Towards a Redefinition of the Role of the Court Interpreter

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Abstract: Various federal and state statutes in the United States define the role of the court interpreter with clear and unequivocal rules. This definition is based on the underlying principles of the U.S. legal system, which is derived from the Anglo-Saxon common-law tradition. Consequently, the distinctive features of that system, including the jury trial and the concept of adversarial proceedings, make the function of the court interpreter quite different from that of his/her counterparts in other countries. In recent years, the judiciary has made an effort to enhance the public's access to the justice system, but at the same time, the latest wave of immigration comprises individuals from societies in which cultural norms differ greatly from those of the United States. Moreover, many of these immigrants have received little or no formal education. As a result, judiciary interpreters feel somewhat constrained by the rules that govern their profession when they strive to bridge the cultural and linguistic gap. This paper reexamines the function of the court interpreter in light of these circumstances and an analysis of prevailing practices in other countries, and proposes a new approach to the interpreter's role.

Standards of Conduct

Although there is no national law governing court interpreters in the United States, most jurisidictions have adopted standards in one form or another to guide interpreters' conduct. For example, the Administrative Office of the U.S. Courts has issued a *Code of Professional Responsibility of the Official Interpreters of the United States Courts*[1] that governs all interpreters who work in the federal courts. In the State of California, the Standards of Judicial Administration of the California Rules of Court provide guidelines for the use of interpreters in court proceedings, including Section 18.3, Standards of Professional Conduct for Court Interpreters [2]. Recently the National Center for State Courts, a private foundation, drafted a *Model Code of Professional Reponsibility*[3] for states without existing standards to use as a basis for devising their own codes of conduct for court interpreters. Some states have passed legislation incorporating these standards, while others have adopted rules of court to govern court interpreters. In addition, professional organizations of court interpreters have adopted codes of ethics to guide their members. The discussion that follows will be based on the provisions of those codes of conduct.

Accuracy

At the beginning of the proceedings, court interpreters take an oath to interpret well and truly and to the best of their ability. Interpreters are expected to convey every element of meaning of the source-language message, without adding, omitting, editing, simplifying, or embellishing. In other words, they must maintain the tone and register of the original message, even if it is inappropriate, offensive, or unintelligible. The preamble of the Model Code of Professional

Responsibility states, "Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communications barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier." [4] This assertion is accompanied by the following footnote: "A non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence." [5] This means that if the defendant is an illiterate tribesman from the mountains of Laos, he should understand as much of the message as an illiterate and geographically isolated resident of the United States would grasp--that is, perhaps, not very much. The interpreter's job is to place the non-English speaker on an equal footing with, not at an advantage relative to an average layperson who understands ordinary English. The interpreter's task is not to ensure that the defendant understands the proceedings.

When interpreting testimony for the record, the interpreter is expected to "retain every single element of information that was contained in the original message, in as close to a verbatim form as English style, syntax, and grammar will allow." [6] The interpreted version should include "all of the pauses, hedges, self-corrections, hesitations, and emotion as they are conveyed through tone of voice, word choice, and intonation." [7] This so-called "verbatim requirement" is a source of confusion to many, because it is assumed to mean that a word-for-word or literal translation is required. As Obenaus (1995) points out, "the fact that legal texts require precision and impose restrictions on the translator is all too often miscontrued to mean that they have to be translated literally, leading to unsatisfactory and awkward results." [8] What is really required is that the interpreter account for every word and every other element of meaning in the source-language message. Thus, if a witness answers the source-language equivalent of, "I, well, I don't know ... I suppose ... yes, I think I saw him there," the interpreter's version in English should not simply be "I think I saw him there," but should reflect all of the uncertainty conveyed in the original. As González et al. (1991) note, "The reason for this high standard of accuracy is that the interpreter is the voice of the non-English speaker ... the words of the interpreter are the only permanent record of what the witness or the defendant said." [9]

Impartiality

Because court interpreters work in an adversarial system, there is a danger that they will be perceived as advocates for the party they are interpreting for in a given case. In fact, however, "(t)he interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant."[10] Thus, the judiciary interpreter is expected to remain neutral and objective at all times, and must disclose any real or apparent conflict of interest. A real conflict of interest would be a close relationship with one of the parties in the case (the defendant, a material witness, one of the attorneys, a juror) or an interest in the outcome of the case (a financial interest in a company being sued, for example). An interpreter might also have a conflict of interest if he or she had previously been a victim of the alleged offense, because it would be difficult to remain impartial; this is especially true in sexual assault cases. A perceived conflict of interest would exist, for example, if the interpreter had worked closely with the defense in preparing their case and then interpreted for prosecution witnesses. Even if the interpreter feels confident that he or she can maintain neutrality, the relationship of trust that is so vital to the interpreter's role would be undermined. Interpreters are

to maintain an appearance of impartiality at all times, refraining from engaging in unnecessary conversation with any of the parties and avoiding facial expressions or postures that would suggest bias.

Confidentiality

When an interpreter assists an attorney to communicate with his or her client, the interpreter comes under the umbrella of the attorney-client privilege and may not disclose any information about the communication.[11] Even when there is no attorney-client privilege, interpreters are not to discuss cases they have worked on or express any personal opinions about them. The sole exception to this rule is that interpreters may discuss linguistic or ethical aspects of an interpreting assignment with colleagues, provided that they do not reveal the names of the parties involved.[12]

Scope of Practice

Interpreters are to limit their activities strictly to the practice of interpreting. Specifically, they should not give legal advice or fulfill any of the functions of an attorney. Interpreters often find themselves in situations that make it very difficult to adhere to this precept. For example, a defendant who can communicate with no one but the interpreter will ask questions about the case and may solicit opinions or advice. Interpreters may feel tempted to explain judicial practices or answer factual questions, especially for defendants who are not represented by counsel, but the standards of professional conduct make it clear that they are strictly forbidden to do so. "Sometimes there is a fine line between practicing law and defining words in linguistic terms, or simply giving information that any lay person might dispense,"[13] notes one source, which goes on to caution the interpreter, "if you have any doubts at all, you should advise the defendant to ask his or her attorney or the judge."[14]

Although judiciary interpreters are rapidly becoming a fixture in the U.S. criminal justice system, there are still many officials, including judges and attorneys, who do not understand the role of the interpreter and expect him or her to carry out functions that are really someone else's job. For example, a clerk may ask the interpreter to help fill out and distribute paperwork; a bailiff may expect the interpreter to escort the defendant to the probation department; or worse yet, a judge or attorney may ask an interpreter to go out in the hallway to explain the defendant's rights and obtain a signature on a change of plea document. All of these duties go beyond the scope of the court interpreter's practice.

Sometimes interpreters feel compelled to step outside their role in an effort to be helpful when communication breaks down. For example, an interpreter might want to point out to the attorney that the witness does not understand the question, or to provide an explanation of a custom in the defendant's culture. This type of intervention turns the interpreter into a witness, however, and is forbidden by the codes of ethical standards. Judiciary interpreters are instructed to be as unobtrusive as possible in court proceedings, and are given guidelines for handling situations in which explanations may be warranted.[15]

Duty to the Profession, Continuing Education

All of the codes of professional responsibility cited here contain language that emphasizes interpreters' professional obligation to continually upgrade their knowledge and skills and maintain good relations with their colleagues. Judiciary interpreters are encouraged to prepare thoroughly for interpreting assignments and to keep abreast of new developments in the law and related fields. Some jurisdictions even have a continuing education requirement for court interpreters.[16]

Interpreter Certification

In addition to the more explicit regulation of interpreter conduct that has been implemented in recent years, an increasing number of states have passed laws requiring that court interpreters demonstrate their interpreting skills and their understanding of the code of ethics by passing oral and written certification exams. As of this writing, 12 states[17] have instituted such requirements, and several more are considering similar measures.

Common-law Principles

The above-described functions of the court interpreter derive from some of the basic features of the common-law tradition. For example, in the common law, the trial is viewed as an adversarial process in which the court (judge and jury) is a neutral body to which the two contending sides (prosecution and defense in the case of criminal law, plaintiff and defendant in civil litigation) present evidence and persuasive arguments in an attempt to prevail. By contrast, the inquisitorial system that exists in civil-law countries views the court (judge) as a finder of fact who plays an active role in determining the truth.[18] In the common-law system, the interpreter is considered an officer of the court, and therefore must remain impartial.[19] The interpreter is thus specifically adjured not to give legal advice or interject personal opinions or observations. In some jurisdictions, the interpreter is also considered an expert witness, although there is no consensus on the precise legal status of the judiciary interpreter.[20]

Another key feature of the common-law tradition is the reliance on oral evidence, in contrast to the civil-law tradition, where documentary evidence is predominant.[21] Originally, interpreters were called into court primarily to interpret witness testimony, and non-English-speaking defendants were often left to fend for themselves.[22] It was in the context of witness testimony that the so-called "verbatim requirement" evolved. As González et al. (1991) point out, "the legal equivalent provided by the interpreter **is the record**. ... For the court interpreter, protecting the record is accomplished through disciplined and rigorous attention to transferring the conceptual message and style from the SL [source language] to the TL [target language]."[23] Morris (1995a) emphasizes that judges and attorneys expect the interpreter to "achiev[e] perfect identity ... between the source and target texts or utterances."[24] She notes that the term *interpretation* in legal usage is reserved for a process "that is performed *intra*lingually, in the language of the relevant legal system, and effected in accordance with a number of rules and presumptions for determining the 'true' meaning of a written document,"[25] and that legal practitioners "firmly state that, when rendering meaning from one language to another, court interpreters are not to *interpret*--this being an activity which only lawyers are to perform, but to *translate*--a term which is defined, sometimes expressly and sometimes by implication, as rendering the speaker's words verbatim."[26] Anyone who is at all familiar with translation theory knows, however, that "a

truly verbatim interpretation is literally impossible. It is, therefore, the interpreter's task to mediate between these two extremes: the verbatim requirement of the legal record and the need to convey a meaningful message in the TL."[27]

The jury trial is another aspect of the common law that has had a major impact on the role of the court interpreter. Though the concept of the lay jury or judge has been adopted by other legal systems, the jury of one's peers (a term now construed to mean strangers chosen at random from the community) is still a unique feature of the common-law tradition. The way attorneys present evidence to a jury and the mistrustful attitude they display toward interpreters are functions of the jury's role in deciding the facts in a court case. The jury trial in the United States has often been compared to a theatrical production--indeed, in the wake of the O.J. Simpson trial, the dividing line between criminal procedure and mass entertainment has become very blurry--because so much of what the attorneys do is a staged performance intended to sway the members of the jury. The interpreter thus becomes another member of the cast of players, and the attorneys attempt to manipulate the interpretation as part of their carefully orchestrated production. As Morris (1995a) puts it, "interpreters are sometimes exploited in the tactical manoeuvres employed by lawyers, who take advantage of current legal views of the interpreter's status and role in court."[28] The interpreter is not given a script in this production, however, and is expected to improvise while other players act out previously rehearsed parts. Attorneys will even go as far as to request a "nice-looking, well-dressed, middle-aged woman who doesn't have too heavy an accent" to be assigned to their case, as if they were casting directors, yet they refuse to allow the interpreter to "rehearse the script," that is, to study the case file and prepare for the assignment.

Berk-Seligson (1990) has studied the impact of interpreters on jurors' perceptions of witnesses, and has found that the mere presence of the interpreter affects the way jurors evaluate a witness's testimony. Furthermore, because they do not understand the witness's language, they must reach conclusions about credibility based not only on the interpreter's words, but also on non-verbal factors such as hedging, pauses, and body language. In her linguistic analysis of interpreted testimony, Berk-Seligson found that "interpreters intrude upon judicial proceedings in various ways, many of them being engendered by other parties present in the courtroom."[29] She concludes that "the interpreter has the powerful capability of changing the intent of what [a] non-English-speaking witness wishes to say in the way he or she would like to say it."[30]

Thus, it is clear that the interpreter plays a very pivotal role in a jury trial, given that everything the jury hears from the non-English-speaking witness is filtered through the interpreter, and such seemingly minor elements as pauses and verb forms can make the difference between a guilty verdict and an acquittal. One would think, then, that the justice system would pay more attention to the training and qualifications of such key players in the drama, and would take care to give them the tools they need to do their job properly. Sadly, this is not the case in most courts.

The "Defense Interpreter"

The 1960s and 1970s saw increased emphasis on the rights of criminal defendants, in keeping with the overall trend toward more liberal and egalitarian social attitudes. A series of precedent decisions [31] over the years gradually built a case for the notion that the defendant's constitutional right to be present at all stages of the proceedings was violated if he or she could not understand

the language of the proceedings. Prior to that, "judges and attorneys had a mistaken impression that the interpreter's role was not an objective one, and that appointment of interpreters unfairly aided the defendant."[32] Eventually, laws were enacted to make explicit the right to an interpreter. California, for example, amended its Constitution to add a provision mandating a qualified interpreter for any criminal defendant who did not speak English.[33]

As a result of these developments, the role of the court interpreter changed from that of a minor player who was called in briefly to interpret for a non-English-speaking witness, and who therefore was present primarily for the benefit of the court, to that of a major player on the defense team who not only kept the defendant apprised of the proceedings, but also aided in the defense investigation by helping to interview witnesses and acted as a liaison between the defendant and defense counsel throughout the trial. Some interpreters even doubled as licensed investigators. The assumption that the proceedings interpreter was part of the defense team was so prevalent that another precedent decision in California[34] ruled that a separate interpreter had to be brought in for prosecution witnesses (although there is also the consideration that if the interpreter leaves the defense table to sit at the stand with the witness, the defendant no longer has access to counsel). Moreover, another decision found that separate interpreters should be provided for codefendants, who presumably have conflicting interests.[35]

This attitude still prevailed in the State of Oregon until recently, when a new code of professional responsibility was adopted.[36] Sections 3 and 4 of that code clearly delineate the respective roles of defense interpreters, who are appointed to work for state-paid, appointed defense counsel in pretrial investigations; proceedings interpreters, who sit at counsel table and interpret for the defendant in court; and witness interpreters, who interpret for defense or prosecution witnesses. An interpreter may play all of these roles at one time or another, but he or she can play only one of them on a given case. In other jurisdictions, these distinctions are not necessarily made, and many interpreters are still regarded, and regard themselves, as members of the defense team.

New Wave of Immigration

Another recent trend in the United States has further altered the role of the interpreter, though this change has not been formally recognized. Throughout most of the 20th century, immigrants to the United States came primarily from Europe and Latin America. They spoke languages that were related to English, to a greater or lesser extent, and the legal traditions in their countries had much in common with that of the United States. The precedent decisions and legislation governing court interpreting in this country evolved during a time when most non-English speakers were from European or Latin American backgrounds. In the last two decades, however, growing numbers of immigrants have come from Asia and Africa, where the languages spoken share no recent roots with English, and the legal traditions are vastly different from ours. Consequently, defendants who have recently immigrated from these countries are even less likely than their European and Latin American counterparts to understand U.S. criminal procedure or legal concepts, and the linguistic and cultural gaps that the court interpreter must bridge are even wider. Moreover, not many native-born Americans speak the languages of African and Asian immigrants, so most of the interpreters are recent immigrants themselves who may have a limited understanding of the U.S. legal system.

An added difficulty is the fact that some of the immigrants speak minority languages that are not and have never been the language of law and government in *any* country (such is the case with Hmong and Tigrinya, for example), and there may simply not be any equivalent in the language for terms like "constitutional rights" or "district attorney." Interpreters in those languages have to be very creative in coining equivalent phrases, and the interpreting process may be very time-consuming as a result. Furthermore, even if the interpreter manages to find a phrase in the target language that more or less conveys the same meaning as the original English term, the defendant is caught in a system that is so alien to his experience that he may not be able to fit the phrase into his world view.

At the same time, the increased regulation and codification of the role of the interpreter means that more stringent controls are exercised over their behavior. Court interpreters are told repeatedly in training sessions, orientation workshops, and textbooks that they are never to give legal advice or provide explanations of the law to defendants,[37] and that they should rarely if ever intervene to explain cultural differences when interpreting on the witness stand.[38] Yet they are also told that they must "interpret the proceedings into a language that the defendant understands."[39]

Practical Implications for Court Interpreters

Thus, there is an inherent conflict in the requirement that the interpreter convey everything to the defendant exactly as it is stated in English without explaining or embellishing in any way. The practical import of the verbatim requirement is that interpreters often find themselves in the frustrating position of knowing, from the blank look on the face of the defendant or the witness's non-responsive answer, that understanding is not taking place. Tempting as it may be to take a question like "If I were to inquire of you as to who was your treating physician at the point in time that you fell ill, what would your answer be?" and convert it to the more understandable "Who was your doctor when you got sick?", such editing is unacceptable.

The reason for this standard is that the attorney has formulated the question for a specific purpose, and the form of the question cannot be altered in the target language. As a judge once observed, "Under our adversary system the role of counsel is not to make sure the truth is ascertained but to advance his client's cause by any ethical means. ... Causing delay and sowing confusion not only are his right but may be his duty."[40] Presumably, even an English-speaking witness would be confused by the question and would ask for clarification; since the interpreter's role is to place the non-English-speaker on an equal footing, the witness requiring an interpreter should be left equally perplexed.

Witnesses may not have the assertiveness or the awareness to request clarification of confusing questions, however. Michael Cooke (1995) points out another danger resulting from the verbatim requirement:

But no matter how skilful the interpreter we must be aware of the limitations of the role. For example, a lawyer might ask a question imbued with implicit accusation. The interpreter in court is only permitted to translate surface meaning and cannot make explicit any embedded or implied

accompanying message which may thus pass over the witness--yet the witness's response may be taken to answer both explicit and embedded aspects.[41]

Again, we see how critical the interpretation is to jury's perception of the witness. The jury *assumes* that the witness heard the same question they did, and they view the answer through that prism, when in fact the witness may be answering quite a different question. Even when no attempt is being made to confuse a witness, the logic accepted by one culture may be totally unfamiliar to another. Cooke (1995) cites an Australian case in which hypothetical questions (Is it possible that that the dingo could have been carrying a baby kangaroo?) were asked of an Aboriginal witness, an expert tracker, who responded, "You are talking your ways with your ideas and you are talking about lies."[42] Cooke explains the interpreter's dilemma:

For the translator who is charged with permitting the target audience to follow a structurally alien argument, there is an implicit requirement to introduce and explain the premises upon which the argumentative style is founded, and then to proceed with the text.

There is another broad issue involved in translating a reasoned argument. It arises in dealing with the problem of hidden or disappearing steps. I am talking about the cultural knowledge shared between speaker and listener ... when they are of the same background. This body of shared knowledge allows some of the steps in a sequence of statements to be left as implicit--they are assumed to be obvious or understood, so as to be superfluous.

Therefore, if the translation is to make sense to those of another culture it must obviously contain in an explicit form, necessary information which may be assumed as known in the original. However, it is not clear that the translator of a judicial document has this freedom to explicate such implicit information as is required to give sense to the text. The court interpreter does not.[43]

Lawyers are understandably reluctant to relinquish control over the crucial process of examining witnesses to interpreters whose skills, qualifications, and possible biases are unknown to them. That is why it is so important for interpreters to demonstrate their competence in reliable and valid examinations. Yet even in jurisdictions where interpreter certification exams are in place, attorneys display a marked distrust of interpreters. As Dunnigan and Downing (1995) emphasize, "When things go wrong in the bilingual courtroom, exasperation is directed mostly at the interpreters."[44] They go on to cite an article in which an attorney complained that "Interpreters get away with murder," suggesting that "interpreters are flagrantly circumventing the rules for reasons of personal advantage."[45] Clearly the suspicion directed at interpreters goes beyond the normal unease one feels when hearing an unfamiliar language. In the legal context, Morris (1995b) traces this attitude to the past:

In a further historical perspective, perhaps the distrust of interlingual interpreters in the legal system derives in part from ancient memories of the twelfth and thirteenth century common-law oral pleaders, narrators or conteurs who literally told a tale. Research findings indicate that when the interpreter stands next to the non-English speaker in the witness box, legal participants appear to find it hard to accept the interpreter's "alter ego" role, believing instead that a "story" is being concocted or fabricated, or, in a marginally more charitable version, that the interpreter is giving his or her "version" of the "story" ...[46]

Thus, we can see that interpreting witness testimony is a very delicate matter and that the interpreter must take great pains not to intrude in the lawyer's carefully planned effort to present the evidence to the jury in a certain light. But what about the defendant's right to understand the proceedings and participate in his or her own defense? The real dilemma for the judiciary interpreter arises when the court is conveying vital information to a non-English-speaking defendant in the expectation that he or she will respond appropriately. For example, in a defendant's first appearance in court, a judge may say, "If you are accused of a felony, you have the right to a speedy and public jury trial." The average layperson in the United States knows what this means, so one might assume that it would be easy to convey this message in equally understandable terms in the target language. While there may be equivalent terms in the target language, perhaps they are not as familiar to laypersons because the court system is not as open as it is in the United States, and court cases are not portrayed on television and in the movies the way they are in this country. Thus, a term of very frequent usage in English may be a rather arcane term in the target language. In translating the term, is the interpreter making the message just as intelligible to the layperson in the target language as it is to a layperson in English?

And what if there is no equivalent term in the target language? Crimes may not be categorized as felonies, misdemeanors, and infractions in the defendant's country of origin, and there may be no such thing as a jury trial. In fact, such disparities are the rule rather than the exception. Should the interpreter explain that a felony is a serious offense punishable by more than a year in the state prison? Should the interpreter explain that a jury trial is a proceeding in court in which members of the community are selected to hear evidence, apply the law to the facts, and reach a verdict of guilt or innocence? The ideal solution is to find succint phrases that sum up these concepts, such as "very serious crime" and "group of people who decide." This may not be possible in every language, however, and the phrase may still be meaningless to the defendant in the context of the law. Furthermore, these phrases omit much of the meaning contained in the terms "felony" and "jury trial." Either way, the interpreter is violating the ethical standards that govern the practice of court interpreting. And doesn't the interpreter have an obligation to ensure that the target-language version is reasonably intelligible? Isn't it a waste of the interpreter's talent, the court's time, and the taxpayer's resources to have an interpreter standing next to the defendant jabbering away in technical language that the defendant can't understand?

Morris (1995a) alludes to this dilemma when she notes that it is "not normally acceptable for an interpreter to point out to an examining lawyer that, for cultural reasons, a particular form of questioning is either impossible to render in the target language or would be understood erroneously by the non-English speaker, or to explain the cultural implications of the witness's reply."[47] She concludes:

When it comes to court interpreting, then, the law distinguishes between the prescribed activity of what it calls translation--defined as an objective, mechanistic, transparent process in which the interpreter acts as a mere conduit of words--and the proscribed activity of interpretation, which involves interpreters decoding and attempting to convey their understanding of speaker meanings and intentions. In the latter case, the interpreter is perceived as assuming an active role in the communication process, something that is anathema to lawyers and judges.[48]

Morris cites Robinson's work on legal language and translation, in which he attributes the verbatim approach to the mystical tradition of Kabbalism, where "absolute cosmic correspondence, translating sense-for-sense, word-for-word, even letter-for-letter, was essential, or more than essential, crucial (anything less meant doom and destruction)."[49] But as Morris so cogently points out,

The law's attitude to interpreters is at odds with the findings of current research in communication which recognizes the importance of context in the effective exchange of messages: it simply does not allow interpreters to use their discretion or act as mediators in the judicial process. The activity of interpretation, as distinct from translation, is held by the law to be desirable and acceptable for jurists, but utterly inappropriate and prohibited for court interpreters.[50]

Does it have to be this way? To reconcile this disparity between "interpreter as impartial translation machine" and "interpreter as linguistic and cultural bridge," a comparative analysis of the role of the court interpreter in several different countries may serve to shed light on the situation and contribute to a redefinition of the proper function of the court interpreter in the United States.

Court Interpreting in Other Countries

Other Common-law Countries

The United Kingdom, Australia, New Zealand, and Canada all share the same legal tradition as the United States, and all have accommodated large numbers of immigrants at one time or another in their history. Consequently, the judicial systems of these countries take a similar approach to non-English-speaking litigants. There are slight variations, however, in the role of the court interpreter.

In the United Kingdom, the courts are advised to use only interpreters who have passed an exam and meet other criteria to be listed with the National Register of Public Service Interpreters. Judiciary interpreters are governed by a Code of Conduct that contains provisions similar to those prevailing in the United States. In the United Kingdom, however, the interpreter is given a little more latitude to intervene to call the court's attention to potential misunderstandings and "ask for those gaps to be filled by the person best qualified to do so,"[51] provided that the interpreter states the reason for the intervention in both languages.

For instance, a lawyer or a judge would be the best person to explain legal procedure and concepts. Whereas the non-English speaking defendants or witnesses are the best people to explain how they, as individuals, perceive something. On those occasions where the interpreters' advice or opinion are sought on linguistic matters which are outside the remit of interpreting, they may be asked to step out of their interpreters' role and become expert witnesses.[52]

In addition, key players in the judiciary (the bench, the bar, and courtroom personnel) are given training to ensure that they are aware of the proper function of the court interpreter and are able to communicate effectively with non-English speakers through interpreters.

Australia also has a requirement that interpreters prove their competence by passing an examination. The National Accreditation authority for Translators and Interpreters (NAATI), the standard-setting organization for the interpreting profession in Australia, has four different levels of competence for interpreters: Paraprofessional Interpreter, Interpreter, Conference Interpreter, and Conference Interpreter Senior. Judiciary interpreters are expected to attain at least the level of Interpreter; for complex court proceedings, interpreters should be rated Conference Interpreter.

The Australian Institute for Interpreters and Translators (AUSIT), which encompasses all professional interpreters, not just those who work in the courts, has a code of conduct that is very similar to other interpreter codes. It requires that interpreters remain impartial, maintain confidentiality, avoid conflicts of interest, and uphold a high standard of competence. The issue of interpreters explaining cultural differences is not directly addressed, although the section titled Accuracy states, "Members shall endeavour to the best of their ability to translate and interpret accurately by ensuring that the true meaning of words, concepts, statements and bodily expressions is conveyed to the client,"[53] which suggests that intervening to provide an explanation is an accepted part of the interpreter's role. One set of guidelines for interpreters states, "They must interpret not only the words but also, where appropriate and within the bounds of court procedure, explain cross-cultural differences and difficulties."[54]

New Zealand did not formally recognize the language rights of minority groups until the 1980s, but since then it has passed numerous laws guaranteeing the right to an interpreter.[55] There has been a formal training program for community interpreters (a profession which includes court interpreting) since 1990.[56] The same code of ethics governs community interpreters wherever they work, including court proceedings. It specifically states, "The interpreter shall, in an appropriate and tactful manner, bring to the attention of the [government official] issues pertaining to culture, creed and language, that may arise in the course of the interview."[57] Interpreters are specifically instructed to interrupt the interview if cultural misunderstandings arise,[58] and no exception is made for court proceedings. Presumably, then, court interpreters in New Zealand are given considerable latitude to exercise their discretion to make sure that understanding takes place.

In Canada, which is officially a bilingual nation, court proceedings may take place either in English or in French. Moreover, in areas where large numbers of indigenous peoples live, such as the Northwest Territories, language rights legislation has been passed in recent years.[59] As a result, interpreters are an accepted feature of everyday life in the Canadian judiciary. Although English and French have a great many terms in common, especially in the legal sphere, the indigenous languages of Canada are not in the same linguistic family as English and French, and European legal concepts are alien to the native cultures. Accordingly, the manual for judiciary interpreters in the Northwest Territories explicitly warns that judges and attorneys may request explanations of cultural practices.[60] On the other hand, all interpreters are bound by the same code of ethics, which provides that interpreters are to interpret faithfully and accurately only what is stated, without omitting, adding, or altering anything.[61] They are cautioned not to volunteer additional information to explain what they think a witness intends to say, or to provide their own explanation of legal concepts if they think a defendant does not understand.[62]

It appears, then, that Canadian court interpreters are required to adhere to the same strict guidelines as their U.S. colleagues, but in addition, they are given very specific instructions for dealing with situations in which the cultures involved are vastly different. This "freedom within order" implicitly acknowledges that the interpreter has the expertise and judgment to decide when it is appropriate to intervene with an explanation to ensure that communication is successful. It should be noted that of the countries discussed here, the ones that have the largest non-European immigrant or indigenous populations are the ones that have made the greatest strides in recognizing the complexity of the interpreter's task, perhaps because the cultural gaps that must be bridged are so wide.

Scandinavia

In recent years, the Scandinavian countries have experienced an influx of immigrants, primarily refugees fleeing invasions, civil wars, and repressive dictatorships in other parts of the world. In keeping with the European Convention for the Protection of Human Rights and Fundamental Freedoms, interpreters are provided for all criminal defendants. But as Helge Niska (1995) notes, that document "says nothing about the qualifications of the interpreter, or even what the interpreter is supposed to do in various situations, or what the legal status of the interpreter is."[63] Norway has passed legislation clarifying the role of the judicial interpreter; in that law, interpreters are specifically directed to monitor the proceedings and inform the court if there are any misunderstandings. At the end of the proceeding, the interpreter is given an opportunity to make additional comments.[64]

Even so, the various participants in legal proceedings do not agree on how much latitude the interpreter should be given to intervene with explanations. Niska cites a study by Falck[65] in which interpreters were interviewed about their experiences, and many of them reported that legal professionals were reluctant to allow them to serve as cultural experts. Niske concludes, "It is not far-fetched to assign the function of cultural mediator to the interpreter. After all, to be able to interpret 'linguistically' the interpreter needs cultural knowledge as well. But this knowledge is not necessarily that of an expert."[66] Thus, it is clear that court interpreters in Norway and in Niska's native Sweden are still struggling with the dichotomy between the legal profession's rigid, theoretical approach to interpreting and the real-life need to provide a cultural backdrop for interpreted messages, but some headway has been made.

Latin America and Spain

In Spanish-speaking countries, the role of the interpreter is dependent on the civil-law tradition, just as the principles of common law dictate the functions of the interpreter in the United States. Because the two legal traditions have much in common, the role of the judiciary interpreter is similar in many ways. With regard to impartiality, for example, the interpreter in these countries is considered an auxiliar de la justicia, which could be considered equivalent to the U.S. concept "officer of the court." There is some disagreement as to whether the interpreter is an expert witness,[67] but traditionally, interpreters and translators have served at the pleasure of the court and have not been given any discretion to refuse assignments. Certain guidelines are provided for the avoidance of conflicts of interest (incompatibilidad); generally speaking, the interpreter may not be a party in the matter and may not have any interest in the outcome of the case.[68] Although

the court has greater fact-finding powers in the inquisitorial tradition and is not considered a neutral observer as in adversarial proceedings, the interpreter is still required to remain impartial.

Criminal defendants in civil-law countries do not enjoy the explicit rights that their counterparts in the United States have been afforded by precedent decisions. As a result, it is not common for defendants to be present, in any sense of the word, at all stages of the proceedings. Live witness testimony is also unusual; witnesses are more likely to render written statements that are later submitted as evidence. Consequently, interpreters do not often appear in court in Spain and Latin America. Judiciary interpreting, as distinct from legal translation, is therefore not an established profession, and it does not have the infrastructure of regulations, professional organizations, and codes of conduct that is seen in other countries. The dilemma posed by the verbatim requirement in common-law countries is not a major problem for interpreters in Spanish-speaking countries.

As for the qualifications required of a court interpreter, in countries where the profession of *traductor público* or *traductor jurado* is firmly entrenched, members of that profession are generally called upon to interpret in court proceedings. Public translators are usually trained in long-established degree programs that give them a solid foundation in the principles of translation, law, comparative legal systems, and the justice system of their own country. They are not usually given training in interpreting techniques, however, since until recently oral trials have been rare in civil-law countries. In Latin American countries where there is not a strong contingent of public translators, minimal guidelines are provided and the courts are simply expected to use their discretion in appointing interpreters.[69]

It should be noted, however, that judicial reform is occurring throughout the Spanish-speaking world, and as public, oral trials become more prevalent, the role of the court interpreter will undoubtedly change to adapt to the new circumstances. The civil-law and common-law systems have established a long tradition of borrowing concepts from each other as they deem appropriate, and in keeping with this tradition, each can learn something from the other with respect to the role of the court interpreter. Specifically, the extensive training in the law and translation theory required of the *traductor público* would be appropriate for judiciary interpreters in common-law countries; and clearly established rules of conduct for interpreters in oral proceedings could easily be adapted for use in civil-law systems.

Conclusion

It is clear that in the legal arena, interpreting is even more complex than in other arenas of human affairs because of the intersection of different cultures and languages in a system that has always proven to be rather inflexible and slow to adapt to new developments in the surrounding society. To accommodate the presence of non-English speakers, the courts must abandon their rigid approach to language and their mistrust of foreign languages and allow interpreters to exercise some discretion. Court interpreters should be accepted as professionals with recognized expertise. They should be given more latitude to intervene discreetly whenever it is apparent that communication is impeded by cultural misunderstanding, and judicial personnel should heed interpreters' recommendations.

By the same token, interpreters must receive more thorough training to develop the expertise necessary to exercise that professional discretion. Instead of the haphazard approach to interpreter training that now prevails in the United States, where there are few university degree programs in judiciary interpreting and most interpreters are forced to struggle on their own to gain a rudimentary knowledge of the law and interpreting techniques, a comprehensive effort should be made to establish a nationally recognized curriculum for a university degree in court interpreting that includes instruction in intercultural communication, linguistics and translation theory, criminal and civil procedure, specialized terminology, and interpreting techniques.

In addition, the legal profession needs to develop a greater awareness of other languages and cultures and of the complexity of the interpretation process. Accordingly, every law school curriculum should contain a segment on cross-cultural awareness and working with interpreters. Newly appointed judges should also be given training in the management of interpreted proceedings. Dunnigan and Downing (1995) strongly advocate such training for the bar and the bench, adding,

It is crucial that the courts not apply a mechanical model to the role of legal interpreters. They are more than instruments for communicating across linguistic boundaries. They are professionals who cannot function well unless judges, lawyers and other courtroom personnel have some appreciation of what interpreting involves and are prepared to collaborate fully in the process of making justice available to those who are language handicapped.[70]

In conclusion, to quote Niska, court interpreters should be "emancipated" so that they can actively manage the communication process. It is difficult, perhaps impossible, to improve upon Niska's concluding remarks:

Being a neutral interpreter does not exclude having a sense of responsibility for the people one works with. Well-educated professional court interpreters possess good linguistic knowledge in their working languages, good interpreting technique, adequate communication skills, strong professional ethics, and have considerable knowledge about legal systems, laws, and legal procedures in the societies concerned. They also have knowledge of the various discourse situations and the language use of the various actors in the court.

When hiring interpreters, legal professionals should opt only for the best. The interpreters should be allowed to work as professionals in their own right, as experts on human interaction and intercultural communication. This means that the interpreter must have the right to work in an optimal way to fulfill his/her task --in other words, to be obtrusive and interrupt proceedings when needed. There are bound to be conflicts ... But in the long run, the emancipation of the interpreter will be favourable to the entire legal system and to the individuals who need language support.[71]

In short, the legal profession should finally realize that interpreters do not function as automatic translation machines from one language to another, and that the ideal of verbatim interpretation does not hold up when confronted with real-life interpreted interactions between human beings. Court interpreters should be given the tools required to perform this critical task properly, and

then they should be allowed to use their professional judgment as to the best way of carrying out the task.

NOTES

1. *Federal Court Interpreters Manual: Policies and Procedures* (Administrative Office of the United States Courts, 1990)
2. California Rules of Court, Standards of Judicial Administration, Section 18.1, Interpreted Proceedings: Instructing Participants on Procedure; Section 18.3, Standards of Professional Conduct for Court Interpreters.
3. William E. Hewitt, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* (Williamsburg, VA: National Center for State Courts, 1995)
4. *Ibid.*, p. 199.
5. *Ibid.*, p. 199.
6. *Professional Ethics and the Role of the Court Interpreter* (Judicial Council of California, Administrative Office of the Courts) p. 2.
7. Roseann D. González, Victoria F. Vásquez, and Holly Mikkelson, *Fundamentals of Court Interpretation: Theory, Policy and Practice* (Durham, NC: Carolina Academic Press, 1991), p. 16.
8. Gerhard Obenaus, "The Legal Translator as Information Broker" in Marshall Morris, ed. *Translation and the Law*, American Translators Association Scholarly Monograph Series, Volume VIII (Amsterdam and Philadelphia: John Benjamins Publishing Co., 1995), p. 248.
9. González, et al., *Fundamentals of Court Interpretation*, pp. 475-76.
10. Hewitt, *Court Interpretation*, p. 202
11. González, et al., *Fundamentals of Court Interpretation*, p. 498.
12. *Professional Ethics and the Role of the Court Interpreter*, p. 37.
13. *Ibid.*, p. 25.
14. Ibid., p. 25.
15. González, et al., *Fundamentals of Court Interpretation*, p. 488.
16. The State of California, for example, requires that certified court interpreters show proof of 30 hours of continuing education each two-year reporting period.
17. New Jersey, Washington, Minnesota, Oregon, New Mexico, Utah, Maryland, Virginia, New York, California, Massachusetts, and Nevada.
18. John Henry Merryman and David S. Clark, *Comparative Law: Western European and Latin American Legal Systems* Indianapolis, New York: Bobbs-Merrill, 1978), pp. 694-97.
19. González, et al., *Fundamentals of Court Interpretation*, p. 160.
20. *Ibid.*, pp. 159-161.
21. Merryman and Clark, *Comparative Law*, pp. 712-19.
22. Susan Berk-Seligson, *The Bilingual Courtroom: Court Interpreters in the Judicial Process* (Chicago and London: The University of Chicago Press, 1990), pp. 30-31; and González, et al., *Fundamentals of Court Interpretation*, pp. 44-45, 47-48.
23. González, et al., *Fundamentals of Court Interpretation*, p. 17. Emphasis in original.

24. Ruth Morris (1995a), "The Moral Dilemmas of Court Interpreting," *The Translator*, Vol. 1 No. 1 (1995), p. 29.
25. *Ibid.*, p. 25.
26. *Ibid.*, p. 26. Emphasis in original.
27. González, et al., *Fundamentals of Court Interpretation*, p. 17.
28. Morris, "The Moral Dilemmas of Court Interpreting," p. 32.
29. Berk-Seligson, *The Bilingual Courtroom*, p. 186.
30. *Ibid.*, pp. 196-97.
31. *Terry v. State* (1925), *Dusky v. United States* (1960), *Pointer v. Texas* (1965), *United States ex rel. Negron v. New York* (1970), *Arizona v. Natividad* (1974).
32. González et al., *Fundamentals of Court Interpretation*, p. 44.
33. California Constitution, Article I, Section 14, enacted in 1974.
34. *People v. Menchaca* (1983).
35. *People v. Rioz* (1984).
36. Supreme Court of the State of Oregon, Order No. 95-042, Establishing Code of Professional Responsibility for Interpreters in Oregon Courts, May 19, 1995.
37. González, et al., *Fundamentals of Court Interpretation*, p. 500; Alicia B. Edwards, *The Practice of Court Interpreting* (Amsterdam, Philadelphia: John Benjamins Publishing Co., 1995), p. 68; Hewitt, *Court Interpretation*, p. 207.
38. González, et al., *Fundamentals of Court Interpretation*, p. 502; Edwards, *The Practice of Court Interpreting*, p. 66; Hewitt, *Court Interpretation*, p. 206.
39. California Evidence Code, Chapter 4, Section 751.
40. Henry J. Friendly, "Some Kind of Hearing," *University of Pennsylvania Law Review*, Vol. 123 (1975), pp. 1267-1317, as quoted by Philip K. Howard in *The Death of Common Sense* (New York: Random House, 1994), p. 86.
41. Michael Cooke, "Understood by All Concerned? Anglo/Aboriginal Legal Translation" in Marshall Morris, ed., *Translation and the Law*, p. 38.
42. *Ibid.*, p. 42.
43. *Ibid.*, pp. 42-43.
44. Timothy Dunnigan and Bruce T. Downing, "Legal Interpreting on Trial: A Case Study" in Marshall Morris, ed., *Translation and the Law*, p. 108.
45. *Ibid.*, p. 108.
46. Ruth Morris (1995b), "Pragmatism, Precept and Passions: The Attitudes of English-Language Legal Systems to Non-English Speakers" in Marshall Morris, ed., *Translation and the Law*, p. 269.
47. Morris, "The Moral Dilemmas of Court Interpreting," p. 28.
48. *Ibid.*, p. 26.
49. Douglas Robinson, *The Translator's Turn* (Baltimore and London: John Hopkins University Press, 1991), as quoted in Morris, "The Moral Dilemmas of Court Interpreting," p. 30.
50. Morris, "The Moral Dilemmas of Court Interpreting," p. 26.
51. Ann Corsellis of the Institute of Linguists, author of *Non-English Speakers and the English Legal System: a Handbook to Good Practice for those working in the legal system across language and culture* (Cambridge: University of Cambridge Institute of Criminology, 1995), personal communication via fax transmission on May 27, 1996.
52. *Ibid.*

53. Australian Institute for Interpreters and Translators (AUSIT) Code of Ethics.
54. Helge Niska, citing Ruth Morris, in "Just Interpreting: Role Conflicts and Discourse Types in Court Interpreting" in Marshall Morris, ed., *Translation and the Law*, p. 295.
55. Lalita Kasanji, *Let's Talk: Guidelines for Government Agencies Hiring Interpreters* (Wellington, NZ: Ethnic Affairs Service, 1995), pp. 26-31.
56. *Ibid.*, p. 4
57. *Ibid.*, p. 36.
58. *Ibid.*, p. 20.
59. Northwest Territories Justice, *Manuel des interprètes judiciaires des territoires du nord-ouest* (1993).
60. *Ibid.*, p. 5.
61. *Ibid.*, p. 12.
62. *Ibid.*, p. 12.
63. Niska, "Just Interpreting," in Marshall Morris, ed., *Translation and the Law*, p. 294.
64. Ibid., p. 295.
65. Sturla Falck. *Rett tolk? En undersøkelse av tolker, språk, rettssikkerhetsproblemer og rollekonflikter inninen politi og domstroler*. (Oslo: Universitetsforlaget, 1987), cited in Niska, "Just Interpreting," in Marshall Morris, ed., *Translation and the Law*.
66. Niska, "Just Interpreting," in Marshall Morris, ed., *Translation and the Law*, p. 300.
67. Catherine J. Bayley, *Manual del traductor público, castellano-inglés* (Buenos Aires, 1973), p. 231; Guillermo Colín Sánchez, *Derecho mexicano de procedimientos penales* (Mexico City: Editorial Porrúa, S.A., 1992), p. 425.
68. Colín Sánchez, *Derecho mexicano de procedimientos penales*, p. 427.
69. *Ibid.*, p. 426.
70. Dunnigan and Downing, "Legal Interpreting on Trial," in Marshall Morris, ed. *Translation and the Law*, p. 110.
71. Niska, "Just Interpreting, in Marshall Morris, ed., *Translation and the Law*, p. 314.

To list of Holly's articles **Back to ACEBO home page**