

# A Study of Hedges in Courtroom Oral Arguments from the Perspective of Contextual Adaptation

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**Abstract**—This paper tries to explore the frequencies of hedges used by lawyers and judges as well as how hedges achieve the contextual adaptation of social world in courtroom oral arguments. 40 courtroom arguments were selected from the United States Supreme Court from 2016 to 2020 as the data source. Verschueren's contextual adaptation theory (1999) was adopted as the theoretical basis. Meanwhile, with the aid of computer software TagAnt, AntConc 3.2.0, SPSS Statistics 23.0 and manual checking, this study finds following results: firstly, lawyers use each type of hedges more often than judges, which indicates that hedges are more favored by lawyers than judges in courtroom arguments; in addition, for accuracy-oriented hedges, modal verbs occur the highest, disjuncts the last; for hearer-oriented hedges, personal attributions appear the most frequently, tag questions the least; for speaker-oriented hedges, there-be sentence pattern occur the highest, and epistemic judgmental verbs the last; secondly, the relevant social factors identified in this study for the adaptation of hedges are courtroom norms, and the power relations between courtroom participants. It is expected that this research may have implications for the courtroom interaction.

**Keywords**— Hedges, Courtroom Oral Arguments, Contextual Adaptation of Social World.

## I. INTRODUCTION

In recent years, a growing number of scholars have realized the close relationship between language and law, especially the importance of language to law. Many linguists at home and abroad have made a great deal of research on legal language from social, psychological, cognitive and pragmatic aspects [1-3] Some even testify as expert witnesses. Hedges are a common communicative resource in language use, and a language without hedges is a lifeless language [4]. The requirements for using hedges vary in different domains. As a typical institutional discourse, the language of courtroom oral arguments has always been known for its accuracy, rigor, and specificity. In legal arguments, the choice of language often has a profound impact on the ultimate trial, and therefore, the choice of language is crucial for trial participants.

Accuracy is the soul of legal language. Legal language is different from general language. It is an authoritative and binding legal carrier, which means that the rights and obligations of the parties must be stated clearly and precisely. On the surface, accuracy and ambiguity seems to be in a contradictory position, but ambiguity is also one of the essential attributes of language [5]. Therefore, the appearance of hedges is inevitable in language. Meanwhile, hedges, as a special language phenomenon, are often used as a language

strategy by court participants. Thus, it is also an unavoidable challenge for courtroom participants to clarify the relationship between ambiguity and precision of judicial language in courtroom arguments, and to achieve their communicative purposes while ensuring the authority and accuracy of the law. Nevertheless, previous studies have focused more on courtroom judgments, comparisons of English and Chinese courtroom arguments, and the analysis of hedges in lawyers' arguments.

Therefore, this study was mainly based on Hyland's classification framework of hedges and Cui's further explanation, with 40 courtroom oral arguments of the United States Supreme Court as the corpus. Firstly, the main participants in courtroom arguments, judges and lawyers, were selected and their use of hedges were quantitatively analyzed, and an attempt was also made to analyze how hedges achieve the adaptation of the social world with the aim of enriching the multidimensional understanding of hedges.

## II. THEORETICAL BASIS

"Adaptation" began to be known in Pragmatics as a Theory of Linguistic Adaptation in 1987. For Verschueren, the use of language is actually a process of constantly making linguistic choices [6]. Social world is one of the part of contextual correlates of adaptation.

The social world is primarily concerned with the linguistic context and specific communicative norms in which any relevant interlocutor is placed. The influence of social factors on the choice, style and content of indicative language is understandable. The social factors that influence language choice are manifold, as is the mutual adaptation of discourse and language choice. Utterers need to consider the relationship between power and solidarity or dependence and authority within the social context and system. In addition, the relationship between the utterer and the interpreter should be taken into consideration. The same is true for any relevant figures involved in the communication process. The relationship of power and solidarity or dependence and authority may also encourage the utterer to ask questions, to suggest or to advise. In addition, the cultural dimension is an indivisible social world that includes social class, ethnicity, religion, education level, and language groups [7].

III. METHODOLOGY

3.1 Research corpus

In order to study the characteristics of the use of hedges in courtroom oral arguments, especially the hedges used by lawyers and judges, the author built a small corpus of legal language by selecting 40 oral arguments from the official website of Supreme Court of the United States. A total of 40, randomly selected 8 courtroom arguments each year from 2016 to 2020, were downloaded as PDF files. These files were then converted to text files so that they could be used with the Antconc software.

3.2 Research questions

This research tries to answer following two questions:

- (1) What’s the frequency of hedges used by judges and lawyers in courtroom oral arguments?
- (2) How do hedges achieve the adaptation of the social world in courtroom oral arguments?

3.3 Operational definition of hedges

Considering the characteristics of courtroom language and the main participants in courtroom discourse, this study mainly based on Hyland’s classification model [8] and the special contextual features of courtroom arguments [9], dividing hedges into three major categories: accuracy-oriented hedges, speaker-oriented hedges, and hearer-oriented hedges.

Accuracy-oriented hedges are primarily concerned with the truth value of propositions, or minimizing the speaker’s responsibility for the accuracy of the information contained in the discourse, such as many, a little, may and probably. Based on Cui’s observation of the hedges in courtroom discourse, accuracy-oriented hedges can be divided into four categories: quantifiers, downtoners, modal verbs and disjuncts.

Speaker-oriented hedges are barriers that prevent speakers from facing threats. The speaker’s statements and opinions may be questioned by listeners. In a sense, speaker-oriented hedges can mitigate this risk by limiting personal commitment and insulate it from the possible consequences of negativity, such as I think, according to. Based on the researches of Cui, speaker-oriented hedges can be subdivided into epistemic judgmental verbs, epistemic evidential verbs, there-be sentence patterns and direct quotations.

Hearer-oriented hedges are often used by speakers as a pragmatic strategies to achieve some communicative purposes, which reflect the social relationship between the speaker and the hearer. The speaker can share his or her point of view with the listener and seek the listener’s attention with the hearer-oriented hedges, such as of course, obviously, you know. According to the studies of Cui, hearer-oriented hedges can be divided into personal attributions, appealing to hearer’s knowledge, tag questions and hypothetical conditions.

3.4 Research instruments

The principal tools employed in the data retrieval for this study are TagAnt, Antconc 3.2.0 and SPSS Statistics 23.0.

TagAnt is a simple freeware tagging tool based around the Tree Tagger engine that takes either a input text or an input list of text files and assigns Parts-Of-Speech (POS) tags to

them. This study tagged the corpus into TagAnt to resolve lexical ambiguity first.

AntConc 3.2.0 has eight major tools: Concordance, Concordance Plot, File View, Cluster, N-Grams, Collocates, Word List and Keyword List. This study employs Concordance and Concordance Plot tools to retrieve information from the corpora.

This study employed SPSS to perform a series of Chi-square Tests. The purpose of the test is to see whether there is a relationship between two categorical variables. In this study, the role of arguments (judges and lawyers), the types of hedges all belong to categorical variables. Thus, to determine whether there is a statistically significant difference between judges and lawyers in terms of different types of hedges, the Chi-square test is the best choice.

IV. RESULTS AND CONCLUSION

4.1 Overall usage of hedges by judges and lawyers

Different types of hedges are used to achieve different communicative purposes of the utterers. Judges and lawyers play different roles in courtroom arguments, and thus their use of hedges may have different emphases. In order to compare the frequency of hedges in the discourse of different utterers, the original frequency of hedges was converted to the standard frequency (i.e., the frequency of hedges per 10,000 words), because of the differences in the text size of the two selected discourse roles (judges: 195549 words; lawyers: 277879 words). Following figure shows the frequency with which judges and lawyers make use of the three types of hedges in courtroom oral arguments.

As shown in Figure 1, judges and lawyers use all three types of hedges to modify their speech. Lawyers use each type of hedges more often than judges, which indicates that hedges are more favored by lawyers in courtroom discourse. Another interesting finding is that the order of frequency of the three types of hedges is the same in both groups.

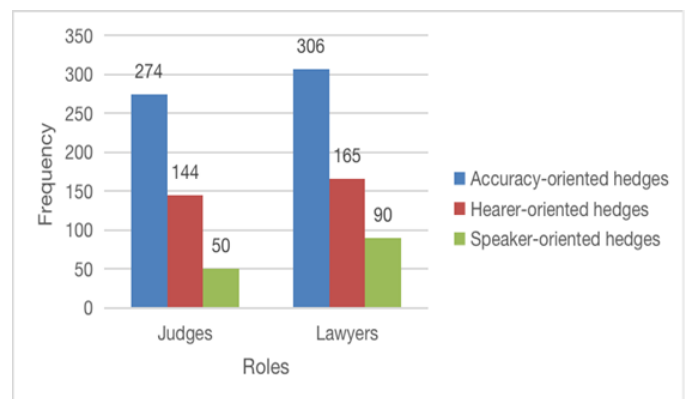


Fig. 1. Frequency of Different Types of Hedges Used by Judges and Lawyers

Accuracy-oriented hedges has the highest frequency, followed by hearer-oriented hedges, and finally speaker-oriented hedges. Thus, there is some association or pattern in the use of three types of hedges by judges and lawyers. In order to determine whether this correlation is statistically significant, it is necessary to employ a Chi-Square test.

TABLE 1. Chi-Square Tests of Hedges Used by Lawyers and Judges

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	6.267 <sup>a</sup>	2	.044
Likelihood Ratio	6.367	2	.041
Linear-by-Linear Association	4.321	1	.038
N of Valid Cases	1029		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 63.67.

Table 1 shows that there is statistically significant association between the roles in courtroom arguments and the types of hedges ( $p=.044 < .05$ ), suggesting that the judges and the lawyers differ significantly in the three types of hedges which used to modify utterances.

*A. Judges' and lawyers' usage of accuracy-oriented hedges*

Figure 2 shows the distribution of accuracy-oriented hedges used by judges and lawyers.

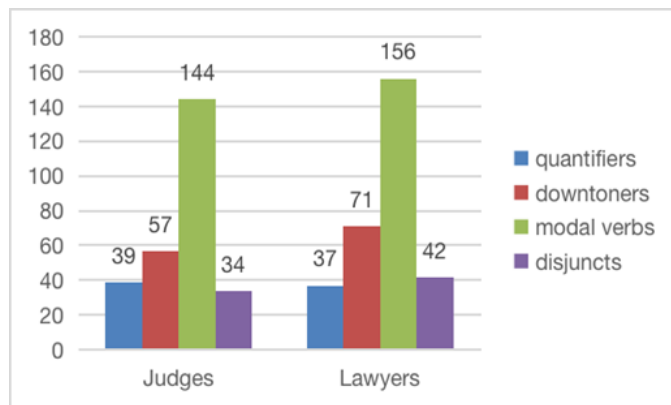


Fig. 2. Distribution of Accuracy-Oriented Hedges

In the courtroom arguments of the judges and lawyers, the most frequently used accuracy-oriented hedges are modal verbs, with a frequency of 156 occurrences among lawyers and 144 occurrences among judges, followed by downtoners, 57 occurrences among lawyers and 71 occurrences among judges. Disjuncts have the least frequency, 42 occurrences among lawyers than among judges, who used it 34 occurrences. In order to test whether there is a significant difference between judges and lawyers in the use of accuracy-oriented hedges, it is necessary to conduct Chi-Square Tests.

Table 2 tells us that there is no significant association between the types of accuracy-oriented hedges and the roles in arguments ( $p=.766 < .05$ )

*B. Judges' and lawyers' usage of hearer-oriented hedges*

Figure 3 displays the distribution of hearer-oriented hedges used by judges and lawyers in courtroom arguments.

TABLE 2. Chi-Square Tests of Accuracy-Oriented Hedges

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	1.144 <sup>a</sup>	3	.766
Likelihood Ratio	1.144	3	.766
Linear-by-Linear Association	.197	1	.657
N of Valid Cases	580		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 35.90.

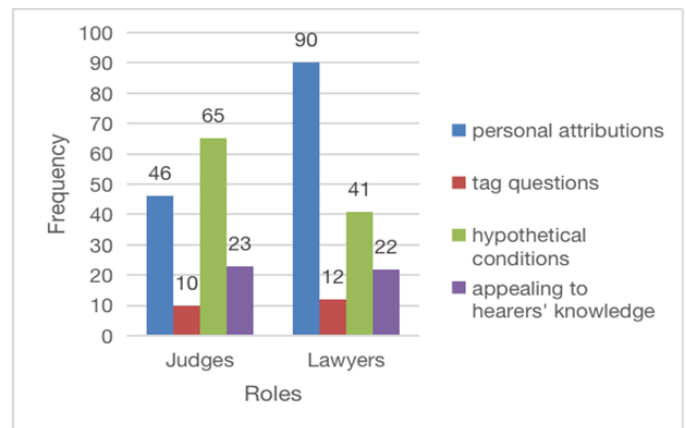


Fig. 3. Distribution of hearer-oriented hedges

As we can see from the figure 3, the most commonly used hearer-oriented hedges differ between lawyers and judges. Hypothetical conditions are used most often in judges' discourse (65 occurrences), while ranking only second in lawyers' discourse (41 occurrences), as is the case with personal attributions, which are used most often in lawyers' utterances (90 occurrences), but also rank second in judges' (46 occurrences). Among these four sub-categories, tag questions are appeared the least frequently in both groups.

TABLE 3. Chi-Square Tests of hearer-oriented hedges

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	18.532 <sup>a</sup>	3	.000
Likelihood Ratio	18.752	3	.000
Linear-by-Linear Association	13.391	1	.000
N of Valid Cases	309		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 10.25.

Table 3 suggests a statistically significant association between the two variables. In other words, the choice of types

of hearer-oriented hedges is related to the roles in arguments ( $p=.000 < .05$ ).

C. Judges’ and lawyers’ usage of speaker-oriented hedges

Figure 4 shows the distribution of speaker-oriented hedges among the judges and the lawyers in courtroom arguments.

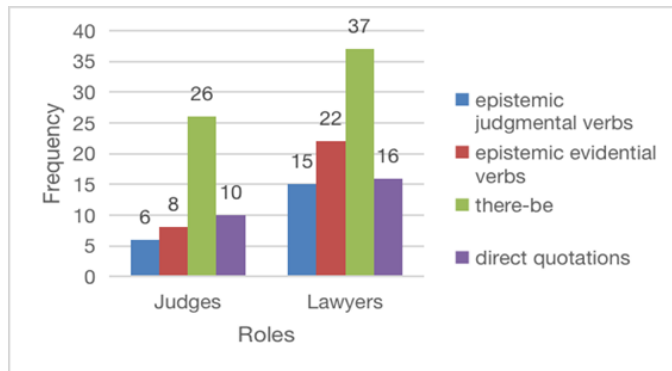


Fig. 4. Distribution of Speaker-Oriented Hedges

As Figure 4 shows, there are four types of speaker-oriented hedges used in the arguments. Among them, there-be sentence pattern occurs with the highest frequency in both the arguments of the judges (26 occurrences) and those of the lawyers (37 occurrences). On the contrary, Epistemic judgmental verbs occur with the least frequency in both groups. Epistemic evidential verbs rank second among the lawyers ( 22 occurrences), while only appear 8 occurrences and rank the third in judges’ arguments, as is the case with direct quotations, which rank the second in judges’ arguments, but also third in judges’ utterances. In addition, lawyers tend to use more four types of speaker-oriented hedges than the judges.

Table 4. Chi-Square Tests of Speaker-Oriented Hedges

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	2.469 <sup>a</sup>	3	.481
Likelihood Ratio	2.517	3	.472
Linear-by-Linear Association	1.431	1	.232
N of Valid Cases	140		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 7.50.

Table 4 shows that there is no significant association between the types of speaker-oriented hedges and the roles in arguments ( $P=.481 > .05$ ).

4.2 Adaptation to the social world by the employment of hedges

The adaptation of language to the social world is ubiquitous [10]. A similar view is expressed by Holmes, discourse is always embedded in a social context that affects its form. Obviously, hedges have a social dimension as a concrete realization of language choice. In this study, considering

courtroom oral arguments, the relevant social factors identified in this study for the adaptation of hedges are courtroom norms, and the power relations between courtroom participants [11].

A. Adaptation to courtroom norms

There is no principle limit to the extent to which language choice and social factors can be adapted to each other. Most of them are related to the properties of the social environment or institutions. In different contexts, different norms may come into play. Clearly, interlocutors from different discourse communities make different choices among different linguistic forms to express meanings that conform to their institutional norms. Therefore, the analysis of linguistic features cannot be separated from the institutional practices in which they are embedded. Courtroom arguments differ from other forms of social interaction in that it is governed by the strict rules. As Drew and Heritage pointed out, the characteristics of institutional interactions vary widely across institutional mandates and contexts [12]. The status, identity, and communicative purpose of institutional speakers change with the task. Communication in the courtroom is driven by the needs or goals of the legal system. Thus, Barry commented that conversations in the courtroom follow a different set of principles and expectations than ordinary conversations [13].

Whether in the way they deal with the law or as forums for expressing some of the most unusual and disturbing aspects of human life, courtrooms are solemn and emotionally charged places [14]. They are institutional settings where people talk in an environment full of conditions and procedures that govern the creation of a contract of belief in the truth and give it the specific effects of power. The fundamental and inevitable role of the court is to decide a question about the legitimacy of social behavior. All participants of the court have certain rights and obligations. Legal obligations generally refer to the necessity of the subjects of legal relations to perform certain acts in accordance with the law.

In a complex trial process, different participants involved have different purposes: the prosecutor aims to prove the guilt of the defendant; the defense attorney tries to prove that the defendant is innocent or, if that is not possible, to mitigate the punishment; the judge aims to explore the truth. Although the purposes are different, they must first be adapted to the legal obligations they should fulfill. Hedges are precisely one of the linguistic strategies chosen by the courtroom participants to comply with their courtroom obligations. The following examples further illustrate how participants choose different types of hedges to adapt to the courtroom obligations. Thus, in courtroom interactions, speakers may choose hedges as a communicative strategy to adapt to the courtroom institution norms. In this way, speakers can produce appropriate utterances by simply following the dictation of courtroom discourse conventions. Following examples may illustrate how lawyers adapt to the courtroom norms by the employment of hedges.

Example 1: Justice Kagan: **Could** the State, in your view, deny the money on that ground, or at least **would** you think that that was a significantly different case?

Mr. Cortman: I -- **I think** it **would** be a different case. **I would**

say the answer to the question **would** be I don't think they **should**, and here's why: **I think there would be...**

The lawyer's arguments are crucial to the verdict of the case. Tilsma [15] argues that the language of the lawyer can influence the jury's perception of whether the lawyer is telling the truth or not. Certainly, the more competent and credible a lawyer appears to be, the more weight the jury will place on his/her arguments. However, in the current corpus, many lawyers express what some researchers (e.g., Lakoff) call an impotent style by choosing a large number of hedges. As the two examples above show, the lawyer Cortman uses different kinds of hedging devices to evade his answers. This is a tactic used by lawyers to adapt to courtroom obligations. Lawyers are required to answer questions under the supervision of the court's authority, and their refusal may carry a considerable risk of contempt of court [16]. In other words, they do not have the option of not responding to the judge's queries. Providing answers is an obligation imposed by the system. The court requires that the arguments made by lawyers be true, the whole truth, and nothing but the truth. Therefore, lawyers are very careful in their choice of language. Hedges fulfill the lawyers' obligation to answer the judge's questions on the one hand, and protect the lawyers from possible liability on the other.

#### B. Adaptation to power relations

Power has been widely and passionately discussed in many disciplines including sociology, philosophy, psychology, and linguistics. Literally, power is the control or authority over others, the ability to impose one's will on the behavior of others. Fairclough stated that power is a way or process in which the more powerful participants control and constrain the less powerful participants who contribute to the conversation or discourse [17]. Power plays an important role in defining interpersonal relationships and shaping interpersonal interactions. In this study, power is seen as a quality or influence that places some participants in a dominant position and others in a submissive position.

Courtroom arguments is a highly specific institutionalized speech event with a pre-determined role structure. A key feature of institutional discourse is goal orientation and power loading. Courtroom arguments consists of the discourse of different participants such as judges, lawyers. Under the constraints of certain rules, these participants jointly pursue one or more communicative goals. The complexity of the courtroom process suggests that the courtroom is a far more uneven playing field. The key imbalance arises from the different roles played by different participants. These role-related privileges assign different participants the power to achieve their own goals, regardless of what those goals are in the context of a particular interaction. Some researchers have argued that the most powerful participant in a courtroom setting is the judge who presides over the courtroom trial and determines the exact verdict and sentence. Next comes the jury. Jurors are the silent recipients of evidence, but all conversations are directed at them. Jury has the real power in the courtroom, while the "needy" lawyer has the least power. Only the judge has the right to ask questions of the other

participants. Prosecutors and defense attorneys may ask questions of each other and of witnesses, but should do so with the permission of the presiding judge. Sometimes, prosecutors and defense attorneys may ask questions of the judge, but such questions usually ask the judge to approve their following actions.

The following example illustrates the imbalance of power between the judge and the lawyer and its effect on the choice of hedging devices.

Example 2: MS. Harrington: Your Honor, **I think** it's not particularly different. **You know, I think** they take **sort of, you know**, a stronger line than we do on the constitutional question. Our view is that you **could** -- **I think** everyone here agrees that there are some things a party -- a litigant would do that don't require standing, like presenting oral argument, filing briefs. **We think**, as a matter of reading the rule, that the rule -- that the drafters of the rule have -- have required that inquiry up front. **We think** the requirements of -- of Rule are best read to map onto the Article III requirement.

The above example is an excerpt from defense attorney Harrington's summation of the argument between her and the judge about whether she was in contempt of the court, and her attempt to change the judge's opinion of her prior conduct. The judge is generally considered to be the most powerful participant in a trial in the courtroom setting when the jury is not considered. In contrast, the lawyer is the weaker party. In a trial defense, an inappropriate choice of language by the lawyer may cause the judge to be suspicious or disgusted, thus undermining the communication atmosphere and the purpose of the communication. Therefore, in order to comply with the role-oriented power of the judge, the lawyer Harrington chose to hedge her utterances with a variety of hedging devices. In this example, MS. Harrington used I think and we think five times to indicate that her subsequent words were her inference, thus moderating the affirmative tone to a certain extent and avoiding giving the judge the impression of imposing her own viewpoint, showing the lawyer's respect for the judge. At the same time, the use of the hearer-oriented hedge as you know by the lawyer means that the following information is also known to and shared by the judge. This statement puts the judge in a proactive position in the defense process, thus harmonizing the relationship between the speaker (lawyer) and the hearer (judge), and adapting to the power relations between them. Besides, Cochran chose sort of, could to indirectly apologize for her prior request. Without these hedging devices, the speaker's request might have offended the hearer. These different hedging devices are linguistic strategies used by the powerless speaker to show respect to the powerful hearer. In other words, the choice of certain hedging devices stems from the language's compliance with the power of the role.

Clearly, courtroom communication is rich and complex, involving multiple participant roles and an intricate interplay between verbal and nonverbal features. Courtroom language is an asymmetrical discourse in which one party has institutional control over the conversation and has a great deal of actual power, while the other party is relatively vulnerable or in a weak position. Inevitably, this power imbalance between the

roles of the different participants affects the participants' use of hedges. That is, speakers choose hedges to adapt to their different role positions.

To answer research questions (1) and (2), this paper finds:

*At the macro level:*

Lawyers use each type of hedges more often than judges, which indicates that hedges are more favored by lawyers than judges in courtroom discourse. Pearson Chi-square test shows that there is statistically significant association between the roles in courtroom arguments and the types of hedges ( $p=.044 < .05$ ).

*At the micro level:*

For accuracy-oriented hedges, the most frequently used accuracy-oriented hedges is the modal verb, followed by downtoner, and quantifier, the last is disjunct. However, Pearson Chi-square test shows that there is no significant association between the types of accuracy-oriented hedges and the roles in arguments ( $p=.766 > .05$ ).

For hearer-oriented hedges, the most frequently used hearer-oriented hedges is the personal attribution, followed by hypothetical conditional, and appealing to hearers' knowledge, the last is tag questions. Pearson Chi-Square test shows that there is significant association between the types of hearer-oriented hedges and the roles in arguments ( $p=.000 < .05$ ).

For speaker-oriented hedges, there-be sentence pattern occurs with the highest frequency, epistemic evidential verb ranks the second, direct quotation appear the third, and epistemic judgmental verbs the last. Pearson Chi-Square shows that there is no significant association between the types of speaker-oriented hedges and the roles.

*Adaptation to the social world*

Considering courtroom oral arguments, the relevant social factors identified in this study for the adaptation of hedges are courtroom norms, and the power relations between courtroom participants.

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