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CHAPTER

22 Courtroom Interpreting

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Abstract

This article describes the concept of courtroom interpretation. Legal interpreting is a branch of interpreting conducted when speakers of different languages have to communicate in legal or paralegal settings. Each legal system has its own unique court procedures, legal concepts, and terms that sometimes have no equivalent in other languages. This cultural asymmetry of legal systems creates substantial interpreting difficulties. In order to interpret competently, court interpreters must be well versed in legal terminology. The role of the court interpreter is to make communication possible between speakers of different languages. A courtroom interpreter has ethical responsibilities to fulfill. The challenges to courtroom interpreting include lack of bilingual legal dictionaries, obstacles to pragmatic influence etc. Court interpreters require training, in both interpreting skills and court interpreting. Effective courtroom interpreting can only be achieved by the professionalization of interpreters through compulsory education, adequate working conditions, and professional remuneration for effective multilingual dialogue.

Keywords: [courtroom interpretation](#), [legal interpreting](#), [cultural asymmetry](#), [legal systems](#), [interpreting difficulties](#), [pragmatic influence](#), [multilingual dialogue](#)

Subject: [Forensic Linguistics](#), [Translation and Interpretation](#), [Linguistics](#)

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22.1 Legal and Court Interpreting: Definitions and Settings

Legal interpreting is a branch of interpreting conducted when speakers of different languages have to communicate in legal or paralegal settings: during an arrest, at police stations, in prison, at a lawyer's office, in courts and tribunals, and in relation to asylum, immigration, and customs matters. Interpreting that takes place in judicial settings—courts of all instances, and tribunals that operate in the manner of a court—is referred to as court interpreting or judicial interpreting. Court interpreting occurs during all types of courtroom hearings, including the trial proper. Interpreter-mediated communication conducted outside the courtroom in relation to the case is defined as quasi-judicial interpreting (Dueñas González 1991: 25). The courtroom setting, language and specific court requirements make court interpreting a specialized area that necessitates high competence on the part of the interpreter.

Historically, records of judicial interpreting go back to the Talmudic times, and are also found in trials during the seventeenth to nineteenth centuries in Britain (Colin and Morris 1996). Official recognition of the interpreting profession began with the Nuremberg trials (1945), with a focus on simultaneous interpreting.

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Today, interpreting is a global practice in courts of national jurisdictions (hereafter, ↴ national courts) in both monolingual and bilingual countries (Canada, Belgium, Israel), and in international courts and tribunals such as the International Court of Justice (ICJ), the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the International Criminal Court (ICC). In Europe and North America, the practice of courtroom interpreting originated with the rise of community interpreting (1960s–1970s) and has since been growing. In the USA, this ‘veritable explosion in the use of foreign language interpreting’ reflects a ‘growing sensitivity to the social needs and rights of linguistic minorities’ (Berk-Seligson 2002: 1).

Court interpreting in national jurisdictions is mostly considered to be an area of community interpreting (Europe, UK, Australia). However, scholars maintain that court interpreting is one of the most complex and demanding types of interpreting, which requires high precision in the constraints of the court, mastery of linguistic and technical skills, an understanding of legal systems, the ability to switch interpreting modes, and an awareness that language in the courtroom is used strategically, thus requiring of interpreters a high level of semantic and pragmatic competence (Eades, Hale, and Cooke 1999: 2). This view is shared by international courts and in some countries (such as the USA).

Courtroom interpreting in the English-speaking common-law legal system has been the subject of much research within the framework of law, sociology, anthropology, psychology, linguistics, and interpreting studies (Dueñas González 1991: 263; Hale 2007: 90–91). More recently, discourse-analytical and ethnographic research, demonstrating the impact of interpreting on courtroom interaction, has had direct implications for court interpreting practice (Berk-Seligson 2002, Hale 2007).

Current practices of court interpreting and principles of interpreter use are far from perfect, and in the literature frequent calls may be found for improvement in the following areas: access to high-quality court interpreting; court interpreting practices and principles of interpreter use; the court interpreter's role and professional ethics; removing obstacles to achieving interpreting of professional quality and accuracy; interpreter training and accreditation; and educating interpreter users.

22.2 Access to high-quality court interpreting

Today, it is widely acknowledged that a person who does not speak the language of the court or speaks it with insufficient competence has the right to an interpreter in judicial and quasi-judicial settings.

p. 327 International law guarantees that all persons charged or arrested must be informed promptly, in a language they understand, of the reasons for their arrest or the nature and grounds of the accusations against them. The right to free interpreting services during a trial has been stipulated in international treaties such as the UN International Covenant on Civil and Political Rights (1966) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). In national jurisdictions, particularly in common-law countries, this right has been associated with access to justice and equality before the law. In some jurisdictions, it was made a constitutional right through legislation, such as the 1978 Federal Court Interpreters Act (USA) and the 1982 Charter of Rights and Freedoms (Canada). Other common-law jurisdictions (UK and Australia) have based the person's 'right' to an interpreter on judicial precedent (e.g. *R v. Lee Kun* in Colin and Morris 1996: 75) or left it to the discretion of an individual judge (Young 1990, cited in Laster and Taylor 1994: 77).

Despite these provisions, in many countries the right to an interpreter is being implemented slowly, and in Europe, national provisions for court interpreting remain patchy and uneven (Hertog 2002: 146). Even in countries where court interpreting is well established, the system of access to it is far from perfect. Thus, it is often unclear who ultimately should raise the question as to whether the defendant or witness requires an interpreter: lawyers notifying the courts (USA), a judge's determination, or a request by one of the parties (Laster and Taylor 1994: 77, 166). Provisions regarding interpreting are either not specific enough or restrict access to an interpreter to criminal cases only (Laster and Taylor 1994: 73, 75, 79). In countries with an established court interpreting system, defendants are provided with interpreters free of charge; however, in developing countries, the decision to provide an interpreter depends largely on the budget of the court's prosecution office (Berk-Seligson 2008).

Another equally serious problem is the lack of recognition of the need for competent interpreting by qualified professional practitioners in national courts (Laster and Taylor 1994: 91; Morris 1998: 3). International courts have always practised a rigorous selection of qualified interpreters, ensuring high professional standards. However, most national jurisdictions, including EU member countries, fail to recognize court interpreting as a profession and therefore neither require that court interpreters be adequately qualified nor provide opportunities for their training. Only a few countries (USA, Canada, Australia) stipulate the requirement of competent court interpreting (Colin and Morris 1996: 152–3), enforcing the use of certified and/or qualified court interpreters. This unsatisfactory situation stems from interpreter users' ignorance about the requirements of professional interpreting, which hinders the recognition of the need for training and professionalization, including adequate working conditions and remuneration.

22.3 Court Interpreting Practices and Principles of Interpreter Use

Different factors determine court interpreting practices: national legal systems, the type of court, and the type of case. It is vital that the interpreter should understand these factors, in order to know what to expect and how to prepare for an assignment.

22.3.1 Interpreting settings: courts, cases and participants

Interpreter-mediated communication occurs in courts and tribunals of various types and instances. They include municipal, state, and federal courts in the USA, and state (local, district and supreme) and federal courts in Australia. Interpreters are required in both criminal and civil cases. Criminal cases include matters such as traffic violations, domestic violence, sexual assault, homicide, and drug offences. Cases heard in superior courts, for example, US Federal District courts, include drug or arms trafficking, people smuggling, money laundering, kidnapping, hijacking, terrorist attacks, and international crimes. Civil cases involving divorce, custody, wills, industrial relations, workers' compensation, and property law can be heard in specialized courts. Immigration and refugee cases, almost always requiring interpreting, are heard by tribunals, such as the Migration Review Tribunal and Refugee Review Tribunal (Australia).

International courts and tribunals try cases involving major international crimes, such as war crimes and crimes against humanity (ICTY, ICTR, the Special Court for Sierra Leone), and settle disputes between countries in matters of international law (ICJ). Some cases of international importance (war crimes, terrorism) are tried in courts of national jurisdiction, for example the Eichmann trial (1961, Israel), Australian War Crimes Prosecutions (1986–93, South Australia), and the Lockerbie trial (2001, Scottish court in the Netherlands).

In criminal cases heard in national courts, interpreters enable communication between speakers of the majority language—lawyers and judges—and minority-language speakers—defendants and witnesses. In civil cases, interpreters ensure communication between parties. In international courts and tribunals all participants, including legal professionals and the judiciary, rely equally on interpretation.

22.3.2 Legal systems and the principal stages of court procedure

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The type of legal system determines what the interpreter can expect. Differences in legal systems determine the way that trials are conducted and their stages. Having evolved historically, each legal system has developed its own unique court procedures, legal concepts, and terms that sometimes have no equivalent in other languages. This cultural asymmetry of legal systems creates substantial interpreting difficulties (Gémar 1995).

The civil law system, also known as the Romano-Germanic, or 'continental', system, mainly operates in Europe, and has been adopted in some countries on other continents. In it, trials are preceded by a period of evidence-gathering by the court, mainly in documentary form, including witness testimony (Dueñas González 1991: 148–52). The judge leads the trials in civil-law countries, playing an active, inquisitorial role in relation to the accused (Dueñas González 1991: 150). In the common-law system, practised mainly in Anglo-Saxon countries and former British colonies, trials comprise an adversarial process conducted in court. They involve much spoken interaction among the participants, in the form of oral evidence presented and challenged through counsel's examining or cross-examining witnesses.

International courts and tribunals are based on mixed jurisdictional practices. Some are more adversarial in their procedure, with oral evidence being presented during the examination-in-chief by the prosecution and challenged by the defence during cross-examination (ICTY). Others gravitate towards the inquisitorial system, excluding features of the common-law system such as the plea of guilty and cross-examination (ICC).

It is essential for court interpreters to understand how courts operate, and to be aware of the structure and sequence of the stages of court proceedings, and the role of each participant. For example, in the USA, criminal cases open with a preliminary hearing or grand jury proceedings, followed by arraignment, pre-trial procedures, the trial proper, sentencing, and appeal (Dueñas González 1991: 111–41). The main stages

in a common-law trial where there has been a Not Guilty plea include the opening addresses by the counsel, the calling and s-in of witnesses, examination-in-chief (also called direct examination) and cross-examination by the prosecution and defence counsel, legal arguments throughout the trial, closing addresses by the counsel, summing-up by the judge, and the verdict by the jury (Laster and Taylor 1994: 174; Russell 2002: 63; Colin and Morris 1996: 108–9).

22.3.3 Courtroom language

p. 330 It is clear that, in order to interpret competently, court interpreters must be well versed in legal terminology. However, there are other characteristics of legal language that interpreters must also be able to master. The legal English spoken in court has many features of written legal English: technical terms, common terms used with uncommon meanings (*suit, bar*), words of Latin, French, and Old English origin (*bona fide, voir dire*), a high percentage of polysyllabic words ↵ (*collateral*), unusual prepositional phrases (*in the event of default*), seemingly redundant paired words (*will and testament, aiding and abetting*), formality, vagueness, and over-precision (González, Vásquez, and Mikkelsen 1991: 254–5). Other features include frequent nominalization (*make assignment*), frequent passive constructions (*remedies may be provided by the law*), lengthy complex sentences often with embedded clauses, numerous negations, and more (Berk-Seligson 1990 and Morrow 1994, cited in Russell 2002: 47–8). These features explain why legal language is difficult to grasp for lay people—and to interpret in court.

Furthermore, the language used by the participants largely depends on the genre of the courtroom event, and the speaker (see 22.3.2 above). Awareness of who is who in the courtroom, each participant's role and function, and the relations between participants is part of the court interpreter's competence and knowledge of what to expect (Colin and Morris 1996: 108–9; Edwards 1995: 74–7; Hale 2007: 66). Thus, counsel often delivers opening and closing addresses using monological speech—dense language delivered in the manner of written rather than spoken text and abounding in legal terms and references to previous cases, and complex syntax. The same applies to judges' summings-up and instructions to the jury. However, the interaction between counsel and witnesses is dialogical, in question-and-answer form, with features of spoken language. Counsel's use of questions in examination-in-chief and cross-examination is strategic, and the intention of the questions—often unclear to a layperson—must be understood and competently conveyed by interpreters. Interpreters must be equally prepared to deal with the colloquial and idiomatic language of eyewitnesses and the specialized and technical language of expert witnesses.

22.3.4 Modes and completeness of interpretation

Current practices vary in the extent to which proceedings are interpreted. In international courts, where all participants rely on interpreting, the entire proceedings are interpreted without exception. In national courts, the coverage ranges from complete interpretation in some countries (Britain, Australia, USA) to summary interpreting only being provided in others (Europe, Japan) (Mikkelsen 1999b; 2000: 3).

In countries with established court interpreting it is understood that, in order to keep the defendant apprised of the evidence, the entire proceedings need to be interpreted. Therefore, the interpreter must interpret everything that the defendant, judge, counsel, and other court participants would understand if there were no language barrier. However, judges and counsel often take the view that it is only necessary to interpret witness evidence, and that complete interpretation of the proceedings for the defendant is not necessary (Laster and Taylor 1994: 95).

p. 331 Interpreting modes depend on where the case is heard. Since the Nuremberg trials, international courts and some trials of international importance (the Eichmann and Demjaniuk trials) have used simultaneous interpreting with equipment, i.e. in soundproof booths with electronic transmission of sound. Interpreters

work under conference interpreting conditions, in teams of two (ICC) or three (ICTY) per booth, each interpreting into one language only, usually the interpreter's mother tongue (language A) or, if necessary, into the interpreter's most active second language (language B) (Stern 2001). Interpreters in national courts use a combination of consecutive and whispered simultaneous (*chuchotage*) interpreting. The examination-in-chief and cross-examination are interpreted in two-directional (short) consecutive mode; the rest of the proceedings is interpreted in whispered simultaneous mode into the defendant's language. During legal arguments, often only summary interpreting can be realistically provided (Colin and Morris 1996: 95). Interpreters' assignments may extend to quasi-judicial settings outside court where they are required to perform liaison interpreting and to sight-translate documents (Colin and Morris 1996: 90).

There are advantages and disadvantages to both consecutive and simultaneous modes. Consecutive interpreting is considered to be more accurate, as it allows the interpreter to better analyse the original speech and convey the nonverbal characteristics of the witness's speech (Russell 2002: 51–3). In national courts, witness evidence is conventionally interpreted using this mode. Consecutive interpreting allows interpreters to exercise greater control over the situation by regulating the speed of delivery, requesting repetitions and clarifying ambiguities (Dueñas González 1991: 164–5). However, these same factors are counterproductive to the witness examination process, as they lead to loss of control on the part of counsel. Research demonstrates that consecutive interpreting affects courtroom discourse by disrupting the dynamic of the witness-lawyer exchange, slowing down cross-examination, and altering the intention and pragmatic force of counsel's questions and witnesses' answers and style.

Since the Nuremberg trials, simultaneous interpreting has been the courts' preferred mode, as it saves time and reduces the interpreter's visibility (e.g. the bilingual ICJ switched from consecutive to simultaneous interpreting in 1965). From the interpreter's point of view, simultaneous interpreting prevents the interpreter from controlling the speed of delivery and asking for clarifications. This mode is particularly taxing in national courts where interpreters work alone, without due training and preparation (Alexieva, cited in Russell 2002: 53–4).

22.3.5 Working conditions and professional status

The Nuremberg trials set high interpreting standards and principles of interpreter use (Gaiba 1998).

p. 332 However, subsequent practices in national courts have not followed this example. 'In most of the world's jurisdictions, court interpreting has not, on the whole, attained professional status in terms of either recognition or performance' (Morris 1995: 40). This lack of professionalization of court interpreting manifests itself in limited opportunities for pre-employment professional training, few professional associations (e.g. the US National Association of Judicial Interpreters and Translators, NAJIT), inadequate remuneration, and often unsatisfactory working conditions (Colin and Morris 1996: 100).

To perform their task competently, court interpreters require adequate physical working conditions—comfortable seating arrangements, adequate acoustics, regular breaks to prevent fatigue, and preparation opportunities (Dueñas González 1991: 177). However, national courts, designed for monolingual interaction, do not provide these conditions. They suffer from poor acoustics and lack proper amplification, and fail to provide adequate seating arrangements for the interpreter, who is often found sitting next to the defendant. Speakers are not used to communicating via interpreters and often speak indistinctly, without projecting their voices (Colin and Morris 1996: 88–9). Interpreters work alone, sometimes for days, without replacement, suffering fatigue. When a second interpreter is called, it is to interpret for the other party, which does not allow interpreters to form a team and take turns. Finally, interpreters are neither briefed nor provided with background documents for preparation. The fear that prior knowledge of a case might affect their impartiality is partly understandable (Gamal 1998), but for adequate preparation interpreters require background documents, such as the indictment and witness statements.

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Interpreters fare better in international courts and tribunals, where they are provided with conference-like conditions of employment and payment, with either full-time renewable positions at a level similar to that of other professionals or ongoing freelance employment (ICTY, ICTR). Gaining familiarity with the court and cases allows interpreters to develop the necessary expertise. An adequate working environment and preparation are ensured in the Staff Regulations (ICC Regulation 67, p. 27). Short-term preparation for a specific case includes briefing and provision of trial-related documents, such as a statement of charges, a list of personal and geographic names, witness statements, and other related documents; this process continues during the trial (Colin and Morris 1994: 84–5). Soundproof booths with headphones and microphones ensure adequate acoustic conditions by blocking out external noise, thus preventing vocal strain and premature fatigue. Teamwork with regular turn-taking and breaks, briefing, and documents provided for preparation ensure the provision of competent services unattainable in national courts (Stern 2002). When documents are read out in court, copies are provided and/or screened on a document camera to allow sight-translation (ICTY, the Special Court for Sierra Leone). Opening and closing speeches, judges' decisions, and other written documents are usually supplied to interpreters in advance (ICC). In national courts where this practice is absent, interpreters are lucky to catch the general idea of the speech (Colin and Morris 1996: 95) and are unlikely to provide adequate sight-translation of documents because of their technical nature (Alexieva, Barnwell, cited in Russell 2002: 53).

22.4 The Court Interpreter's Role and Professional Ethics

22.4.1 The interpreter's role: perceptions and reality

The role of the court interpreter is to make communication possible between speakers of different languages, for example litigants and court personnel, by removing the linguistic barrier (Mikkelsen 2000: 1). However, most participants in national courts tend to misunderstand this professional role by failing to recognize the interpreter as a qualified professional. Unless interpreting is performed by court officers (as in Malaysia and Singapore: Colin and Morris 1996: 98–9; Ibrahim and Bell 2003: 212), court and lawyers 'treat interpreters with suspicion, distrust and lack of respect for the skills which they bring to the job' (Colin and Morris 1996: 15; Hale 2007: 64). Interpreters' own confused self-perceptions have contributed to unclear role boundaries and unrealistic expectations (Laster and Taylor 1994: 111, 113).

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The interpreter's role has often been described by metaphors involving inanimate objects (channels, bridges) and equipment (translation machines, conduits), implying invisibility, a lack of emotional or personal bias, and a mechanistic view of the interpreting process (Laster and Taylor 1994: 112–14; Roy 1996; 2000: 347) with an expectation that the result will be free from error. Untrained interpreters tend to assume additional roles, as helpers and advocates for non-English speaking witnesses (NESW), as a cultural bridge to judges, or else as assistants to lawyers (Laster 1994: 118–19, 121). There are several reasons for this. The interpreter's self-perception as a helper or advocate for the person from the same community grows out of interpreting in a welfare role; it is accentuated in court, where the complexity of the legal language and the alien nature of the 'legal culture' virtually exclude a lay person from the interaction (Russell 2002: 49). Torn between the intuitive desire to 'help' and the expectation of acting as a 'conduit', interpreters hesitate between making an explanatory intervention and 'withholding' cultural information which, they feel, is not their responsibility to offer (Laster and Taylor 1994: 123–5). These contradictory expectations, however, tend to occur only during face-to-face interaction in national courts, in which (mainly untrained) interpreters undertake additional functions as a result of undervaluing their professional role (Hale). These matters are mostly absent in international courts, where, even in instances of great cultural differences, interpreters are removed from face-to-face interaction.

Academic studies stress that interpreting is much more than a technical linguistic transfer—it is a highly skilled cognitive and linguistic process involving comprehension of the original in one language, conversion of meaning, and delivery in another language that usually has a different structure (word order) and lacks equivalent concepts and terms (Hale 2004). To perform their professional role competently, interpreters require a mastery of their working languages as well as interpreting skills, and considerable thematic knowledge, including knowledge of the respective legal systems, a comparative understanding of common legal concepts, and a working knowledge of legal terminology. Above all, interpreting is not a mechanistic process, and court interpreters cannot automatically assume an invisible, machine-like role. Recognition that interpreters exercise more (verbal) power than lawyers are prepared to admit allows us to define the interpreter's role as a dynamic and interactive one—that of communication facilitator. However, interpreters themselves must come to terms with their role and convey it to interpreter-users—something that can only become possible through appropriate education (Laster and Taylor 1994: 127).

22.4.2 Ethics and professional conduct

The complex and legally binding nature of courtroom exchange places particular ethical responsibilities on interpreters. While there is no unified international code of ethics, most codes include principles of accuracy, impartiality, confidentiality, competence, and professional conduct (see NAJIT, AUSIT, and ICTY Codes of Ethics).

Accuracy is a crucial principle of court interpreting, and the interpreter's oath includes an undertaking to translate 'truly and faithfully' (Australia). According to codes of ethics, interpretation must be complete and contain no additions, omissions, or distortions of meaning (misinterpretations). In court, this applies not only to content but to style and manner, especially important in witness testimony. Conference interpreting techniques, such as condensation, omission, polishing a speaker's style, are inapplicable in court interpreting. Views regarding what constitutes accuracy, and how it can be achieved in practice, often revolve around the degree of freedom permitted to the court interpreter. No code of ethics provides guidance on how exactly to achieve a faithful delivery (Hale 2007). One school of thought (supporters of the 'conduit' metaphor) suggests that interpreters should adhere strictly to 'translating words' only and allow lawyers and clients to resolve communication difficulties; the other views interpreters as cultural advisers helping bridge cultural gaps (Mikkelsen 2000: 3). The legal profession's preferred view is that the interpreter should provide an exact verbatim translation of utterances and remain 'invisible' (Morris 1995)—or, as some codes of ethics state, convey 'with the greatest fidelity and accuracy, and with complete neutrality, the wording used by the persons they interpret' (Code of Ethics for Interpreters and translators employed by the ICTY, Article 10 (1a)). While wanting interpreters to render 'no more and no less than what the witness has said' (Colin and Morris 1996: 99), lawyers and judges traditionally misuse the concept of accurate interpreting as verbatim, word-for-word, literal translation (Morris 1995: 30; 1998: 4; Jacobsen 2003: 223). Interpreters, on the other hand, often believe that an invisible, conduit-like role does not allow them to ensure accurate communication between speakers, and maintain that it is their responsibility to act as a language aide and cultural bridge in order to achieve accuracy—for example, in New Zealand Maori or Australian Aboriginal cases (Laster and Taylor 1994: 84–5).

Other provisions in the codes of ethics also cause controversy. Interpreters must remain impartial, maintain appropriate distance, and avoid any conflict of interest. They are precluded from making value judgements or volunteering solicited or unsolicited opinion or advice. The provision regarding confidentiality prevents the disclosure of any privileged information obtained in the course of their duties. Despite these provisions, lawyers and judges in national courts often mistrust interpreters, fearing that they side with the NESW or behave unethically (Laster and Taylor 1994: 126). The fact that in national courts the interpreter appears in physical proximity to the NESW, with the defendant relying on the interpreter as a person from the same culture, casts a shadow on the interpreter's integrity. Further mistrust arises when interpreters act as

facilitators and cultural bridges, causing them to be identified with the minority-language speakers. Torn between loyalties, most interpreters assume a middle position, recognizing that ‘universal ethical principles [of neutrality and impartiality] are a mere ideal situation that may be impossible to achieve’ (Moeketsi 1999a, b, cited in Mikkelsen 2000: 3). In international courts, where interpreters are placed in booths, they are less likely to be identified with the defendant.

22.5 Obstacles to Competent Interpreting and Accuracy

22.5.1 Common challenges

p. 336 Achieving accuracy in courtroom interpreting is fraught with difficulty. Having heard the speakers only once and interpreting in real time, interpreters cannot guarantee the same degree of precision as in a written translation, hence it is unrealistic to expect flawless accuracy. Errors can occur for a variety of reasons: poor acoustics, the speed and complexity of a speaker's delivery, lack of clarity of meaning, linguistic and cultural lacunae that require clarification or explanation, or simply because the interpreter needs a break. Courts agree that, when interpreters cannot perform competently and convey the message accurately, they must notify the court (Colin and Morris 1996: 96), however, the formality of the court, the often rapid pace of the proceedings, and interpreters' low status discourage them from interrupting and asserting their rights (Stern 1995). In international courts, speed of delivery is the main cause of difficulty, and the red-light button used during the Nuremberg trials to signal to speakers to slow down (Gaiba 1998) is not provided in modern courts. Unable to interrupt the proceedings to consult reference materials or consider better versions, interpreters resort to the first version that comes to mind (Hale and Gibbons 1999) and rely on ‘survival skills’—approximations, use of synonyms, paraphrases, and explanations.

A common source of errors is a lack of language proficiency, training, and awareness of the discourses of court interpreting. The result is a literal translation with a focus on words rather than meaning, distortions of sense, omissions, additions, and changes of style and register (Duenñs González et al. 1991: 289, 291). Such problems often derive from a ‘lack of awareness of the consequences of their interpreting choices, lack of time to think of the best alternatives, or lack of linguistic resources’ (Hale 2004: 211).

One of the primary reasons for the lack of quality control in national courts is that the minority-language original is neither recorded nor transcribed, even where there is an established courtroom system (Morris 1998: 8). In Britain, ‘tape recordings of non-English utterances produced in the courtroom hardly ever exist; written transcripts are almost never produced. The alarming implications for the doing of justice are rarely considered by the law’ (Morris 1995; 1998: 8). The lack of a record of the original text makes it impossible to verify the accuracy of interpretation, which is often disputed in trials (Stern 1995). In international courts and tribunals, where all language versions are recorded, both the original and the interpretation appear in English on screen, which allows interpreting teams to monitor the accuracy as the proceedings unfold and, if necessary, promptly detect and report errors (Stern 2001, 2003).

However, the lack of specialized education and adequate working conditions are not the only factors that affect the accuracy of interpretation. Studies reveal that almost all interpreting techniques interfere with courtroom discourse (Berk-Seligson 2002, Hale 2004), and that, ironically, in an attempt to secure effective communication, interpreters exercise latitude and modify utterances (Jacobsen 2003: 224–5). Because of the role that language plays in the courtroom and the manner in which lawyers use it, interpreters inadvertently ‘support—or thwart—the linguistic tactics of lawyers in the adversarial courtroom’, which affects the legal process and possibly its outcome (Laster and Taylor 1994: 161).

Much importance is attributed to the preparation of terminology by interpreters (Edwards 1995: 46–53). The situation is often complicated by a lack of current bilingual legal dictionaries, and also by the difficulty of achieving equivalence between languages because of the culture-specific nature of legal concepts, terms, and formulaic courtroom routines. Terms such as *rule of law*, *due process*, and *reasonable man/person* reflect the historical aspect of each concept; so do the French terms *arrêt*, *état de droit*, and *quasi-délit* (Gémar 2002: 166). The languages of civil-law systems often lack equivalent common-law terms and concepts, such as *cross-examination*, *pre-trial*, *to plead guilty/not guilty*, *beyond reasonable doubt*, or *balance of probability*. Languages with a shorter tradition of writing and legal culture, for example Acholi and some other African languages used in ICC, lack words for *prosecutor* and *registry*. Even when equivalents exist between more closely related languages, they lose their historical and cultural richness in translation, for example, French *droit* compared to English *law* or German *Recht* (Gémar 2002: 166); using French cognates to interpret the English terms *appeal*, *charges*, *objection* leads to distortions of meaning (Stern 2004). Frequently raised in legal translation studies, this obstacle is not sufficiently appreciated by court interpreters (Hale 2004: 213–14).

It is doubtful whether the existing interpreting approaches successfully convey the legal effects of the original (Gémar 2002: 164). Neologisms, loanwords, and literal translation are unlikely to convey the denotative meaning in an idiomatic fashion. Resorting to adaptation through synonyms that exist in the target language makes the translation imprecise, if not inaccurate. Explication through paraphrase, explanation, or a combination of loanword and explanation lengthens the interpretation, which is undesirable in simultaneous interpreting. In most cases either denotative or connotative meaning (or both) is affected (Stern 2004).

In the absence of a standardized approach, interpreters sometimes use different terms to denote a concept in the course of the same case (Stern 1995, 2004). This inconsistency can be avoided in international courts, where interpreters cooperate with translators (ICTY) and where terms are pre-emptively minted as meaning-based neologisms (ICC).

22.5.3 Obstacles to stylistic and pragmatic equivalence

Accuracy in court interpreting applies not only to the content that is communicated, but also the manner in which speakers communicate it. Conveying the individual manner of defendants and witnesses is important because of the impression the court and jury form of them in assessing their character, credibility, and level of education and intelligence. Conveying witnesses' style involves ↪ conveying their mood and range of emotions (e.g. distress, anger), and individual mannerisms: hesitation, pauses, false starts, stumbling, circular answers, and repetitions (Colin and Morris 1996: 91; Hale 2007: 87). When interpreting the language of court officers, lawyers, and judges, interpreters must pay particular attention to maintaining the original intention and trying to achieve the desired impact on the recipient.

Much of what court officers and lawyers say to witnesses—court routines, instructions, and counsel's questions—is specific to the legal system of the court. For example, the request to enter a plea has no equivalent in civil law cultures, and is different from the request to admit guilt (Laster and Taylor 1994: 170–71). Counsel's strategic questions in common-law witness examination are particularly difficult because they do not lend themselves easily to translation into languages other than English owing to their different grammatical structures and established tactics of legal questioning. Conveying the speaker's intention and achieving the same impact on the listener requires the interpreter to possess particular pragmatic competence, while many interpreters lack such competence and instead focus excessively on

formal equivalence and words, termbanks, and terminology lists (Fowler, cited in Hale 2004: 7). As Hale and Gibbons (1999) point out:

Many legal professionals would be disturbed by the changes in the nature of the questions they are asking. The construction of questions with the desired level of coercion during examination is a highly developed skill among counsel, and one that plays an important role in the adversarial legal system. The use of various types of question, such as leading questions, is also prescribed and standardized within the courtroom. When major changes to question type occur during translation, all this is threatened.

There are several manifestations of the way interpreters affect courtroom discourse through lack of awareness of the semantic and pragmatic aspects of courtroom interaction (Jacobsen 2003). They may skew the intended meaning, making speakers appear more or less cooperative, coercive, or antagonistic than they intended to be (Berk-Seligson 1990/2002; Morris, cited in Hale 2004: 7). Interpreters may alter the register to make it more or less formal, raise the degree of politeness (Hale 2007: 96–7), and make witnesses' replies more hesitant (Jacobsen 2003). Polishing witnesses' style leads to their being misrepresented by the court, and interpreters sometimes violate the code of ethics through possible additions and even fabrication of facts (Hale 2007: 85–6). The inadvertent superimposition of the interpreter's own style onto the witness's, for example through false starts, back-tracking, and hyperpoliteness, also affects the style and pragmatic force of utterances (Berk-Seligson 1990/2002) as does mirroring the listener's (rather than the speaker's) style by the interpreter (Hale 2004).

p. 339 Interpreters seldom acquire this theoretical understanding of courtroom discourse intuitively. Nor are they aware of the impact of their interpreting on courtroom discourse. This awareness and mastery of pragmatic competence can only be acquired by a process of formal training in court interpreting. This is why international court interpreters, albeit better qualified than those in national courts through training in conference interpreting schools, demonstrate similar failings: interpreting counsel's questions non-pragmatically, embellishing witnesses' style, and raising the witnesses' register and level of politeness (Stern 2004).

22.6 Interpreter Training and Accreditation

As has been indicated, 'linguistic competence is a necessary, but not sufficient condition for ensuring that a competent legal interpreter is provided' (Laster and Taylor 1994: 93). Considering the complexity of their task, court interpreters require training, preferably tertiary, in both interpreting skills and court interpreting. However, this prerequisite is largely ignored, and 'legal interpreters are not given the professional training they deserve [in order] to do a good job' (Hertog 2003: 146). Instances where any degree of self-declared familiarity qualified an individual as a court interpreter (Cheshin 1959, cited in Morris 1998: 2) are far from being a feature of the past, and most court interpreters in national courts are untrained. This lack of requirement for adequate compulsory training accounts for the slow professionalization, inconsistency in the guidelines to good practice, and lack of a common code of conduct (Hertog 2003: 150). Today, practitioners are at best certified through examinations, rather than trained (Austria, Australia, Spain, USA). Even court interpreters' associations perpetuate the status quo, for example, by describing an academic background as a desirable but not necessary prerequisite for court interpreting purposes, and inviting high-school graduates to take interpreting examinations (NAJIT website).

Having an accreditation system and a register of accredited court interpreters does not guarantee quality. Some national registers of court interpreters were compiled without sufficient verification of interpreters'

credentials (Mikkelson 1999b). Countries that accredit court interpreters through general examinations (Australia, Austria, Canada) fail to test interpreters in all the courtroom techniques and registers (NAATI), and some use only a translation test (Spain). Most countries lack the resources to provide accreditation for interpreting in all languages (e.g. 'rare languages', such as African languages in Australia). A specialized judiciary interpreter and translator certification examination in Spanish has been developed in the USA through NAJIT (and recognized by a number of states), to test candidates in interpretation and legal translation skills.

p. 340 The introduction of court interpreter training has been slow in many countries, and using accreditation alone for entry to the profession may have been counterproductive for the development of training. Few countries train interpreters for accreditation, as does Sweden in community colleges. The accreditation system by NAATI (National Accreditation Authority for Translators and Interpreters) has discouraged the creation of tertiary programs in Australia (Hale 2004: 26), and proposals for university training of court interpreters in EU national courts, such as the Gropius Project 1998–2000, remain at the stage of recommendation (Hertog 2003: 151, 154–6).

Today, there are different levels of court interpreter training. The shortest is orientation and on-the-job training in national courts (Dueñas González 1991: 201), from half a day to two days, covering the court interpreter's role, judicial procedures, interpreting ethics and protocol, and court observation. Short ad hoc training courses have been offered for special projects, for example, a ten-day course in simultaneous court interpreting conducted for the Truth and Reconciliation Hearings (Lotriet, South Africa). However, it is doubtful whether short courses are effective in imparting the necessary skills for novice interpreters. Longer, in-house training, aimed at the needs of individual courts, has taken place in international courts, in the 1990s at ICTY, and a specially designed course at ICC (see Chapter 32).

Secondary and community college courses provide vocational interpreter training with or without a view to accreditation by the state. In Sweden, Stockholm University trains generalists in community interpreting, with a section dedicated to legal/court interpreting and offered in community colleges. Interpreters are granted authorization to practise court interpreting on the basis either of a test by a national judicial board or of successful completion of a one-year basic interpreting course at university (Niska). In Australia, one-year generalist interpreting diploma courses run by Technical and Further Education (TAFE) are NAATI-accredited and thus qualify interpreters for court work. In British Columbia, courses for the Court Interpreting certificate are recognized by the Ministry of the Attorney General (Colin and Morris 1996: 161–2).

Few university courses specialize in court interpreting; Rand Afrikaans University and Potchefstroom University (South Africa), whose courses lead to diplomas, are among those which do. Undergraduate and graduate programmes usually offer modules in court interpreting as part of community interpreting programmes. Few postgraduate programmes include individual courses in legal interpreting. Among those that do are the Monterey Institute of International Studies (USA) and the University of Western Sydney (Australia). The former offers certificates in legal/court interpretation, and summer and elective courses in court interpreting (Mikkelson). A specialist master's degree in bilingual legal interpreting (Spanish) is offered at the University of Charleston, South Carolina, and the Institute of Applied Linguistics at the University of Warsaw has a one-year postgraduate legal and judicial translating and interpreting programme.

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22.7 Educating interpreter-users

The quality of court interpretation cannot be ensured by interpreters alone—interpreter-users and employers are also responsible for providing the necessary working conditions. Most users, for example legal professionals, have been trained in monolingual national jurisdictions and do not realize that interpreter-mediated communication requires adjustment on the speakers' part. 'The majority of the judiciary have no proper understanding of the interpreting process and do not really know how to work efficiently with interpreters' (Hertog 2002: 150). This lack of awareness of interpreters' requirements on the part of speakers often prevents them from working competently.

It is necessary to impart an awareness of the intricacies of working effectively with court interpreters. This is done at national and international level, e.g. through publications providing instruction for adequate communication (*Access to Interpreters in the Australian Legal System* 1991 and *Guide to Best Practice: Lawyers, Interpreters, Translators*; judicial checklist in Edwards 1995: 88–9), and education sessions for judges, counsel, and other courtroom participants (e.g. annual induction by the National Judicial College, Australia, and seminars at the NSW Bar Association and ICC).

Interpreter users can improve interpreters' performance through an understanding of the interpreting process and the interpreter's role. Practical suggestions include limiting speakers' speed to allow interpreters to understand and process complex specialized information. Speakers should plan their speeches and aim to speak in correct and complete grammatical sentences, avoiding false starts, lengthy sentences, questions with embedded clauses, negative structures, and questions within questions. For the delivery of written or scripted speeches, such as judges' decisions, speakers should provide interpreters with written materials, skeleton arguments, or notes (Colin and Morris 1996: 95–6). Judges and lawyers should be reminded that, in view of the complexity and specialized nature of legal discourse, preparation by interpreters is a precondition for competent and accurate delivery. Wherever possible, interpreters need to be briefed and provided with documents relevant to the case, such as witness statements, in advance.

Effective courtroom interpreting can only be achieved by the professionalization of interpreters through compulsory education, adequate working conditions, and professional remuneration, in partnership with a recognition by courtroom participants of the special requirements for effective multilingual dialogue.

Further Reading and Relevant Resources

Literature on court interpreting that will assist the reader in understanding the courtroom system and the interpreter's role includes Colin and Morris (1996), Dueñas González, Vasquez, and Mikkelsen (1991, 2000). Articles by Sandra Hale, Holly Mikkelsen, and Ruth Morris provide an in-depth understanding of the complexity of court interpreting. These authors cover a wide array of topics, from NESW rights to professional interpreting, and interpreters' working conditions in national courts to achieving accuracy at all levels and maintaining ethical conduct. Essential reading on the discourse of court interpreting and its impact on the proceedings includes Berk-Seligson (2002) and Hale (2004). Among the most recent publications is Hale and Russell (2009).