

PROBLEMATIC ISSUES IN COURT INTERPRETING

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Abstract

Court interpreters are ethically bound to maintain absolute fidelity to the level of language being spoken, be it the frozen, stylized language of legal professionals or the street slang and dialectical variations used by parties and witnesses. At the same time, they must be accurate, without modifying, omitting details or adding to the content of the communications. When interpreting testimony in the consecutive mode, court interpreters are, in fact, forming the official court record, since only their rendition in the Court's language will be recorded by the court reporter for use in appeals or other future proceedings. This is a serious burden requiring excellent short-term memory skills. Added to that burden is the awareness that one's performance at this stage can have grave consequences in the life of another human being. The terminology used to express the same idea from country to country can be very confusing. The lack of knowledge of a culture or social realities may at times produce a negative outcome in court interpreting.

KEY WORDS: court interpretation, interpreter's role.

Anotacija

Vertėjas žodžiu turi turėti išskirtinių įgūdžių, nes tai ne tik tikslus minties, pasakytos viena kalba, perteikimas kita – tai teismo įrašo pagrindas, kuriuo vėliau remiamasi, jei tenka nagrinėti bylą iš naujo. Ši aplinkybė ypač svarbi teismų vertėjams, kurie privalo tiksliai, nieko nekeisdami išversti pokalbių turinį, nepraleisdami detalių, jo nepildydami savo nuožiūra. Ir byloje dalyvaujantys asmenys, ir bylą nagrinėjantis teismas nėra apsaugoti nuo neteisingo sprendimo ar nuosprendžio priėmimo. Neteisėtą ar nepagrįstą teismo sprendimą gali lemti ne tik vertėjų kalbų, teisės terminų mokėjimas, bet ir atitinkamų kultūrų pažinimas, jų skirtumų suvokimas, gebėjimas suprasti visus kalbėtojus: tiek vartojančius sustingusią, teisės profesionalų stilizuotą kalbą, tiek kalbančius su ryškiu akcentu, gatvės žargonu ar darančius gramatikos klaidų. Teismų vertėjams svarbu išsąmoninti, kad vertėjo darbas gali turėti rimtų pasekmių kito žmogaus gyvenimui. Kalbinė įvairiakultūrinė patirtis, preciziškas tokios patirties naudojimas neapdraudžia nuo nesėkmių, tačiau palengvina vertėjo misiją.

PAGRINDINIAI ŽODŽIAI: vertimas teisme, vertėjo atsakomybė.

Introduction

Interpretation plays a far greater role in the criminal process than is realized and can potentially make all the difference between a defendant being found guilty or not guilty. As an increasing number of non-English speakers pass through the justice system, challenges remain intact for a court system that needs qualified translators daily. In English-speaking countries, a court interpreter is a specially trained professional who possesses a variety of skills that distinguish him or her from bilingual persons who simply speak two languages. They interpret from English to another language and vice versa in a court proceeding for people who cannot communicate effectively in English. Interpretation is usually in one of two modes, depending on the circumstances: [simultaneous or consecutive](#) (Mintz). Court interpreters are also sometimes responsible for translating written documents, often of a legal nature, from English into the target language and from the target language into English.

Although the United States Supreme Court has never directly addressed the right to an interpreter in criminal or civil cases as a constitutional issue, many courts on the state and federal levels have upheld this right in criminal proceedings. The landmark case in which this view was firmly established was the Negrón ruling. Unfortunately, failure to appoint an interpreter still occurs today (Interprefer [...], 2000).

2. Interpreting issues

2.1. The court interpreter's role

The interpreter's role is to render a complete and accurate interpretation (oral) or translation (written), without altering, omitting, or adding anything to what is stated or written. In essence, the interpreter serves as a bridge between whoever is speaking – the judge, attorney, witness, etc. – and the non-English speaking person, so that the non-English speaking person hears in his own language everything that is being said in English.

“Interpret” in this context does *not* mean “explain”. It means providing an equivalent meaning in the target language as the one stated in the source language. It is not the job of the interpreter to explain anything independent of what is being said by participants in the courtroom proceedings. It is not the interpreter's job to give advice to or otherwise counsel the non-English speaker in court, and it would be unethical for the interpreter to provide services other than interpreting from one language to another (Utah [...]). Interpreters must make sure their translations are accurate.

2.2. The court interpreter's skills

The court interpreting requires more than just speaking two languages. Being bilingual is not sufficient. The level of expertise required for court interpreting is much greater than that required for everyday bilingual conversation. In addition to having a thorough command of English and the other language, a court interpreter must be able to deal with the specialized language of judges and attorneys, as well as with the street slang of witnesses and the technical jargon of police officers, expert witnesses, etc. A court interpreter must be able to interpret accurately for individuals with a high level of education and a large vocabulary, as well as for persons with very limited language skills, without changing the language register of the speaker. The interpreter must also possess excellent mental skills, including the ability to accurately convert the source language into the target language, and vice versa, often with only an instant to choose the equivalent words and phrases.

Interpreters must be able to interpret simultaneously in a court of law while attorneys are speaking at lawyer speed, speak the party's dialect within the second language, and use words conveying the tone and meaning contained in the phrase of the original speaker. In some instances, *what* was said may be less important than *how* it was said. The words “be quiet” and “shut up” may have the same meaning, but they convey it on different levels. There are many synonyms within the English language, as with any language (Wisconsin [...], 1997).

In addition, it's very helpful for a court interpreter to have good public speaking and interpersonal skills. The interpreter must understand the interpreter's role; that is, the interpreter cannot express personal opinions or be an advocate for one side or the other in a court case. The interpreter must be able to work well under pressure and react quickly to solve complex linguistic

and ethical problems as they arise. A good court interpreter must continually strive to upgrade his/her skills by reading from a wide variety of sources, researching new terms and concepts, and improving interpreting techniques (Mocketsi, 1999).

2.3. Main difficulties in court interpreting

A court interpreter rarely has the advantage of working in a team of interpreters. Court interpreters work alone, for long hours, with no rest or recovery time. The potential damage to their vocal chords is never considered. The average “client” of a court interpreter is rarely articulate or fluent. Fear and uncertainty also renders their language more incoherent. Court interpreters do not only work in court, but they are involved at every stage of the legal process, especially in systems where they are called to the interview following arrest. Such sessions often take place at unsociable hours. Court interpreters must naturally observe neutrality regarding the content and impartiality between parties. This is frequently difficult to maintain due to the insistence by the “client” to regard their (compatriot) interpreter as an ally (What [...]).

If an interpreter does not know how to translate a word or phrase is a question of ethics and technique. If an interpreter is interpreting for a witness and that witness says something that the interpreter does not understand, the interpreter is obligated to seek clarification, after asking the judge's permission. If the interpreter is simultaneously interpreting the proceedings, the answer depends on whether the importance of the thing said seems sufficient to outweigh the intrusiveness of interrupting the proceedings to request a repetition or clarification, and that determination depends on the interpreter's judgment. Theoretically the interpreter should always interrupt in such situations, but many often do not. Poor interpretation has indeed caused injustices; that is why standards, training and certification are so vitally important (Mintz). Certified or qualified interpreters are trained to find the terms that best convey the original message.

Using just any bilingual speaker not trained in court interpreting can create massive problems for the court system. When a document states the words *appoint an attorney*, the well-intentioned but inadequately trained interpreter may convey the words *point to an attorney*. A bungled translation can mean the difference between dismissal and conviction. In one recent case, a victim robbed by three juveniles required a Spanish translator. While the victim testified about how she identified one assailant, the translator mixed up the gender of a crucial word. The interpreter asked her how many people she was shown in a lineup, rather than how many males she was shown. The resulting confusion contributed to the case's dismissal. The Fulton County district attorney Marina Navia says such mistakes are common. "How we describe hair or facial features in Spanish is different. It even varies from country to country", she said. She has seen plenty of mix-ups, including one interpreter who translated *hood* into *baseball cap* (All [...]).

Courtroom stories throughout Wisconsin illustrate the hazards of using bystanders as interpreters. The social worker assigned to a child abuse case interpreted the testimony for a witness in court. The witness said a word in Spanish which the social worker interpreted to the court as *'raped the child*. The witness on the stand, understanding just enough English to know what the word rape meant, jumped up and shouted at the interpreter and at the judge, saying, *No, no, not raped. I said hurt, not raped*. The Spanish word later was found to mean *hurt, damage or injure*. The cause of the mistake is irrelevant; the fact that mistakes of such magnitude may be occurring and going unnoticed in other cases is disturbing (Wisconsin [...], 1997) nevertheless that rarely is a case overturned because of interpretation errors alone (Interpreter [...], 2000).

Interpreting a suspended sentence can also be very tricky for many court interpreters. For instance, a two year sentence suspended for five years has been interpreted as follows: “You will serve two years out of prison, in the period of five years. This means that if, in the next five years you are arrested for a similar offence, you will go to jail for a minimum of two years”. Should an interpreter who, instead of interpreting the sentence as pronounced by the magistrate, explains the conditions of a suspended sentence to a lay person, be accused of offering unsolicited additions to the source message? (Moecketsi, 1999).

The trial court has broad discretion in matters regarding selection of the interpreter (Interpreter [...], 2000). The courts are becoming pretty sensitive to the fact that people with less developed language skills are not as experienced in sophisticated terminology (What [...]). Demand for interpreters who speak a variety of languages is growing. The Asian languages, particularly Japanese, Chinese, Korean, and Vietnamese, represent a significant part of the translation industry in the United States, especially on the West Coast (Translation [...], 2004). While finding certified Spanish language interpreters in the USA is easier now, seeking qualified interpreters for other languages is still a challenge.

The drug ship case (Drug [...], 2004) when crew members of the 500-foot freighter *M/V Yalta* were arrested in connection with an apparent attempt to smuggle nearly 4 tons of cocaine in 2003 is well known to a great number of Lithuanians. There were many reasons why sixteen men from Ukraine and Lithuania were acquitted of federal drug charges only after a year. The Defendants in this case were interrogated without the benefit of having been informed of their rights to consult with consular officials, without being brought to a United States Magistrate in a timely manner, without food, without medical aid, without sleep and without hope. The Defendants were without the cultural background of American citizens who have some preexisting knowledge of the Miranda warning. By way of digression, the *Miranda* rule was developed to protect the individual's Fifth Amendment right against self-incrimination. The *Miranda* warning ensures that people in custody realize they do not have to talk to the police and that they have the right to the presence of an attorney.

If the *Miranda* warning is not given before questioning, or if police continue to question a suspect after he or she indicates in any manner a desire to consult with an attorney before speaking, statements by the suspect generally are inadmissible at trial – they cannot be used against the suspect.

Thus getting back to the cultural differences in courts practice, *the right to remain silent* culturally to a Lithuanian signifies the notion that though one could be silent, *the silence itself will be evidence at one's trial* (United [...]). Besides the physical and psychological pressure the Defendants were confronted with an unreadable or understandable Russian Miranda form, interrogators with limited Russian language skills, misleading statements by the interrogators and defective translation of the Miranda form. The third paragraph translated into English should approximate the following: *Everything that you say may be used against you*. The first word of the third paragraph, which thankfully is in English lettering and therefore readily rendered for the Court, could be *Bec* or possibly *Bce*. If the word is *Bec* the Russian meaning is *weight*; whereas the intended meaning of the word is *everything* if the word is *Bce* though to a Russian reader *Bce* could also mean *all the time* or *quite*. Yet there is a far more significant problem which distorts and undermines the intended meaning. Instead of reading *Everything that you say may be used against you* a Russian reader unfamiliar with Miranda would read it literally as a command to speak. The word, as

apparently misspelled in Russian on the Miranda form, strikes an imperative mood (you must say) rather than the conditional mood (if you say). The Miranda warning should be straightforward and easily understood not ambiguous hieroglyphics (United [...]). It is conventionally believed that familiarity with the source and target languages, as well as the subject matter on the part of the translator is enough for a good translation. However, due to the findings in the field of text analysis, the role of text structure in translation now seems crucial.

During my five-year stay in New York City, I had a first-hand experience acting as an interpreter for various U.S. courts requiring fluent knowledge in the Lithuanian language. I worked as an interpreter in Local, District, County, Municipal and Family Courts, as well as in the Supreme Court of New York City. It was a valuable learning, challenging and rewarding experience for me, as I observed the courts' workings and procedures. My experience in local and trial courts served me well during a murder trial in the Supreme Court of the New York City in 1999. One might not think about it, but there are established rules of the court for every contingency, e.g. how to ask the judge for permission to stop and ask the defendant (or a witness) to repeat his/her statement or simply to ask a question, to use the same grammatical person as the speaker for whom one is interpreting. I learnt this during my first court interpreting when very quickly it became evident to me that despite being a native Lithuanian speaker, I had difficulty in understanding a defendant: he spoke in a very soft voice and his regional dialect was unfamiliar to me; at first I even could not make what his name was.

Besides cultural and technical difficulties there may occur contextual miscommunication. I would like to comment on another translation error related to a contextual misunderstanding which happened during the above mentioned murder trial proceedings. Lukas, a teenager from Kaunas, was giving evidence as the sole eyewitness in the murder of his parents two years earlier. When Lukas asked me what the English for *į viršų* was, raising his eyes to the ceiling, I told him *upstairs* – Then Lukas said, “When I heard the shots, I looked *upstairs*“. The judge then asked Lukas some questions, such as “Did you have to go upstairs?”, “Where was the bedroom?”, which led the jury to understand that the bedroom and his room were on the ground floor. Since Lukas' family lived in a rented apartment in a private house, I thought their bedroom was on the second floor, what is typical in American houses. After Lukas answered the judge's questions, it became apparent I had misinterpreted *į viršų*. The expression *į viršų* can mean *up* or *upstairs* depending upon the context of the sentence. Lukas had actually meant to say that he looked up at the ceiling after he was awakened by the sound of gun shots and not that he went *upstairs* – hence my mistake in translation.

Finally, another translation error related to differences in British and American English. A young Lithuanian lady who had spent some years in the US before was interpreting in the Crown Court of London. Having had the American English experience she did not hesitate translating Lithuanian word *kelnės* which may be translated as *trousers* or *pants*, as the latter variant. The barrister asked the judge for permission to ask the interpreter to find out what kind of *kelnės* it could be, as *kelnės* in this situation was used as factual evidence in a rape case. The word *pants* is used in England to denote men's close-fitting trousers while in America – an outer garment.

Conclusions

From my own experience and that of others I can state that the most frequent errors during judicial interpretation may occur not only because of the lack of language skills or the quality of experience of the interpreter but for many other reasons as well. It could be the defendant's or witness's articulation, low voice or accent, contextual and cultural differences as well as differences in British and American English.

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PAGRINDINĖS VERTĖJO PRAKTIKOS TEISMUOSE PROBLEMOS

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S a n t r a u k a

Įvairių globalizacijos procesų skatinamos migracijos mastai visame pasaulyje sparčiai didėja. Kaip ir kitų šalių, naujoji imigrantų karta iš Lietuvos neišvengiamai susiduria su įvairiais, dažniausiai nenumatytais sunkumais, kuriuos kartais tenka spręsti net ir teismuose. Straipsnyje apžvelgiamas teismų teisėjų darbo savitumas, aptariami jiems keliami reikalavimai.

Remiantis penkerių metų (1994–1999), praleistų JAV, Niujorko mieste, patirtimi, aptariamos dažniausiai pasitaikančios teismų kalbų vertimo problemos. Tokia galimybė atsirado teismuose sprendžiant (ir verčiant) skyrybų, pinigų išieškojimo, įvairių nelaimingų atvejų, iškeldinimo iš buto ir net nužudymo bylas.

JAV šiandien lengviausia rasti kvalifikuotus teismų vertėjus verčiančius iš/į ispanų kalbą, tuo tarpu labai trūksta vertėjų į Azijos kalbas (japonų, kinų, korėjiečių ir vietnamiečių), ypač į mažų valstybių, tokių kaip Lietuva, kalbas. Tokiais atvejais verčia ne profesionalai, o beveik atsitiktiniai žmonės, mokantys kalbą, taigi suprantama, jog tai gali turėti rimtų pasekmių kito žmogaus gyvenimui.

Pagrindiniai reikalavimai, keliami teismų vertėjams: privalomas aukštasis išsilavinimas, geras kalbų ir teisės terminų mokėjimas, puiki nuovoka, leidžianti suvokti ne atskirus žodžius, o kalbėtojo mintį, analitiniai gebėjimai, puiki orientacija, gera atmintis, leidžianti tiksliai išversti pokalbių turinį nieko nekeičiant, nepraleidžiant detalių ar kaip nors jo nepildant. Netikslus vertimas gali lemti neteisingą ar nepagrįstą teismo nuosprendį.

Ne visada padarytos vertimo klaidos susijusios su kalbos mokėjimu. Yra nemažai veiksnių, lemiančių vertimą. Suprantama, norėdamas gerai versti, vertėjas turi remtis bendrojo išsilavinimo žiniomis, nes daugiakalbėje aplinkoje nepakanka puikiai mokėti kalbas, reikia gerai pažinti atitinkamas kultūras, suvokti jų skirtumus, gebėti gerai suprasti visus kalbėtojus: tiek vartojančius sustingusią, teisės profesionalų stilizuotą kalbą, tiek kalbančius su ryškiu akcentu, gatvės žargonu ar darančius daug gramatikos klaidų. Vertėjas iš/į anglų kalbą turi išmanyti skirtumus tarp britiškojo ir amerikietiškojo anglų kalbos variantų.