has understood the question in English). But when two English speakers interact, such as an arbitrator and an English-speaking litigant, they generally do not pause for the interpreter, neither within turns nor between turns, and so the interpreter has no choice but to use simultaneous mode, unless she or he is able to request source speakers to make pauses.9

This occurred in only two instances in the data, and they involved Jorge and Yves, two staff interpreters who were shown to be exceptional in their regular use of reported speech when translating into English (see Chapter 4). One example is given in excerpt (12), from a dispute between a Haitian customer and a West Indian storeowner about a refund for a defective computer that had been delivered to the claimant. As the defendant is narrating his version of the events that led to the dispute, the interpreter (“Yves”) interrupts him (line 6) when he begins a new utterance (line 5) before the previous one has been translated. Evidently, Yves wants to interpret in consecutive mode (note that he does not begin interpreting during the defendant’s utterance shown in lines 1–3). The arbitrator reiterates the request (line 7), and the defendant complies, although responding to her and not to Yves (line 9).

(12)

1 Defendant: And we warned him about that if he keeps all these things
2 plugged in
3 it will have- ahm it will affect the system
4 Interpreter: Li [di-]
5 {'he says-'}
6 Defendant: [Ah]
7 Interpreter: Shh please please give me a chance to- to translate you to him
8 Arbitrator: Talk [slower so he can interpret]
9 Interpreter: [Li di ou konsa ke-]
9 {'he tells you that-'}
9 Defendant: [Yes Maam]
Testifying in another language: What’s lost in translation

Following this exchange, the defendant continues his brief narrative, and then the arbitrator asks further clarification questions of him, as well as of the claimant, and also of a witness. When the discussion turns to a dispute about who was present on the day of the delivery (see (13)), the defendant takes another extended turn and he again fails to pause for the interpreter, causing overlap (lines 3 and 4) and another interruption (lines 5–6). This time, the arbitrator does not get involved, and the defendant reacts with indignation (lines 7–8), though he ultimately accepts the interpreter’s request (line 11). Before he resumes his testimony, he asks if Yves is ready and then he pauses after his first, subordinate clause, before he has even finished a whole sentence (line 15).

(13)

1 Defendant: there was two of them that went (with me) the second day,
2 because what happened
3 Interpreter: [Nan dezyèm jou a se de ki te vini] {'on the second day, there were two who came’}
4 Defendant: [on the day that- I got called back to go back to] the client-
5 Interpreter: Go slow Sir! You give me a chance to do the translation
6 (if) you’re [too fast-]
7 Defendant: [All you] have to do is ask Sir
8 You don’t really have to be [(impolite) okay?]?
9 Interpreter: [I know but I]
10 have to do the- the translation, go slow for me
11 Defendant: [All right, it’s no problem]
12 Interpreter: [That- that will make- make-] (.7) I will do the job better
13 Defendant: All right. (.8) Are you ready?
14 Interpreter: Yes, go ahead. Go- go slow please.=
15 Defendant: =Okay, the first day we delivered [the computer +]
16 Interpreter: [Premye jou]
17 ke nou te delivre kompute [-a ba-ou a] {'the first day that we delivered the computer to you’}
While Yves’ objections in (12) and (13) interrupt the defendant’s narrative, they also result in a fragmentation of discourse once interpreting is resumed. Not only do the defendant’s pauses in lines 15 and 19 lead to a fragmentation by consecutive interpreting, but they also prompt a reaction from the arbitrator. In line 18, she reacts to his pause with *okay?*, a response token that marks the previous talk as unfinished (see excerpt (8)), and then she begins a new question in line 21, taking advantage of the turn-taking ambiguity that arises in consecutive interpreting. Yves’ actions have thus made it more difficult for the English-speaking defendant to hold the floor, yet this does not put him at a disadvantage compared to the Haitian-speaking claimant, whose talk is also interpreted in consecutive mode. Thus, by insisting on consecutive interpreting, Yves inadvertently counteracts the narrative inequality described above and levels the playing field between the LOTE-speaking claimant and the English-speaking defendant.

The defendant’s reaction in line 7 shows that such meta-pragmatic objections to uninterrupted source-speech delivery constitute face-threatening acts (this is also a likely explanation for the claimant’s laughter in excerpt (10)). Given this fact, it is perhaps not a coincidence that all the interpreters I observed engaging in this practice were men in their 50s with an assertive demeanor in the courtroom. This includes Yves and Jorge, who were observed interrupting English-speaking litigants, as well as two other interpreters who interrupted LOTE-speaking litigants (see excerpt (10)).

All interruptions occurred with litigants, never with an arbitrator or attorney who failed to pause during an extended turn, such as for example when explaining the differences between arbitration and a judge-led trial (see Angermeyer to appear for a detailed discussion of a relevant example). This fact demonstrates further that there is an institutional hierarchy of participants with regard to turn-taking rights, which is also manifested in the asymmetrical treatment of overlapping speech, as shown in the discussion of excerpt (3) (compare also Davidson 2000). Thus, it appears that interpreters are reluctant to engage in acts that could be seen as threatening the face of the arbitrator, while some are willing to threaten the face of litigants. However, interruptions as in excerpt (12) also indirectly threaten the face of the interpreter, because they can be taken to imply a lack of competence in simultaneous interpreting. As noted in Chapter 4, court interpreters are required to be

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18 Arbitrator: [Okay?]
19 Defendant: There was Dennis with me +
20 Interpreter: Te gen De- Dennis ki te [avek (mwen)]
‘it was Dennis who was with (me)’
21 Arbitrator: [Okay], the second day?
able to do simultaneous interpreting, as they are tested in it as part of their mandatory proficiency examination (New York State Unified Court System 2008:3). Moreover, as noted, simultaneous interpreting is generally expected, although not mandated, in courtroom situations when LOTE speakers are unaddressed recipients. However, these policies do not take into account that simultaneous interpreting is a complex task that requires intensive training (Pöchhacker 2004:184) and, ideally, the use of specialized equipment. Importantly, simultaneous interpreting is often regarded as placing a heavier burden on the interpreter’s cognitive-processing capacities than does consecutive interpreting (Pöchhacker 2004:100, 172). From a psycholinguistic perspective, simultaneous interpreting can be described as a “complex language processing task” (Seeber 2011:185) that poses “extreme language demands” (Obler 2012:177) because it requires the interpreter to multitask by performing language comprehension and production at the same time, in two different languages. This places a high burden on working memory that increases with the rate of input (Seeber 2011:186). As a consequence, simultaneous interpreters at conferences take frequent breaks, and their working conditions are designed to minimize disruption. At international institutions like the United Nation or the European Parliament, this often has them working in a soundproof booth, hearing the source speaker via headphones and speaking to the recipients over a microphone. In addition, they translate in one direction only. Clearly, the conditions for simultaneous interpreting are usually very different in the courtroom (except at high-profile courts like the International Criminal Tribunal for the Former Yugoslavia in The Hague, see Elias-Bursač 2012). In New York small claims court, like in other courtrooms in the United States, simultaneous interpreting is performed without any supporting equipment, and by interpreters who are not trained in the task to the same extent that conference interpreters are. As small claims court is in session at night, the interpreters are working overtime, and I observed only once that an interpreter requested a break during a long hearing. Instead, there may be considerable distractions in the courtroom as in excerpts (3) through (7), and interpreters routinely encounter overlapping speech. Given these conditions, it seems unrealistic to expect court interpreters to perform simultaneous interpreting to the standards that are required. The data collected in this study show that simultaneous interpreting in small claims court regularly leads to loss of information because interpreters do not have enough time to translate, especially if they need to rephrase a false start (see, for example, line 13 in excerpt (11) above). Similar observations have been made in studies of court interpreting in other jurisdictions (see Berk-Seligson 1990:125–126; Jacobsen 2012:224). Without a doubt, the likelihood that interpreters produce close renditions is much greater if they work in short consecutive mode than if they work in simultaneous mode (see, e.g., Lee 2011:27). Thus, it is hard to argue with Yves’ contention that he will “do the job better” (line 12) if he can
interpret consecutively. The fact that he insists on doing a better job when translating for the benefit of the claimant rather than for the benefit of the arbitrator corresponds to his target-oriented approach to interpreting that was described in Chapter 4.

Simultaneous interpreting is especially challenging when it involves source-speaker changes—that is, when interpreters translate dialogue between English-speaking participants, such as between an arbitrator and an English-speaking litigant. In such situations, source speakers typically interact with one another as if no interpreter were present. The interpreter is likely to “fall behind” as they alternate turns and sometimes produce overlapping talk with each other. This is illustrated in excerpt (14), from a dispute between a Spanish-speaking welfare recipient and her landlord, who is represented by an attorney. In the excerpt, the landlord’s attorney is asking questions that are intended to elicit testimony from his client, comparable to what is called a direct examination in a formal court. As noted in Chapter 3, this is unusual in small claims court, where such questions would more commonly be asked by an arbitrator. The Spanish interpreter, an Argentine woman in her 30s, is interpreting for the benefit of the claimant, and she does so in simultaneous interpreting mode. Throughout the excerpt her speech overlaps almost constantly with speech by the defendant or by his lawyer. As she produces a false start in translating the phrase oral agreement (line 6), she falls behind, and by the time the attorney asks a new question (line 11), she has not yet begun translating the prior turn by the defendant. She then proceeds to translate the new question without indicating what the defendant had answered, thereby omitting his claim that there was no written lease (line 7), potentially an important piece of testimony. When she interprets the defendant’s next response, it appears that she again omits part of the source message, but her rendition is not fully audible in the recording (line 18).

(14)

1 Lawyer: Was that pursuant [to a written lease?]
2 Interpreter: ¿Eso era de acuerdo a un contrato?
3 {'Was it according to a written lease?’}
4 Lawyer: [Or was that]
5 Interpreter: an oral [agreement with Ms. Castro?]
6 {'Or was it an- an-'}
7 Defendant: [There was never a lease]
8 Interpreter: [acuerdo oral con la] señora Castro?
9 {'oral agreement with Ms. Castro?’}
10 Defendant: (.8) only receipts.
11 Interpreter: (1.1) Co-
Testifying in another language: What’s lost in translation

The example illustrates the challenges that interpreters face when interpreting dialogue between two English-speaking participants into the LOTE. As speakers take turns and respond to one another, the interpreter has to translate quickly, with no room for hesitation or self-correction. Moreover, as the English speakers orient toward one another (and here also toward the overhearing arbitrator), it is difficult for the interpreter to draw attention to any problems that may occur. For example, it appears that the interpreter in excerpt (14) is trying to point to a trouble source of some kind (I’m sorry in line 19), possibly to the fact that the defendant speaks quietly and is hard to hear. However, this repair initiator (in conversation analytical terms) is being ignored by the primary participants, and, as they keep talking to one another, she resumes her interpretation. This further demonstrates the need for interpreters to be assertive if they want to raise concerns with interpreting, as Yves was shown to be in excerpt (12).

The simultaneous interpretation of dialogue is also challenging in that it may require the interpreter to identify the source speakers, especially as the target renditions often overlap with talk by a new speaker. However, as noted in Chapter 4, such source attributions are not possible if interpreters adhere to the institutional norm of direct translation. Consequently, it may not always be transparent to the target recipient whose voice the interpreter is translating and when speaker change occurs, especially when interpreters render two separate turns by different speakers in a single utterance of their own (i.e., with no pause or other interactional cue.
distinguishing the parts authored by different source speakers). A relevant example is shown in excerpt (15), from the same case as excerpt (11). Of course, given the pre-allocation of turn types in courtroom talk, it is possible that recipients will recognize that questions originate with arbitrators, for example.

(15)

**Arbitrator:** Has she paid the rent up to today’s [date?]
**Claimant:** [She-]

She [paid the old rent.]

**Interpreter:** [¿Ha pagado? Sí,] la [antigua renta.]

{‘Did she pay? Yes, the old rent.’}

**Arbitrator:** [the old one?] 

An alternative strategy for interpreting question-and-answer pairs was observed with Jorge and Yves, the two interpreters who were found to request consecutive interpreting from English-speaking litigants. Both of them produced renditions in which question and answer were combined into a single rendition, what Wadensjö (1998:107) terms “summarized renditions.” Examples are given in excerpts (16) and (17), from an examination phase of the respective arbitration hearing, in which an arbitrator or attorney asks closed questions of a litigant or witness to confirm or deny specific aspects of prior testimony. Such question-and-answer pairs are very typical of courtroom interaction, so their interpretation is a routine part of the court interpreters’ work in formal courts, outside of small claims court. As noted by Raymond (2003), such questions are often designed to anticipate a specific response. For example, a declarative with a question intonation as found in excerpt (16) is designed to elicit a “yes” response, and this enables the interpreter to anticipate the response and thus to combine question and answer into a single rendition.

(16)

**Arbitrator:** And the computer doesn’t work?
**Defendant:** E [xactly!]
**Interpreter:** [Kompute]-a pa travay.

{‘The computer doesn’t work.’}

(17)

**Attorney:** Is that your car?
**Witness:** (.5) That’s correct.
**Interpreter:** Es el carro de él.

{‘It’s his car.’}
This practice of combining question-and-answer pairs into single summarized renditions does not conform to the professional norms for court interpreting, but it has the advantage that it represents the testimony of the opposing party, in contrast to excerpt (14) above, where the interpreter translated the attorney’s questions but left out much of the defendant’s answers. In excerpts (16) and (17), the interpreters’ renditions are not “verbatim” translations of source speech, but they can be viewed as accurate representations of the speech acts that witnesses are deemed to perform by confirming the question posed to them. These renditions thus fulfill the purpose of informing the LOTE-speaking litigant about the testimony of the opposing party or of a witness. Along with the preference for consecutive interpretation of English narratives shown above and the deictic shifts shown in Chapter 4, they converge in creating an interpreting style that is highly target-oriented—that is, that places the needs of the target recipient above court-interpreting norms (see also Angermeyer 2009).

Disadvantages resulting from the distribution of interpreting modes

The analysis in this chapter has demonstrated that there are problems with both consecutive and simultaneous interpreting modes, which interfere with the ability of LOTE speakers to participate in the proceedings in the same way English speakers do. As shown in the discussion of excerpts (3) to (7), consecutive interpreting causes problems for the source speaker in causing extended turns to be fragmented, making them less coherent and more prone to interruptions. In addition, there is a lack of back-channeling, which makes it more difficult for the interlocutors to check their understanding of the others’ contributions. By contrast, simultaneous interpreting does not cause fragmentation, nor does it interfere with back-channeling between the speaker and addressee. As seen above, English-speaking litigants can narrate testimony (see excerpt (11)) or respond to questioning (see excerpt (14)) in the same way that they would if no interpreter were present at all. This is not true, however, for the target recipient. As seen in the same excerpts, when interpreters translate simultaneously, they are often unable to produce close renditions of all that has been said, and as a consequence LOTE-speaking litigants may remain unaware of some parts of the testimony, unless they have understood in English. Such omissions are less likely to occur with consecutive interpreting, as long as the interpreter is not interrupted by other participants. In summary, consecutive interpreting causes communication problems for the source speaker, whereas simultaneous interpreting causes communication problems for the target recipient. But given the habitual distribution of the two interpreting modes in the courtroom, these problems are experienced only by LOTE speakers and not by their English-speaking
opponents. This amounts to a structural disadvantage for LOTE speakers in court, who are more easily interrupted and less likely to be aware of all relevant information in the case.

These findings raise questions about the common practice of distributing interpreting modes in this manner in the courtroom. As noted above, this distribution is customary in many jurisdictions and is sometimes even mandated by legal guidelines on court interpreting. In New York state, the guidelines for court interpreters state that consecutive mode “shall be used when LEP [Limited English Proficiency] or deaf or hard of hearing persons are giving testimony, or are in direct dialogue with the judge, counsel or an officer of the court” (New York State Unified Court System 2008:7). By contrast, the use of simultaneous interpreting mode is not mandated, although the manual notes that it is “most often used in opening and closing statements and any ongoing exchanges” (p. 7). Consequently, courts could decide to abandon the use of simultaneous interpreting in light of the problems with its use in the courtroom, and if interpreters have not been especially trained in this practice and lack appropriate equipment. Instead, consecutive interpreting could be used for all parts of a hearing to increase the likelihood that the interpreter produces close renditions of all source talk and to ensure that both parties testify under the same conditions (although this would in many cases increase the amount of time spent per hearing). However, the distribution arises not solely from institutional norms but also from differences in the extent to which speakers and addressees orient toward the presence of the interpreter. When an English speaker interacts with a LOTE speaker, pauses arise “naturally” because interlocutors have to wait for the interpreter to understand what the other person has said. But when two English speakers interact with each other, they will not make pauses for interpretation unless they are explicitly told to do so and make a deliberate effort. As shown in excerpts (12) and (13), some interpreters with an assertive personality are prepared to interrupt participants to request consecutive interpreting, but given the participant hierarchy in courtroom discourse, they do so only with litigants, not with legal professionals. Consequently, an instruction to use consecutive interpreting would have to be given by the court administration and enforced by the presiding judge or arbitrator in order to be used consistently. In their study of court interpreting per video link for defendants who are in prison rather than in the courtroom, Licoppe and Vernier (2013) discuss examples in which a judge instructs a prosecutor to subdivide an extended turn into short chunks for the purpose of interpreting, and also interrupts the prosecutor to give a turn to the interpreter. It is difficult to imagine that interpreters could themselves interrupt a prosecutor’s speech in this way. This illustrates that, for interpreter-mediated interaction to result in successful communication, all participants have to be aware of the challenges in the interpreting process and collaborate with the interpreter. Where this does not occur, the question
arises to what extent the disadvantages of interpreter-mediated interaction are outweighed by the advantages it provides to litigants with limited L2 fluency in the language of the court. This will be addressed in the final section.

Against an “all-or-nothing” rule of language choice: When do litigants “need” an interpreter?

All LOTE speakers I observed made use of their limited L2 proficiency in English, as will be discussed in more detail in the following chapter. However, as shown in excerpts (1) and (2), and also in examples discussed in Chapter 1, they are routinely instructed by arbitrators and interpreters to speak in their LOTE rather than in L2 English. This illustrates an expectation of individual monolingualism that is also apparent when litigants are criticized by their opponents for not speaking English (see also Chapter 1). Litigants are categorized either as speakers of English or as speakers of another language, and they are expected to use only one language throughout the hearing. In this “all-or-nothing” view of language choice, no distinction is made between speaking and understanding, or between different speech situations within a hearing (Angermeyer 2008). These ideological assumptions are not consistent with research in second-language acquisition and bilingual education, which has demonstrated the need to differentiate between different types of active and receptive competence. In a highly influential conceptualization, Cummins (1979, 1984) distinguishes between Basic Interpersonal Communicative Skills (BICS), which can be understood as the ability to participate in face-to-face conversation by relying on contextual information, and Cognitive Academic Language Proficiency (CALP), which is the ability to use academic language with minimal contextual information. These two types of competence are acquired separately and independently, and Cummins argues that second-language learners often developed BICS earlier than CALP. Eades (2003:116) applies this distinction to the legal sphere, noting that a defendant who appears “quite fluent and articulate in answering basic biographical questions” may nonetheless lack the language proficiency to understand and respond to complex questions. Along similar lines, Pavlenko (2008) presents a case study in which she assesses the English proficiency of a Russian-born defendant in a U.S. murder case. Examining data from police interrogations as well as evidence of the defendant’s personal linguistic and academic history, Pavlenko finds that the defendant had a high level of interactional competence in English, which allowed her to interact with and be understood by the interrogating police officers. However, Pavlenko argues that she lacked the conceptual competence to understand important legal concepts in English, such as the Miranda rights (the right to remain silent in the interrogation and to have an attorney present) and the waiver of such rights. As noted by
Solan and Tiersma (2005:82), judges have often been reluctant to accept such reasoning if defendants have displayed interactional competence.

Regarding specifically the use of interpreters in the courtroom, Valdés (1990) argues that assessments of a witness’s proficiency should evaluate the specific linguistic demands that speakers face in courtroom proceedings, such as the display and confirmation of information during testimony. In particular, Valdés argues that cross-examination requires higher proficiency than direct examination, because it involves the need to anticipate and respond to challenges, or to maintain the floor “in the face of efforts to interrupt or change the floor” (p. 26). Méndez (1997:91) builds on Valdés’s findings to argue that a person who can follow the proceedings in English may still need interpreting as a witness, especially during cross-examination. As shown throughout this study, small claims court makes its own set of demands of litigants with limited proficiency in English, which to some extent differ from those found in formal courts, especially if litigants appear pro se. The need to tell one’s “story” of the dispute arguably, though, places similar demands as in direct examination, which may involve narrative testimony as well. In many cases, such as most disputes about housing, work, defective merchandise, or car accidents, these claim narratives require primarily interactional competence, or BICS, as they involve relatively simple descriptions of events and do not require an understanding of legal concepts or the use of low-frequency lexical items. Moreover, the narratives allow litigants to engage with English-speaking arbitrators in face-to-face interaction where the interlocutors’ understanding can be checked and meaning can be negotiated. By contrast, CALP is clearly required when litigants need to understand legal arguments presented to them by arbitrators, for example during the consent briefing or if there are formal problems with a claim (see Chapter 3). It may also be required during questioning, if questioners rely on legal concepts or phrase their questions in syntactically complex ways not found in everyday conversation. Finally, litigants need to understand the testimony of the opposing party. BICS may often be sufficient for this task, but, from an interactional perspective, L2 comprehension may be impeded in such situations by the recipient’s overhearer status, which prevents the LOTE speaker from checking his or her understanding or from having others attend to it, so that misunderstandings cannot become apparent to the speaker or to other participants.

These factors suggest that for litigants with high BICS proficiency in English, the “need” for interpreter assistance is not necessarily constant throughout the hearing. Some litigants may well be capable of giving narrative testimony in English (like Mr. Bessonov in the case discussed at the beginning of this chapter), but this does not mean that they are able to understand everything that other participants say in English. They are still likely to benefit from interpreting when arbitrators discuss legal concepts, for example.
Thus, while some authors, like Méndez (1997), suggest that interpreting is more important when LOTE speakers speak than when they listen, the opposite may be true with pro se litigants in small claims court, who are typically not subject to cross-examination. To my knowledge, this question has not been investigated empirically, but a recent experimental study by Reit hofer (2013) in a conference-interpreting setting investigated listener comprehension of interpreted speech compared to speech in the listeners’ L2 and found that test subjects understood the content better in the interpreted version (the subjects were German speakers with high proficiency in L2 English). Given the fact that many jurisdictions derive the legal right to court interpreting from a defendant’s right to understand the charges brought against him or her (Angermeyer 2013), it could be argued that interpreting is in fact more important to ensure comprehension, particularly as any problems with L2 comprehension will be less apparent than problems with L2 production.

The notion that interpreting could be used in some parts of a hearing but not others is further supported by the findings discussed in this chapter, which suggest that interpreting is not equally beneficial in all situations, such as for example when narrative testimony is being fragmented by consecutive interpreting. As a consequence, it appears that the rights of litigants would be better served if courts adopted a more flexible approach to court interpreting rather than taking an all-or-nothing approach in which litigants are discouraged from testifying in English, as seen in excerpt (1) above. Such a flexible approach to language choice occurred in one case I observed, an inquest hearing in a claim about unpaid work brought by a Spanish-speaking contractor (see Angermeyer 2008:390). As shown in excerpt (18), a language-negotiation sequence is resolved in favor of the claimant’s use of English, but the interpreter remains present in the room, retreating into self-described “standby mode” (line 18) to assist the claimant when necessary.

(18)

<table>
<thead>
<tr>
<th></th>
<th>Arbitrator:</th>
<th></th>
<th>Interpreter:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>In- uh normally I’m an arbitrator +</td>
<td>2</td>
<td>Normalmente soy un arbitro +</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(‘Normally, I’m an arbitrator’)</td>
<td></td>
<td>(‘In these kinda cases where it’s an inquest +</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>In these- Do you understand what she says?’</td>
<td>5</td>
<td>Eh sí, (bastante).</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(‘Some things.’)</td>
<td></td>
<td>(‘Uh, yes, enough.’)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Entonces prefieres que yo deje hablar eh sin traducírselo?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(‘So do you prefer that I let her talk, without translating it?’)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>(‘Some things.’)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Unlike in other instances, like excerpt (1) above, when litigants speak English and are told not to, the issue of language choice is here raised by the interpreter, who apparently senses that the claimant understands the arbitrator’s introductory remarks in English (line 4). Ironically, interpreting is made even less necessary by the arbitrator’s (nonnative) knowledge of Spanish, demonstrated in lines 11, 15, and 16. The hearing was conducted in English and the interpreter stayed in the background (giving administrative advice to the arbitrator at the end). Stand-by interpreting also occurred occasionally in cases in which both parties were speakers of the same LOTE, but one was a proficient bilingual, who testified in English. Since the interpreter was there translating for the other party, such bilingual litigants could turn to the interpreter for assistance, if necessary. In addition, interpreters can monitor the interaction for communication problems and intervene on their own, resuming interpretation for example when litigants hesitate to respond to a question, as in Mr. Bessonov’s second hearing in excerpt (9).

Such standby interpreting is arguably the routine mode of interpreting in some nonprofessional interpreting contexts. For example, when immigrant children translate for their parents in institutional settings, they are likely to act as interpreters only ad hoc, whenever they believe that communication is otherwise not successful (see, e.g., Meyer 2004:128; and also Bolden 2012 on the concept of “language brokering”). The selective use of interpreting has also been described in some courtroom contexts. Kadric (2001:218) mentions the use of standby mode in Austrian courts and proposes that interpreters should be trained in deciding when their assistance is required. Ng (2009:125) notes that interpreters in Hong Kong courts sometimes skip simultaneous interpreting into Cantonese “if a litigant shows signs of understanding a fair amount of English.” Cooke (1996) presents a detailed study of an Australian
murder trial with an Aboriginal defendant who spoke English but was also assisted by an interpreter during the trial. According to Cooke, the defendant’s claim that she killed her boyfriend in self-defense relied strongly on her ability to persuasively narrate her experience of domestic abuse. While she was able to narrate in English, Cooke (1996:286) argues that “access to an interpreter at the trial was a significant aid in her narration . . . The fact that she spoke mainly English does not detract from the linguistic empowerment that interpreting assistance gave her at those points when deficiency in her second language blocked her expressive capacity.” In ways that are relevant for language choice in smalls claims court, Cooke also argues that miscommunication is much more likely to occur when nonnative speakers respond to questions, such as during cross-examination or police interviews, than when they narrate freely and independently. For persons with good interactional proficiency in the language of the court, “standby mode” is thus arguably a suitable form of interpreter mediation. In small claims court, standby mode allows litigants to communicate directly with the arbitrator and thus to avoid the problems inherent with consecutive interpreting, while at the same time providing them with support if their limited proficiency gives rise to problems of expression or comprehension.
In the previous chapter, I showed that litigants who speak a language other than English (LOTE) have a strong incentive to speak English during the hearing, particularly when they narrate the story of their claim and want to avoid a fragmentation of their narrative by consecutive interpreting. As was shown in the discussion of Mr. Bessonov’s case, some litigants are able to narrate their claim in L2 English, but this is obviously not true for all litigants who have requested an interpreter. However, even litigants who appeared to have very limited proficiency used some English at some point in the hearing—that is, they engaged in what is often called codeswitching in bilingualism studies (Milroy & Muysken 1995; Gardner-Chloros 2009). Some alternated between English and their other language repeatedly and produced even extended turns in English. For others, codeswitching consisted merely of answering yes or no to an interpreted question, or of inserting one or two English words into sentences that were otherwise in another language. In fact, every single litigant in the dataset produced at least one instance of codeswitching to English. This chapter will explore when and how litigants codeswitch and how arbitrators and interpreters react to this.

Codeswitching is rarely mentioned in studies of interpreter-mediated interaction (but see Müller 1989; Meyer & Zeevaert 2002; Anderson 2012; and Meyer 2012) because scholars generally assume a communication barrier posed by “a perfect and reciprocal absence of knowledge of the other’s language by both of the principal interlocutors” (Davidson 2002:1293). Similarly, the legal rationale for court interpreting rests on the assumption that litigants who are assisted by an interpreter cannot speak English at all. On the other hand, guidelines for court interpreters in New York state refer to LOTE-speaking litigants as “Limited English Proficiency” (LEP) persons, implying that they may have some knowledge of English (New York State Unified Court System 2008:1). In addition, other participants may also have
knowledge of the LOTE. As mentioned above, some arbitrators and court officers speak Spanish natively or as a second language (see excerpt (18) in Chapter 5). In addition, many cases involve two parties with the same LOTE background, but only one side chooses to use the interpreter, while the other (typically the defendant) speaks English. In such cases it happens occasionally that the English-speaking party switches into the other language when addressing the opponent (although judges and arbitrators may object to this). Finally, some LOTE-speaking litigants also hire bilingual attorneys with whom they can speak in their first language. As a consequence of these factors, interpreter-mediated interaction in small claims court can be understood as a form of bilingual interaction, in which several (and sometimes all) participants are bilingual, but with different levels of proficiency in their respective languages (Angermeyer 2010). Consequently, it is not surprising that the interaction between them includes various phenomena of bilingual speech that are comparable to those described in research on bilingualism. While these phenomena are found in the speech of all participants (including interpreters and, rarely, arbitrators), this chapter will primarily focus on the language use of litigants.

Studies of bilingual speech commonly distinguish whether bilingual speakers switch languages between sentences or whether they use material from both languages within a single sentence. While the term codeswitching is often used as a cover term for both of these forms of bilingual speech (Poplack 1980; Myers-Scotton 1993a; Gardner-Chloros 2009), I follow Auer (1984, 1995, 1998b) and other conversation analysis–oriented studies in reserving this term to describe instances where speakers change their choice of language for the current stretch of talk. This often occurs at turn boundaries, but also within a turn. When speakers combine elements from both languages into a single utterance, I will use the term code-mixing, following Auer (1984) and Muysken (2000). The most common type of code-mixing involves the use of single lexical items or phrases from one language (usually English) into a structure from another language (usually the LOTE). Following Auer (1998b) and Muysken (2000:3), I will refer to this phenomenon as insertion.

Early research in bilingualism tended to view codeswitching and code-mixing as symptoms of “interference”—that is, of a bilingual speaker’s lack of proficiency or failure to keep the two languages separate (Weinreich 1968). At a macrosociolinguistic level, these bilingual speech phenomena were seen as precursors of language shift, or at best as outcomes of a societal distribution of languages by topic or interactional situation (i.e., diglossia, Ferguson 1959). By contrast, later researchers who were able to rely on audiorecorded data of bilingual speech came to regard these phenomena in more positive terms. For example, Poplack (1980) argues that intimate intrasentential codeswitching (i.e., code-mixing) is indicative of speakers’ bilingual competence. And, following Blom and Gumperz (1972) and Gumperz
(1982a), researchers have come to regard codeswitching and code-mixing as socially meaningful, both in the local context of the interaction and as a marker of bilingual identity more generally (Auer 1984; Myers-Scotton 1993b; Heller 1995; Li Wei 1998; Auer 1998b; Woolard 1999). But while researchers initially saw the social meaning of codeswitching as derived from the indexical values of the particular languages (see the notion of “metaphorical codeswitching” in Blom & Gumperz 1972), Auer (1995:119) notes that “[m]any investigations have shown that the mere fact of juxtaposing two codes can have a signalling value of its own,” so that the conversational meaning cannot always be explained by an “association between languages and speech activities.”

Any analysis of codeswitching and code-mixing presupposes that linguistic forms can be unambiguously attributed to a particular language. But, as noted by Woolard (1999), this is not necessarily the case, as speakers may strategically use ambiguous forms that “belong” to both languages, or may alternate between languages in a way that avoids a commitment to a particular language (Heller 1982). Moreover, as I will show below in discussing disagreements between litigants and interpreters, speakers of the same language do not always agree on which words “belong” to it. At the same time, interpreter-mediated interaction differs from other forms of bilingual speech in that it makes the boundaries between the languages highly salient. As Wadensjö (1998:277) writes, “[T]he activity of translation demands that two separate linguistic entities are recognized and a gap between them is sustained. [. . .][T]he languages currently being used by those requiring the intervention of an interpreter are consequently treated as separate linguistic domains.” As a result, both codeswitching and insertion pose a challenge to interpreter-mediated interaction and alter it in important ways, as will be shown in this chapter.

Studies of codeswitching have often found that bilingual speech phenomena are distributed unevenly across language contact situations. While insertion is arguably the most basic phenomenon of bilingual speech, the distribution of code-mixing of grammatical features from two languages appears to be more restricted, occurring only in a subset of the environments where insertion and (intersentential) codeswitching are found. Auer (1999:318) points out that code-mixed language use (“language mixing” in his terms) seems to be characteristic of balanced bilinguals who have developed a specific bilingual identity and whose mixed way of speaking “sometimes has a folk name.” Similarly, Poplack (1980:589–590) sees a clear distinction between on the one hand the “emblematic codeswitching” of nonfluent bilinguals and on the other hand the “intimate intra-sentential codeswitching” used by fluent bilinguals in ingroup conversation. Emblematic codeswitching involves the insertion of single nouns or of discourse markers and other elements that do not require any integration into the grammatical structure of
the recipient language (“tag-switching”). Such a distinction can also be found in the courtroom data, as some litigants’ use of English was limited to single insertions or tag-switches, while others switched at turn boundaries and produced entire utterances in English. By contrast, code-mixing of the type that Poplack describes as “intimate” occurred very rarely in the data and was criticized by interpreters, arguably because it challenged the distinction of the two languages that is necessary for the activity of translation (see excerpt (2) in Chapter 5). Consequently, this chapter will be divided into two main parts, focusing first on codeswitching, and then on insertion, before turning to an analysis of the consequences of these bilingual speech practices for the interaction in the courtroom.

Codeswitching

A THEORY OF CODESWITCHING IN INTERPRETER-MEDIATED INTERACTION

As noted above, codeswitching is rarely addressed in studies of interpreting, but the reverse is true as well. Studies of codeswitching have not been concerned with interpreting and translation, and interpreter-mediated interaction has not been considered as falling within the scope of data sources for such research (see Angermeyer 2010). One reason for this is that codeswitching (in the wider sense) is often perceived as an informal speech style that occurs in informal ingroup settings (e.g., Backus 1996:41) and is best observed by researchers who are bilingual community members (e.g., Poplack 1980:595; Zentella 1997a:7; Nortier 2008:40). However, codeswitching has also been observed in interaction between bilingual speakers from different communities (i.e., *exolingual* bilingual interaction, Lüdi 1987), most notably by Heller (1982) in research on French–English bilingualism in Canada, and by Myers-Scotton (1993b) on multilingualism in East Africa. This situation also bears a resemblance to ingroup interaction where significant differences in language preference exist between members of different generations, as described in research by Auer (1984) and Li Wei (1994), among others. In such contexts, participants are often found to negotiate which language is to be used as the common language of interaction, apparently out of a “preference for same language talk” (Auer 1984:23–24). Codeswitching occurs both during this language negotiation phase and again whenever one speaker abandons the consensus and introduces a new language of interaction. In an influential paper, Auer (1995) proposes a pragmatic theory of codeswitching that models these two sequential environments and assigns different contextual meanings to them. When speakers begin by speaking different languages, an eventual switch can be understood as *preference-related*, in that it occurs in the direction toward the preference of a given participant. By contrast, when a common language of interaction has been established, Auer (1995:125)
interprets subsequent codeswitching as *discourse-related*—that is, as “contextualizing some feature of the conversation, e.g. a shift in topic, participant constellation, activity type, etc.” Interpreter-mediated interaction is of the first type as the primary participants speak different languages, so that, by definition, there is no common language of interaction for all participants. This divergent language choice is reminiscent of patterns that have been described in some multilingual communities undergoing language shift, where members of different generations have divergent preferences of language choice (Gal 1979:110; Dabène & Moore 1995:30). Such sustained unreciprocal language use is schematized as “pattern IIa” by Auer (1995:125) in his typology of code alternation sequences, as shown in (1) in the figure below.

This schema, in which speaker 1 speaks language A and speaker 2 speaks language B, can be adapted to describe interpreter-mediated interaction by adding turns of the interpreter (speaker 0) after every turn, as shown in (1').

\[(1) \text{ Pattern IIa: } A_1 B_2 A_1 B_2 A_1 B_2 A_1 B_2 \]

\[(1') \text{ PatternIIa': } A_1 B_0 B_2 A_0 A_1 B_0 B_2 A_0 A_1 B_0 B_2 A_0 A_1 B_0 B_2 \]

In unreciprocal language use, as well as in interpreted discourse, language alternation occurs in regular intervals, after each turn by a (primary) participant (speakers 1 and 2 in the schema). However, these instances of language alternation are not examples of true codeswitching, because there is always a “structurally determined (and therefore predictable) return into the first language” (Auer 1984:26). A sequential analysis of codeswitching in interpreter-mediated interaction thus has to take into account that interpreters are expected to alternate between languages when they translate from one language into the other. To be interactionally salient as codeswitching, a speaker’s language choice therefore has to run counter to the expected distribution of languages in the interpreter-mediated interaction. As such, it can be modeled after language negotiation sequences in bilingual discourse. Auer (1995:125) argues that the pattern of divergent language choice illustrated in (1) is often dissolved when one participant accommodates to the interlocutor’s preferred language (i.e., engaging in preference-related codeswitching). This is schematized in (2), with speaker 2 converging to the choice of language A by speaker 1.

\[(2) \text{ Pattern IIb: } A_1 B_2 A_1 B_2 A_1//A_2 A_1 A_2 A_1 \]

\[(Auer 1995:125)\]

Auer’s pattern IIb can be adapted to interpreted discourse to illustrate the convergence by one speaker to the language choice of the other. This is shown in (2’), where speaker 2 switches to language A, in response to a preceding turn in language A by speaker 1. This switch can either occur in
direct response or after a translation by the interpreter. Furthermore, this
codeswitch may render subsequent turns by the interpreter unnecessary, as
speakers 1 and 2 are now using the same language of interaction, although
this may be only temporary.

(2’) Pattern IIβ: A1 B0 B2 A0 A1 B0 B2 A0 A1 (B0) // A2 A1 (B0) A2

The schema shown in (2’) illustrates codeswitching at the beginning of
a speaker’s turn. Codeswitching can also occur during a speaker’s turn, es-
pecially during extended turns. As was shown in Chapter 5, extended turns
are habitually interrupted by consecutive interpreting, so codeswitching may
occur either during an uninterrupted segment or when the speaker reprises
an extended turn after having paused for the interpreter. This is illustrated
in pattern IIγ shown in (3). Again, speaker 1 uses language A, which is trans-
lated into language B by the interpreter (speaker 0). Speaker 2 initially uses
language B, which is translated into language A by the interpreter, but then
speaker 2 switches to language A (which may or may not be repeated by the
interpreter). A parallel sequence is described in pattern IIδ, except that the
switch occurs before the interpreter has translated speaker 2’s words into lan-
guage A.

(3) Pattern IIγ: A1 B0 B2 A0 // A2 (A0)

PatternIIδ: A1 B0 B2 // A2 (A0)

This sequential approach is theoretically independent of the languages,
as codeswitching may be produced by any participant and in any direction
(from language A to language B or vice versa). However, in interpreter-
mediated interaction in small claims court, codeswitching is found only in
the speech of LOTE-speaking litigants, not in the speech of arbitrators.²
LOTE speakers are found to switch to English, following the patterns IIβ
through IIδ, and after having done so, they may switch back to the LOTE at a
later point. In both cases, codeswitching can be viewed as preference-related,
as it reflects either a switch toward the interlocutor’s preferred language or a
switch back toward the speaker’s own preferred language, in which he or she
is acknowledged to have greater proficiency. However, this does not rule out
the possibility of a discourse-related interpretation of individual instances of
codeswitching, because the two interpretations are not mutually exclusive.
As noted by Auer (1998b:8), “in pattern IIb, the transition from divergent to
convergent language choices . . . may take on discourse-related meanings,” as
it may occur in a context where this convergence contextualizes some feature
of the conversation and contributes to the interactional meaning of the utter-
ance. This is true of codeswitching in small claims court as well, as will be
discussed in the following sections, which explore different contexts in which
codeswitching occurs, as well as the consequences that codeswitching has for
interpreter-mediated interaction.
BYPASSING THE INTERPRETER

Whether codeswitching occurs turn-initially or within a turn, or whether it is interpreted as discourse-related or preference-related, all instances are alike in that they alter the turn-taking structure of interpreter-mediated interaction. As noted in Chapter 5, the interpreter participates in the organization of turn taking during consecutive interpreting by taking every second turn, preventing successive turns by primary participants and relegating one of them to the temporary status of a bystander during “other-language talk” (cf. Wadensjö 1998; Roy 2000). It is therefore not surprising that interpreter-mediated interaction has often been described as two separate dialogues going on simultaneously (see Lang 1976:342; Urciuoli 1996:100; or Jönsson 1990, as cited by Wadensjö 1998:76) or as consisting of two “parallel and related conversations” (Jacquemet 2005a). The interpreter participates in both of these conversations, but the two primary participants (e.g., the arbitrator and the claimant) are not directly engaged in a dialogue with one another, even though they address their utterances to each other. This is illustrated in excerpt (4) with an example from the dataset, from an inquest hearing of a Spanish-speaking tenant who is suing her landlord. As can be seen, the excerpt begins with a question asked by the arbitrator in English (line 1), which is then translated into Spanish by the interpreter (line 2). The claimant responds in Spanish (lines 3 and 6), which is translated into English by the interpreter (lines 4, 5, 7, and 9). The claimant then switches to English, partially repeating the interpreter’s translation of her prior utterance (line 8) and then expanding on it (line 10). Finally, the interpreter repeats elements from the claimant’s elaboration in English (line 11; see the discussion of “echoing” below).

(4)

1 Arbitrator: And the paint /fell on the carpet?
2 Interpreter: ¿Y la pintura le cayó a la [alfombra?]
   {'And the paint fell on the carpet?’}
3 Claimant: [le cayó] a la [alfombra.]
   {'it fell on the carpet’}
4 Interpreter: [Yes, it]
5 [fell on the carpet.]
6 Claimant: [me dejó toda la] casa pintada toda.
   {'he left me the entire house painted’}
7 Interpreter: =He left the /entire house painted ah +
8 Claimant: [entire [house]
9 Interpreter: [stained]
10 Claimant: the kitchen, in the lobby, [and the-]
11 Interpreter: [kitchen,] the lobby.
Before turning to the effect of codeswitching, I will first discuss the initial four turns (lines 1–4), which conform to the expected turn-taking sequence of consecutive interpreting. In conversation analytic terms, these turns contain two adjacency pairs that can be attributed to two “parallel” conversational floors. A question in English by the arbitrator (line 1) receives an answer in English that is spoken by the interpreter (lines 4–5). A question in Spanish by the interpreter (line 2) is answered in Spanish by the claimant (line 3). The Spanish adjacency pair is embedded within the English one. These adjacency pairs are schematized in Figure 6.1. The arrows represent utterances, emanating from the speaker and directed at the recipient (not the addressee; see the discussion of Goffman’s footing model in Chapter 4).

As Figure 6.1 shows, communication “flows through” the interpreter, and there is no direct interaction between arbitrator and LOTE-speaking litigant—that is, neither of them produces utterances designed to be received by the other. Codeswitching, however, causes a deviation from the established structures of participation and turn taking in interpreted interaction. By switching to English in lines 8 and 10, the Spanish-speaking claimant temporarily “bypasses” the interpreter and directly directs her statement at the arbitrator. This is illustrated in Figure 6.2.

This “bypassing” of the interpreter and direct addressing of the arbitrator is reminiscent of Gumperz’s (1982a:77) observation that codeswitching may be used for “addressee specification” in multiparty interaction (see also Auer 1995:120; Gardner-Chloros 2009:79). That is, if different participants are associated with different languages, then the choice of a particular language can help in singling out a specific addressee. Of course, the arbitrator is also the ultimate addressee of talk in the LOTE, but this status is made more explicit by choosing English, especially if litigants show signs of treating the interpreter as their interlocutor in the LOTE (see, e.g., Mr. Bessonov’s use of Russian in excerpt (2) in Chapter 5). Thus, when litigants codeswitch like in line 8 above, they temporarily redefine the nature of the interaction.
from a bilingual interpreted interaction with three participants to a monolingual interaction with two participants. The same is true when codeswitching occurs turn-initially in response to a question, as shown for example in Chapter 5, where Mr. Bessonov, the Russian-speaking claimant in the car accident case, responded in English to interpreted questions. Finally, it can occur also when a participant speaks without having been giving a turn by the previous speaker—that is, when a participant self-selects. This will be discussed in the following section.

CODESWITCHING FOR SELF-SELECTED TURNS

As noted in Chapter 3, courtroom talk differs from other types of interaction in that turn taking is highly regulated, so that turn selection and turn types are largely pre-allocated (Atkinson & Drew 1979; Komter 2013:621). This is true of arbitration hearings as well, despite their relative informality. Self-selection by litigants is thus rare because it violates this pre-allocated turn-taking format. Nonetheless, litigants attempt to self-select as next speakers under certain circumstances, especially when wanting to refute an accusation made by the other party or when the arbitrator has announced that the hearing is coming to an end. This often leads to overlapping talk, and as shown in Chapter 5, court interpreters generally respond to overlapping talk by giving priority to the speaker whose turn is institutionally sanctioned, especially if this is the arbitrator. Chapter 3 included several examples where LOTE speakers self-selected in the LOTE, speaking when the floor had been given to their opponent or when the arbitrator was making concluding statements. These self-selections had mixed results. In excerpt (11), from a case with a Spanish-speaking tenant, the interpreter refrained from translating and told the claimant not to speak out of turn (*Señora, tiene que dejar que ella hable* ‘Ma’am, you have to let her talk’). Excerpt (12) showed a self-selection by a Russian-speaking defendant, which was not interpreted in full, so that his
counter-accusation was not translated until after the completion of the hearing (on ukral u nas dengi ‘he stole money from us’). Excerpt (6) showed an example where the interpreter did translate self-selected talk into English, but the arbitrator then told the litigant to sit down and wait. These examples suggest that it is difficult for litigants to make themselves heard when they self-select in the LOTE, as they require the interpreter’s support to do so. By contrast, English speakers were able to self-select on their own, even if these turns were not necessarily received positively by arbitrators. Consequently, it is not surprising that many LOTE speakers are found to codeswitch when they self-select as the next speaker. One example was shown in Chapter 5, in the second hearing about the car accident. When the arbitrator asks about the speed limit, the claimant (Mr. Bessonov) hesitates to answer, but the Russian-speaking defendant self-selects in English to claim that it was thirty miles per hour, which is lower than the claimant’s admitted speed at the time of the accident (see excerpt (9) in Chapter 5).

Another example can be seen in excerpt (5), from a case in which a Russian-speaking claimant is suing a mortgage broker over a bounced check. At this point in the hearing, the arbitrator has determined for herself that the case has to be dismissed, because the claimant has sued the defendant in person instead of the defendant’s company, which is legally responsible. Apparently sensing that the arbitrator is prepared to end the hearing, the claimant tries to prevent her from doing so, addressing her in English and asking her to wait (line 5). He wants to refute the arbitrator’s claim that the defendant is not responsible, and he does so in English, although with apparent difficulties. In line 6, after some hesitation, he begins to state why he thinks the defendant is responsible. Before he finishes his sentence, though, he switches back to Russian, reiterating the initial English clause this guy at this time (line 6) as on v èto vremja byl ‘he at this time was’ (line 7). Following the switch back to Russian, the claimant continues in Russian (lines 10 and 11), which is translated by the interpreter (lines 13–14). As seen in lines 8 and 12, the bilingual defendant also self-selects in English, denying the claimant’s accusation before it has been translated into English by the interpreter.

(5)

1 Arbitrator: Okay, you need to sue [not the employee, but the company.]
2 Interpreter: [Vam nužno sudit’] kompaniju,
   ‘You need to sue the company,’
3 a ne [rabot]nika kompanii.
   ‘and not the employee of the company’
4 Claimant: [Ah-]
5 can wait please, yes?And I have a witness.
6 (0.8) This guy at this time- ( )
on v èto vremja byl broker-om v ètoj kompanii-
(‘He was at the time, a broker in this company’)

Defendant: =No, [[I never was a broker], I’m sorry]=

Interpreter: [He was-]

Claimant: [[i manager-om]] v ètoj kompanii,]=
(‘and a manager in this company xxx’)

= [i segodnjaj on tamže.]
(‘(and he’s still there today)’)

Defendant: = [Objection!]

Interpreter: [He was a broker] and manager

at that company and he’s still there.

Immediately prior to excerpt (5), the claimant had used English to re-

spond to a yes/no question, but otherwise he had spoken Russian almost ex-
clusively, especially when narrating his testimony. Moreover, judging by the
hesitation in line 6 and his switch back to Russian in line 7, it appears that his
proficiency in English is not sufficient for producing extended turns. None-
theless, by using English in line 5, he manages to capture the floor, which he
then continues to hold when he finishes his turn in Russian. The example sug-
gest that codeswitching can play an important role in moments of conflict, as
using English is the most (and often the only) effective way for LOTE-speak-
ing litigants to make themselves heard by other participants. Moreover, by by-
passing the interpreter, litigants accommodate to the language choice of the
arbiter, and this may be understood as an appeal for understanding. In the
social psychological framework of accommodation theory developed by Giles
and associates (Giles & Smith 1979; Giles, N. Coupland, & J. Coupland 1991),
codeswitching as in excerpt (5) can be understood as an act of convergence—
that is, as the “reduction of linguistic dissimilarities between speakers” (Cou-
pland 2001:201). Research on accommodation has argued that interpersonal
convergence in face-to-face interaction promotes social approval and com-
unication efficiency. Moreover, convergence may be asymmetrical, because
the participants have different needs and motivations. While litigants seek
the understanding and approval of arbitrators, hoping they will decide the
case in their favor, arbitrators have no such incentive to appeal to litigants.
This distinguishes arbitration hearings from interpreter-mediated medical in-
terviews, where codeswitching has been observed not only in the speech of
patients (Friedland & Penn 2003:101–102; Meyer 2004) but also in the speech
of doctors, where it has been interpreted as conveying empathy (Anderson
2012:139, also Davidson 2002:1293). In small claims court, the need to remain
and appear neutral between the two opposing parties largely prevents arbitra-
tors from displaying empathy, if they were so inclined (see Atkinson 1992),
and hence such codeswitching does not occur. On the other hand, legal pro-
fessionals have been shown to accommodate to nonprofessionals along other
dimensions such as information density (Linell 1991), which are perhaps less salient and less likely to be interpreted as conveying empathy.3 In general, sociolinguistic research on courtroom discourse has demonstrated the potential benefits of convergence and the risks of divergent speech styles. For example, Wodak (1980) and O’Barr (1982) argue that litigants fare better if their variety or speech style is similar to that of legal decision makers, while Gumperz (1982b, 2001) and Eades (2008) have shown that witnesses who speak varieties of English that differ from those of legal decision makers are at risk of being misunderstood. At the level of legal discourse, Conley and O’Barr (1990) demonstrate that small claims litigants benefit if their approach to the dispute corresponds to that of the judge (i.e., if both are rule-oriented or both are relation-oriented, as discussed in Chapter 3).

Litigants thus have a strong incentive to accommodate to the arbitrator, and this is true especially in situations of conflict. This interpretation corresponds to a finding by Anderson (2012:123), who notes that participants of interpreter-mediated interaction may codeswitch out of “a desire to make themselves heard at crucial points in the interaction.” This can also be seen in cases of overt disagreement between litigants and arbitrators, as shown in excerpt (6), from a case about a refund for a canceled insurance contract. Just prior to the excerpt shown, the arbitrator has opened the hearing by inviting narrative testimony from the Haitian-speaking claimant (Please tell the court what happened), but the claimant has instead inquired about the defendant (Okay anvan m di tribinal la sak pase fo m konnin ki moun mesye a ye ‘Okay, before I tell the court what happened, I need to know who this gentleman is’). He is suing an insurance brokerage firm and is apparently surprised that the person who has come to represent the company in court is not the same person with whom he had dealt when the dispute originated. As can be seen in excerpt (6), the arbitrator berates the claimant for having asked this question instead of giving testimony. When the claimant tries to defend himself and explain why he did so, he switches to English (line 9) and then repeats himself in Haitian Creole (lines 10 and 12).

(6)

1 Arbutrator: And you know, you ask too many questions,
2 Interpreter: [Ou poze twòp-twòp kesyon]
   {‘You’re asking too many questions’}
3 Arbutrator: [I asked you to tell the court what happened]
4 and let [the court determine] +
5 Interpreter: [Mwen mande ou] [pou ou koumanse sa.]
   {‘I asked you to begin it.’}
6 Arbutrator: [what’s going on as we proceed]
7 Interpreter: Kite [tribinal] [la deside (ki sa)]
   {‘Let the court decide what it is’}
The claimant’s switch back from English to Haitian Creole in line 10 may reflect his limited L2 proficiency in English, but it is also reminiscent of what Auer (1984:77) calls “defensive code-switching,” where a speaker “retreats” on “his” language out of embarrassment or in an attempt to mitigate the force of a disagreement. The example thus illustrates Auer’s (1998b:8) claim that preference-related codeswitching can contextualize discourse-related interpretations, similarly to excerpt (5). In both cases, litigants switch to English even though their L2 proficiency appears to be quite limited, but they do so at a moment of tension, when it appears that they want to appeal to the arbitrator directly.

As noted, excerpts (5) and (6) are parallel in that they both involve a switch to English and a subsequent switch back to the LOTE that acts as a self-translation, repeating propositional content that had just been given in English (This guy at this time- on v èto vremja byl in excerpt (5), because I don’t know this man, m pat konen moun sa a in excerpt (6)). The research literature on codeswitching in conversation abounds with examples of quasi-translations, where a speaker utters the same propositional content twice, once in each language. Auer (1998b:4–5) describes a codeswitching pattern he calls “non-first firsts,” where a speaker codeswitches to repeat the first part of an adjacency pair (e.g., a question) that was not responded to, creating the impression of a self-repair of language choice. According to Auer, this
pattern “is frequent and has been reported in many bilingual communities all over the world” (see also Li Wei 2005:378). In courtroom interaction, however, litigants or witnesses are generally limited to producing second-pair parts—that is, their turns are responses to first-pair parts of judges, attorneys, or arbitrators (in fact, the arbitrator’s reaction in excerpt (6) shows that litigants are not supposed to ask questions). Consequently, these quasi-translations differ from Auer’s category of non-first firsts, but they are parallel to it in that they come across as a repair of language choice. In interpreter-mediated interaction, such a repair also represents a return to interpreting mode, as the litigant directs the repetition at the interpreter, in the shared LOTE. At an important point of the hearing, the litigant thus produces the same propositional content twice, first for the arbitrator in English and then in the other language for the interpreter. The interpreter then produces a second English version, which serves to confirm the content of the preceding codeswitched utterance.

Self-translation may also occur in the opposite direction, with the repetition made in English rather than in the LOTE. This is shown in excerpt (7), from the second hearing about Mr. Bessonov’s car accident (see Chapter 5). The excerpt is taken from a point of the hearing when the Russian-speaking defendant is being asked questions about the accident, both by the arbitrator and by the attorney of his own insurance company. The questions focus on the defendant’s decision to make a left turn into oncoming traffic and his awareness of the claimant’s car at the time. Specifically, the arbitrator and the attorney try to determine the relative distance between the claimant’s car and the intersection at different points in time (when the defendant reached the intersection, when he decided to make a turn, when he began the turn). However, the interpreter ignores some of the nuances of these questions, as well as of the defendant’s answers (see the vagueness of her translation in line 8), thereby making the examination appear more repetitive than it actually is. The defendant thus becomes increasingly annoyed because he feels that he is being asked questions he has already answered. With audible frustration in his voice, he switches to English in line 13, repeating the content of the preceding Russian words, effectively translating his own words from Russian into English instead of letting the interpreter do it for him. He continues in English in lines 15 and 16, prompting the attorney to direct him to speak in Russian instead (to the interpreter, line 17).

(7)

1 Def. Attorney: Okay, but when you started to turn,
2 was he still the half a block away
3 or had he [come closer to you?]
4 Interpreter: [Kogda vy stali] povorachivat’,
   {‘When you were starting to turn,’}
Like in excerpts (5) and (6), the defendant’s codeswitch to English can be viewed as an instance of accommodation and a direct appeal to understanding from the English-speaking attorney and the arbitrator. In addition, the quasi-translation again gives the impression of a self-repair of language choice, but here the defendant treats Russian as the “wrong” language, and he “corrects” to using English instead of repairing to the LOTE. This makes his switch to English appear more deliberate than those in excerpts (5) and (6), and it lends emphasis to his statement. This example thus corresponds to a common observation about the use of codeswitching in conversation, namely that it can be used for emphasis. As noted first by Gumperz (1982a:78), when “a message in one code is repeated in the other code . . . such repetitions may . . . amplify or emphasize the message” (see also Auer 1995:120). This is clearly the case in excerpt (7), where this sense of emphasis is also conveyed by the tone of the defendant’s voice, which suggests frustration about not having been able to make his point before.

OTHER PARTICIPANTS’ REACTIONS TO CODESWITCHING

The direction of the repetition (from LOTE to English rather than vice versa) also influences the reaction of other participants to codeswitching. While the litigants in excerpts (5) and (6) returned to speaking in their LOTE, thus framing their codeswitching as a momentary excursion into English,
the defendant in excerpt (7) continues in English (lines 15 and 16), and this prompts the attorney to interpret his codeswitch as an attempt to switch to English for the remainder of the interaction, which she rejects. The attorney’s directive to the defendant thus illustrates again the tendency of legal professionals to discourage LOTE speakers from using English, which was discussed in Chapters 1 and 5. This institutional preference for the litigants’ use of the LOTE makes codeswitching to English a choice that has the potential to be controversial and may thus be highly salient. By contrast, when litigants switch from English “back” to the LOTE, this is not met with adverse reactions from arbitrators or interpreters. This is most likely because other participants attribute this switch to the speaker’s limited proficiency in English and also because it represents a return to the normative distribution of language choice. This was true even in one case in which a claimant had switched from Spanish to English early on in his testimony and then spoke only English for most of the hearing, which was rather long (45 minutes). When he switched back to Spanish shortly before the end of the hearing, the arbitrator did not comment on it and the interpreter resumed translating.

As pointed out above, codeswitching by litigants temporarily redefines the nature of the interaction from bilingual, interpreter-mediated interaction to monolingual interaction. In this situation, the interpreter is theoretically sidelined, and this can be seen in excerpt (7), where the interpreter stops speaking once the defendant has switched to English. However, in other cases, interpreters are often found to react to codeswitching by simply repeating a litigant’s utterance in English. This was shown in excerpt (4) above, where the litigant switched to English to describe where paint stains had occurred (the kitchen, in the lobby) and the interpreter reiterated this in English (kitchen, the lobby). With such “echoing” of a codeswitched utterance, the interpreter maintains the expected turn sequence in which every second turn is produced by an interpreter, and thereby reaffirms his or her position in the interaction. Echoing is further illustrated in excerpt (8), which also follows the pattern IIIγ, with a litigant giving testimony in the LOTE and switching to English after having paused for the interpreter (see excerpt (3) above). The example is from a case between two Polish-speaking litigants, which had been discussed in detail in Chapter 3 (involving a claim about work, housing, and alleged theft). The excerpt is from the testimony of the defendant, who is speaking Polish and pauses midsentence for the interpreter. When he resumes his turn, he switches to English for an English-specific format of time telling (eleven pm in line 3), which the interpreter then incorporates into her ongoing rendition of the previous talk (at eleven pm, line 4). The defendant then continues in Polish, still speaking the same sentence, and the regular pattern of consecutive interpreting continues.
In excerpt (8), the codeswitching to English and back to Polish occurs within a single sentence and does not co-occur with any apparent contextual changes. This raises the question whether the speaker codeswitches deliberately and is aware of it, or whether the switch to English in line 3 is “triggered” by the interpreter’s preceding turn (i.e., resulting from a momentary linguistic “disorientation”; see Clyne 1967). Similar questions about speaker awareness are raised by apparent examples of self-repair in language choice (as in excerpt (5) or (6)), suggesting that the initial choice may have been unintentional. As noted above, research on codeswitching in conversation has consistently found that it contributes to interactional meaning, and this could be seen to suggest that it results from speakers’ intentional strategies. However, Woolard (2004) criticizes the common tendency to characterize codeswitching as strategic and the perceived need to “prove” its functionality (which is itself a reaction to the attitudes of earlier researchers who saw codeswitching as evidence of interference and limited bilingual competence; e.g., Weinreich 1968). Instead, Woolard (2004:75) suggests that “we might as easily ask why people who have multiple ‘ways of speaking’ would restrict themselves to a subset of them. It would be at least as sensible to ask what constrains the deployment of the full range of linguistic skills as it is to ask what motivates the use of more than one segment of that range.” Along these lines, codeswitching in interpreter-mediated interaction can be understood as resulting from the participants’ bilingual proficiencies, no matter how limited. All examples of codeswitching discussed so far reflect the fact that the litigants participate in the English-language talk, even if only passively for the most part. That is, it is clearly not the case that litigants listen only to what the interpreter says in the LOTE and ignore everything that is being said in English. Instead, they pay attention to utterances made in English and attempt to relate their own contributions to them. This will be illustrated further in the discussion of insertion below.
As noted above, the practice of echoing does not necessarily result merely in a verbatim repetition of the codeswitched “source” utterance but may in fact involve substantial modifications by the interpreter. This is shown in excerpt (9), from the same case as excerpt (6) above. The excerpt marks the beginning of the claimant’s testimony. Following an initial utterance in Haitian Creole, which is marked by hesitation and false starts (lines 1, 2, and 4), the claimant switches to English in line 6, after having paused for the interpreter. In the context of the interpreter’s preceding rendition, the claimant’s English utterance \textit{I go} is infelicitous, because it is in the present tense instead of the past (arguably due to interference from Haitian Creole, where unmarked active verbs have a past tense meaning, cf. Spears 1990) and it does not include information about where he went. This is “translated” by the interpreter as \textit{I went to the office} (line 8), culling source information from the utterances the claimant made in both English (line 6) and Haitian Creole (line 4). Her rendition presents a felicitous and coherent continuation and reformulation of her previous translation in line 5, arguably making the claimant’s testimony appear more coherent than it is (compare Hale 2002:32, who contends that interpreters may make answers “more literate, coherent, and precise”). The interpreter thus provides a quasi-translation from nonnative, foreign-accented English into a form that corresponds more closely to the variety of English used in court and that is in the very least more native-like and less foreign-accented (see also excerpt (10)).\textsuperscript{5} This echoing is accepted without comment by both arbitrator and claimant, and the latter proceeds by speaking Haitian Creole.

\textbf{(9)}

1 Claimant: mwen fè- mwen fè yon asirans konpa- mwen fè yon- yon-
\{‘I did- I did an insurance compa- I did a- a-‘\}

2 () yon asirans () [nan- na-]
\{‘an insurance in- in-‘\}

3 Interpreter: [I had (an-)]

4 Claimant: () nan- nan- nan ofis la
\{‘In, in, in the office’\}

5 Interpreter: () I: () had an insurance company uhm [in the] office=

6 Claimant: [I go]

7 [uh-]

8 Interpreter: =\{I went to the office\}

9 Claimant: () Li mande m ki non m. Se yon [dam, se yon fi]
\{‘He/she asked me what is my name. It was a lady, a girl’\}

10 Interpreter: [He asked me-]

11 () asked me- it was a lady, she asked me my name
The difference between the claimant’s utterance *I go* in line 6 and the interpreter’s rendition *I went to the office* in line 7 raises a question about the difference between echoing and translating. What does it take for an utterance to be perceived as “not English” and thus warranting a translation? In fact, echoing and translation become indistinguishable when utterances consist of elements that can be described as “bivalent” following Woolard (1999:7)—that is, “words or segments that could ‘belong’ equally, descriptively or even prescriptively, to both codes.” As the notion of what “belongs” to a certain language is contestable, bivalency may be best understood as a notion of a degree of similarity that permits some form of understanding between speakers who don’t share a common language (see the discussion of insertions below). This may be the case when utterances consist entirely of a proper name or of an English-origin item that has an international or “transidiomatic” nature (see Jacquemet 2005b; also Lüdi 1987), such as *okay*. Another near-bivalent case is presented by the similarity of Spanish *no* or Haitian Creole *non* to English *no*, which suggests that a negative answer to a yes/no question by a litigant speaking Spanish or Haitian Creole may be understood by English speakers without being translated into English. Given the propensity for yes/no interrogatives in courtroom talk, this is frequently the case, but interpreters habitually translate such turns. However, Wadensjö (1998:23–25) points out that there is not necessarily pragmatic equivalence between such formally similar elements. For example, languages differ with regard to how speakers can confirm or deny negative yes/no interrogatives, so that it may be pragmatically appropriate to translate *no* as *yes*. Wadensjö quotes an example where she herself translated Russian *da* as Swedish *nej* (‘no’), and where her translation was met with bewilderment by a Swedish-speaking participant who “knew” that *da* “means” *yes*. Similarly, a Spanish interpreter in small claims court told me that he was once criticized by an attorney when he translated a witness’s *sí* as *of course*. This shows that bivalent or transidiomatic elements may well be misunderstood and thus warrant translation, but also that the interpreter’s translation of such elements may be challenged by other participants. Nevertheless, it remains the prerogative of the interpreter to determine what the meaning of a disputed source utterance is—that is, the interpreter has epistemic authority over the meaning of talk in a LOTE.

The practice of echoing thus needs to be understood also in the context of the legal guidelines for court interpreting and the language ideologies that shape them. As discussed in Chapter 4, court interpreters are required to speak in the voice of the LOTE-speaking witness (using direct translation), and their speech replaces the witness’s own voice during the trial and in the court record (Haviland 2003:768). This is made explicit in an appellate decision cited by Berk-Seligson (2000:225), which holds that statements of the interpreter “are regarded as the statements of the persons themselves.”
Consequently, when litigants codeswitch to English during testimony, their voice comes to compete with that of the interpreter, and this can lead to complications if it is unclear for other participants which voice is to be taken as testimony. This is shown in excerpt (10) from a case about a car accident, with a Russian-speaking claimant whose narrative testimony was shown in Chapter 3 (see also Angermeyer 2008:394–395). In line 3, the claimant switches to English following a yes/no question by the arbitrator and its translation by the interpreter. The interpreter echoes the codeswitched answer, modifying its form to make it a more felicitous answer to the arbitrator’s question. The claimant then continues in English, in what can be viewed both as a reformulation and an elaboration of his previous response. His utterance in line 5 is still in nonnative syntax, and it is again echoed by the interpreter (line 6), although now she is using nonnative syntax as well. At this point, the arbitrator has received several answers to her question that are different in form, although not in meaning, which prompts her to reiterate her initial question. She does so using a declarative question form that anticipates confirmation by the recipient, which suggests that she has understood the responses but needs to have her understanding confirmed (Heritage & Clayman 2010:141). The claimant again responds in English, although he produces several false starts (lines 8 and 9). These are not echoed by the interpreter, who instead produces a reduced Russian rendition of the arbitrator’s question (line 10). The claimant responds in English once more (line 11) and is again echoed by the interpreter, before he finally switches back to Russian, in his fifth attempt at stating that he did not have a stop sign (line 13). The interpreter’s translation of this Russian response (line 14) finally concludes the adjacency pair, in providing an answer that satisfies the arbitrator (even though, ironically, it is also in nonstandard English syntax).

(10)

1 Arbitrator: Did you have a stop sign?

2 Interpreter: (1.3) U vas byl stop-signal?  
‘Did you have a stop sign?’

3 Claimant: No. [(not)].

4 Interpreter: [No], I didn’t. [I d-]

5 Claimant: [I don’t] got.

6 Interpreter: I did not [have]

7 Arbitrator: [You didn’t] have a stop[signal?]

8 Claimant: [No, I no]got sig-

9 I- (1.1) I don’t [have]

10 Interpreter: [U vas] ne bylo?  
‘You didn’t have (one)?’

11 Claimant: No I- [(no uh-)]

12 Interpreter: [No I ]didn’t.
In contrast to the previous examples of echoing (excerpts (8) and (9)), in which litigants continued in the LOTE after the first instance of codeswitching and echoing, the claimant in excerpt (10) resists such “language repair.” Instead, he attempts three more times to respond in English to the arbitrator’s questions (lines 5, 8–9, and 11), all the while competing with overlapping turns by the interpreter, who continues to treat his English turns as input for her own talk (lines 6 and 12). This sequence of competing turns of codeswitching and echo thus creates the impression of a discursive tag-game, where the claimant is trying to escape the interpreter but the interpreter always wants to have the last word. This sequence can be analyzed as a struggle over the claimant’s voice, using Goffman’s (1981:144–145) delineation of the participation framework and the “production format” of interpreter-mediated interaction. As outlined in Chapter 4, the interpreter can be described as the “animator” of translated utterances, speaking words that establish the position of the source speaker, who takes the role of “principal,” or as “owner” of the translated talk (cf. Lerner 1996). When litigants codeswitch to English, they make their voices heard in English. However, by echoing, the interpreter reasserts the production format of interpreter-mediated interaction and continues to act as an animator of talk that is “owned” by the claimant. Moreover, by denying the claimant the role of animator, the interpreter also undermines his role as principal (i.e., as the person who is “committed to what the words say”; Goffman 1981:144). This is particularly apparent following the arbitrator’s confirmation request in line 7 you didn’t have a stop sign? Her question indicates uncertainty about the meaning of prior turns, and this would normally require disambiguation from the principal. However, the claimant’s attempts at disambiguation continue to be unsuccessful until he finally relents and responds in Russian (line 13), which is then translated by the interpreter (line 14) and acknowledged by the arbitrator (line 15). The excerpt shows that the interpreter has epistemic priority over the claimant, despite the fact that she is not the principal of her words in Goffman’s sense. However, the claimant is evidently unable to act as principal when he is speaking English. His English turns are treated as meaningless nontalk by the other participants; he is not seen as truly competent to speak on his own behalf unless he speaks Russian.

This perceived incompetence of codeswitching litigants echoes the notion of LOTE speakers as linguistically “handicapped,” which has been found in legal approaches to interpreting. As noted by Haviland (2003:769), this perception results from a worldview in which limited proficiency in English is
viewed as an individual shortcoming, because any “normal” person is seen as capable of speaking (Standard) English. Once a litigant’s proficiency is in doubt, he or she may thus be seen as too handicapped to communicate reliably in English. In fact, in formal trials, there may be a concern that statements made in English can be appealed on the grounds that the speaker didn’t know what she or he was saying. The court interpreter’s practice of echoing thus leads to a kind of linguistic disenfranchisement of bilingual litigants, as the interpreter asserts the epistemic authority to determine the meaning of the litigants’ utterances, whether made in English or in another language. From the perspective of conversation analysis, this epistemic priority of the interpreter runs counter to the usual distribution of epistemic rights in narrative contexts, where participants have “primary rights to know and describe their own thoughts and experiences” (Heritage & Raymond 2005:36; drawing on Sacks 1984; and Goffman 1983). Bilingual litigants are thus in an unusual interactional situation as they listen to the interpreter giving voice to their own experience, and they may subsequently feel the need to speak to this experience themselves (hence the game of tag in excerpt (10)). As noted by Lerner (1996:317), “[t]he voicing of utterances, experiences, viewpoints, and even actions that are recognizably owned by someone other than the speaker make relevant the confirmation or rejection by the author/owner.” In interpreter-mediated interaction, this provides a strong motivation for the frequent occurrence of codeswitching as a method for communicating such confirmation (or disconfirmation) directly to the arbitrator or judge. Accordingly, I observed several litigants during my fieldwork who tended to comment on the English translation of their own words. For example, in excerpt (4) above, the Spanish-speaking claimant was shown to repeat two words (entire house) from the interpreter’s translation (He left the entire house painted) of her own prior turn (me dejó toda la casa pintada toda), thus using codeswitching to suggest approval of the preceding translation.

Excerpt (11) demonstrates that a similar effect can be achieved through paralinguistic means as well. Here a Russian claimant, a young female customer of a valet parking service, provides online commenting on the interpreter’s translation of her previous turn, marking her approval with yeah (lines 10, 12, and 20), and mm-hum (line 20), response tokens that show agreement with prior talk (Gardner 2001). The timing of these agreement tokens at breaks in the interpreter’s rendition is reminiscent of the back-channeling behavior of addressees. As mentioned in Chapter 5, Wadensjö (1998) and Davidson (2002) see the lack of back-channeling and acknowledgment markers in interpreted interaction as problematic, yet this example shows that they can be employed in unexpected ways by bilingual litigants. Moreover, these agreement tokens also provide a way for litigants to draw on their English proficiency without inviting criticism from arbitrators or interpreters.
By producing response tokens such as *mm-hum* and *yeah* after turns by the interpreter, the claimant is able to assert her epistemic rights and affirm her status as principal to the arbitrator without interfering with the interpreter’s role of animator of her talk. These agreement tokens don’t compete with the interpreter’s turns but rather serve to reclaim ownership of the viewpoints and experiences expressed in them. In contrast to codeswitching as in excerpt (7) or (10), this practice elicits no apparent reaction from the arbitrator or the interpreter. Of course, litigants who monitor and comment on the interpreter’s translation of their own words do not always approve of what they hear. This was illustrated in Mr. Bessonov’s case, discussed in Chapter 5 (excerpt (4)), when the interpreter rendered his *na svetofore* ‘at the light’ as *it was on red light*, prompting him to interrupt her in English: *green light!*

This shows that codeswitching to English can be an essential resource for LOTE-speaking litigants. The examples discussed in this chapter have shown that codeswitching enables litigants to participate more actively in
the interaction, to confirm or correct the interpreter’s rendition of their own talk, to gain the floor, and to assert their own voice and appeal directly to English-speaking participants such as the arbitrator, at crucial moments in the interaction. Some of these uses of codeswitching require a relatively high degree of proficiency in English, although some do not, as evidenced for example by excerpt (5), where the claimant appears unable to produce an extended turn in English but used codeswitching to gain the floor in the first place. Nonetheless, even litigants with highly limited proficiency were found to use English to some extent. As noted at the beginning of this chapter, this did not always involve codeswitching for entire turns but rather the use of single English lexical items in LOTE structures. The use of such insertions will be described in the remainder of this chapter, and it will be shown that, much like codeswitching, insertion can be seen as interactionally meaningful in interpreter-mediated interaction.

The use of insertion

Insertion involves the use of a simple constituent from one language in a structure of another language (cf. Muysken 1997, 2000) This may be an ad hoc, idiosyncratic occurrence, where a speaker codeswitches for a single word, or it may involve a word that is used habitually, so that it may be considered borrowed (i.e., a loanword). In either case, this definition presupposes that words can be characterized as “belonging” to a particular language. For the purposes of this analysis, any English lexical item was considered an insertion in a LOTE sentence if it could be used in an English sentence with the same meaning (and the same principle applied to LOTE-origin words in English contexts). This excludes borrowed forms that have undergone a change of meaning in the recipient language, such as the words parking and real estate in the following examples found in the data: Russian в этом паркинге часто разбивают (‘in this parking lot they often break--’) or Spanish yo fui a un real estate a buscar apartamento (‘I went to a real estate office to find an apartment’). However, apart from considering such semantic change, I did not exclude other forms that might be considered instances of borrowing simply by virtue of frequency of use, as it is commonly done in codeswitching research (see for example Myers-Scotton 1993a:16). An important reason for doing so lies in the fact that the status of a lexical item as “borrowed” or not is in effect variable. As will be shown below, different speakers may not agree on whether a word is borrowed or not, and even a single speaker may use the same lexical item in different ways, either emphasizing or ignoring its possible attribution to another language.

In Angermeyer (2010), I present the results of a quantitative analysis of insertions in a set of 40 transcribed hearings that involved 65 LOTE-speaking
litigants or witnesses and 15 interpreters. Almost all LOTE-speaking litigants or witnesses and all interpreters were found to use insertions of English lexical items in LOTE structures (569 tokens). By contrast, insertions of LOTE-origin items in English structures were found to be extremely rare (3 tokens). This asymmetrical distribution is reminiscent of the findings of many studies of bilingual speech in ingroup interaction, which show insertions of lexical items from the socially dominant language into structures of the dominated language, but not vice versa (see Muysken 2000:68). It has been documented in many studies of language contact in the context of transnational migration (see, e.g., Auer 1988:206; or Backus 1992:47), including ones of Russian/English bilingualism in New York City or elsewhere in the United States (Schmitt 2000:16; Gregor 2003:72, 103; Angermeyer 2005b). Similarly, Poplack (1980:602–603) found in her study of Puerto Rican bilinguals in New York that, despite the relative symmetry of “intimate” codeswitching, the insertion of English nouns into Spanish structures occurred four times more often than that of Spanish nouns into English structures. The fact that so many studies of bilingual speech have yielded parallel results suggests that this asymmetry is rooted in the social relationship between the communities who speak the languages. Where there is inequality between groups, speakers of the dominated language acquire the dominant language and insert words from it into their own language, but speakers of the dominant language don’t do the reverse.

Another common finding of studies of language contact and bilingual speech is that nouns are more frequently and more easily borrowed or inserted than are other categories (Poplack, Sankoff, & Miller 1988; van Hout & Muysken 1994:60; Thomason & Kaufman 1988:74). This is also true of insertions in small claims court, for speakers of all four languages, as 92% of all insertions are nominal constituents (472 single nouns and 52 compound nouns; see Angermeyer 2010:476). This universal prevalence of nouns has been explained from a structural perspective, arguing that nouns are more easily integrated into recipient-language structures than other categories (Heath 1989; Myers-Scotton 1993a; Muysken 2000). Such approaches have investigated how the integration of material from one language into structures of another language is possible, but not why it occurs in the first place. When the question of motivation is raised, insertions and lexical borrowing are most commonly attributed to a need for denoting concepts that are not available in the recipient language (Weinreich 1968; van Hout & Muysken 1994)—that is, they may fill a “lexical gap” (Backus 1992:4–5) or may result from a momentary “lack of words” (Auer 1984:57; in cases of what he calls “preference-related transfer”). Based on these claims, we would expect English-origin lexical items to refer to concepts that are not readily expressed in the respective LOTEs. Such forms certainly exist, as all LOTE speakers are confronted with aspects of American culture that are alien to their culture of
However, this is not the case for many other inserted lexical items, which co-occur with LOTE equivalents in the dataset. Often such equivalents are used earlier in the hearing by the same speaker, and sometimes immediately preceding the insertion. This is shown in excerpt (12), which shows a Spanish-speaking witness, a contractor, listing items stolen from a parked van. In line 3, he uses the Spanish word _taladros_ ‘drills’ and then immediately follows with an English insertion _los drills_. In using the insertion _drills_, he is clearly not motivated by a lexical gap or a loss for words. The fact that the interpreter translates only once (_the drills_) emphasizes the notion that _taladros_ and _drills_ are synonyms and translation equivalents: She does not treat them as having two different meanings that warrant separate translations.

(12)

<table>
<thead>
<tr>
<th></th>
<th>Witness:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bueno, faltaba la escalera +</td>
<td>{‘well, the ladder was missing’}</td>
</tr>
<tr>
<td>2</td>
<td>Interpreter:</td>
<td>the ladder was missing +</td>
</tr>
<tr>
<td>3</td>
<td>Witness:</td>
<td>los taladros, los <em>drills</em> +</td>
</tr>
<tr>
<td></td>
<td>{‘the drills, the drills’}</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Interpreter:</td>
<td>the drills +</td>
</tr>
</tbody>
</table>

Translation equivalence plays a significant role in studies of codeswitching and borrowing, as researchers routinely distinguish between insertions that lack an equivalent in the recipient language and those that don’t (e.g., see the distinction between “core borrowing” and “cultural borrowing” in Myers-Scotton 1993a:169). At the same time, these studies have found it difficult to define translation equivalence, and they risk imposing the researcher’s judgments instead of those of the bilingual speakers. In interpreter-mediated interaction, this is not the case, however, as translation equivalence can be established empirically, following Toury’s (1995:89) notion of “coupled pairs of target- and source-text segments.” When interpreters translate from an English source to a target in another language, or vice versa, they establish a correspondence between lexical items from different languages. For example, excerpt (12) provides empirical evidence for the claim that _escalera_ and _ladder_, or _taladros_ and _drills_ can be viewed as translation equivalents. For bilingual participants, each of these “coupled pairs” sets up a set of available lexical alternatives, as it associates each English lexical item with a corresponding counterpart in the LOTE. Consequently, we can establish for each inserted English lexical item whether a LOTE counterpart exists in the data or not. This can be done by comparing different coupled pairs that involve the same English item, which occur either in the same hearing or in different hearings. Table 6.1 shows the number of insertions that are used by litigants despite the existence of a LOTE translation equivalent in the dataset. The
table counts only first-time uses of insertions by a speaker in a single interactional episode. In other words, if a speaker uses the same inserted item multiple times, this is counted only once, but if different speakers use the insertion in the same or in different episodes, these are counted as separate instances of insertion.

Table 6.1 shows that more than half (59%) of all inserted items produced by litigants co-occur with translation equivalents in the data. Moreover, in a quarter of the cases (26%), the translation equivalent was used previously in the same hearing, whether by the same speaker (as with drills and taladros in excerpt (12)) or by a different speaker. The table also shows that the rates are much lower for Russian than for the other three languages, which may reflect a higher rate of lexical borrowing from English. The sample of Russian speakers in the data included several people who appeared to engage in code-mixing habitually, including several litigants (see, e.g., excerpt (2) in Chapter 5) and one interpreter (see excerpt (20)).

Why do litigants use English insertions even if a LOTE alternative exists? Some scholars have argued that such forms may be used to index cultural values that are associated with a given language and consequently with lexical items taken from it (Weinreich 1968:59; Myers-Scotton 1993a:234–236; Auer 1998b:7). However, a speaker’s choice of a particular word not only relates to the speaker’s mental lexicon in the language but can also be understood with reference to the interactional context in which it occurs. With regard to insertions, this was first suggested by Auer (1984:62), who uses the term “anaphoric transfer” to describe cases in which an inserted item refers back to an earlier use of the same lexical item in the same conversation. While Auer considers this a relatively rare phenomenon, I argue in Angermeyer (2002) that a significant portion of insertions can be explained in this way. Drawing on Halliday and Hasan’s (1976) notion of lexical cohesion, as well as on studies of lexical repetition in interaction (e.g., Johnstone 1987; Bublitz 1996), I argue that insertion can serve to establish lexical cohesion between utterances made in different languages. This will be illustrated in the following section.

### Table 6.1.

<table>
<thead>
<tr>
<th>LOTE equivalent used</th>
<th>Haitian Creole</th>
<th>Polish</th>
<th>Russian</th>
<th>Spanish</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Earlier in same trial</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>by same speaker</td>
<td>10 (42%)</td>
<td>11 (32%)</td>
<td>6 (10%)</td>
<td>16 (35%)</td>
<td>43 (26%)</td>
</tr>
<tr>
<td>by other speaker</td>
<td>6 (25%)</td>
<td>7 (21%)</td>
<td>3 (5%)</td>
<td>6 (13%)</td>
<td>22 (13%)</td>
</tr>
<tr>
<td>Later in same trial, not before</td>
<td>5 (21%)</td>
<td>9 (26%)</td>
<td>4 (7%)</td>
<td>11 (24%)</td>
<td>29 (18%)</td>
</tr>
<tr>
<td>Used only in different trial</td>
<td>2 (8%)</td>
<td>3 (9%)</td>
<td>13 (22%)</td>
<td>6 (13%)</td>
<td>24 (15%)</td>
</tr>
<tr>
<td>Total</td>
<td>17/24 (71%)</td>
<td>23/34 (88%)</td>
<td>23/60 (38%)</td>
<td>33/46 (72%)</td>
<td>96/164 (59%)</td>
</tr>
</tbody>
</table>
LEXICAL COHESION AS A DISCOURSE MOTIVATION FOR INSERTION

When interpreters translate testimony into English, they do so for the benefit of the arbitrator and other English-speaking participants. However, as was shown in the discussion of codeswitching above, LOTE speakers listen to the translation as well, especially when they pause during consecutive interpreting, waiting for the next opportunity to take the floor. As litigants are listening to the translation of chunks of their own prior speech, the interpreter’s speech is likely to be more transparent to them than English talk by other participants, and thus litigants are likely to recognize which English words correspond to their own LOTE words. This is illustrated in excerpt (13), from a hearing with a Spanish-speaking tenant suing her landlord. As part of her claim, she wants to be compensated for having hired an exterminator, and she introduces this issue by using the Spanish word *fumigador* (line 3). In his translation, the interpreter uses the English word *exterminator* (line 4), and this is then twice repeated by the claimant (lines 5 and 8). The first repetition immediately follows the interpreter’s use of the term, as if approving his translation and emphasizing the word (compare the use of *entire house* in excerpt (4) above). The second repetition is uttered more quietly, as if made to herself for the purpose of memorization.

(13)

1 Claimant: Eso es de-
   
   {‘That’s for’ [*Showing a receipt*]}

2 Interpreter: [Es de-
   
   {‘It’s for’}

3 Claimant: [Es-] eso es del- del *fumigador* que [fue-]
   
   {‘that’s for, for the exterminator who came’}

4 Interpreter: [That’s] for the *exterminator* (.)

5 Claimant: [*Exterminator!*]

6 Interpreter: [who went to the apartment]

7 Arbitrator: (.) Ah (.) sorry

8 Claimant: [*Exterminator*]

9 Interpreter: [(xx-) disculpe]
   
   {‘Sorry’}

After this exchange, the claimant does not use the Spanish word *fumigador* again but instead inserts the English word *exterminator* into Spanish utterances each time she refers to this topic. One example of her doing so is shown in excerpt (14). Note that the insertion of *exterminator* into a Spanish structure is preceded by disfluency, which suggests that its use may be deliberate. In these and in subsequent examples, the corresponding lexical items are highlighted in bold font for emphasis.
As noted by Auer (2007:331), who discusses the same example, the integration of exterminator into a Spanish utterance “is nothing more than the consequence of the repeated use of an item.” In excerpts (13) and (14), the claimant repeats an English lexical item that had previously been used by the interpreter in an English utterance, where it functioned as the translation of the corresponding Spanish equivalent. Thus, following Auer (1984:26), we can say that it ties back anaphorically to earlier uses of the same item in English. Such repetition of lexical items within the same discourse has received considerable attention in studies of monolingual discourse, where it has been claimed to establish lexical cohesion (cf. Halliday & Hasan 1976; Johnstone 1987; Norrick 1987; Tannen 1987; Tyler 1994; Bublitz 1996). Drawing on this work, I argue in Angermeyer (2002) that insertion regularly creates ties of lexical cohesion to prior utterances made in a different language. When such cohesive insertions are first used by litigants, the relevant prior utterance (or utterances) is almost always one that has been made by a different speaker, not by the litigant himself or herself (in contrast to multilingual discourse, where speakers have overlapping multilingual repertoires and may quote words that they themselves spoke in another language, as in Angermeyer 2002). In other words, cohesive insertion in interpreter-mediated interaction tends to be “second-speaker repetition” rather than “same-speaker repetition” (cf. Norrick 1987), although it may combine elements of both when cohesive insertion is preceded by codeswitched repetition in unintegrated single-word utterances, as in excerpt (13).

In addition to using words previously used by interpreters, litigants may also repeat English words that occurred in the speech of arbitrators or English-speaking litigants. In those cases, it is likely to have been translated into the LOTE by the interpreter, so that, again, the speaker has the choice between two synonymous lexical items that have occurred in prior discourse. This is
Codeswitching in the courtroom illustrated by excerpts (15) and (16), from a hearing with a defendant who speaks Haitian Creole in a case about a car accident that was discussed in Chapter 1 (see also Angermeyer 2010:477). The claimant accuses the defendant of having caused the accident by running a red light. When she tells her version of how the accident happened, she claims that the light turned yellow as she crossed the intersection. When she first makes this claim, as shown in excerpt (15), she uses the Haitian Creole term jòn ‘yellow’ (line 5) and the interpreter translates it as yellow (line 6). Later in the hearing, the claimant is given the opportunity to ask her questions, as shown in excerpt (16). Like in a cross-examination in formal court, he does not ask information-seeking questions but rather poses closed questions that challenge her earlier testimony. In line 2 he uses the word yellow with question intonation, asking her to confirm or deny her earlier claim. The interpreter translates this into Haitian Creole (jòn, line 3), but when the defendant reiterates her testimony, she inserts the English word yellow into a Haitian Creole sentence (line 5).

(15)

1 Defendant: Limyè a te vert +
   {'the light was green'}
2 Interpreter: And the light was green +
3 Defendant: (Yes) () and then () mwen travese +
   {'and then I crossed'}
4 Interpreter: [And I crossed the street] +
5 Defendant: [Men li tounen jòn lè m ap travese=
   {'but it turned yellow when I was crossing'}
6 Interpreter: =but while I was () crossing ah the light turned yellow

(16)

1 Claimant: You said that the light changed to what?
2 [Yellow?]
3 Interpreter: [Ou di ke] limyè (a te to-) tounen jòn?
   {'you said that the light (had) turned yellow'}
4 Defendant: (0.6) limyè a te vert,
   {'The light was green'}
5 et puis lè m ap pase (anba li) tounen yellow.
   {'and then, when I passed underneath, it turned yellow.'}

In excerpts (15) and (16), the defendant uses two phrases that are entirely parallel (li tounen jòn ‘it turned yellow’ and li tounen yellow), except for the fact that the second version replaces a Haitian Creole item with a synonymous English insertion. Moreover, the item being inserted is a keyword in the case as a whole, and especially in the question-and-answer pair shown
in excerpt (16), where it is the focus of the claimant’s question in line 2. In choosing *yellow* over *jón*, the defendant can be seen as demonstrating that she participates in the English part of the interaction and acknowledges the receipt of utterances made by English speakers (cf. Johnstone 1987:207; Tannen 1987:585). Moreover, the fact that she repeats this keyword from the claimant’s question corresponds to a common finding in conversation analysis: that answers often include words from the question (Clayman 2001:410), especially if they rebut a proposition included in the question (see, e.g., Atkinson & Drew 1979:160–163).

These examples show that insertions may be the result of discourse processes rather than of gaps in the speaker’s lexicon. By inserting *exterminator* in excerpt (14) and *yellow* in excerpt (16), LOTE speakers establish lexical cohesion between utterances that were made during the same interaction but in different languages (Angermeyer 2002). Such cohesive insertions occur frequently in the data. Overall, 41% of insertions used by litigants (67/164) involve lexical items that have previously been used by another speaker in the same hearing, and in about half of these cases the prior use occurred in the previous five turns (32/164, 20%). This kind of lexical repetition is also found with insertions that consist of more than a single word, as shown in excerpt (17). The Russian-speaking claimant, a Section 8 tenant suing for the return of her security deposit, is explaining the circumstances of her move out of the landlord’s building, which involved a transfer of the housing subsidies to the new building. In line 1, she introduces this fact by using the Russian verb *perevesti* ‘to transfer’ as well as the prepositional phrase *v drugoj building* ‘to another building,’ which contains a preposition and an adjective in Russian as well as the inserted English noun *building*. This is translated by the interpreter as *transfer me to another building* (line 2), which the claimant reprises (omitting the pronoun) as the noun phrase *transfer to another building* in line 6.

(17)

<table>
<thead>
<tr>
<th></th>
<th>Claimant:</th>
<th>Vos’maja Programma menja <strong>perevela v drugoj building</strong>.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>{‘Section 8 transferred me to another building’}</td>
</tr>
<tr>
<td></td>
<td>Interpreter:</td>
<td>And the Section Eight <strong>transfer me to another building</strong> +</td>
</tr>
<tr>
<td></td>
<td>Arbitrator:</td>
<td>(.) Okay?</td>
</tr>
<tr>
<td></td>
<td>Claimant:</td>
<td>I (.) kodga ja za četyre mesjaca naperjod,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>{‘and when I, four months in advance’}</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ja dala znat’ uh <strong>manager-u</strong>, čto Vos’maja Programma</td>
</tr>
<tr>
<td></td>
<td></td>
<td>{‘I let the manager know that Section 8’}</td>
</tr>
<tr>
<td></td>
<td></td>
<td>delaet transfer to another [building]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>{‘would do a transfer to another building’}</td>
</tr>
<tr>
<td></td>
<td>Interpreter:</td>
<td>[Uh-]</td>
</tr>
</tbody>
</table>
Codeswitching in the courtroom

In addition to the cohesive insertion of transfer to another building, excerpt (17) also illustrates the use of insertions that are not repeated from earlier uses in the hearing, namely building in line 1, manager in line 5, and security in line 8. These examples are representative of the other 59% of the litigants’ insertions for which no prior use is attested in the data. Like the insertions in the examples above, these three items are clearly keywords in the case, especially security (the security deposit), which represents the subject of the claim, and manager, which refers to one of the defendants. As keywords in the dispute, they can be surmised to have occurred at a prior point in the history of the dispute, such as during arguments that led to the dispute, or when the claim form was filled out in English. In fact the claimant here is reporting her verbal request for the return of the security, which was likely made in English. In Angermeyer (2002:378–383) I argue that insertions can establish cohesive ties to earlier interactional episodes, thus functioning intertextually. A similar claim is made in Auer (1998b:7). However, as the analysis in this study is limited to interaction in the courtroom, the existence of such intertextual links can only be hypothesized but not demonstrated empirically.

LEXICAL REPETITION AS ACCOMMODATION

Even when a lexical repetition occurs, it cannot be solely explained by the need to establish cohesion. As noted above, there is an asymmetry in the distribution of insertions by language and speakers (291 insertions of English items made by LOTE-speaking litigants, compared to only one insertion of a LOTE item by an English-speaking arbitrator or litigant). All participants need to make their contributions coherent with prior talk, but not all do so by quoting words that their interlocutors have said in another language. This can often be attributed to a lack of knowledge of LOTEs among English speakers, but not in cases where LOTE speakers have bilingual adversaries, or with
arbitrators who speak Spanish (see Chapter 3). Instead, it can be argued that the asymmetry arises from processes of accommodation in the context of a hierarchical role distribution in court, and of inequality in society more generally. When LOTE-speaking litigants use English words, they accommodate to English-speaking participants, including the arbitrators who make the legal decision. In the framework of accommodation theory (Giles, N. Coupland, & J. Coupland 1991), which was introduced above, insertion can be understood as an act of convergence, just like codeswitching. In fact, lexical choice is among the features that have been considered in studies of accommodation. Trudgill (1986) views accommodation in face-to-face interaction as the primary cause of long-term language change and argues that accommodation begins with lexical choice before reaching other levels of language (p. 25). Cohesive insertions represent convergence in two ways, namely through lexical choice (by using the same lexical item) and through language choice (by using the same language, even if only momentarily). Thus, LOTE speakers converge to the speech of English-speaking participants, but not vice versa. As noted in the discussion of codeswitching above, this asymmetry is in fact predicted by accommodation theory. As Giles, N. Coupland, and J. Coupland (1991:19) state, “the greater the speakers’ need to gain another’s social approval, the greater the degree of convergence there will be.” In the courtroom, litigants need to gain the social approval of legal decision makers, but not vice versa. Research on courtroom interaction that has been conducted in the accommodation theory framework has shown accommodation by witnesses or defendants, although defendants in particular may also be found to be confrontational and to diverge in their speech style (Linell 1991). Aronsson et al. (1987) interpret the lexical repetition of legal terms by witnesses as an act of convergence toward the speech of legal professionals.

Excerpt (18) provides an example of cohesive insertion that can be interpreted as an act of convergence from litigant to arbitrator. It is taken from a case in which a Russian-speaking claimant is suing a mortgage broker over a bounced check (see also excerpt (5)). The defendant, who signed the check, has claimed that he is not legally responsible, as he is merely an employee of the company. The arbitrator is agreeing with him, telling the claimant that he should sue the company whose name is written on the check. The claimant contends that this company has changed its name four times, and that the defendant is in fact the manager, but he cannot convince the arbitrator, who decides to dismiss the case. Excerpt (18) includes the final exchanges of the hearing, during which the arbitrator explains to the claimant once more that he cannot hold an employee responsible for the company. In doing so, she uses the word *employee* four times (lines 2, 4, 10, and 11), and the Russian interpreter translates it as *rabotnik* (line 6). When the claimant attempts once more to question this view (lines 14, 16, and 18), he uses the English word *employee* instead of the Russian alternative (he had not used either word in the hearing prior to this moment).
Arbitrator: The law is the law. I- there’s nothing I can do, you have to [sue the company not the employee]

Interpreter: [Odin odin dva dva vosem’] [‘11228’][ZIP code, dictating to claimant]

Arbitrator: Cause employees are not personal [liable]

Interpreter: [Vy dolžny] ‘You have to sue’

Arbitrator: [Unless it’s a sole proprietorship] (1.5) you know if you are the only-

if you own the company and you are the only employee, then

you can’t hide [behind the fact that you’re an employee]

Audience: [(xxx možet dokazat’ čto-)]

‘xxx can prove that’

Interpreter: [Esli vy vladeete kompaniej-] ‘If you own the company’

Claimant: =Kak on možet dokazat’ [čto-]

‘How can he prove that--’

Arbitrator: [So can] I have my pen back then?

Claimant: Kak on možet dokazat’ [čto on-]

‘How can he prove that he is--’

Arbitrator: [Thank you]

Claimant: čto on uh employee ětoj kompanii?

‘that he is an uh employee of this company?’

Interpreter: (...) How he- ah (can he-)

(...) how can he prove that he is employee [of the company?]

Claimant: [On daže ne- ne-]

‘He is not even--’

Arbitrator: The problem is, /you have the burden of proof, not him,

and you /must [sue the company]

Interpreter: [Vy ego vyzvali v sud]

‘You took him to court’

Arbitrator: =You must sue the company, (.) okay?

Interpreter: Vy dolžny sudit’ [kompaniju]

‘You have to sue the company.’

Arbitrator: [Thank you very much]

Claimant: =Thank you.
The claimant’s lexical choice of *employee* over *rabotnik* in line 18 thus represents an example of cohesive insertion, where a LOTE-speaking litigant establishes lexical cohesion between his utterance and a prior utterance by an arbitrator. As in the case of *exterminator* in excerpt (14), we find the insertion to be preceded by disfluency, suggesting that it may be produced deliberately. Also, as in the previous examples, the insertion involves a lexical item that can be considered central to the subject matter of the case. In the context of courtroom discourse, such a repetition of the same lexical item also brings to mind the “same meaning, same form” principle that is characteristic of legal language (Tiersma 1999:113). This involves a preference for the repetition of full phrases instead of using anaphora, in order to minimize ambiguity (O’Barr 1982:19). Conversely, Gibbons (2003:48–49) points out that while “a word or expression is taken to have the same referent throughout a text,” “perhaps more importantly, a synonym is expected to have a different referent.” This principle thus conflicts directly with the task of the interpreter, since translation requires the use of a different word to designate the same referent. In fact, consistency of reference may be difficult to achieve in interpreter-mediated interaction, as shown by Pym (1999) in his analysis of variable translation of *slap* and *hit* into Spanish in testimony from the O. J. Simpson trial. By contrast, the use of an insertion maintains the “same meaning, same form” principle across language boundaries.

Applied to the analysis of insertion in bilingual speech, the “same meaning, same form” principle thus implies that insertion should be particularly common with lexical items that denote important legal concepts, such as different forms of evidence, or categories of participants. This is in fact the case. Table 6.2 illustrates the ways in which 12 such legally relevant concepts from the most common case types are referred to by interpreters and litigants when speaking in the respective LOTE. Insertions are attested in 19 of the 48 relevant LOTE environments, with 12 occurring alongside LOTE equivalents and seven occurring as the only variant. Several inserted items are found in more than one recipient language, including *lease* and *estimate*, which occur in three different language contexts each. These parallels provide further evidence for the claim that the insertion of such items is often discourse-related and does not result primarily from “gaps” in the respective speakers’ LOTE lexicon. The insertions could also be taken as evidence in support of Backus’s (1996) claim that items are more likely to be inserted if they denote a specific referent. However, Table 6.2 also shows that insertions are often absent where a close cognate is available—that is, a word etymologically related and formally similar to the co-referential English word, such as the Spanish words *depósito*, *estimado*, *recibo*, or *renta*. Overall, cognates are attested in 15 relevant environments, compared to 11 that contain neither an insertion nor a cognate (see especially Polish forms like *mieszkanie* ‘apartment,’ *umowa* ‘contract/lease,’ or *wypadek* ‘accident’) and three where there is a lack of data.
The relative distribution of insertions and cognates in Table 6.2 suggests that the use of insertions is less likely if a cognate exists in the LOTE. For example, Spanish speakers use cognates for eight of the 12 referents and insertions for only three, compared to three cognates and 10 insertions produced by Russian speakers. Like insertions, cognates can be understood as establishing lexical cohesion across language boundaries by virtue of their formal similarity to a co-referential item. The use of a cognate avoids the ambiguity introduced by synonyms, maintaining a sense of “talking about the same thing,” in line with the “same meaning, same form” principle of legal language.

This hypothesis is further supported by the occurrence of LOTE items that do not have the same meaning as their English cognates in monolingual
language use but that are used by litigants and interpreters as if they did. This is the case with Spanish *renta*, for example, which refers to “pension” or “income” in monolingual usage but is used to mean “rent.” In bilingualism research, this phenomenon has been described as loan shift (Haugen 1950:219) or semantic extension (Weinreich 1968:48), and it is parallel to the notion of false friends in translation studies, which describes the use of target-language words that have a similar form to but a different meaning than the source-language word being translated (Nida 2004).

**INSERTION IN TRANSLATION**

As shown in the previous section, insertions and close cognates tie back to prior discourse by establishing cohesion to identical or similar forms that have been used by other speakers. However, insertions and cognates also have an effect on subsequent discourse in that they facilitate the interpreter’s task by providing an input for translation that is already partially in English or is formally similar to the appropriate target form. As shown in excerpts (12), (14), (17), and (18), insertions habitually result in a repetition of the inserted item in the English translation produced by the interpreter, and the same is true with close cognates. Consequently, it can be argued that the use of insertions and cognates enables LOTE speakers to influence the interpreter’s choice of words in English, and at times it appears as if they do so deliberately. This is particularly evident when the insertion follows an item from the LOTE that can be considered to be its translation equivalent. This is the case in excerpt (19), where a Russian-speaking claimant uses the English item *shop* immediately after its Russian equivalent *remontnaja masterskaja* ‘car repair shop’ (see also the use of *taladros* and *drills* in excerpt (12) above). Moreover, the insertion is followed by the question tag *tak?*, which appears to solicit a confirmation of understanding from the interpreter.

(19)

1 Claimant: Èto, značit, kogda eë postavili,
   {‘well, that is, when it was put’}
2   značit, v remontnuju masterskuju, v shop, (.) tak?
   {‘that is, in a repair shop, in a shop, yes?’}
3   (.7) ona, značit, prostožal tam šest’ s polovinoj mesjacev.
   {‘it was, you know, parked there for six and a half months’}
4 Interpreter: Well, this car was put at a repair shop where it spent about ah
5   (.6) skol’ko ona tam provela?
   {‘how much time did it spend there?’}

Such lexical suggestions were especially common with specialized vocabulary items that related to the litigant’s line of work, such as the use of *drills*
by a contractor in excerpt (12). In fact, litigants with limited proficiency in English may nonetheless be more familiar with English terminology in their field than the interpreter is. For example, in discussing car repair, LOTE-speaking litigants inserted such items as catalytic converter, alternator, exhaust system, or injector, which interpreters were not always familiar with. This shows again that L2 proficiency is not uniform but depends on the topic in addition to the speech situation (as discussed in Chapter 5). Moreover, the use of such lexical items in English indexes professional expertise that is likely to enhance perceptions of the litigant’s credibility.

The use of English insertions (and cognates) thus provides litigants with a number of advantages over the use of LOTE equivalents. As discussed in the above sections, by using insertions, they make their own talk more coherent with prior discourse in English, accommodating to the lexical choices of English speakers and maintaining continuity of reference across language boundaries, especially in reference to key concepts in the dispute. In addition, the use of insertions enables litigants to influence the interpreter’s choice of words, and, if it involves specialized vocabulary, it may be seen as indexing a litigant’s professional or educational qualifications.

By contrast, when interpreters use insertions in their own speech, they are likely to be perceived as indexing a lack of qualification for the interpreting task. Particularly in the legal sphere, interpreting is often simplistically understood as a “word matching exercise” (Hale & Gibbons 1999:207), where interpreters are supposed to translate “word for word” (Haviland 2003:768). From this perspective, the use of insertions by interpreters is problematic because it can be taken as evidence that the interpreter doesn’t “know” the appropriate translation equivalent in the LOTE and is unable to produce a complete translation of the English source utterance. This is particularly true if the insertion repeats a lexical item from the corresponding source talk (see Meyer & Zeevaert 2002:2). If insertions result from lexical gaps, these may reflect limits in the interpreter’s proficiency, or they may be temporary, resulting from difficulties with lexical retrieval. Such retrieval problems are likely to arise, as court interpreters have to make quick lexical decisions. If they spend too much time choosing an appropriate lexical item, they risk missing new input that also needs to be translated, especially when they are operating in simultaneous interpreting mode (see Chapter 5). Insertions may thus represent a fallback strategy for avoiding such delays.

As shown in Table 6.2, the court interpreters in this study do use insertions of English lexical items, which are mostly repetitions of words from the corresponding source utterance (278 tokens overall). However, there are considerable differences between individual interpreters in the sample. Many interpreters use insertions only rarely, with Spanish interpreters averaging a rate of one insertion per 500 words in the LOTE and other interpreters averaging between one in 50 and one in 200 words (see Angermeyer
2010:475). However, one particular Russian interpreter was found to produce more insertions than all other interpreters combined, at a rate of one in 25 words (170 tokens). Her use of insertions is illustrated in excerpt (20), where she translates for a Russian-speaking overhearer what the defendant says in English to the arbitrator. As discussed in Chapter 5, such situations often give rise to simultaneous interpreting, and the interpreter’s rendition here overlaps almost entirely with speech by other participants. In her translation of the defendant’s turn, the Russian interpreter repeats the lexical items landlord and security from the English source. In addition, she produces the construction otdali nazad ‘(they) gave back,’ which is modeled after the English phrase ‘give back.’ She does so despite having used the verb vernut’ ‘to return (something)’ in the same context earlier (compare also excerpt (17), where this verb is used by a litigant, along with an insertion of security). Such constructions, called calques, have been documented in many language-contact situations, but they may also be attributed to a tendency of translators to produce target forms that are syntactically modeled after the source form, even where this diverges from monolingual usage (so-called translationese, cf. Toury 1995). Consequently, it is not clear whether the interpreter’s speech reflects language-contact phenomena in her use of Russian generally or whether it results from the constraints of simultaneous interpreting.

(20)

1 Defendant: according to my landlord he gave it back to ‘em,
2 he gave back (their) security.
3 Arbitrator: (.8) Y’all can’t [prove it]
4 Interpreter: [Soglasno] [landlord-u]
   ‘According to the landlord,’
5 Defendant: [(But here)!]
6 Interpreter: oni vam [security otdali nazad]
   ‘they gave you the security back.’
7 Defendant: [Here’s the- here’s the check]

Where interpreters use insertions, one may ask whether the inserted lexical item is in fact understood by the LOTE-speaking litigant. Meyer (2004:133) discusses an example where a nonprofessional interpreter accompanies the insertion of a medical term with a question intonation that suggests that she is checking its comprehension by the addressee. However, no such examples are found in my data, suggesting that interpreters, if they are aware of using insertions, assume that the respective English lexical items will be understood by their LOTE-speaking interlocutors. To the contrary, there may be cases where LOTE speakers are much more familiar with the inserted English-origin item than with a LOTE alternative (see the discussion
of lexical struggle below). In any case, most interpreters seem to want to avoid insertions when they can. This becomes apparent when items that have been inserted are avoided in subsequent discourse and replaced by a LOTE alternative. This is illustrated in excerpt (21), from a case with a Polish-speaking claimant. In this excerpt, the defendant is explaining her position in English to the arbitrator, and the interpreter is translating this into Polish for the overhearing claimant. The defendant twice uses the English word *cash* (lines 1 and 10). In the first instance, the interpreter inserts English *cash* (line 7), but when she has to translate it a second time (line 12), she uses the Polish item *gotówka*. Thus, we can interpret the use of *gotówka* as an instance of self-repair, a lexical choice that substitutes a Polish-origin lexical item for an earlier English-origin insertion. It suggests that the interpreter perceives *cash* as English, even though she uses it in a Polish structure, without hesitation and case-marked with an inflectional suffix (for instrumental case). Thus, while it may well be that the word *cash* is habitually used by Polish–English bilinguals in New York, this does not mean that its English origin has become irrelevant.

(21)

1  Defendant: That was agreement, I gave [her *cash*]
2  Arbitrator: [Where is the-] where is-
3  Defendant: (.) I never[(give-)]
4  Arbitrator: [You] never had a [receipt?]
5  Defendant: [Nie-] [no]
   {'No.'}
6  Interpreter: [Nigdy]
7  nie miałam żadnego kwitka [zawsze płaciłam *cash-em*]
   {'I never had any receipt, I always paid in cash’}
8  Defendant: [We never have [receipt]
9  Arbitrator: [Never] receipts?
10 Defendant: =We give the *cash* on the table, that’s it, that was agreement.
11 [And I have the proof she’s lying to-]
12 Interpreter: [Gotówka była na stół kładziona i to wszystko]
   {'The cash was put on the table, and that’s all.’}

However, when interpreters avoid insertions, the chosen alternative does not necessarily facilitate the recipient’s understanding and may even be denotationally incorrect. This is illustrated in excerpts (22) and (23), from a hearing with a Spanish-speaking tenant who sued her former landlord for the return of the security deposit. The claimant had rented the apartment in person, through a real estate broker, but had planned on receiving Section 8 subsidies. After an inspection, Section 8 had demanded repairs to the
apartment. This prompted the landlord to cancel the contract, and, as the apartment was empty for several months, he decided to withhold the security deposit. During his testimony, the defendant repeatedly refers to the real estate broker, and the interpreter initially translates this by using the English word broker, albeit with some hesitation (as shown in excerpt (22)). When the broker is mentioned again approximately 80 seconds later, as shown in excerpt (23), the interpreter uses a Spanish term to translate the word broker, namely corredor de bolsa (again preceded by disfluency). Ironically, this is an inappropriate translation, as corredor de bolsa commonly refers to a stockbroker, not a real estate broker.22

(22)
1 Defendant: ah the broker requested that they [ah-]
2 Interpreter: [el-]
3 Defendant: it was not a Section [Eight apartment that they requested]
4 Interpreter: [el- el broker dice que-]
   {'the, the broker says that’}

(23) [ca. 80 seconds later]
1 Defendant: I had to cancel.
2 [I have a statement from the broker, if you want to see it]
3 Interpreter: [Yo tuve que cancelar el acuerdo. Aquí hay una]
   {'I had to cancel the agreement, here is a’}
4 declaración del- [del- del] corredor de bolsa
   {'statement from the, from the stock broker’}
5 Arbitrator: [Let me see]

When it comes to intraspeaker variation in lexical choice, interpreters thus show a pattern that is the reverse of that shown by litigants. Litigants tend to use LOTE terms but then later substitute them with English insertions, as shown in excerpts (14) and (16). By contrast, interpreters may use insertions as a temporary stopgap, especially during simultaneous interpreting, as in excerpts (21) and (22), but then substitute a LOTE item at the next opportunity. When both of these patterns of lexical choice occur in the same interaction, we find variation between individuals, which may take the form of a struggle between interpreter and litigants about the “right” word for a given referent. This will be described in the following section.

LEXICAL STRUGGLE BETWEEN INTERPRETERS AND LITIGANTS

The previous examples have shown that interpreters may engage in lexical self-repair, substituting English insertions with alternative lexical items from the
LOTE. However, if the troubling inserted item was previously used by both the interpreter and a litigant, its substitution with an alternative item is not just a case of self-repair but can also be seen as a correction of the litigant’s lexical choice. This was found to be a recurrent phenomenon in the speech of Spanish interpreters. As mentioned above, Spanish interpreters used fewer insertions than the interpreters for other languages did, and this is true not just on average but also individually, as six of the seven Spanish interpreters in the sample have a lower rate of insertions than any of the eight other interpreters in the sample. The seventh Spanish interpreter (Jorge) still has a lower rate of insertions than all but two of the other interpreters. As will be shown in this section, these differences relate to language ideologies about Spanish–English language contact, as well as to dialect differences among Spanish speakers in New York City. As noted in Chapter 4, many Spanish-speaking litigants in the sample were of Dominican origin, whereas interpreters were mainly from other countries, and the resulting differences in national origin and dialect were amplified by differences in socioeconomic class (and, occasionally, differences in racial identity). As a consequence, many Spanish interpreters embraced prescriptivist language ideologies that value a “correct” Spanish—that is, a formal, international standard variety—while stigmatizing codeswitching and Caribbean varieties that are perceived as nonstandard. Consequently, these interpreters did not always agree with litigants about lexical choice. This is illustrated in excerpt (24), from a hearing about a theft of tools from a parked van (see also excerpt (12) above). The owner of the van, an immigrant from the Dominican Republic who is speaking mostly English during the hearing, is suing the owner of the parking lot, also a Dominican immigrant. In this excerpt, the defendant is claiming that his company is not responsible for the loss of items left inside a parked car, and he states that this policy is stated on the ticket that the claimant received when he parked his van. The defendant uses the English-origin item ticket in Spanish (line 1), and the interpreter (who speaks a Caribbean variety herself) uses ticket in her English translation, and then again in lines 7 and 11, when she translates the arbitrator’s questions into Spanish. In line 7, her use of ticket is preceded by hesitation (elongating the preceding syllable), suggesting that she is hesitating to use the term in a Spanish context. And in fact, when she has to translate it into Spanish for the third time, she uses a Spanish-origin alternative, boleta, in line 14.

(24)

1 Defendant: y en el ticket dice que nosotros no somos [respon]sables por {'and it says on the ticket that we’re not responsible for’}

2 Claimant: [uhm]

3 Defendant: (.) [nada que dejen] {'anything that they leave’}
4 Interpreter: [uh and the] ticket states that we’re not responsible for anything left.
5
6 Arbitrator: (. ) Do you have a ticket?
7 Interpreter: (. ) Usted tiene un: ticket?
   {‘Do you have a . . . ticket?’}
8 Defendant: Él tiene uno.
   {‘He has one.’}
9 Interpreter: /He has one.
10 Arbitrator: (. ) You have the ticket?
11 Interpreter: (. ) Tiene el ticket?
   {‘Do you have the ticket’}
12 Claimant: (. ) I have a ticket right here.
13 Arbitrator: Can I look at it?
14 Interpreter: =Tengo la boleta [aquí]
   {‘I have the ticket here.’}
15 Claimant: [Yes ]

The different uses of ticket in excerpt (24) suggest that the defendant and the interpreter disagree about its status in the Spanish lexicon. Ticket is an established loanword that is listed in Spanish dictionaries, and the defendant uses it with no sign of hesitation or flagging. By contrast, the interpreter does hesitate before first using it in Spanish, and then she replaces it with another word, suggesting that she views ticket as an English word. This illustrates the difficulty for bilingualism studies of attributing lexical items to a specific language across the board, for every occurrence in a given corpus. Apparently, ticket “belongs” to both languages, and consequently, speakers of Caribbean Spanish can use it as a borrowed word (like the defendant in line 1) or as a momentary codeswitch (like the interpreter in lines 7 and 11). This difference in metalinguistic attribution further illustrates the divergent language ideologies of Spanish-speaking interpreters and litigants. While the examples discussed so far have shown instances where interpreters revised their own language choices, there are also a number of examples where such a mitigating element of self-repair is absent and interpreters directly contrast their own lexical choice with that of the litigant. A striking example is given in excerpt (25), from the same hearing as excerpt (14), where the two opposing uses are found in adjacent turns (if Spanish and English utterances are counted as belonging to separate adjacency pairs, as illustrated in Fig. 6.1). Here the claimant twice uses the English word lease in Spanish structures (lines 1 and 5), but the interpreter (a Cuban-born man in his 50s) instead chooses the prescriptively correct form contrato de arrendamiento (line 8).
Given that the interpreter’s choice of words blatantly violates the “same meaning, same form” principle discussed above, one can wonder whether the claimant recognizes *contrato de arrendamiento* as referring to the same object as *lease* (although she appears to have understood the arbitrator’s question in English without translation). But as the interpreter is talking about the same referent, his divergent lexical choice can be seen as correcting that of the claimant. Evidently, the interpreter treats the use of *el lease* as erroneous Spanish, despite the fact that it can be viewed as fulfilling a discourse function in this bilingual interaction, since it maintains continuity of reference across the language boundary for a keyword in the dispute. In choosing *contrato de arrendamiento*, the interpreter opts for a prescriptively correct translation equivalent instead of speaking with the claimant on her terms. Lexical choice can thus be understood as introducing an “ideological positioning” (Cotterill 2004: 519). In fact, disagreements over lexical choice are a common phenomenon in courtroom talk, as parties argue over the representation of facts (see, e.g., Danet 1980). This has been described as “lexical struggle” (Eades 2006) or lexical negotiation (Cotterill 2004) and has been observed especially in the context of cross-examinations (see also Drew 1992; Matoesian 2001; Ehrlich 2001; Eades 2008). Eades (2006) further speaks of “lexical perversion” if a cross-examining attorney rejects a witness’s labeling of his or her own experience, and notes that this may be accomplished by overt correction or covert substitution of the witness’s lexical choice. While the lexical struggle between interpreters and litigants in small claims court is not about the representation of testimony but about ideologies of standard language, there are clear parallels to Eades’s findings. The interpreter’s substitutions tend to be covert, as they depend on relevant source input and do not respond...
directly to the litigant’s choice of words. Eades (2006:158) also notes that lexical struggle is asymmetrical in that attorneys tend to “correct” the lexical choice of witnesses rather than vice versa. This is also true of lexical struggles between litigants and interpreters, as litigants are not found to “correct” an interpreter’s use of an English-origin item. This is true of litigants speaking other languages as well, even in the case of the Russian interpreter who uses a large number of insertions. Moreover, litigants do sometimes accommodate their lexical choices to those of the interpreter. For example, the claimant of excerpt (25) initially used landlord but then substituted dueño after the Spanish term had been used by the interpreter. However, given the underlying motivations for speech accommodation (Coupland 2001), it is not surprising that litigants should rather want to accommodate to the speech of arbitrators than to the speech of interpreters. In any case, the salient contrast that is established between divergent forms further illustrates the accommodative function of repetition as a potential signal of approval and acceptance of other speakers and their utterances, which it was argued to have above.

While some examples of divergent lexical choice between interpreters and litigants can be found with speakers of other languages as well, the competing lexical items are never juxtaposed so immediately as in excerpt (25), or even as in those involving self-correction as in excerpt (24). It appears that this practice is characteristic of Spanish interpreters, as it was observed in the speech of five different Spanish interpreters. Moreover, such divergent lexical choices are directed not only against English insertions but also against cognates that have undergone semantic extension to include the meaning of the English word. Consequently, several interpreters are found to use the word alquiler ‘rent’ where litigants routinely use renta (as do some other interpreters; see Table 6.2). Table 6.3 shows divergent lexical choices of Spanish-speaking interpreters and litigants that occurred within the same interactional episode. While the lexical choices of litigants reflect either a cohesive insertion of English lexical items or an established loan or loan shift in the vernacular contact variety, those of the interpreters reflect a decontextualized use of a standard variety of Spanish. As evidenced by examples of self-correction, it is not the case that single speakers always use one form exclusively. Table 6.3 also includes cases where either the interpreter or the litigant used both forms while the other participant used only one.

One of the two Spanish interpreters who did not engage in such lexical struggles is Jorge, the interpreter who was found to accommodate to litigants by using a target-centered approach to interpreting (see Chapter 4) and who interrupted English speakers to facilitate consecutive interpreting (see Chapter 5). In contrast to his colleagues, he also produced one example in which he substituted an English insertion for a Spanish equivalent, parallel to the witness in excerpt (12). This is shown in excerpt (26), where he chooses English lanes immediately after using the Spanish term vías de tráfico ‘lanes of traffic.’
While this self-repair may result from an uncertainty about the Spanish term, it also suggests that he is confident that the recipient of his translation, a Spanish-speaking witness, is familiar with the English item *lanes*.

(26)

1 Lawyer: How many lanes of traffic were there northbound on Kingston?

2 Interpreter: Cuántas vías de tráfico, *lanes*, habían de tráfico?

‘How many lanes of traffic, lanes, were there of the traffic?’

Like in the examples above, this suggests that the use of certain English items may actually improve communication between interpreter and litigant. This was pointed out by one Spanish interpreter with whom I discussed the issue of English insertions and lexical choice (he was not among the interpreters included in this analysis). He told me that when he first started to work as a court interpreter, he insisted on using “proper Spanish” but found that this would confuse Spanish-speaking witnesses or litigants, so he had decided to accommodate to their usage. The fact that he is a speaker of Argentine Spanish may have contributed to his willingness to accommodate, because he already accommodated phonologically to speakers of other varieties in order to be understood. Cross-dialectal convergence and divergence in lexical choice between speakers of different varieties has been observed in New York City Spanish (Zentella 1990), and in some cases interpreters and litigants were in fact speakers of different varieties. In their study of Spanish-dialect contact in New York City, Otheguy and Zentella (2012:114) note that racial and socioeconomic distance prompts many Spanish speakers from the Latin American mainland to resist dialect accommodation to speakers of Caribbean Spanish, even though the latter are more numerous in New York.
City. However, these attitudes were evidently shared by several court interpreters of Caribbean origin (as in the case of the interpreters in excerpts (24) and (25)), which suggests that these ideologies are primarily rooted in socioeconomic rather than regional difference.

It follows that the lexical choices of interpreters are best interpreted as resulting from language ideology and from attitudes toward particular groups of speakers. If the coexistence of multiple varieties of Spanish in New York City alone is not a sufficient reason to explain the different lexical choices of interpreters and litigants, it is certainly a contributing factor to the stigmatization of Caribbean Spanish (internalized by many of its speakers) that has been described extensively in the literature (García et al. 1988; Zentella 1997b; Toribio 2000). At the same time, the speakers of these stigmatized varieties are perceived as particularly susceptible to interference from English (see García et al. 1988:497; Zentella 1997b:180). This was expressed by the same Argentine interpreter quoted above, who told me that he felt that Puerto Ricans and Dominicans “butcher the beautiful language of Pablo Neruda” by (allegedly) saying things like *el roofo*. This hypothetical example underscores the perception of English insertions or loans as spurious, a perception that does not recognize the discursive function that real insertions actually fulfill in the speech of court users, as argued above. As language professionals, interpreters are invested in standard language ideology, but this can result in choices that antagonize litigants and impede communication in the courtroom.

**Bilingual speech in bilingual interaction**

The analysis of the use of codeswitching and insertion has shown that both phenomena can be understood as resulting from LOTE speakers’ participation in an interaction with English speakers. They may switch to English to make themselves better heard, perhaps to emphasize a point or to self-select as next speaker, or they may repeat important English words that other participants used before. Both phenomena can be understood as related to accommodation, especially given the litigants’ obvious need to gain approval from English-speaking arbitrators. This analysis may be taken to suggest that speakers use codeswitching and related phenomena deliberately and strategically, but this is not necessarily the case. As cited above, Woolard (2004:75) notes that codeswitching speakers can be viewed as employing the “full range” of their linguistic resources, and she argues that it is instead the act of restricting oneself to a subset of one’s linguistic resources that should be seen as extraordinary and as warranting an explanation. LOTE-speaking participants who are L2 English learners do make use of the full range of the resources available to them as they interact with speakers of both languages
during interpreter-mediated interaction. Whether deliberately or intuitively, they choose those linguistic resources that are best suited to the communicative task at hand, and the question to which language a word “belongs” may be less important than the fact that it was used previously in the same discourse by another participant. Consequently, the bilingual speech phenomena described in this chapter should not be viewed as idiosyncratic features of mixed language varieties (e.g., so-called Spanglish) but rather as interactionally meaningful ways of using both languages while participating in a bilingual interaction. Following García (2009:44–51), they can also be described as examples of *translanguaging*—that is, as “discursive practices in which bilinguals engage in order to make sense of their bilingual worlds” (p. 45) and that are the “communicative norm of bilingual communities” (p. 51).

This view of codeswitching as a normal, possibly unintentional practice is supported by psycholinguistic research that has shown that bilingualism can’t be “turned off”—that is, bilinguals (including L2 learners) are not able to completely deactivate one of their languages (Grosjean 2001:2). Moreover, hearing the other language used by the interpreter and others is likely to have a priming effect that further counteracts even a partial deactivation.25 Similarly, accommodation is “not necessarily either enacted or evaluated with full awareness” (Giles, N. Coupland, & J. Coupland 1991:24). In fact, Trudgill (2004:28; 2010:190) argues that accommodation is a relatively automatic process, following a maxim postulated by Keller (1994:96), which holds “talk like the others talk.” Moreover, Trudgill (2010:190) draws on psychological research by Cappella (1997:65), who argues that mutual adaptation is “arguably the essential characteristic of every interpersonal interaction” and an aspect of “the relatively automatic behaviours manifested during social interaction.” In other words, accommodation is not limited to language but is part of an innate human tendency to coordinate and adapt one’s behavior to that of others, a fact that is arguably related to the notion that human communication is fundamentally cooperative (Tomasello 2008). Despite this relative automaticity, accommodative behavior that is salient enough to be perceived by participants may be interpreted as intentional and as indexing cooperative attitude, and Ochs (1992:351) argues that it is “universally associated with demeanor of lower towards higher ranking parties.”

If we accept that accommodation is indeed the default for human communicative behavior, we can predict codeswitching in the speech of LOTE-speaking litigants, but we also need to explain why such accommodative phenomena are absent in the speech of other participants. In many cases, this absence results from lack of proficiency in the LOTE among arbitrators or English-speaking litigants.26 In other cases, namely with interpreters or with arbitrators who speak Spanish, the lack of accommodation (i.e., divergence) must be seen as motivated in ideologies about language and law. For
arbitrators, it may result from a desire to appear neutral by avoiding displays of empathy. For interpreters, the divergent lexical choices discussed above result from adherence to a standard language ideology and from an ideology of translation that defines translation equivalence independent of the discursive or sociocultural context. In all these cases, divergence may stand in the way of successful communication. The impact of these language ideologies will be the focus of the concluding chapter.
Language ideology and legal outcomes

It is often claimed that court interpreting should put the speaker of another language on an equal footing with participants who speak the language of the court (Mikkelson 1998:22; Hale 2004:9; Shlesinger & Pöchhacker 2008:2), but the chapters in this book have demonstrated that this goal is not attainable. In New York Small Claims Court, litigants who speak a language other than English are systematically disadvantaged for several reasons. As shown in Chapter 5, the use of consecutive interpreting mode for translation into English causes their narratives to be fragmented, reducing coherence and prompting interruptions by other participants. By contrast, English speakers can narrate without such constraints, because their testimony is usually translated in simultaneous mode. In addition, the use of simultaneous interpreting mode for the translation of English testimony increases the likelihood that translation is incomplete and that important information is lost. More generally, interpreting limits the ability of LOTE speakers to check their own understanding or that of their interlocutors, as participants in interpreter-mediated interaction generally do not produce response tokens. LOTE speakers are also disadvantaged because their language choice may be evaluated negatively by other participants, no matter whether they speak in the LOTE or in English. In Chapter 1, it was shown that the choice of the LOTE is sometimes construed as misleading about the speaker’s proficiency in English, and thus as indexical of dishonesty more generally. In Chapters 5 and 6, it was shown that the use of English is often criticized if it occurs against a recommendation by arbitrators, interpreters, or court staff. As noted by Haviland (2003:772), language choices that violate institutional policy can come to be seen as “willful acts of disobedience.” Either way, LOTE speakers thus run the risk that their language choice comes to be seen as indexing negative social attributes.

These disadvantages result from language ideologies that are prevalent in the legal system and in society more generally. For example, the negative
evaluation of language choices rests on a monolingual language ideology that assumes that monolingualism is normal and treats bilingualism as an exceptional skill that only interpreters possess (Angermeyer 2008). In line with this ideology, speakers are categorized either as speakers of English or as speakers of another language, and they are expected to use only one language throughout their hearing, as the use of the LOTE is deemed synonymous with “not speaking English” and “needing” an interpreter. This produces conditions in which the litigants’ limited bilingualism becomes a source of criticism and suspicion, and use of the “wrong” language can come to index negative social attributes or actions, such as deception and disobedience. As seen in Chapters 5 and 6, this monolingual ideology also generally prevents participants from using both of their languages, for example by narrating in L2 English but having the interpreter translate other participants’ English testimony into the LOTE.

The participation of LOTE speakers in small claims proceedings is further affected by language ideologies about language and communication. In particular, these include a referential ideology of language that sees the primary function of language in the ability of words to refer to external meanings (Silverstein 1979), as well as the belief that communication is achieved solely by the speaker “putting thoughts into the right words”—that is, the conduit metaphor (Reddy 1979). Applied to translation and interpreting, these ideologies underlie the legal system’s assumption of referential transparency—that is, the notion that competent court interpreters are able to produce renditions that are fully equivalent to the source talk, so that translation is nothing more than the substitution of “one language’s word for another’s, as though the word, or code, is merely an exotic costume for a shared meaning” (Haviland 2003:772). Arguably, the fact that LOTE speakers are discouraged from speaking English is also rooted in this ideology because it leads legal professionals to assume that LOTE speakers are better served by using the LOTE. If communication is believed to depend solely on “putting thoughts into words,” then participants can be taken to benefit from doing so in their primary language, rather than in an L2. However, this view ignores the dialogic nature of communication and the need for interlocutors to monitor and check each other’s understanding. Moreover, this view is directly contradicted by studies of language choice in intercultural communication. For example, Coulmas (1987:100) postulates a maxim called the communication control principle, arguing that “if you speak your interlocutor’s mother tongue well enough to make yourself understood use it. Then you know exactly how much he understands of what you say. Allowing him to use your mother tongue does not afford you this advantage.” In addition, the insistence on interpreting instead of L2 English use also runs counter to a preference for same-language talk that has been observed in many bilingual settings (Auer 1984:23–24).
The observed practices of language choice and court interpreting in small claims court can thus be seen as interfering with communication between LOTE speakers and English-speaking participants. This is true not only of the imposed language choice but also of other practices of individual arbitrators and interpreters that were observed. As shown in Chapter 3, arbitrators differed in how they conducted arbitration hearings, especially in the extent to which they allowed litigants to present information and in the amount of time they were willing to devote to a hearing. Also, individual interpreters differed in how they approached the task of interpreting, as shown in Chapters 4, 5, and 6. The majority of staff interpreters, especially among the Spanish interpreters, adhered closely to institutional norms in their use of direct translation for interpreting into English and into the LOTE, but also in their lexical choices and in their adherence to the typical distribution of consecutive and simultaneous interpreting modes. By contrast, a small number of other interpreters accommodated to litigants by treating them as addressees of all talk in the LOTE (Chapter 4), by attempting to use consecutive mode even when LOTE speakers were unaddressed recipients (Chapter 5), and by converging to their lexical choices (Chapter 6). These individual differences among the interpreters and the arbitrators can be understood along a continuum of accommodation, namely whether they are willing to work toward mutual understanding, verifying that LOTE speakers have understood them and confirming their own understanding of LOTE speakers’ speech. In contrast to those who are willing to do so, the “fast” arbitrators and most of the court interpreters appear to place the burden of communication solely on the LOTE speakers, expecting them to make themselves understood and to present testimony in institutionally acceptable ways but doing nothing themselves to facilitate this process. Consequently, this leads to the observed asymmetry in accommodative practices. While the success of LOTE speakers in court depends on their ability to make themselves understood and to present testimony in institutionally acceptable ways but doing nothing themselves to facilitate this process. Consequently, this leads to the observed asymmetry in accommodative practices. While the success of LOTE speakers in court depends on their ability to make themselves understood to an English-speaking arbitrator, English speakers in court (whether arbitrators or English-speaking litigants) do not suffer negative consequences if they are not understood by LOTE speakers, and so they are less likely to modify their way of speaking to facilitate communication.

Communication in court is thus affected both by the linguistic resources available to LOTE speakers and by the willingness of English-speaking participants to accommodate to them. As pointed out by Lippi-Green (1994: 185–187) in her study of accent discrimination, the burden of communication is shared by all participants and comprehension depends on mutual willingness to establish common ground and check understanding. Claims of unintelligibility may thus mask prejudices against nonnative speakers on the part of the listener and an unwillingness to engage in “reasonable accommodation” (Matsuda 1991:1379–1380). These views are supported by research on communication between native and nonnative speakers more generally, which has
found that comprehension requires collaboration and mutual acceptance of repetitions or interruptions for such purposes as requests for clarification or for confirmation of understanding (see, e.g., Long 1983; Kaur 2010). In small claims court, such a lack of willingness to cooperate in communication with LOTE speakers is particularly evident in cases in which litigants are accompanied by an English-speaking attorney who can be asked to speak on their behalf. This is illustrated in the following excerpts from a case involving a Haitian claimant, a landlady who found her testimony ignored by the “fast” arbitrator. The claimant was involved in a dispute with her former tenants, a West Indian couple who had been forced to move out after a city inspector had determined that their apartment violated the city’s building code and could not be rented out legally. The tenants had then stopped paying rent but stayed in the apartment for a few more months until they found a new place to live. This prompted the landlady to sue them, with the help of an attorney. The tenants countersued her, and they also sued the real estate broker who had found the apartment for them. They sued for the return of the broker’s fee they had paid as well as for a reimbursement of their moving costs, and they claimed that the landlady and the broker had known all along that the apartment was illegal. The landlady in turn claimed that the tenants had known this before they moved in. As the original claimant in the case, the landlady was asked to give testimony first and she chose to speak in L2 English, as shown in excerpt (1). In response to the arbitrator’s broad opening question, she is prepared to narrate her claim like pro se litigants do (see Chapter 3), but her attorney interferes (lines 7–10), attempting to explain the claim on her behalf. However, when the arbitrator asks a second question, a yes/no interrogative in lines 13 and 15, the claimant responds again, and her answer differs slightly from that of her attorney, as she denies having had a lease (line 16), while he claims that there was a month-to-month tenancy (line 19).

(1)

1 Arbitrator: Why are you suing for non-payment of rent and
2 [failure to return property?]
3 Interpreter: [Pou ki sa ou asiyen-l] paske [li pa peye lwaye?]
   {'Why do you sue him/her because (s)he didn’t pay rent’}
4 Claimant: I sign because uhm uh when he came in my house
5 and then uhm-
6 Attorney: Uh- you know what (.) let- maybe let me start off, and then
7 I’ll let Ms. Blanc fill in. (.8) This- there was
8 a landlord and tenant relationship between the parties,
9 Ms. Blanc was the- (.) uh: is the owner of the premises,
10 what’s the address?
12 Claimant: (.) Seventy four three East Eighty Third Street
Perhaps because of potential discrepancies, the arbitrator (a “fast” arbitrator who serves twice a month on average) does not want to let the attorney take over for his client, despite the fact that his course of action appears likely to facilitate the hearing for her. In telling the attorney to let his client speak, the arbitrator is referring to an accepted and often explicitly stated rule that attorneys are not supposed to testify on behalf of their clients. At the same time, the comment she was doing fine (line 24) concedes that this may depend on her performance as a witness. The hearing thus continues with the claimant’s testimony. As shown in excerpt (2), she continues to speak English, but her utterances are characterized by nonnative syntax and pronunciation. With frequent pauses and hesitation markers, her testimony appears somewhat discontinuous and labored, and in line 33 the arbitrator interrupts to offer her the opportunity to speak through the interpreter, although apparently unaware what language she might be speaking.

(2)

Arbitrator: =Was there [a lea-]se?
Attorney: [She-]
Arbitrator: () between the parties?
Claimant: (1.1) I didn’t give her a lease () because I told her.
Attorney: () uh when [he came-]
Claimant: There was- it was a month to [month tenancy]
Attorney: [Excuse] me, hold on one second.
Interpreter: [(xxx)]
Attorney: () Uh:-
Arbitrator: Well, let her talk.
Attorney: () Oh
Arbitrator: She- [she was] doing fine.
Attorney: [Okay]

Claimant: [Go ahead]
Arbitrator: [When he came] at- when they came at my house,
Attorney: () and I told her uhm uh
Claimant: () I (can’t) rent to people () this place because it’s (illegal),
Attorney: (.6) and they tell me they miss uh one because uhm
Claimant: uh something happen,
Arbitrator: and then the real estate uhm uh (.7) call me-
Claimant: =You can use your regular language,
Interpreter: [Okay=]
Claimant: =Si ou santi ou pi alèz nan kreyòl la,
Interpreter: (=If you feel more at ease in Creole, you can,’)
Claimant: (ou toujou mèt fè l).
Interpreter: {(you can always do it)’}
While the arbitrator’s suggestion appears understandable in that there is clear evidence of limitations in the claimant’s L2 proficiency in English, it is noteworthy that excerpt (2) contains no further signs of communication difficulty. The arbitrator does not indicate that she has failed to understand the claimant’s prior speech, nor does she seek confirmation or clarification from her. Nonetheless, the claimant agrees to continue her testimony in Haitian Creole. As shown in (3), she reprises points from her earlier turn, namely the assertion that the defendants knew that the apartment could not legally be rented out (compare lines 28–29 above and 41–42 below) and that this fact motivated her to not give them a lease (line 16 above and line 45 below). The interpreter produces renditions that are not particularly close, as evidenced for example by his rendition of rete la ‘stay there’ as rent the place in line 44, and his addition of valid in line 46. However, the interpreter’s renditions do present coherent testimony in native syntax, which also edit out the disfluencies in the claimant’s testimony. The excerpt also shows that he is willing to verify his own understanding by asking which of the two defendants she is referring to (note that the Haitian Creole third-person singular pronoun li is gender-neutral).

(3)

<table>
<thead>
<tr>
<th></th>
<th>Claimant:</th>
<th>Interpreter:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>38</td>
<td>Okay. (), And then uhm uh, sa m fè () li vini, li mande mwen eh-</td>
<td>gason oubyen fi a?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>‘okay and then what I did, (s)he came, (s)he asked me’</td>
<td>‘the guy or the girl’</td>
<td></td>
</tr>
<tr>
<td>39</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>Interpreter:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>Claimant:</td>
<td>gason oubyen fi a?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>f- tou- uhm fi a. () Epi m di l li ilegal</td>
<td>‘g- all- uhm the girl. And then I told her it’s illegal’</td>
<td></td>
</tr>
<tr>
<td></td>
<td>pou de moun rete la a paske mwen menm m pou kont mwen.</td>
<td>‘for two people to stay there, because I was there on my own.’</td>
<td></td>
</tr>
<tr>
<td>42</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>() [Epi m di-].</td>
<td>‘And then I said’</td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>Interpreter:</td>
<td>[I told them] that it’s illegal (.7) to (.8) /rent the place.</td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Claimant:</td>
<td>(1.1) M pa ba l lease +</td>
<td></td>
</tr>
<tr>
<td></td>
<td>‘I didn’t give her a lease’</td>
<td></td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>Interpreter:</td>
<td>(1.1) That’s why I didn’t (. ) give them a valid lease.</td>
<td></td>
</tr>
</tbody>
</table>

Having twice presented the orientation of her narrative, once in English and once in Haitian Creole, the claimant is now ready to move on to the complicating action, namely the fact that the defendants got the city’s Department of Buildings involved, by calling the city (line 48 in excerpt (4)). However, her testimony is again interrupted, only this time by the arbitrator. As can be seen in lines 50 and 51 in (4), the arbitrator revokes her earlier decision to let her talk and gives the floor back to the attorney. After an exchange of metapragmatic comments between them in lines 53 to 59, the attorney once
Language ideology and legal outcomes

again takes over the testimony from the claimant, and he begins an account of the dispute that can be described as highly rule-oriented, in contrast to the claimant’s more relational account (see the discussion of Conley’s and O’Barr’s framework of legal discourse in Chapter 3). As a result, the attorney and the arbitrator quickly establish mutual understanding about the relevant facts of the case, as shown in lines 61 to 69 (and in continuing dialogue that is not shown). In contrast to her reaction to the claimant’s testimony (whether in English or in Haitian Creole), the arbitrator now provides feedback to the attorney, first by producing an acknowledgment token (mm-hm, line 62), and then by beginning a confirmation question (Okay so it was an illegal- in line 67), which is immediately confirmed by the attorney (right line 68). Thus she is willing to share the burden of communication when her interlocutor is a fellow legal professional but is apparently not inclined to do so when speaking with LOTE-speaking litigants. Meanwhile, the claimant continues speaking in lines 52 and 56, but her turns are no longer translated by the interpreter. She is ignored by the other participants, yet she may not immediately be aware that her speaking rights have been revoked, because neither the arbitrator nor the attorney has addressed her in person. Instead it is the interpreter who tells her to stop speaking, in a form that cannot readily be identified as a rendition of talk by the arbitrator or attorney (line 60).

(4)

<table>
<thead>
<tr>
<th>Line</th>
<th>Speaker</th>
<th>Translation</th>
</tr>
</thead>
<tbody>
<tr>
<td>47</td>
<td>Claimant</td>
<td>(.6) So, (.) lè mwen fini, sa li fè,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>‘So, when I was done, she did this,’</td>
</tr>
<tr>
<td>48</td>
<td></td>
<td>li [rele city a]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>‘she called the city’</td>
</tr>
<tr>
<td>49</td>
<td>Interpreter</td>
<td>[Afterwards] (.) what (.) she</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[did she called the city]</td>
</tr>
<tr>
<td>50</td>
<td>Arbitrator</td>
<td>[Why don’t you (.) finish]</td>
</tr>
<tr>
<td>51</td>
<td></td>
<td>c- examining [your witness.]</td>
</tr>
<tr>
<td>52</td>
<td>Claimant</td>
<td>[So lè l fin fè ] call [city a +]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>‘So after she finished calling the city’</td>
</tr>
<tr>
<td>53</td>
<td>Attorney</td>
<td>{speaking under his breath}</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[I- I was] trying to do that</td>
</tr>
<tr>
<td></td>
<td></td>
<td>before</td>
</tr>
<tr>
<td>54</td>
<td></td>
<td>[Your Honor.]</td>
</tr>
<tr>
<td>55</td>
<td>Claimant</td>
<td>[I call] city [a +]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>‘I called the city’</td>
</tr>
<tr>
<td>56</td>
<td>Arbitrator</td>
<td>[Be-]cause she was talking, she- (.)</td>
</tr>
<tr>
<td>57</td>
<td></td>
<td>[I understood.]</td>
</tr>
<tr>
<td>58</td>
<td>Attorney</td>
<td>[I know, I know.]</td>
</tr>
<tr>
<td>59</td>
<td>Interpreter</td>
<td>[(xxx) kanpe, kanpe,] kanpe, kanpe. {to claimant}</td>
</tr>
<tr>
<td></td>
<td></td>
<td>‘stop, stop, stop.’</td>
</tr>
<tr>
<td>60</td>
<td>Attorney</td>
<td>(1.4) It’s a landlord and tenant situation.</td>
</tr>
<tr>
<td>61</td>
<td>Arbitrator</td>
<td>Mm-hm.</td>
</tr>
</tbody>
</table>
The exchange of metapragmatic comments in lines 50 to 59 reveals the arbitrator’s attitude toward interpreted testimony. In particular, the attorney’s mildly complaining comment in lines 53–55 motivates her to explain why she has changed her mind with regard to the claimant’s testimony. In particular, she contrasts the claimant’s initial turns, when she wanted to let her talk (see excerpt (1)), with the current testimony, when she wants the attorney to speak for her. Earlier, as she says in lines 57 and 58, the claimant was talking and she understood. Now, this comment seems to imply, the claimant is not “talking” anymore and is no longer “understood” by the arbitrator. Given the fact that the claimant had spoken English earlier but is speaking (mostly) Haitian Creole now, one cannot escape the conclusion that the arbitrator is unwilling to listen to interpreted testimony, despite the fact that she urged the claimant not to speak English in the first place. The arbitrator’s comment because she was talking underscores the extent to which speakers of languages other than English can be perceived as nonparticipants. However, when LOTE speakers are absent from the participation framework of the English part of the interaction, it is the court interpreter whose voice is supposed to stand in for theirs (see Chapter 6). So even if the landlady is perceived as “not talking,” the arbitrator should recognize that the interpreter is talking on her behalf. The reaction thus suggests that the arbitrator’s unwillingness to cooperate with interlocutors extends to the interpreter. Like the claimant, he is Haitian and speaks English slowly and with a nonnative accent, though clearly producing a coherent sequence of grammatical sentences. While it cannot be determined what specifically motivates the arbitrator’s reaction, an unwillingness to listen to nonnative speech may well be a factor. In fact, such an attitude toward “accented” English could explain both her request to the claimant to not speak English (excerpt (2)) and her reaction to the interpreter’s speech in excerpt (4). Clearly, if accent discrimination of the type discussed by Matsuda (1991) and Lippi-Green (1994, 1997) does occur in court, it would affect both LOTE-speaking litigants and interpreters who are native speakers of the LOTE. Similarly, Lev-Ari and Keysar (2010) found in psycholinguistic experiments that native speakers evaluated nonnative speakers as less truthful than native speakers, even in situations where the nonnative speakers were merely acting as animators of somebody else’s words (i.e., comparable to the court interpreters in this study).
In addition, excerpt (4) also illustrates again how LOTE-speaking litigants use bilingual speech phenomena in their attempt to communicate with English speakers. In Chapter 6 I argued that codeswitching to English and the insertion of English items into LOTE structures can both be seen as attempts to accommodate to English speakers and to improve cohesion across language boundaries. In excerpt (4), the claimant also produces bilingual speech phenomena that can be considered insertions of English into Haitian Creole structures, but to a degree that can be described as code-mixing (Muysken 2000). In fact, as she is being excluded from the interaction by the arbitrator, she gradually uses more and more English. This is evident in comparing three parallel structures in lines 48, 52, and 56, which all refer to the action of calling “the city.” In the first instance, the noun city is the sole English element and it is inserted in a Haitian structure that includes a subject pronoun, a verb, and a determiner (li rele city a ‘she called the city’ in line 48). In the second instance, the verb is also in English, albeit without overt tense marking (lè l fin fè call city a ‘after she finished calling the city’ in line 52). Finally, in the third instance, even the subject pronoun is in English, leaving the postposed determiner as the only overt Haitian Creole morpheme, despite the fact that the syntactic structure is in Haitian as well (I call city a ‘I called the city’ in line 56). This increased use of English lexical items does nothing, however, to regain the attention of the arbitrator. But when the claimant speaks again later in the hearing, in response to closed questions from the arbitrator or from her attorney, she speaks only English.

The situation of “Ms. Blanc,” the Haitian landlady, parallels that of Mr. Bessonov in Chapter 5, as both claimants were discouraged from using nonnative English but then suffered negative consequences from speaking through an interpreter. However, in contrast to Mr. Bessonov, she can at least expect that her interests will be represented by the attorney who is asked to speak instead of her (and, in fact, she ultimately won her claim). Nonetheless, the apparent lack of willingness on the arbitrator’s part to listen to testimony from the claimant runs counter to the notion of small claims court as an informal venue suitable for pro se litigants, and this converges with the findings of previous chapters. In Chapter 3, it was shown that arbitrators who expect rule-oriented testimony are often not willing to actively elicit it from litigants who do not present such testimony on their own. Similarly, Chapters 5 and 6 showed that the ability of LOTE speakers to narrate their testimony is affected by the willingness of arbitrators and interpreters to accommodate to them. In the case discussed above, this lack of willingness is especially apparent if we compare the arbitrator’s reaction to the claimant’s speech (whether in L2 English or Haitian Creole) to her interaction with the attorney, which is markedly more collaborative (e.g., in the use of feedback noted above). Consequently, what can be observed as a narrative inequality thus results at least in part from an inequality of listener cooperation. The promise of equality
before the law is compromised when representatives of the legal system are not equally willing to listen to all litigants, irrespective of whether they speak English or not, or whether they present their claim in a rule-oriented or relationship-oriented way.

Legal outcomes

The analysis in this book has thus clearly demonstrated ways in which LOTE speakers are disadvantaged when it comes to the task of narrating the “story” of their dispute. This raises the question of whether these disadvantages lead to adverse legal outcomes for LOTE-speaking litigants. While individual cases suggest that legal outcomes could be affected by misunderstandings or by arbitrators’ attitudes toward different types of testimony (see Chapter 3), it is not possible to establish a direct link between these discursive processes and the decisions taken by arbitrators. It is possible, though, to survey legal outcomes in general to investigate whether certain factors correlate with a higher or lower rate of litigant success. Using such a quantitative methodology, sociolegal studies of small claims court have hypothesized that the outcome of a hearing may be affected by factors such as the presence of an attorney on either side (cf. Sarat 1976:367), the litigants’ experience with the court (cf. Sarat 1976:365; Abel 1982b:297), their orientation to rules or relationships respective to the style of the judge or arbitrator (cf. Conley & O’Barr 1990), or the subject matter of the case, the amount sued for, or even the atmosphere and caseload at a particular courthouse (Abel 1982b:278–279). Following the analysis in the previous chapters, one would want to consider further factors specific to this study, such as the language choices of both claimant and defendant, and the differences between source-oriented and target-oriented interpreters (see Chapter 4). Given this large number of potentially relevant factors, a statistically reliable analysis of legal outcomes was beyond the scope of this study.

Among the proceedings that I observed, 92 involved arbitration hearings in which a final decision was made that I was able to determine from court records (excluding claims that were dismissed for being against the wrong party). In 52 of these cases (56.5%), claimants were awarded some or all of the money they had sued for, whether by judgment or in a stipulation of settlement. LOTE-speaking claimants won in 55% of cases (41/74), while English-speaking claimants won in 61% (11/18). While this does not suggest a significant disadvantage for LOTE speakers, the overall rate of successful claims is rather low compared to those reported in sociolegal studies of small claims court, where it has been noted that “plaintiffs are disproportionately successful in small claims courts” (Abel 1982b:296). For example, in their survey of studies on small claims court usage, Yngvesson and Hennessey
Language ideology and legal outcomes

(1975:255) found that plaintiffs won “at least 74% of the cases going to judgment (and frequently more).” Similarly, Sarat (1976:364) found that 78.3% of claimants in arbitration hearings received at least a third of the amount of their claim. Given that the sample of observed cases is not random, I consulted court records to estimate the overall rate of successful claims. In doing so, I decided to focus on cases heard at the court in Brooklyn, due to systematic differences between the courthouses that were described in Chapters 2 and 3. As noted there, the court in Manhattan generally has fewer cases and more available arbitrators than the other two courts. This reduces the caseload for individual arbitrators, so that most arbitrators in Manhattan have a relatively “slow” style. By contrast, the court in Queens represents the other extreme, where very few arbitrators are available, and several of them are insurance lawyers who take a “fast” approach to arbitration. Given that the style of arbitration could be expected to have a significant impact on legal outcomes, I thus decided to focus on the Brooklyn court, where both styles were well represented (as were all four focus languages). I randomly chose to consult all court records for one month during my fieldwork period, and I determined that claimants won in 67% of all cases heard by arbitrators (98/147, excluding counterclaims) and 80% of cases heard by judges (20/25). These findings suggest that the overall success rate in Brooklyn is comparable to those of previous studies mentioned above, but they also suggest that the observed success rate for LOTE-speaking claimants (56.5% overall, and 43% in Brooklyn with 13/30) is lower than the overall average for all claimants.

It is possible that a lower success rate for LOTE-speaking claimants may result from the observed narrative inequality—that is, from the difficulties these claimants face when trying to narrate their claims. However, the legal outcomes for LOTE-speaking claimants may also be affected indirectly by the court’s practices in assigning cases to individual arbitrators. As noted in Chapter 3, clerks prefer to give their cases to “fast” arbitrators because they are concerned that the interpreting process will take up too much time. At the Brooklyn courthouse, half of all decided cases that I observed (21/42) were heard by just two arbitrators, who closely fit the profile of a “fast” arbitrator (including the arbitrator shown in excerpts (1) to (4) above). The remaining 21 cases were heard by 13 other arbitrators, all of whom can be characterized as slow by comparison. The two “fast” arbitrators decided in favor of a claimant in 33% of their cases overall (7/21) and in 31% of cases with a LOTE-speaking claimant (5/16). By contrast, the slower arbitrators made judgments for the claimant in 62% of their cases (13/21), including 57% of those with a LOTE-speaking claimant (8/14). While these numbers are too small to permit strong conclusions, they suggest that a lower success rate of LOTE-speaking claimants might not result necessarily from adverse treatment by individual arbitrators but rather from the court’s tendency to assign their cases to impatient arbitrators who dismiss claims more readily than other arbitrators.
While the different approaches of arbitrators may thus correlate with a difference in legal outcomes, the impact of different interpreting styles cannot be estimated, because the three exceptional, recipient-oriented interpreters Jorge, Yves, and Jerzy (see Chapter 4) combined represent only seven cases, of which four were won by the LOTE-speaking party.

Overall, it is clearly possible for LOTE-speaking claimants to succeed in small claims court, but on average they appear less likely to do so than English-speaking claimants. The findings of this study also support previous analyses in law and society research that take a skeptical view about the benefits of informal justice to inexperienced court users, in particular if informal justice is dispensed under conditions where the courts’ capacity to engage in meaningful dispute resolution is “constantly undermined by the pressure to process caseload” (Abel 1982b:278–279). The courts’ efforts to process caseload speedily may be especially detrimental for LOTE speakers if it causes their cases to be assigned to impatient arbitrators and prompts arbitrators to interrupt them instead of hearing them out (see Chapter 5).

**Implications beyond small claims court**

For a legal system concerned with guaranteeing equality before the law to all court users, there are thus certain conclusions to be drawn from this study. In particular, this study has pointed out problematic aspects of several practices that are common in cases involving participants with limited proficiency in English, namely the distribution of interpreting modes with its negative consequences (see Chapter 5), the policy of individual monolingualism (i.e., the “all-or-nothing rule” of interpreting; see Chapters 5 and 6), and the insistence on direct translation for interpreting into the LOTE, where it may alienate and confuse the LOTE-speaking recipient (see Chapter 4). While the findings are specific to small claims court, they may be generalized to other legal settings to some extent, especially settings where first-person narration is important and where examiners have little or no prior knowledge of the facts at hand. One such venue is asylum hearings, where applicants also need to present convincing narratives to succeed with their case. In fact, studies of asylum interviews have made similar observations about the restriction of language choice, with applicants being prevented from speaking the language of the interviewer (Jacquemet 2005a, 2011:481; Maryns 2012:310) or being accused of deceit if they do (Maryns 2012:304). Moreover, the indexicality of language varieties is especially pertinent in asylum hearings, as applicants’ linguistic repertoires are routinely evaluated as evidence for or against a claim (see the widespread institutional practice of “language analysis in the determination of origin,” cf. Eades & Arends 2004). Such assessments are often based on language ideologies that assume that applicants have L1 fluency in the
national language of their alleged country of origin, and thus refugees’ claims are rejected if their linguistic repertoires do not conform to such assumptions (Blommaert 2009; Jacquemet 2011:481–482). In addition, studies of asylum interviews have found ample evidence of communication difficulties resulting from differences in linguistic repertoires (Blommaert 2001; Jacquemet 2011), both when applicants communicate in an L2 (for a particularly striking example see Maryns 2006:1) and when they speak through an interpreter. In particular, Maryns (2013:682) argues that interpreters often do not render the emotionality of the source narrative, even though this may be a crucial factor in the assessment of an applicant’s credibility. Consequently, the adoption of “standby” interpreting, as described in Chapter 5, could mitigate such communication difficulties, but this is unlikely as long as the communicative value of flexible language choice is outweighed by the social meanings that it simultaneously indexes.

A flexible approach to interpreting, which recognizes that different kinds of proficiency are required for different interactional tasks, could also be applied to other legal settings where the “all-or-nothing” rule of language choice is adhered to and codeswitching is prohibited. Such institutional determinations of language choice have been described matter-of-factly for police interrogations (Russell 2002:119–120) and formal trials (De Jongh 1992:77), but given the findings discussed in Chapters 5 and 6, one can argue that LOTE speakers should not be prevented from speaking English; just as importantly, if they do speak English, that fact should not be taken to imply that they do not “need” an interpreter for other tasks, such as understanding legal instructions or complex questions (e.g., instructions about Miranda rights; Solan & Tiersma 2005:82).

In formal trials, the “all-or-nothing” rule of language choice does not have the same consequences for the participation of LOTE speakers that it has in small claims court, even though the distribution of interpreting modes is usually the same. In particular, LOTE-speaking witnesses in formal trials are unlikely to produce extended narrative turns because their testimony is constrained by the questions of the examining attorney, which are often designed to elicit short answers (see Chapter 3). Consequently, consecutive interpreting is less likely to lead to further fragmentation, so that the testimony of LOTE speakers does not differ from that of English speakers in this respect. However, the use of simultaneous interpreting in situations where the LOTE speaker is an unaddressed recipient is likely to have the same adverse effects that it has in small claims court. Given the cognitive burden exerted by simultaneous interpreting and the lack of suitable working conditions (such as frequent breaks or the use of audio equipment), it is doubtful whether court interpreters are able to consistently produce close renditions of everything said in English, even though courts fully expect them to do so. Consequently, there is a risk that important information may be left untranslated when
simultaneous mode is used, for example during the examination of English-speaking witnesses, closing arguments, or sentencing. At the same time, this potential disadvantage for LOTE-speaking defendants is likely to be mitigated by the presence of an attorney who can be counted on to understand what is said in English. Nonetheless, if the goal is to put non-English speakers on an equal footing with English speakers, the consistent use of short consecutive interpreting appears more likely to guarantee equality of access to the information produced during the trial. Studies of court interpreting have generally focused on the examination of other-language speakers but have devoted less attention to other trial phases and have therefore not questioned the use of simultaneous interpreting mode, despite the fact that the interpreter’s working conditions are typically not conducive to its use (but see Licoppe & Vernier 2013 on the use of consecutive mode in all trial phases when defendants appear via videoconferencing).

Overall, the findings point toward a need for a greater understanding of the pragmatics of interpreter-mediated courtroom interaction, how it differs from same-language interaction, and how communication can be achieved in a given interactional context (e.g., taking into consideration differences between examination and testimony by pro se litigants). Research on court interpreting has often implicitly placed the responsibility for preserving the rights of LOTE speakers on the interpreter, by investigating translation practices and suggesting that problems with interpreting can be resolved through better interpreter training and supervision. Similarly, the prevalent attitude to interpreting in the legal system holds the interpreter responsible for the production of translations that are equivalent to their corresponding source but does not consider how the court could facilitate the interpreting process or verify its results (see Haviland 2003). The analysis in Chapter 5 has shown that the interpreter’s performance is in fact greatly influenced by external factors, such as noise and other working conditions, and especially the degree to which other participants collaborate with the interpreter by producing source talk that is designed to facilitate the interpreting task. At the same time, improved working conditions can reduce the risk of miscommunication or loss of information, but they do not change the fact that interpreter-mediated interaction is inherently different from interaction in the same language, due to the fragmentation of narratives and the general absence of comprehension checks. Because of such factors, communication is more difficult to achieve in interpreter-mediated interaction, and this inherently disadvantages LOTE speakers even in the best of circumstances. In addition, this study has shown that the indexical meanings of language choice can work against LOTE-speaking participants in court by affecting assessments of their credibility, irrespective of whether they choose to speak English or not.

The disadvantages experienced by LOTE speakers result from institutional language policies and their underlying language ideologies, in particular
the standard language ideology, which holds Standard English to be a neutral vehicle of communication that is equally accessible to all citizens. In this ideology, a person’s lack of proficiency in Standard English is viewed as his or her individual shortcoming, as noted by Silverstein (1996:295) and Haviland (2003:769). Any disadvantage experienced by speakers of nonstandard language varieties can thus be rationalized (and excused) as resulting from the actions of the speakers themselves—that is, from their failure to speak correctly (Milroy 2001:536). This view does not recognize that the disadvantage is in fact created by the courts and other institutions, as they define which language variety can be legitimately used in them for institutional purposes, and thereby inherently privilege speakers of this variety over those with limited or no proficiency in it. Moreover, as argued by Bourdieu (1991:76), institutions like the court draw some of their authority from the use of linguistic resources that have high symbolic value in the linguistic market precisely because they are not available to everyone. In small claims court, this ideology became particularly apparent when court interpreters were used in hearings in which all participants were speakers of Spanish, including the arbitrator (Angermeyer 2014). When asked about this practice, one arbitrator, who was a native speaker of Spanish from Cuba, told me that speaking English gave him “more authority” and commanded “greater respect” from Spanish-speaking litigants.

Given these findings and observations, it can be concluded that researchers on multilingualism in the legal system should not view court interpreting as the sole answer to linguistic diversity. Competent court interpreters can alleviate the inequality that inherently results from language policies of the legal system, but they cannot eliminate it. Consequently, court interpreting should be seen as a lesser evil, not as an option that is inherently superior to the use of L2 English (where possible) or to conducting hearings in another language. In fact, the observed exceptional use of Spanish by arbitrators in cases in which both parties were Spanish speakers provided an alternative to court interpreting that is clearly advantageous for the litigants but also represents a more efficient use of the court’s resources (see Angermeyer 2014). As argued by Ng (2009b), the high concentration of Spanish speakers in many parts of the United States warrants a wider use of the language in institutional settings, especially in relatively informal settings such as small claims court. This distinguishes Spanish from other LOTEs, where the relevant circumstances are less likely to arise with sufficient regularity. While I did observe some cases in which both parties were speakers of Russian or Polish, I did not encounter arbitrators who could have conducted hearings in one of these languages. The fact that Spanish is understood by some institutional representatives and occasionally used by them points further to the special status of Spanish in the linguistic market of New York City and in other parts of the United States, which may be better described as a second vernacular than as a minority language.
For the litigants, the experience of communicative disadvantages is ultimately tied to the legal outcomes of their cases. As noted above, many LOTE-speaking claimants are not successful with their claims. Irrespective of the legal reasons for the judgment, they are likely to perceive this outcome as unjust and as being affected by language choice—that is, attributing it to their inability to use the right English word at the right time (cf. Urciuoli 1996:103). In Chapter 6, I argued that codeswitching results from litigants’ attempts to communicate directly with the arbitrator—“to use the right English word”—rather than relying solely on the mediation by the interpreter. This analysis can explain the cross-linguistic parallels in the distribution of insertion and codeswitching, as speakers of all four focus languages are in the same position vis-à-vis English-speaking arbitrators (Angermeyer 2010). In addition, the analysis of language contact phenomena in the data also shows parallels to the findings of many other studies that were conducted based on ingroup interaction in migrant communities around the world. This suggests a connection between the microsociolinguistic context of the courtroom interaction and the macrosociolinguistic context of language contact in New York and in the United States more generally. Arguably, the interactions in court and the LOTE speakers’ perceptions of them can be understood to be emblematic of the accommodative pressures that operate on immigrants and that provide the motivation for the interrelated processes of second language acquisition, codeswitching, contact-induced language change, and, ultimately, language shift. While many languages coexist in people’s daily lives in New York City, the court enforces the social dominance of English through the asymmetrical relationships between the participants, where positions of power are invariably occupied by English speakers. As shown throughout this book, LOTE-speaking individuals risk being marginalized and treated as nonparticipants. Interpreters can speak for them, but they can provide only limited support that is constrained by their allegiance to the court and its norms of interaction. Ultimately, it is clear that immigrants need to speak English to truly make their voices heard.
Appendix: Transcription conventions

[] Square brackets are used to indicate the beginning and end of overlapping speech.

== Equal signs mark the beginning and end of contiguous utterances by different speakers (i.e., utterances with no break or pause in between them). They may also mark a continuous utterance by a single speaker that was broken up in the transcript in order to facilitate the display of overlapping speech.

() marks a brief pause of less than 0.5 seconds

(1.7) marks a timed pause, with length in seconds

English Underlining is used for English words that are inserted into LOTE structures or that are spoken by a litigant who codeswitches between English and the LOTE.

{‘gloss’} English glosses of LOTE utterances are given in curly brackets with single quotation marks.

{laugh} Characterizations of speech delivery or other comments are given in curly brackets in italics.

(guess) Parentheses are used to mark transcriptionist’s doubt and inaudible segments.

un: ticket Colons are used to mark the lengthening of the preceding speech sound.

/he has one/ Slash is used to mark emphasis of the following syllable (e.g., contrasting stress).

it- it A hyphen marks an interrupted or self-interrupted speech, for example a false start.

? indicates rising intonation

. indicates a falling intonation contour

, indicates continuing intonation

+ indicates that a speaker’s pauses (often within an utterance) can be attributed to the process of consecutive interpreting. This is accompanied by a “continuing” intonation.
NOTES

Chapter 1

1. On average, transcribing took an estimated 30 hours per hour of recording, a rate that can be explained by the fact that transcribing was complicated by frequent overlap of speakers, due to the presence of the interpreter. Seven recordings of hearings with Spanish-speaking participants were not included in the original corpus and were transcribed later by research assistants at York University.

2. One research assistant wrote to me about one case: “I am very emotional working on the text. I was very upset with [the English-speaking defendant] when he kept laughing and made [the LOTE-speaking claimant] upset.” Even in cases where both parties originated from the same country, my assistants appeared to identify more with the LOTE-speaking litigant than with the English-speaking compatriot. By contrast, I also worked with one assistant who was not a native speaker of the LOTE (Spanish), and this assistant did not appear to identify with Spanish-speaking litigants at all.

Chapter 2


2. In addition to providing guidelines for court clerks about interpreter availability, the schedule shown in Table 2.1 also largely avoids conflicts for interpreters who travel between courthouses, as the same language is generally not scheduled on the same day for two different courthouses.

3. At the Brooklyn court, I was given access to court records, which I consulted to estimate interpreter use and to survey legal outcomes. I copied down all decisions for a sample month during my fieldwork time, and I found that 10% (19/188) of cases in the calendar were marked as involving a court interpreter. However, during that period I observed additional cases with interpreters that were not marked as such in the calendar, so the actual number was surely higher. It may be that the records included only those cases where interpreting was requested by the claimant at the time of filing the claim and not those where the need for interpreting became apparent in court (see Chapter 4).

4. The inherent problems in predicting interpreter demand for a large number of languages are described by Viens et al. (2002:290) for Montreal. They describe patterns where certain languages are in great demand for a short period of time but then not again for a while, concluding “ces éléments rendent aléatoire la planification du recrutement...”
5. In addition, I observed 13 hearings that were conducted in Spanish by Spanish-speaking arbitrators but without an interpreter (see Angermeyer 2014).

6. I was unable to obtain official counts of interpreter usage by courthouse, but according to the court administration, about two thirds of all full-time interpreters who are employed statewide are interpreters for Spanish (see New York State Unified Court System 2011:6).

7. While neither of them spoke Standard Polish, the two claimants also varied between each other, especially in the absence or presence of auxiliaries and of gender agreement on plural participles. If auxiliaries were used, they were always cliticized to pronouns and not to participles as in Standard Polish. My Polish-speaking research assistant perceived the speech of one of the two litigants as “Ukrainian-ish.” However, this was not confirmed by my Russian-speaking research assistant, who also speaks Ukrainian.

8. At a preliminary hearing I heard a comment by a judge that suggested that the litigants had asked for interpreting in either Polish or Russian.

9. This is primarily a consequence of my placement in court, which often precluded unmediated contact with the litigants. Litigants were informed about my study by court clerks and arbitrators, who also requested consent to audiorecording on my behalf. This procedure was required by the court administration, but it was also the most practical, as it ensured that my presence did not interfere with the workings of the court. Moreover, in this institutional context, lay participants are likely to be focused on interacting with court officials and are not likely to be receptive to requests from people who have no institutional role. On a few isolated occasions I was able to speak with litigants after their hearing had concluded.

Overall, my movements in court were thus monitored and constrained by court clerks and officers, who were generally very helpful, and it would have been impossible for me to conduct my study without their support. They defined the boundaries of my ability to look behind the scenes, but they also opened doors for me, as other people got used to seeing me with them. Most importantly, they introduced me to arbitrators and interpreters, or, if I introduced myself to request their consent to being recorded, the clerks and officers were available to assure them that my study had been approved by the court administration.

10. This distinction between different varieties of Haitian Creole likely corresponds to a difference in requests for French versus Haitian Creole interpreters. Some Haitian litigants request an interpreter for French instead of Haitian Creole. One French interpreter who was not Haitian commented to me that he did not want to be assigned to such cases because the litigants would inevitably switch to Haitian Creole (he also interpreted Romanian and Italian, and rarely worked as a French interpreter). As far as I could tell, requests for French interpreters in Brooklyn were typically assigned to one of the Haitian Creole interpreters, who could also speak French.

11. This distribution of case types corresponds to that found by Sarat (1976:356) in his study in Manhattan small claims court.

12. Section 8 is a federally subsidized program that gives rental assistance to low-income families, allowing them to rent apartments at market rent. The tenants pay the
landlord 30% of their income as their share of the rent and Section 8 pays the rest. Landlords participate in the program voluntarily.

13. Cases involving car accidents were less common in Manhattan than in Brooklyn or Queens, which is not surprising, as fewer residents of Manhattan own cars than do residents of the “outer” boroughs. This may contribute to the fact that the court in Manhattan tends to have a lighter caseload than the other two courts.

14. Ruhnka & Weller (1978:28) observed the same phenomenon in Washington, D.C.: “[W]e found two or three private attorneys always present in small claims court who were on retainer with corporations, businesses, and insurance companies to handle all of their cases which showed up in small claims court. As did the judge, they usually saw a case for the first time when the docket was called.”

15. For example, the manager of a furniture store testified that it was not company policy to pay employees who had been let go for their remaining vacation time. In another case, the manager of a restaurant stated that full-time dishwashers were not entitled to paid vacation at all (see excerpts 4 through 6). On another occasion, the employee of a hair salon stated in an inquest hearing that it was the salon’s policy to withhold a week’s worth of pay if an employee quit the salon. In the two latter cases, the employee’s weekly salary amounted to approximately $300 each.

16. The court system recognizes this problem, and in its 2006 Action Plan it proposes the use of remote interpreting by video conference or telephone when interpreting is needed spontaneously in settings outside of courtrooms (New York State Unified Court System 2006).

17. In their survey of 15 small claims court in the United States, Ruhnka and Weller (1978:175) found that serving claims to defendants was “the number one problem” and reported that “court clerks in several cities had indicated up to half of all small claims cases filed never went any further because of lack of service.”

18. The company’s name consisted of a building address, but that address was different from the mailing address, which may easily have confused the claimant, the court clerk, or the postal service.

19. According to court records, the claim was ultimately dismissed by a judge. I was not present for the final hearing, nor for some of the preceding ones.

Chapter 3

1. While the New York civil court administration uses the term “trial” indiscriminately, at least in communication with litigants, I reserve its use for judge-led trials and will use the terms “arbitration” or “arbitration hearing” to describe proceedings led by arbitrators.

2. The text of the announcement is sometimes displayed in writing at the entrance to the courtroom (reproduced here in replication of original formatting):

SMALL CLAIMS INFORMATION
PLEASE READ BEFORE ENTERING COURTROOM

GOOD EVENING LADIES AND GENTLEMEN.

BECAUSE OF THE LARGE NUMBER OF CASES ON TONIGHT’S CALENDAR, IT WOULD BE IMPOSSIBLE FOR THE JUDGE TO TRY ALL OF THE
CASES. THEREFORE, IN ADDITION TO THE JUDGE, WE HAVE MANY ARBITRATORS AVAILABLE TO ASSIST THE COURT AND TRY THESE CASES.

THE ARBITRATORS ARE COURT APPOINTED, EXPERIENCED ATTORNEYS WHO HAVE VOLUNTEERED THEIR TIME TO TRY SMALL CLAIMS CASES. MOST CASES ARE HEARD BY ARBITRATORS.

WHEN THE CALENDAR IS CALLED, PLEASE STAND AND REPEAT YOUR NAME.

IF BOTH PARTIES ARE PRESENT, YOU WILL GET AN IMMEDIATE TRIAL TONIGHT IF BOTH PARTIES AGREE TO HAVE AN ARBITRATOR TRY THE CASE, HOWEVER, IF YOU CHOOSE TO HAVE YOUR CASE HEARD BY THE JUDGE, SAY “READY BY THE COURT.” KEEP IN MIND, YOU MAY HAVE TO RETURN TO COURT SEVERAL TIMES BEFORE YOUR CASE CAN BE REACHED FOR TRIAL BY A JUDGE.

WHEN YOUR CASE IS SENT TO AN ARBITRATOR, THERE IS A CARD WHICH YOU WILL BE ASKED TO SIGN. YOUR SIGNATURE ON THIS CARD WILL INDICATE THAT YOU UNDERSTAND THAT THE ARBITRATOR’S AWARD IS FINAL AND BINDING ON BOTH SIDES AND THAT THERE’S NO APPEAL. HOWEVER, IF YOUR CASE IS TRIED BY THE JUDGE, IT IS POSSIBLE TO APPEAL FROM A JUDGE’S DECISION. PLEASE NOTE THAT AN APPEAL MAY BE EXPENSIVE AND TIME CONSUMING.

IF ONLY THE CLAIMANT IS PRESENT, AND THE DEFENDANT DOESN’T APPEAR THIS EVENING, THE CLAIMANT WILL BE SENT TO AN ARBITRATOR FOR AN INQUEST. EVEN IF THE DEFENDANT DOES NOT APPEAR, YOU MUST STILL PROVE YOUR CASE AT AN INQUEST.

IF ONLY THE DEFENDANT IS PRESENT, AND THE CLAIMANT DOESN’T APPEAR THIS EVENING, THE CASE WILL BE DISMISSED.

IF YOU NEED AN ADJOURNMENT, FOR EXAMPLE TO ADD AN ADDITIONAL PARTY, TO CHANGE THE AMOUNT OR TO MAKE A REQUEST BECAUSE YOU ARE NOT PREPARED TO PROCEED, REPEAT YOUR NAME AND SAY “APPLICATION.”

WHEN YOU HEAR YOUR NAME CALLED, PLEASE STAND AND ANSWER WITH YOUR NAME, IN A LOUD, CLEAR VOICE.

THANK YOU!
October 3, 2000

3. The speed of processing arbitration cases varied greatly by courthouse. Of the three courthouses where I conducted fieldwork, the Manhattan small claims court had the smallest caseload and the largest number of volunteer arbitrators, so the court was often able to process all the cases on the docket that were ready for a hearing. By contrast, litigants in Brooklyn and Queens often had their case adjourned to a later date even if they agreed to arbitration. The Queens courthouse in particular struggled to have enough arbitrators. In part, this was likely due to the court’s location in Jamaica, which
does not have a significant concentration of office buildings in the vicinity and would be out of the way for attorneys working in Manhattan or western Queens. By contrast, the civil courts in Brooklyn and Manhattan are in downtown locations that are easy to reach for volunteer arbitrators who want to stop by on their way home from work. As a consequence, the court in Queens often relied on insurance lawyers to double as arbitrators once they had finished the cases in which they acted as lawyers.


5. At the courthouse in Queens, some of the volunteering arbitrators are already in court as attorneys on retainer with insurance companies to appear in cases involving car accidents. They sometimes appeared to receive preferential scheduling of their insurance cases so that they could work as arbitrators once their hearings were done. I observed several cases where one such insurance lawyer/arbitrator conducted an arbitration hearing in which another insurance lawyer was involved as attorney for the defendant. The Queens court relied heavily on these insurance lawyers, as the number of “regular” volunteers was much lower than in Manhattan or Brooklyn. This phenomenon illustrates potential problems with the policy of relying on arbitrators instead of judges.

6. Hearings in which a settlement was negotiated were thus effectively akin to mediation sessions, which are conducted in many courts throughout the United States. Mediation processes have received considerable attention in sociolegal research (see, e.g., Garcia 1991). Conley and O’Barr (2005:40) note that one problem with mediation sessions is that litigants may “make concessions that are neither required by the law nor consistent with their interests.” On the other hand, it has been noted that settlements achieved through mediation are more likely to be complied with by the parties than are adversarial judgments (McEwen & Maiman 1984).

7. This was an insurance lawyer acting as arbitrator.

8. I was told by a clerk that the court administration in Brooklyn preferred it if arbitrators sat at the bench.

9. Philips’s (1998) label of “record-oriented” judges seems less appropriate here, since there is no court record of arbitration hearings. However, it could be argued that “fast” arbitrators orient toward the absence of a court record by reducing litigant instruction and testimony to an absolute minimum.

10. Moeketsi (1999:5) reports similar circumstances from courts in the South African Free State province. She observed that even if all participants were speakers of Southern Sotho, hearings were conducted in Afrikaans or English with a court interpreter because the court records were kept in these languages.

11. As I show in Angermeyer (to appear), some litigants arrive in front of an arbitrator without having understood the distinction between trial and arbitration and without having deliberately opted for arbitration. In response to the request for consent, some litigants are reluctant to waive their right to appeal and state a preference for a trial by judge, which remains a possibility until the consent form is signed. In most cases, arbitrators and interpreters discourage litigants from doing so and ultimately manage to elicit their consent.

12. In New York City, rent-control laws limit a landlord’s ability to raise the rent on continuing tenants. Landlords therefore often stand to gain substantially when an old tenant moves out and a new tenant moves in, especially in neighborhoods undergoing gentrification.
Chapter 4

1. Among the court interpreters employed by the court system, some are multilinguals who translate several LOTEs, often ones that are less commonly requested. For example, I encountered three different interpreters for Romanian, each of whom translated two other languages as well (including French, Greek, Hungarian, and Italian).

2. In her study of court interpreting in the United States, which focuses on Spanish interpreters, Susan Berk-Seligson (1990:271, fn.1) characterizes the typical court interpreter as female. In contrast to her findings, the majority of the court interpreters I observed were men (39/66), although not among the Spanish interpreters (8/17). Angelelli (2001:90) found that 70% of all court, medical, and conference interpreters she surveyed were women.

3. Many of the court interpreters in New York are also members of the National Association of Judicial Interpreters and Translators (NAJIT), which has its own binding code of ethics: http://www.najit.org/about/NAJITCodeofEthicsFINAL.pdf (accessed December 6, 2013).

4. According to an administrator I interviewed, all senior interpreting supervisors in the New York court system were former Spanish interpreters at the time of my fieldwork.

5. The notion that the interpreter is part of a team of court personnel is an explicit policy of the court system, as stated in the Action Plan of the New York State Unified Court System (2011:11–12).

6. The exceptionality of Spanish is clearly recognized by the courts. For example, the New York State Unified Court System distinguishes two different job titles, one for court interpreters for Spanish and one for languages other than Spanish (UCS Court Interpreter Manual and Code of Ethics). Perhaps it is time for U.S. linguists to add the acronym LOTS (languages other than Spanish) to that of LOTE.

7. In language contact studies, the Tok Pisin term “wantok” has been used to describe this social category of having a shared L1 in a multilingual context.

8. Specifically, Berk-Seligson (1990) finds that interpreters vary in how they translate English passive constructions into Spanish, either using constructions that emphasize agency, such as active constructions (yo rompí ‘I broke’) or true passives followed by por ‘by’ (fue roto por mi ‘it was broken by me’), or using forms that omit or downplay agency, such as reflexive passives (se rompió ‘it broke’) or datives of interest (se me rompió ‘it got broken on me’). Focusing on trials in the southwestern United States of undocumented immigrants and the smugglers they pay to cross the border, Berk-Seligson argues that the interpreters’ choice of construction correlates with their attitudes toward the person whose action is being described. Consequently, she finds that interpreters use overt expressions of agency when they interpret statements about the actions of border guards or smugglers, toward whom they feel antipathy (Berk-Seligson 1990:109–112). By contrast, they avoid such forms (and thus background individual responsibility) when translating statements about the actions of undocumented migrants, with whom they empathize.

9. The absence of a court record for arbitration hearings removes the need for interpreters to use first person in order to produce utterances that can be read in the transcript as originating from a litigant. However, all interpreters in small claims court are professional interpreters who also work in formal trials, and they don’t see arbitration
hearings as a context where the normal rules of court interpreting should be suspended. If anything, they tend to complain about the arbitrators’ failure to adhere to the same standards as judges.

10. Inghilleri (2003) argues that the conduit model of interpreting is derived from dominant models of communication in linguistics, beginning with Saussure. However, one could argue with Reddy (1979:296) that “the conduit metaphor is a real and powerful semantic structure in English,” preceding linguistic models in shaping perceptions of communication and interpreting.

11. In a very small number of exceptional cases, deictic shift involved only second-person reference to the target recipient, and first person was still reserved for the source speaker (see Angermeyer 2009:17).

12. The notion of community norms for nonprofessional interpreting is not widespread in interpreting studies. However, Valdés’s (2003) study of child interpreters, for example, provides evidence that parents who rely on their children as interpreters have clear expectations about how they want interpreting to be conducted.

13. There were also 68 instances of indirect speech for which the corresponding source did not contain a first-person reference.

14. For example, the New York State Unified Court System has issued a “benchcard” for judges on “Working with Interpreters in the Courtroom,” in which judges are encouraged to monitor the interpreter’s use of first or third person as a way of assessing his or her performance (New York State Unified Court System 2008: Appendix L). Interestingly, the benchcard does not ask judges to avoid addressing the interpreter instead of the witness.

15. Jerzy had acted in a similar manner earlier in the hearing when he explained the difference between arbitration and a trial by the court instead of letting the arbitrator do so, as is normally the case (see Chapter 3). I also observed him talking to the claimants during the waiting period before the hearing began (he had traveled to the courthouse specifically for this hearing).

Chapter 5

1. Both the need to understand and the need to be understood are equally part of the legal rationale for court interpreting, which has derived from the right to due process for defendants in criminal trials—that is, the right to understand the charges and to participate in one’s own defense.

2. The decision to use a court interpreter can be taken at different points during the legal process. Claimants may request an interpreter upon filing their claim, in which case the court will schedule the hearing for a date when an interpreter is available. Alternatively, litigants may request an interpreter when they appear in court for their hearing, or a court clerk, judge, or arbitrator may decide that an interpreter is needed. If the decision is taken at the time of the first court date, it generally leads to a postponement of the hearing, when no interpreter for the required language is present.

3. Such an incorrect assignment of articles is in fact characteristic of the speech of Russian learners of English (see, e.g., Pavlenko 2008:10) and is also found in the claimant’s speech (see the driver in line 25 of excerpt 2).
4. Wadensjö (1998:107–108) distinguishes seven types of divergent renditions, based on the ways in which they diverge. These include “expanded renditions,” which contain more information than the source, and “reduced renditions,” which contain less, as well as a combination of the two, namely “substituted renditions.” Where correspondences involve multiple source or target utterances at once, Wadensjö identifies “summarized renditions,” which correspond to two or more prior source utterances, either by the same speaker or by different speakers, as well as “multi-part renditions,” where multiple target utterances correspond to a single source utterance. However, these categories are not truly mutually exclusive, as a summarized rendition can also be expanded or reduced. These types contrast with utterances that do not function as translations (“non-renditions”) as well as with instances where source input is not translated at all (“zero renditions”).

5. One example is from a malpractice suit against a dentist. Here the arbitrator twice interrupts the Russian interpreter to ask a question (was it half in lines 9 and 11) that the claimant had already answered (èto pjat’desjat procentov ‘it was fifty percent’ in line 7) but that had not yet been successfully translated, because of the arbitrator’s interruptions. However, in contrast to excerpt (3), the interpreter in this case gives precedence to the litigant instead of the arbitrator. As can be seen, he translates none of the arbitrator’s turns after the initial question (lines 1–2), until he has finished translating the claimant’s response. Thus he omits the arbitrator’s elaboration on the question (line 5), as well as the follow-up question, which the arbitrator repeats impatiently (lines 9 and 11).

(i)

1 Arbitrator: How much of the work that she was supposed to do did she actually do?

2 Interpreter: no skol’ko raboty, kotoruju ona dolžny byla sdelat’, ‘but how much work, which she was supposed to do’

3 nsakol’ko ona faktičeski zakončila eë? ‘to what extent did she actually finish it’

4 Arbitrator: I mean you went twenty [visits so]

5 Claimant: [verx ona] sdelala, ploxo sdelala verx ‘she did the top, she did the top poorly’

6 Interpreter: = She did the top in the mouth. She did it bad but she did it +

7 Arbitrator: That was [half?]

8 Interpreter: [So you] can say that it [was fif-]

9 Arbitrator: [Was it half?] Fifty percent.

6. For example, the length of turn-initial and turn-internal pauses has been shown to vary cross-culturally, as has their pragmatic interpretation in context. In her detailed study of cross-examinations of Aboriginal witnesses in Australian courts, Eades (2008:107–114) shows that the witnesses’ responses to questions are often preceded by silent pauses that are a common feature of Aboriginal discourse but that the attorneys
interpret as evasive. Moreover, the cross-examining attorneys frequently react with impatience to such silences and produce new questions or comments before the witness has spoken. While such cultural differences may not play a role in the case discussed here, the claimant does produce many turn-internal pauses when he speaks English (see line 22 in excerpt 2, as well as excerpts 8 and 9) but not when he speaks Russian (see also the long silence after the arbitrator’s initial question in excerpt 1, when the claimant has the floor but does not speak).

7. In a few instances, interpreters did not interrupt litigants who failed to pause but instead attempted to translate the extended source turn after it was complete. However, in such circumstances they did not succeed in providing close renditions. Litigants thus succeeded in avoiding fragmentation but did not manage to have all information from their source turn conveyed. This is illustrated in the following excerpt, from a hearing with a Russian-speaking claimant. As the “fast” arbitrator wants to conclude the hearing, he quickly tries to make a final point and does not pause for the interpreter. The interpreter does eventually intervene (line 13) but not as early as the arbitrator expects him too (see lines 7 and 9). When he finally translates the claimant’s extended turn, he leaves out some propositional content (the mechanic’s threat to sell the car), and he begins with reported speech (line 14) and then alternates between direct (lines 16 and 20) and indirect translation (lines 14, 18, and 19).

(ii)

1 Claimant: eščë takaja vešć’ () tak-
{‘one more thing’}

2 Interpreter: One more [thing]

3 Claimant: [učč]tvaja, čto ja, značit, v tot moment, kogda, značit,
{‘considering that I, well, at the (same) moment when, well’}

4 etot mexanik () pred’javil mne ul’timatum libo on prodast mašinu +
{‘this mechanic gave me an ultimatum, either he sells the car’}

5 Arbitrator: () [Okay-]

6 Claimant: [tak?] () libo ja eë dolžen vykupit’.
{‘you know, or I have to buy it out’}

7 Arbitrator: [What is he saying?]

8 Claimant: [libo ja eë dolžen vykupit’] () tak- () u [menja-
{‘or I have to buy it out, you know, I had-’}

9 Interpreter: [He didn’t] /finish yet. =

10 Claimant: =U menja v èto vremja- U menja v èto vremja, tak?
{‘I had at the time- I had at the time, you know”’}

11 () nužno bylo oplatit’ straxovku () tak? ()
{‘I had to pay the insurance, you know?’}

12 i ja straxovku [xxx xxx-]
{‘and I xxx the insurance-’}

13 Interpreter: [Vy dolgo očen’ govorite] ja ne suneju perevesti! =
{‘You talk for too long, I won’t be able to translate!’}

14 =He’s saying that he had a problem () to bail out his vehicle from

15 the shop
8. As noted in Chapter 3, I observed a small number of exceptional hearings that were conducted in Spanish without an interpreter by bilingual arbitrators (see Angermeyer 2014).

9. Researchers studying interpreter-mediated interaction usually conceive of it as a dialogic activity in which the interpreter translates between two people who do not share the same language (hence the term *dialogue interpreting*). Because of this focus on dialogic situations, face-to-face interpreting is typically described in the consecutive interpreting mode exclusively (Wadensjö 1998:49; Valdés, Brookes, & Chávez 2003:25; Meyer 2004:19), even though the need for simultaneous interpreting might arise if more than two people are present besides the interpreter.

10. I observed and recorded Yves several times, but he made such an interruption only in the first hearing I recorded with him. It is possible that this reflected a concern that his performance was going to be evaluated by me. On later days when I recorded him again, he did translate simultaneously but did so in such a whispered voice (“chuchotage”) that parts of his translation are not audible on the recording.

11. Berk-Seligson (2012:422, 432) claims that skilled interpreters consider consecutive interpreting to be more difficult than simultaneous mode because it “requires a great deal more reliance upon memory” (p. 422; see also Berk-Seligson 1990:2). Similarly, Obler (2012:179) reports on an individual interpreter’s preference for simultaneous over consecutive mode. However, both accounts neglect the distinction between short and long consecutive modes (Pöchhacker 2004:183; Jacobsen 2012:218) and describe challenges that are characteristic of long consecutive mode, as interpreters are faced with “units of several sentences” (Obler 2012:17) or extended turns (Berk-Seligson 2012:422). If interpreters are expected to interpret entire turns, the cognitive challenge for the interpreter will vary greatly by turn length. When a litigant takes a long narrative turn without interruption, it will be difficult for the interpreter to provide a close rendition once the litigant’s turn is complete (see note 7). Instead, as seen throughout Chapter 5, consecutive interpreting in small claims court is typically done in short consecutive mode, where speakers pause even within a sentence to facilitate interpreting by breaking their talk down into smaller units. Consequently, short consecutive mode does not place the same demands on short-term memory as long consecutive does (Obler 2012).

12. Studies of conference interpreting have argued that the often-monotonous intonation pattern of simultaneous interpreting interferes with listener comprehension (cf. Shlesinger 1994). In this case, such an intonation may present an additional obstacle for the attribution of interpreter renditions to different source speakers.

13. In the same excerpt, the judge also paraphrases the prosecutor’s argument to provide specific input to the interpreter. This raises concerns about the roles of the participants and the authorship of the input talk, which Licoppe and Vernier (2013) discuss, but these are separate from the issue of interpreting modes.
14. Such a “standby” use of an interpreter who is otherwise assisting the opposing party is illustrated in excerpt (iii), where a Dominican claimant who had been speaking English turns to the interpreter for help with a vocabulary item. The interpreter helps out, temporarily abandoning her previous task of translating into Spanish for the benefit of the defendant. She merely confirms the claimant’s choice of *disarm* (line 5), so that one could say that he doesn’t “gain” from her help, apart from perhaps being more assured about continuing in English.

(iii)

1 Claimant: *And they took the whole thing out.*

2 [they took the whole thing out, to get to the engine.]

3 Interpreter: [*Y todo eso los sacaron, eso, para.*]

\{’And all this they took out, this poder [llegar al motor.]

\{’to be able to get to the motor.’\}

5 Claimant: *[And they eh] dis- *disarmed?*

6 *How you* ¿cómo se [dice, desarmar?]*

\{‘how do you say, disarm?’\}

7 Arbitrator: *So did they*-

8 did they [open the [front?]*

9 Claimant: [El- el [alternador.]

\{’the- the alternator’\}

10 Interpreter: [They disarmed-]*

11 They disarmed the alternator.

**Chapter 6**

1. The 48 transcribed hearings that make up the dataset for this study included 67 LOTE-speaking litigants, and every one of them used some English. The transcribed dataset also includes speech by 16 LOTE-speaking witnesses. Two of these did not use any English words at all, but both spoke only very little (fewer than 50 words each).

2. Codeswitching by bilingual arbitrators occurred in a few exceptional cases where all participants were speakers of Spanish (see Angermeyer 2014).

3. On a discourse level, one might argue that the institution of small claims court in itself represents convergence toward the perceived needs of unrepresented litigants on the part of the legal system.

4. This echoing is reminiscent of the practice called *shadowing* that is used in the training of simultaneous interpreters as well as in psycholinguistic experiments, where interpreters are asked to produce an “immediate verbatim repetition of the input in the same language” (Pöchhacker 2004:117). Despite these similarities, I decided not to use the term *shadowing* because echoing does not necessarily involve a verbatim repetition but may consist of a paraphrase.

5. Where it modifies the form of the prior codeswitched utterance, echoing is thus reminiscent of the phenomenon of adult expansions of children’s first utterances, which has been observed in baby talk registers (cf. Ochs & Schieffelin 1984).
6. The transidiomatic character of certain Russian words became also evident in my data, when an arbitrator commented on the use of pravda ‘truth’ in the interpreter’s translation of the oath that witnesses are asked to swear.


8. Of course, such rights are often restricted in courtroom talk, as lawyers constrain through their questioning how witnesses can describe their own experiences (see Chapter 3).

9. An additional eight hearings were transcribed after the completion of the initial phase of the research project. All of these involve Spanish-speaking litigants. These additional data are not included in the quantitative results presented in this section or in Chapter 4 but are considered in the discussion otherwise.

10. For example, my Russian-speaking research assistant commented that some terms relating to housing issues do not have true equivalents in monolingual Russian due to differences in the organization of the housing market (especially during Soviet times).

11. In this respect, the repetitive subject matter of small claims proceedings has a beneficial side effect for the linguistic researcher, in that different people at different times (and speaking different languages) are observed talking about more or less the same things. As many cases in small claims court result from car accidents or from disputes between tenants and landlords, employees and employers, or customers and business owners, similar topics are discussed across hearings and similar forms of evidence are presented. For example, when a claimant sues a defendant in order to be compensated for damages to property, such as damages resulting from a car accident, arbitrators ask to see either two estimates of the cost of repair or else a paid bill. As a consequence, the English lexical items estimate and (paid) bill frequently occur in such hearings, and interpreters translate them from English into their respective LOTEs and vice versa. The following two excerpts illustrate this, based on excerpts from two hearings involving different Russian interpreters. In (i), the interpreter translates the arbitrator’s two estimates and paid bill as dve ocenki (line 2) and oplačennye sčeta ‘paid bills’ (line 5). By contrast, the interpreter in (ii) twice uses the English item estimate in Russian structures (line 3), although she uses the same Russian translation as her colleague for paid bill (line 6).

(i)

<table>
<thead>
<tr>
<th></th>
<th>Arbitrator:</th>
<th>But you are in- Small Claims Court requires two estimates.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Interpreter:</td>
<td>V sudy melkix iskov vy: dolžny prinesti dve ocenki.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>{‘In the court of small claims you have to bring two estimates.’}</td>
</tr>
<tr>
<td>3</td>
<td>Arbitrator:</td>
<td>(1.7) or a paid bill.</td>
</tr>
<tr>
<td>4</td>
<td>Claimant:</td>
<td>[a otkuda vtoruju-]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>{‘but from where the second--’}</td>
</tr>
<tr>
<td>5</td>
<td>Interpreter:</td>
<td>[ili /o:/pla-]čennye sčeta</td>
</tr>
<tr>
<td></td>
<td></td>
<td>{‘or paid bills’}</td>
</tr>
</tbody>
</table>

(ii)

|   | Arbitrator: | Okay, I’m gonna ask your client for [an estimate] of damages + |
| 2 | Interpreter: | [ja (xxx)] |
|   |              | {‘I (xxx)’} |
Excerpt (i) thus provides evidence that the Russian noun *oceneka* can be considered a translation equivalent of the English noun *estimate*—that is, the two items form a “coupled pair of target- and source-text items,” in the terminology of Toury (1995). Furthermore, a comparison of excerpts (i) and (ii) permits us to draw the conclusion that the insertion of *estimate* by the interpreter in excerpt (ii) occurred despite the fact that a “viable” LOTE alternative exists, namely the noun *oceneka*, as used by the interpreter in excerpt (i).

12. Where no translation equivalent is attested in the data, this does not necessarily preclude the existence of an alternative lexical item in the lexicon of the speaker or the community, as my native-speaker research assistants pointed out possible alternatives to me. Also, the size of the dataset plays a role in identifying equivalents, because the likelihood that an alternative occurs may be taken to increase with the number of recorded trials. Proceedings concerning damages to cars are a case in point. While the datasets of Spanish, Russian, and Polish speakers each contain at least two such hearings, the dataset of Haitian Creole speakers contains only one. In this hearing, *estimate* is used as an insertion, but a Haitian Creole alternative does not occur, although it might have in a different hearing, if such a hearing had been recorded.

13. Insertions used by interpreters are overwhelmingly repetitions of lexical items used earlier in the discourse (138/150, 92%; see Angermeyer 2010:478). This may be explained by the fact that interpreters generally don’t initiate topics, and in fact most inserted lexical items are repeated from the corresponding English source talk (123/150, 82%).

14. *Manager* is attested as a loanword in monolingual Russian, borrowed from English (Andrews 1998:37). It is treated as an insertion because it can be used in English with the same form and meaning. In fact, the claimant, the interpreter, and the arbitrator all use the word in English sentences later on in the hearing.

15. This involved an arbitrator asking *What’s the disputa?*, using cohesive insertion of Spanish *disputa* ‘dispute’ immediately after it had been used in Spanish by the interpreter.

16. Mellinkoff (1963:374–375) links this phenomenon to a “tradition of precision by precedent,” where, because of a general focus on the notion of precedent in the common law legal system, word meanings are defined by reference to earlier uses of the same word.

17. In fact, the potential ambiguity introduced into legal language by translation may have given rise to the formation of many of the nominal doublets that are characteristic for legal English. As pointed out by Mellinkoff (1963:121–122, see also O’Barr 1982:20), many of these forms combine two synonymous lexical items of which one is of Old English origin and the other of Norman French origin (e.g., in *swear* or *affirm*). At the time of language contact between Old English and Norman French (which lasted longer in the legal sphere, cf. Thomason & Kaufman 1988:267), these synonyms presumably
were translation equivalents, and naming both of them may have been a strategy to avoid ambiguity (cf. Tiersma 1999:32). Note that by repeating a translation equivalent, these doublets were originally parallel to some examples of self-translation found in the data, as shown in excerpts (12), (19), and 26. As Mellinkoff (1963:120) writes, “what may have once been rationalized as necessary translation soon became a fixed style.”

18. Contrary to the predictions of Backus’s (1996) specificity continuum, the data contain several examples of lexical items that have highly culture-specific referents but are referred to by a LOTE term rather than an insertion. The most striking example is *Section Eight*, the name of a government housing subsidy program, which appears as *Sección Ocho* ‘section eight’ in Spanish and as *Vos’maja Programma* ‘eighth program’ in Russian (see excerpt 17). *Section Eight* is used as an insertion only once by a Russian interpreter, who immediately self-corrects to the Russian alternative.

19. Other examples of such semantic extension are found in the translations of “security deposit.” Both Russian *depozit* and Polish *depozyt* refer to a deposit of money in a bank account, and appropriate monolingual translations of “security deposit” would be *zalog* and *kaucja*, respectively. In addition, Spanish speakers use *deposito de seguridad* (rather than *fianza*), which can be described as a combination of a loan shift and a calque, since it combines two cognate terms following the model of an English compound.

20. For example, guidebooks for interpreters often include vocabulary lists of translations for specific legal terms (De Jongh 1992) or lists of words that interpreters should know to interpret in particular types of cases (Mikkelson 2000a).

21. Meyer and Zeevaert (2002:25) also found considerable differences between individual interpreters in their rate of insertion use.

22. I am grateful to Ricardo Otheguy for pointing this out to me.

23. Table 6.3 follows the model of Woolard’s (1999:14) presentation of contested Catalan/ Castilian bivalent terms, in which she shows that some Catalan speakers systematically avoid lexical variants that are similar to Spanish cognates.

24. Because of the circumstances of the fieldwork (see Chapter 2), I generally did not have the opportunity to talk with litigants, so I’m unable to address the issue of how they might perceive the divergent lexical choices of interpreters.

25. This is suggested also by the findings of Berk-Seligson’s (1990) experiments with mock jurors, where she found that the ratings of bilingual mock jurors were affected by the speech style of the interpreter in English, even though the mock jurors were presumably also listening to the Spanish source talk (p. 163).

26. The lack of proficiency in the LOTEs among English speakers is the outcome of divergence at a macrosociolinguistic level, as English speakers in New York do not face accommodative pressures to acquire Russian or Haitian Creole.

27. This is especially true in legal context, where the professional register is not readily accessible to lay participants. As pointed out by Aronsson et al. (1987:113), divergence during monological phases of trials may cause lay participants to be “more or less totally excluded from the trial discourse.”

**Chapter 7**

1. Coulmas (1987:100) postulates two more maxims, which also predict the choice of English in small claims proceedings: the *local language maxim* (“the local language
should be the first choice for any interaction between a foreigner and a native”) and the intercultural communication maximizing maxim, which holds that “for any group of speakers sharing two or more languages/varieties in common, the one that enables everyone to partake in the interaction to the best of his or her relative ability should be chosen in order to make communication most efficient.”

2. All names are pseudonyms and all addresses are altered to prevent identification.

3. The phrase “C of O” refers to “Certificate of Occupancy,” a document granted by the Department of Buildings that certifies that a building is in livable condition and specifies how it may be inhabited (e.g., how many separate units may exist).

4. Negative attitudes toward nonnative accents in English were sometimes voiced by interpreters, despite the fact that most of them had learned English as a second language themselves. In particular, one Polish interpreter reacted with indignation when she was involved in hearings with two Polish litigants, one of whom was speaking English. In such circumstances, she thus had to translate nonnative, Polish-accented English into Polish for the benefit of the other party. In one incident that I was unable to record, the interpreter protested to the arbitrator that she didn’t understand the litigant’s English utterances, and the arbitrator (who had shown no sign of being unable to understand) instructed the litigant to speak Polish instead. On another occasion, she complained to me after the proceedings that the English spoken by a Polish litigant had been incoherent.

5. This number also excludes observed proceedings of inquests or judge-led trials, as well as arbitration hearings that ended in a postponement. In addition, I was not able to find out the legal outcomes of all observed cases. As noted before, arbitrators did not announce their decisions at the hearing but had them sent to the litigants in the mail instead. In many cases, I was able to obtain information on judgments from the court records, but this was not always possible.

6. A case was counted as won by the defendant if the arbitrator dismissed the claim. Counterclaims were categorized with the original claimant.

7. In this analysis of legal outcomes, the focus is on claimants alone, irrespective of the language choice of the defendant, because the structure of arbitration hearings gives precedence and priority to the claimant (see Chapter 3). If the claimant fails to convince the arbitrator that the burden of proof is met, it matters less what the defendant says (or in what language). Whether the defendant presents a coherent counter-narrative, or whether the arbitrator concludes that “they were both lying” (as one “fast” arbitrator said to me after a hearing), the legal outcome is the same: judgment in favor of the defendant.

8. In fact, among the 92 observed arbitration hearings that came to a decision, claimants won 64% of those heard by “slow” arbitrators (41/64) but only 39% of those heard by “fast” arbitrators (11/28).

9. The total number of judgments made during the sample month appears rather low compared to the typical daily caseload. While it excludes cases that were discontinued or dismissed without prejudice, the majority of the cases on the docket were postponed until a later date. In addition, the court records also include some information about interpreter use, though apparently only for cases in which it was scheduled prior to the court date, not cases in which the decision was made once the parties were in court. In the relevant time period, 19 cases were marked as involving an interpreter, of which 10 were decided in favor of the claimant (53%). The court records did not indicate
which party spoke a LOTE, but it is likely that they reflect primarily requests that were made by claimants. I observed three of these 19 cases, all of which involved a LOTE-speaking claimant. I also observed another hearing with a LOTE-speaking defendant, but this was not listed in the records as involving a court interpreter.

10. Similarly, the impact of attorneys appears to be mediated by arbitration style as well. While Sarat (1976:367) found that pro se claimants were less likely to succeed if the defendant was represented by an attorney, I found this to be true only with “fast” arbitrators. In Brooklyn, the two “fast” arbitrators decided in favor of a pro se claimant in only one of six such cases, while “slow” arbitrators did so in five out of seven cases. While excerpts (1) to (4) in this chapter show a “fast” arbitrator having a good rapport with an attorney, other arbitrators often experienced conflicts with attorneys, especially when attorneys wanted to take over questioning and expected arbitrators to act like a judge in an adversarial trial rather than like a judge in an inquisitorial system (see excerpt (3) in Chapter 3). Consequently, some arbitrators may in fact be inclined to give pro se litigants more leeway in order to counteract any disadvantages they might experience in facing a legal professional (see, e.g., excerpts (1) and (3) in Chapter 1).
REFERENCES


References


References


References


References


References


References


INDEX

Note: Locators followed by the letter ‘n’ refer to notes.

Abel, Richard, 17, 200, 202
accent, 104, 159, 193, 198, 223n4
accommodation, 13, 146, 152, 174, 179, 186–189, 193, 206
accommodation theory, 152, 174
accuracy, 72–73, 101, 155
address, forms of, 44, 83, 86–87
addressee role, 12, 81–86, 93, 100, 102, 128, 149, 151
adjacency pair, 134, 149, 154, 161, 184
adversarial trial, 50–51, 224n10
agency, 79, 115, 214n8
Albanian, 20, 21, 71
all-or-nothing rule of language choice, 8, 10, 137–139, 202–203
American Sign Language, 20
anaphoric transfer, see cohesive insertion
Anderson, Laurie, 142, 152, 153
Anderson, R. Bruce W., 75, 76, 100
Angelelli, Claudia, 70, 75, 214n2
Angermeyer, Philipp, 8, 85–89, 165–166, 168, 170, 173
animator, participant role of, 81–82, 162, 164, 198
answers, 111, 114, 134, 149, 162, 172, 203
appeals, grounds for, 8, 163
impossibility in arbitration, 42–43, 212n2, 213n11
Arabic, 19, 21, 22, 71
arbitration, 49–54
vs. judge-led trial, 17, 42–44, 201, 211n2, 213n6
arbitrators, 42–49
fast versus slow style of, 48, 50, 59, 63–67, 90, 110, 193, 200–201, 223n8, 224n10
insurance lawyers as, 93, 201, 211n14, 212n3, 213n5, 213n7
legal ideology of, 45–48, 59, 64–67, 224n10
neutrality of, 37, 152
procedure-oriented vs. record-oriented, 47, 49–50, 213n9
Spanish-speaking, 38, 45, 49, 63, 205, 210n5, 219n2
assessment of L2 proficiency, 137–138, 140, 202; see also interpreting, request for
assessments (in interaction), 37
asylum hearings, 70, 99, 122, 202–203
asymmetrical power relations, 31, 99, 130, 174, 206
Atkinson, J. Maxwell, 13, 37, 50–52, 110, 119, 150, 152, 172
attention drawn to interpreter, 73, 111, 133
attorneys, 16–17, 28–29, 31–32, 50, 76, 88, 93, 130, 194–200, 204, 211n14, 224n10
bilingual, 143
representing insurance companies, 28, 31, 93, 201, 212n3, 213n5
audio-recording in the courtroom, viii, 14, 18, 210n9
Auer, Peter, 6, 13–14, 75, 143–147, 149, 154–156, 166, 168, 170, 173, 192
back-channelling, 99, 119, 135, 163; see also feedback; response tokens
Backus, Ad, 145, 166, 176, 222n18
Bakhtin, Mikhail M., 82
Baraldi, Claudio, 99
Barrett, Rusty, 28
Bengali, 19, 21, 71
Berk-Seligson, Susan, 4, 8, 20, 31, 39, 70, 73, 79–82, 90, 93, 101–103, 110, 131, 214n2, 214n8, 218n11, 222n25
BICS (Basic Interpersonal Communicative Skills), 137–138
bilingualism, 6–8, 11, 21, 75, 81, 189, 192
bilingual jurisdictions, 5, 124
bilingual speech, 14, 106–107, 142–145, 158, 166, 185, 188–189
bivalency, 144, 160, 222n23
Blommaert, Jan, 5, 22, 122, 203
Bolton, Galina, 13, 140
borrowing, 165–168, 181; see also insertion
Bosnian, 71
Bot, Hanneke, 80–81, 83
Bourdieu, Pierre, 31, 205
Index

Brooklyn, 18, 20–21, 23, 34, 211n13
Civil Court, 44, 46, 201, 212n3
burden of communication, 120, 193, 197
burden of proof, 54, 175, 223n7
Burmese, 20

CA, see Conversation Analysis
calendar call, 43–44
Callahan, Laura, 28
CALP (Cognitive Academic Language Proficiency), 137–138
calque, 180, 222n19
Cambodian, 20
car accidents, disputes arising from, 28–29, 32, 59, 104, 138, 211n13, 213n5, 220n11
Caribbean Spanish, attitudes towards, 183, 187–188
case types, labeling of, 25, 30, 57, 210n11
Census, U.S., 4, 20–21
Chinese, 5, 18, 20–23
Christensen, Tina Paulsen, 93
chuchotage, 83, 85, 103, 218n10
claimants, 24–32
testimony of, 50, 52–58, 103, 107, 117, 122, 127, 138
Clayman, Steven, 13, 119, 161, 172
code-mixing, 24, 143–145, 168
code of ethics, court interpreters’, 72–73, 80, 99, 214n3, 214n6
codeswitching, 6, 8, 14, 142–165, 188–190
and bilingual competence, 143–144, 154, 157–158, 189
and interpreter-mediated interaction, 142, 144–150, 155, 157, 161–162
as accommodation, 152, 156, 189
as quasi translation, 154–156
attitudes towards, 105, 107, 145, 157, 183, 188, 203
awareness of, 158, 189
between Haitian Creole and English, 199
between Polish and English, 157
between Russian and English, 7, 24, 105–107, 166–168, 180
between Spanish and English, 23, 166, 183, 188–189
conversational, 13, 14, 143, 158
direction of, 144, 147, 155–156
discourse-related, 146–147, 154
emblematic, 9, 144
for addressee specification, 143, 149
for emphasis, 156, 169, 188
for reiteration, 156
functions of, 14, 144, 149–150, 152–154, 156, 158, 163–165, 188
in self-selected turns, 150–151
intimate, 143–145, 166
intrasentential, 105–107, 143
metaphorical, 144
preference-related, 145, 147, 154
sequential analysis of, 145–147
unreciprocal language choice, 146
cognates, 176–178, 186, 222n19
cognitive load, 12, 131, 203, 218n11
coherence, 114, 122–123
cohesive insertion, 13, 170, 172–174, 221n15
common law, 5, 50, 221n16; see also adversarial trial
communication control principle, 192
communicative burden, see burden of communication
comprehension
by second language listeners, 138–139
checking of, 69, 99, 103, 119–120, 161, 178, 192–193, 204
conditions for, 122, 193–194
in simultaneous interpreting, 138–139, 218n12
conduit metaphor, 8, 192, 215n10
confirmation of understanding, 109, 119, 161, 178, 194, 196
confirmation-seeking questions, see questions
consecutive interpreting, 3, 88, 102–103, 148–149, 218n11
cognitive demands of, 109, 131, 218n11
interpreters’ preference for, 124, 129–132, 218n11
pragmatic consequences of, 4, 12, 102, 111, 117, 120, 130, 135–136, 204
use in formal courts, 203, 204
see also interpreting; interpreting modes
consent to arbitration, 47, 49–50, 138, 213n11
consent to recording, 210n9
textualization, 146–147, 154
continuers, 120; see also response tokens
continuity of reference, 176, 179, 185; see also same meaning, same form principle
correspondence, 146–147, 152–153, 174, 187, 219n3
Conversation Analysis, 13–14, 119, 143, 163, 172
core borrowing, 167; see also insertion
Cotterill, Janet, 185
Coulmas, Florian, 192, 222n1
Coupland, Justine, 13, 152, 174, 189
Coupland, Nikolas, 13, 152, 174, 186, 189
coupled pairs, 167, 221n11
court interpreters, viii, 70–76, 89
availability of, 9, 18–19, 38, 71–72
code of ethics for, 72–73, 80, 99, 214n3, 214n6
giving procedural instruction, 56–57, 62, 74, 77
per diem, 20, 71–73, 94
status of Spanish, 20, 49, 71, 73–74, 77, 92, 183, 214n4, 214n6
staff, 18–19, 38, 71–74, 77, 92
testing of, 71–72, 131
see also interpreters
court interpreting, 4, 70, 101–103
scheduling of, 18–20, 22, 72
see also interpreting
court record (official transcript)
absence in small claims arbitration, 43, 213n9, 214n9
in formal courts, 50, 52, 81, 99, 213n10
courtroom architecture, 42, 46–47
courtroom talk, 13, 65, 114, 119, 134, 174
credibility, 2, 10–11, 101, 179, 203–204
creoles, 22
Croatian, 71
cross-examination, 2, 50–51, 138–139, 141, 171, 185, 216n6
Cubans, 184, 205
cultural borrowing, 167; see also insertion
culturalization, 38, 63
culture, 33, 38, 63, 111, 222n18
Cummins, Jim, 137
customer complaints, 27, 29–30, 32, 138
data collection, 6, 14, 18
Davidson, Brad, 13, 70, 75, 99–100, 109, 118–119, 130, 142, 152, 163
decision-making, interpreters’ translation of, 90
deontological approaches to, 64–68, 200
defendants, 24–32
testimony of, 50, 53–54
diachronic shift, 83–85, 87–94, 215n11
D’hondt, Sigurd, 31, 38, 93, 103, 111, 120
dialect contact, 183, 187
dialogue interpreting, 70, 83, 87, 218n9
direct examination, 50, 132, 138
direct speech, 80, 95
direct translation, 79–82, 85, 87, 89–90, 99, 133, 160, 193
disadvantages, of interpreted litigants, 4, 125, 135–137, 191, 200, 204–205
of pro se litigants, 32, 224n10
discourse markers, 101, 144
dispute resolution, 17, 25, 63, 202
disputes, 16–17, 21, 24–34; see also car accidents;
customer complaints; employee/employer conflicts; tenant/landlord conflicts
divergence, 187, 189, 222n26, 222n27
Dominicans, 23, 29–30, 33, 77, 183, 188
Doucet, Rachelle, 24
Drew, Paul, 13, 51, 110, 150, 172, 185
due process, 8, 215n1
Eades, Diana, 5, 51, 137, 153, 185–186, 202, 216n6
echoing, 148, 157, 159–163, 219n4, 219n5
Ehrlich, Susan, 51–52, 185
employee/employer conflicts, 27–28, 31–33, 36, 46, 59, 138, 211n15
English, discouraging of L2 use, 7–8, 105, 137–139, 157, 192, 199
indexicality of using, 10–11, 49, 106, 205
social dominance of, 3, 76, 100, 166, 174, 206
testimony given in L2, 118–122, 138–139, 179, 188, 199
epistemic authority, 159–164
epistemic priority, 162–163
epistemic stance, 127
equality before the law, 5, 16, 191, 199–200, 202, 204
ethical, see code of ethics
evidence (in court), 10, 25–30, 45, 220n11
face threats, 115, 130
false friends, 178
false starts, in L2–usage, 7, 104, 159, 161
in simultaneous interpreting, 131–132
Farsi, 20
fast arbitrators, see arbitrators
feedback, 99, 119, 197, 199; see also
back-channelling: response tokens
Felstiner, William, 17
fieldnotes, 14, 48
fieldwork, 6, 14, 17–18, 23
filing a claim, 29, 32, 38–41, 211n17, 215n2
first-pair parts, 37, 154–155
first person plural, 78–79
first person translation, 80–82; see also direct
translation
footing, 14, 37, 79, 81, 83; see also deictic shift
formal trials, 52, 114, 203, 214n9
formulation, 119
fragmentation of discourse, 114, 117, 123–125, 130, 135, 203, 217n7; see also narratives
freelance interpreters, see court interpreters, per
diem
French, 19–22, 71, 210n10, 214n1, 221n17
frivolous lawsuits, see “garbage” cases
Fukienese, 20
“garbage” cases, 33, 63
Garcia, Angela, 13, 213n6
Garcia, Ofelia, 4, 188, 189
Gardner, Rod, 119, 163
Gardner-Chloros, Penelope, 142–143, 149
gatekeeping, 75, 100
Gavioli, Laura, 99
gender, 38, 58, 90, 130, 214n2
Index

Gibbons, John, 50, 176, 179
Giles, Howard, 13, 152, 174, 189
Goffman, Erving, 14, 74, 81–83, 149, 162–163
Greek, 19, 21, 71, 214n1
Gujarati, 21
Gumperz, John J., 5, 75, 122, 143–144, 149,
153, 156
Guyanese, 22

Haitian Creole, 159, 196
interpreting for, 19, 22, 70–71, 210n10
spoken in New York, 18, 21–22, 24
varieties of, 24
Haitians, 22, 33
Hale, Sandra, 4, 70, 75, 91, 159, 179, 191
Halliday, M.A.K., 168, 170
Hasan, Ruqaiya, 168, 170
Hatim, Basil, 109
Haviland, John B., 3, 6, 8, 10, 22, 24, 73, 81, 102,
106, 160, 162, 179, 191–192, 204–205
Hebrew, 19–21, 71
Heller, Monica, 6, 75, 144–145
Heritage, John, 13, 119, 161, 163
Hindi, 19, 21, 71
Hungarian, 20, 214n1

immigration, 18, 32–34, 166, 206
immigration status, 28, 35–36
indexicality, 3, 10–11, 81, 144, 168, 179, 189, 191,
202–204
indirect translation, 79–80, 82, 85, 88–95, 215n13
inequality, 5, 122, 166, 174, 205
informal justice, 6, 13, 37, 47, 50, 68, 76, 202
information-seeking questions, see questions
Inghilleri, Moira, 70, 73, 75, 82, 215n10
inquest hearings, 44, 49, 54, 63, 212n2
inquisitorial system, 50
insertion, 13, 143–144, 165, 221n14
and cognates, 177
as input for translation, 178–179
asymmetrical distribution of, 166, 173–174, 206
attitudes towards, 105, 188
attribute to specific language of, 165, 167,
181, 184, 221n11
cohesive, see cohesive insertion
competing with LOTE forms, 167–168,
222n18
discourse-related, 172, 176–177, 199
interpreters’ avoidance of, 182–188
interpreter’s use of, 179–182, 187, 221n13,
222n21
nominal, 144, 166
preference-related, 166; see also lexical gap
insurance lawyers, see attorneys

intercultural communication, 4, 15, 33, 111, 192,
216n6
interference, 122, 143, 158–159, 188
interpreters
as addressees, 93–94
as gatekeepers, 62, 75, 78, 100
identity of, 75–76
neutrality of, 72–73, 75–76
role of, 75–76
see also court interpreters
interpreter use, indexicality of, 3, 11
instruction of, 7, 105–106, 155
interpreting
consecutive mode, see consecutive interpreting
long vs. short consecutive mode of, 107,
218n11
non-professional, 70, 85, 140
request for, 6, 9, 105–106, 215n2
simultaneous mode, see simultaneous interpreting
source-centered style of, 85
standby mode, see standby interpreting
target-centered style of, 85, 128
interpreting mode
choice of, 102–103, 127–128
distribution in court, 3, 103, 124, 128,
135–136, 203–204
see also consecutive interpreting; simultaneous
interpreting
interpreting norms, community, 81, 85,
215n12
institutional, 94, 99, 124, 128, 136
professional, 57, 73, 80–81
interruption
by arbitrators, 60, 63–65, 77, 110–111, 114,
195–196, 216n5
by interpreters, 90, 107, 110, 123–124,
128–130, 136
by litigants, 62, 164
see also fragmentation of discourse
intertextuality, 173
interviews, 14, 23, 69, 71, 76–77, 214n4
Italian, 20, 21, 71, 214n1
Jacobsen, Bente, 103, 110, 127, 131, 218n11
Jacquemet, Marco, 5, 70, 100, 148, 160,
202–203
Jamaicans, 22
Japanese, 20, 71
Johnstone, Barbara, 168, 170, 172
judges, 40–41, 42–43, 105, 211n2, 223n5
legal ideology of, see arbitrators
Kadric, Mira, 38, 70, 103, 110, 140

keywords, insertion of, 171–173, 177

Knapp, Karlfried, 70, 75–76, 81, 83

Knapp-Potthoff, Annelie, 70, 75–76, 81, 83

Komter, Martha, 13, 150

Korean, 19, 21, 29, 71

L2, see second language

Labov, William, 53, 127

landlord/tenant conflicts, see tenant/landlord conflicts

language boundaries, 13, 22, 144, 165, 167

language choice, 5–7, 137, 206

as tied to credibility, 2, 10–11, 204

convergence of, 146–147

court’s instruction of, 7–8, 105–106

indexicality of, 3, 10–11, 49, 144, 191–192, 202–204

negotiation of, see language negotiation

repair of, 155–156, 158, 162

language ideology, 3, 5–6, 8, 11, 22, 73, 80–81, 87, 100, 137, 183–185, 188–192, 202, 205

language negotiation, 6, 106, 139, 145–146

language shift, 23, 143, 146, 206

Lee, Jieun, 101, 131

legal anthropology, 17, 47

legal consciousness, 17, 32–37

legal ideology, 12, 47, 66, 90

legal language, 49–50, 176–177, 221n17, 222n27

length of hearing, 12, 42–43, 46, 48

lexical choice, 77, 100, 174, 176, 181–183, 185–188, 222n24

lexical cohesion, 168–170, 172, 177

lexical gap, as motivation for borrowing or insertion, 166, 169, 172, 179; see also insertion

lexical perversion, 185

lexical repair, 181–182

lexical repetition, 13, 168, 170, 173–174, 179, 221n13

lexical retrieval, 166, 179

lexical struggle, 182, 185–188

Li Wei, 13, 144–145, 155

liaison interpreting, 70; see also dialogue interpreting

Licoppe, Christian, 136, 204, 218n13

Limited English Proficient persons, 142

Linell, Per, 153, 174, 222n27

lingua franca, 28

linguistic market, 31, 205

linguistic relativity, functional, 5

Lippi-Green, Rosina, 5, 122, 193, 198

listener cooperation, 122, 193, 199

loan shift, 178, 186

loanwords, 165, 188, 221n14, 222n19; see also borrowing

LOTE (Language other than English), 4, 214n6

lying, see credibility

Mandarin, 18–22, 71

Manhattan, 18, 21, 23, 211n13

Civil Court, 19–20, 32, 38, 44, 46, 201, 212n3

Maryns, Katrin, 9, 70, 202–203

Mason, Ian, 82, 109

Matosian, Gregory, 13, 51, 185

mediation, 47, 213n6

medical interpreting, 70, 152

Merry, Sally E., 6, 16–17, 25, 30–33, 63, 65

Meyer, Bernd, 70, 81, 140, 142, 152, 179–180, 218n9, 222n21

Mikkelsen, Holly, 11, 73, 99, 191, 222n20

Miranda warning, 137, 203


mode of interpreting, see consecutive interpreting; interpreting; simultaneous interpreting

monolingualism, courts’ ideology of, 8–10, 137, 192, 202

Morris, Ruth, 4, 70, 80, 82, 99, 101

multilingualism, 4, 13, 76; see also bilingualism

multilinguals, 24, 170, 214n1

Muysken, Pieter, 142–143, 165–166, 199

Myers-Scotton, Carol, 143–145, 165–168

narrative inequality, 122, 125, 130, 199

narrative structure, 53, 107, 110, 112, 127, 196

narratives, 52–53

arbitrators’ expectations of, 54–55, 58, 67, 135, 153

as evidence in court, 54, 202–203

fragmented by consecutive interpreting, 111, 114, 120, 123–124, 130

fragmented by questioning, 107, 114, 203

in testimony, 51–52, 114, 138

listener feedback in, 119–120

second language, 118–122, 138

simultaneous interpretation of, 126–127

therapeutic function of, 65–66

National Association of Judicial Interpreters and Translators (NAJIT), 73, 80, 214n3

neutrality, see arbitrators; interpreters

New York City

linguistic diversity of, 4, 20–21, 23, 26, 31, 76, 166, 183, 187, 205–206

policies, 213n12
### Index

**New York City (continued)**
- Spanish speakers, *see* Spanish
  *see also* Brooklyn; Manhattan; Queens

**New York State Unified Court System**
- Civil Court policies, 6, 25, 32, 64
- interpreting services of, 71–72, 80, 124, 128, 131, 211n16, 214n6

Ng, Kwai Hang, 5, 124, 140, 205

non-native English
- attitudes towards, 122, 193, 198, 223n4
- interpreters’ use of, 70, 115, 161, 198
  *see also* accent

**oath**, 50, 220n6


Ochs, Elinor, 3, 189, 219n5

Orellana, Marjorie Faulstich, 11, 70

Otheguy, Ricardo, 23, 187, 222n22

other-repair, 184

overhearer, *see* unaddressed recipient

overlapping talk, interpreters’ reaction to, 4, 65, 91, 110, 130–132, 150

paraphrasing, 88, 161–162, 219n4

participant observation, 14, 23

participation framework, 81–82, 162–164
  - in courtroom talk, 102
  - in interpreting, 83–87, 94, 127, 148–150, 198

Pashto, 20, 26, 73

passive voice, 90–91, 101, 214n8

Pavlenko, Aneta, 137, 215n3

Philips, Susan, 12, 47–49, 66, 213n9

Pöchhacker, Franz, 70, 75, 82, 131, 191, 218n11, 219n4

Poles, 24, 27–28, 33, 205

Polish, characteristics of, 87
  - interpreting for, 19, 70–72, 89
  - spoken in New York, 18, 21–22, 24
  - varieties of, 22, 210n7

politeness, 84, 87

Poplack, Shana, 23, 143–145, 166

Portuguese, 20, 24, 71

principal, participant role of, 81–82, 162, 164

proceedings interpretation, 103; *see also* unaddressed recipients, interpreting for pronouns, 82, 85, 90

**pro se** litigants, 17, 28, 32, 50, 99, 138–139, 199, 204, 224n10

Puerto Ricans, 11, 23, 166, 188

Punjabi, 19, 21, 71

Queens, 18, 21, 211n13

Civil Court, 44, 46, 201, 212n3, 213n5

question form, 51–52, 114

questions
  - closed, 51–52, 58–59, 114, 120, 134, 171
  - confirmation-seeking, 104, 135, 160–163, 197
  - declarative, 51, 134, 161
  - information-seeking, 51, 171
  - yes/no, 8, 51–52, 114, 160
  *see also* wh-questions

Raymond, Geoffrey, 134, 163

referential transparency, 6, 8, 73, 81, 192

reflexive passive, 214n8

reformulation, 159, 161

relationship-oriented discourse, *see* rules vs. relationship

relaying by displaying, 82, 85–86

relaying by replaying, 81, 85–86

renditions, close, 12, 88, 109, 127, 131, 135
  - divergent, 109, 114–115, 121, 196, 216n4, 217n7
  - reduced, 161, 216n4
  - summarized, 134–135, 216n4

repair, 133, 154–156, 158, 162

repetition, *see* lexical repetition

reported speech, 73, 79–85, 92, 95, 101, 128; *see also* indirect translation

response tokens, 119–120, 130, 163–164, 191, 197

absence in interpreter-mediated interaction, 119, 135, 197
  *see also* back-channelling, feedback

Reynolds, Jennifer, 11, 70

Richland, Justin B., 5

right to interpreting, 7–8, 139, 215n1

Romanian, 20, 21, 26, 70, 74, 214n1

Roy, Cynthia, 13, 75, 110, 148

Ruhnka, John C., 16, 17, 39, 211n14, 211n17

rule-oriented discourse, interpreters’ preference for, 56–57, 78

rules vs. relationships model 37–38, 47, 57–59, 67, 77, 197

Russian, characteristics of, 108

codeswitching, *see* codeswitching

interpreting for, 19–20, 70–72, 89

learners of English, 161, 215n3

lexical borrowing in, 104, 168, 177, 180, 221n14

second language comprehension of, 160, 205, 220n6

spoken in New York, 18, 20–24, 26, 33–34, 166, 222n26

Sacks, Harvey, 13, 14, 111, 163

same meaning, same form principle, 176–177, 185

same-speaker repetition, 170

Sarat, Austin, 17, 32, 200–201, 210n11, 224n10

Schegloff, Emanuel, 13, 14, 111, 120
Schieffelin, Bambi, 14–15, 24, 75, 78, 219n5
second language competence, 70, 122, 137–139
second-pair part, 155
second person, use in interpreting, 83–86, 90
second-speaker repetition, 170
Second 8 rental assistance, 26, 31, 34–35, 61, 181–182, 210n12, 222n18
self-repair, 155–156, 158, 181, 183, 187
self-selection, 35, 91, 110, 150–151
semantic extension, see loan shift
Slovak, 20
settlements, hearings ending in, 30, 46–47, 64, 95–98, 213n6
shadowing, see echoing
Shanghainese, 20
Shlesinger, Miriam, 70, 82, 191, 218n12
short consecutive mode, see consecutive interpreting
Sidnell, Jack, 52
silence, culture-specific meaning of, 216n6
Silverstein, Michael, 3, 5, 11, 192, 205
simultaneous interpreting, 4, 102
cognitive demands of, 131
of same-language dialogues, 83, 132–133
omission of source content in, 3, 87, 127, 131–132
psycholinguistic studies of, 131
testing in, 71, 131
use in court, 103, 128, 131, 136
use of insertion in, 180
working conditions for, 131, 203
see also interpreting; interpreting modes
Slovak, 20
small claims court, 6, 16–17, 24–25, 68
claimant success in, 32, 200–201
history of, 16, 32, 209n1
procedures in, 25, 32, 38, 43
social class, 38, 58, 77, 183
Solan, Lawrence M., 138, 203
source, 70, 167, 179, 204, 221n11
source-centered interpreting style, 12, 80, 85–87
Spanish
as lingua franca, 28
codeswitching, see codeswitching
cognates, 176–178, 186–187
contested lexical choice in, 182–188
dialectal variation in, 23, 77, 183, 186–188
hearings conducted in, 45, 49, 205
in New York City, 4, 13, 18, 20–24, 187–188, 205
interpreting for, 19–20, 70–71, 73, 89
passive constructions, 214n8
second language use of, 22, 24, 28, 49, 74, 140
use by court staff, 38–39, 43, 143, 173–174, 189, 205
see also arbitrators; court interpreters
speech acts, 135
standard language ideology, 3, 5, 22, 163, 185, 188, 205
standby interpreting, 139–141, 203, 219n14
story, use of term, 54, 58, 65–67, 103, 107, 200
swearing in, see oath
Tagalog, 21, 122
tag-switching, 144–145
talk-as-text, 102, 108, 117
target, 70, 86, 167
target-centered interpreting style, 85–88, 132, 135, 186
tenant/landlord conflicts, 26, 31–32, 62–63, 138, 213n12
third person, use by arbitrators, 55, 93–94
third person translation, see indirect translation
Tiersma, Peter, 50, 81, 138, 176, 203, 222n17
Toury, Gideon, 70, 167, 180, 221n11
transcript, see court record
transcription conventions, 207
transcription process, viii, 14–15
transidiomatic items, 160, 220n6
translanguaging, 189
translatability, 5, 101
translation equivalence, 101–102, 160, 167–168, 185, 190, 221n11, 222n17
translationese, 180
trouble sources, 94, 114, 118–119, 133
Trudgill, Peter, 174, 189
Turkish, 20
turn taking, ambiguity in consecutive interpreting, 111, 114, 130
asymmetrical rights of, 110, 118, 130, 136, 155
in consecutive interpreting, 102, 107, 148–149, 157
pre-allocation in courtroom talk, 50, 110, 134, 150
turn transition, 111, 123, 216n6
Twi, 20, 72
Ukrainian, 210n7
unaddressed recipients, interpreting for, 12, 83–87, 102–103, 125–136, 138, 203
understanding
confirmation, 109, 119, 161, 178, 194, 196
negotiation of, 119–120, 193, 197
see also comprehension
Urciuoli, Bonnie, 11, 23, 93, 148, 206
Urdu, 19, 21, 71
Valdés, Guadelupe, 70, 75, 81, 138, 215n12, 218n9
verbatim translation, 73, 80, 99; see also direct translation; referential transparency
vernacular, 10, 22
Vernier, Maud, 136, 204, 218n13
Vietnamese, 71

Weinreich, Uriel, 143, 158, 166, 168, 178
welfare, 26, 31, 132, 187; see also Section Eight rental assistance
Weller, Steven, 16, 17, 25, 29, 32, 39, 211n14, 211n17

wh-questions, broad, 51–52, 114
narrow, 114
whispering voice, see chuchotage
witness interpretation, 102, 135–136
Wolof, 71
Woolard, Kathryn, 144, 158, 160, 188, 222n23
working memory, 131, 218n11

yes/no interrogatives, see questions, yes/no
Yiddish, 19–21, 71

Zentella, Ana Celia, 23, 145, 187–188