# Garbage In, Garbage Out: The Court Interpreter's Lament

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Abstract

*Interpreters in all settings, in all parts of the world, and throughout history have lamented the poor quality of the language they must deal with in source texts. This chapter will review some recent publications on interpreting quality criteria, user expectations, and the associated challenges facing interpreters in different settings (Kondo 2006; Peng 2006; Lee 2009; Ng 2009; Napier et al. 2009; Kent 2009). The constraints facing court interpreters in adversarial settings will be analyzed, particularly when interpreting from English to Spanish for immigrants who may have little or no formal education. A variety of solutions available to court interpreters will be explored within the context of prevailing professional standards in the United States.*

## 1. Introduction

Throughout history, interpreters have struggled with the same problem: flawed source messages. Just as translators are more sensitive than the average reader to errors or ambiguities in source texts, interpreters are hyper-attuned to the quality of the speech that serves as the source for their interpretation. Interpreting students often ask, "Should I improve on the speaker's message?". The answer to that question, like so many others, is "It depends". This chapter will attempt to provide some answers for interpreters in legal settings on the basis of a thorough analysis of the problem, an examination of quality in interpreting and how it is defined in different contexts, and a discussion of various studies on user and interpreter expectations for their performance. Those elements will be used to further refine the statement of the problem, and the chapter will conclude with some suggestions of strategies that interpreters can employ when faced with imperfect source messages.

## 2. Statement of the problem

Judiciary interpreters are taught that they must interpret all utterances with no distortion due to "addition, omission, explanation or paraphrasing" (NAJIT, n.d.). To achieve this objective, they must have a full command of all registers of their working languages, including the erudite language of legal arguments, the legal jargon often used in colloquies between attorneys, the technical register of expert witnesses, the speaking style unique to law enforcement personnel, the street slang of gang members, and the "baby talk" used by children. For example, if a judge says, "Do you waive time for sentencing?", the interpreter should provide a target-language version as close to that wording as possible, rather than clarifying it by saying, "Do you waive the legally required delay before the judge passes sentence?". Similarly, a child witness's statement that "he showed me his pipi", should not be made more anatomically explicit by the interpreter, or the jury would have a distorted impression of the child's level of sophistication.

In order to pass their certification exams, court interpreters devote many hours to studying glossaries and reading background material on firearms, drugs, criminalistics, sex offenses, criminal procedure, traffic terms, regionalisms, and street slang, among many other subjects. What they cannot prepare for, however, is the nonsensical statements made not only by unsophisticated witnesses with little formal education, but also – perhaps surprisingly – by trained professionals such as expert witnesses and, yes, even lawyers and judges. In a study of expert witness testimony, Miguelez (2001: 4) found that:

> [T]he language used by expert witnesses and by attorneys when addressing them, is often grammatically faulty, convoluted, imprecise, repetitive and lacking in coher-

ence. Therefore, preparing vocabulary, while useful, will not guarantee success, given that the challenges in comprehending and interpreting expert testimony are not always strictly – or even principally – lexical in nature.

Consider this excerpt from a trial transcript examined by Miguelez in her research:

> Q: Now referring to the other areas that you mentioned, density, what is density?
> A: This is the weight of the mass of an object, the weight in air as against water: It was the old Greek principle when Archimedes got into the bathtub and there was so much water came out that was specific gravity so much water displaced. The density of an object is measured in this relation between the relation of its weight and mass in air as against its weight and mass in liquid. In the laboratory the way we run density we actually take a glass particle and we bounce it in a liquid mixture and in this case the mixture is 'Bromifoam alcohol.' Bromifoam being a heavy liquid on which you can float the rocks and alcohol being very light and you put in a glass particle and it neither rises nor falls in that liquid. You can either do that by two ways, by heating the liquid and making it lighter and the object will fall. If you cool it and make the liquid denser the particle will rise. Here is a point where we actually balance it in liquid, neither rises nor falls, a little particle so small you have to use a magnifying glass. At that time when we finally let it down, the equilibrium, we have a definite balance and we take the count of liquid which gives us our density reading. So, we read the density of the liquid, which is very sensitive, much more sensitive method, much more sensitive than the old method they have of giving the specific gravity. (*ibid.*: 6)

Miguelez comments that "there was virtually no specialized jargon here and yet the answer was quite incomprehensible" (to put it mildly). Another excerpt quoted in her paper does have some specialized jargon, but the problem of unintelligibility is not limited to terminology:

> So far as the double action of the function of State's Exhibit 1, […] I found this did not function properly in the double action of the State's Exhibit 1. After a cartridge was fired, it was necessary to slightly pull the hammer back to a first position causing a small click as it makes contact with the mechanism before the action of the function of the weapon would be free enough to function as double action where you actually depress the trigger […]. (*ibid.*: 10)

Similarly, Stojkovic-Ring (2009), referring to the interpreting at the International Criminal Tribunal for the former Yugoslavia (ICTY), notes that there are "situations in which the interpreters are forced to stick to the word-for-word strategy (to comply with the users' perception of accuracy, particularly in low-context vs. high-context messages) at the expense of the sense, and … situations where the interpreters judge it is 'safe' to do the opposite" (*ibid.*: 21). As an example, she presents an excerpt from testimony in which an English-speaking attorney examines an English-speaking witness (interpreted simultaneously into French for the judges and other attorneys):

A [attorney]: Who was involved in that incident by appearance or group?
T [witness]: Sorry, can you repeat the question please? I didn't understand or I don't know if I did or didn't.
D [defense]: Il s'agit d'un problème d'interprétation sûrement. [There surely must be a problem with the interpretation.]

It is clear that even without interpretation, participants in legal proceedings may have difficulty understanding the language used. Many court interpreters will relate to the examples cited here, and will undoubtedly have plenty of anecdotes to tell about similar witnesses.

It is worth asking how much jurors understand of testimony like these two excerpts. Napier, *et al*. (2009), drawing on previous studies of jurors' ability to understand the instructions judges give them on the law they are supposed to apply to cases in which they must reach verdicts, conducted their own study of mock jurors. In their study, they presented both hearing and deaf participants with a judge's summation of a real-life criminal case, taken from a transcript of the proceedings, and then asked them questions for the purpose of determining whether jurors could understand proceedings conveyed through an interpreter just as well as jurors hearing the source message. They found that although there was little difference between the two groups' grasp of the facts, some of the legal concepts were "problematic" for both deaf and hearing participants due to the "challenging" language used by the judge (Napier *et al*. 2009: 107).

As stated in the introduction, however, judiciary interpreters are not alone in having to contend with incomprehensible source messages. For example, Kent (2009) found in her interviews with conference interpreters in the European Parliament that there is a great deal of frustration with speakers who insist on addressing delegates in languages they do not fully master, usually French or English, those being the languages shared by the largest number of delegates. Interpreters, who confess that sometimes "you're not really sure they know what they're saying," have coined terms such as "Globe-ish", "this whatever-the-hell-it-is", "this ridiculous Pidgin English" and "what they think of as English", to describe this phenomenon (*ibid*.: 63). One interpreter lamented, "If it's a Polish speaking bad English, I have no clue [what they mean]" (*ibid*.: 66). Kondo (2006) reports on a survey of Japanese conference interpreters (all native speakers of Japanese) in which many of them complained that Japanese speakers were "too vague, too obscure, too ambiguous" for them to fully understand the source speech and render it in their B language, English. One respondent said, "I have difficulties when the Japanese speaker speaks horribly, making it impossible to see what he is trying to say" (*ibid*.: 177). Kondo also recounts an incident in which the Japanese Minister of Agriculture and Fisheries expressed his view on a fishing dispute with the United States, and after the interpreter finished interpreting his statements into English, the U.S. negotiator said, "What the hell is he trying to say?". The interpreter calmly rendered the outburst into Japanese, later explaining his reasoning that it was the minister's responsibility to clarify what he meant (*ibid*.: 176). In

the legal setting, particularly in adversarial proceedings, interpreters take a similar stance: if one of the parties does not understand a statement, it is that party's responsibility to ask for a clarification (Gonzalez *et al*. 1991: 476).

## 3. Communication and meaning

Kent's (2009: 55) study at the European Parliament emerged from an effort to examine the "shared responsibility between interpreters and interlocutors" for the effectiveness of interpreted communication. To do this she looks at two models of communication, the ritual and transmission views, to "illuminate the struggle in Interpreting Studies to clearly distinguish linguistic meaning from socially-emergent meaningfulness".

The transmission view of communication "depicts meaning as an object (a message) to be physically moved", leading to interpreters being conceptualized as "conduits" of information. This is the way interpreted interactions have traditionally been viewed. Kent emphasizes the limitations of this approach:

> However, the transmission metaphor only holds up if one neglects the numerous instances in which transparent transfers of meaning fail. In other words, if one ignores the evidence of misunderstanding (with or without simultaneous interpretation), one operates within a reduced framework that considers only the immediate utilitarian effects of language. (*ibid*.: 59)

The ritual view, in contrast, considers communication to be "the representation of shared beliefs" (Kent, 2009: 60), and comprehension of messages depends on whether the interlocutors have a shared identity – a point also made by Henriksen (2007: 16) in her discussion of "eurospeak" or "the eurolect". In interpreted interactions, the interpreter must share two identities and find a middle ground between them in which to construct meaning. The jargon of the European Parliament is an example of a language used by individuals whose identities overlap, to the extent that they are all European delegates representing their countries in a deliberative body. However, to the extent that they come from different countries and speak different languages, their identities do not overlap, hence, the need for interpreters. When the delegates elect to use a lingua franca instead of speaking their native languages, the result is the incomprehensible "Globe-ish" described by the interpreters. The source of the frustration expressed by the interpreters interviewed by Kent is the expectation (by the delegates and by themselves) that they will bridge the gap between Pidgin English and standard Greek, for example, just as effectively as they bridge the gap between standard English and standard Greek.

## 4. User expectations of quality

A number of researchers have examined the expectations of interpreters' clients to determine whether their notions of quality and what constitutes a successful interpretation coincide with the interpreters' own views on these issues. Quality, as defined by interpreters, is summed up by Déjean le Féal (cited in Kurz, 1993/2002: 312) as follows:

> What our listeners receive through their earphones should produce the same effect on them as the original speech does on the speaker's audience. It should have the same cognitive content and be presented with equal clarity and precision in the same type of language. Its language and oratory quality should be at least on the same level as that of the original speech, if not better, given that we are professional communicators [...]

In particular, Kurz (1993/2002), Moser (1996) and Collados Aís (2002) surveyed users of conference interpretation services to elicit their ideas about quality interpreting. Although these researchers did not reach uniform conclusions, they all found "a clear separation between quality and the perceived quality or success of a simultaneous interpretation" (Collados Aís, 2002: 336). Kurz (2002: 321) concluded from her study that all respondents valued "sense consistency" and "logical cohesion" more than a native accent or a pleasant voice, although diplomats were more concerned than technical experts (physicians and engineers) about the "completeness" of the interpretation. She attributes this disparity to diplomats' interest in "full understanding of the arguments [of other delegates] with all their nuances", whereas the technical experts "would opt for an intelligent, logical, terminologically correct summary of the original".

Moser's survey (1996: 163) confirmed that delegates showed a "clear preference for concentration on essentials" rather than a complete rendition of the source speech. He analyzed the data according to the size of the conference, how technical the subject matter was, and the participants' years of experience attending interpreted conferences. Across the board, he found "a marked preference for faithfulness to meaning" rather than "a literal reproduction of what was being said" (*ibid.*: 167), though delegates at large technical conferences attributed more importance to the correct use of terminology than the completeness of the interpretation.

Collados Aís (2002) sought to test a number of hypotheses about end-users' and interpreters' evaluations of the content and the form of interpreted speeches by presenting different versions of a single speech in a controlled study, manipulating the intonation of delivery and the sense consistency of the interpretation. Although the end-users, not knowing the source language, could not assess whether there were content errors in the interpretation, they could determine whether the speech as a whole was coherent and consistent with their understanding of the subject matter (in this case, jurisprudence). The majority of them

were less concerned about content than about the interpreter's tone of voice; indeed, many of them failed to notice even glaring factual errors that were introduced into the speech (*ibid.*: 335).

In the judicial context, a quality interpretation is considered to be one that produces a "legal equivalent", defined by Gonzalez *et al.* (1991: 16) as "a linguistically true and legally appropriate interpretation of statements spoken or read in court, from the second language into English or vice versa". In other words:

> [T]he court interpreter is required to interpret the original source material without editing, summarizing, deleting, or adding while conserving the language level, style, tone, and intent of the speaker. (*ibid.*: 16)

Does the theoretical view of quality correspond to the way different actors judge quality in real-life court proceedings? In the case of incomplete thoughts or missing words in expert witness testimony, Miguelez (2001: 12) noted, "As with all speech, the receiver needs and expects some type of closure and completion". In this regard, consumers of judicial interpretation are no different from other users. Lee's (2009) survey of court interpreters and legal professionals on their expectations of the interpreter during witness examinations is also of interest. She found the same conflicting views as those reported in the conference interpreting studies mentioned above. When asked whether the interpreter should match the style of the source messages, "nearly three quarters of the legal professionals (166) responded in the affirmative and two thirds of the interpreters (24) responded that this was what they sought to do" (*ibid.*: 47). When Lee delved further and specified either witnesses' answers or counsel's questions, however, she discovered a significant discrepancy:

> As for reproducing witnesses' speech style, 29 interpreters (78%) reported that they did in fact strive to do so, whereas only 134 legal professionals (59%) responded that this was what the court interpreter should do. The answer also depended on *whose* style was at stake: 32 more legal professionals expected the court interpreter to reproduce the questioning style of counsel compared to the speech style of witnesses. The contrast between legal professionals and interpreters in this regard is particularly striking: contrary to the legal professionals' views, more interpreters responded that they reproduced the style of *witnesses'* speech than that of counsel. (*ibid.*: 47, emphasis in the original)

Some interpreters admitted that "they sometimes simplified questions, or explained legal terms rather than simply using the equivalent terms in the target language, or that they conveyed only the main point of the question if they perceived that the witness was having difficulty understanding", despite admonitions against doing so in the literature on court interpreting (*ibid.*: 47). In other words, they geared their interpretation to their perception of the listeners' ability to understand. The notion of a "listener-centered" interpretation (Stern, 2004) will be explored further in a later part of this chapter.

## 5. Coherence and quality

The studies cited in the previous section show that consumers of interpreting services are not always good judges of the quality of the interpretation, at least in terms of the standards set by the interpreting profession itself. In the context of training future interpreters, Peng (2006: ii) writes, "Talking about quality of interpreting, 'making sense' is generally held to be one of the most important criteria for judging the success of a given interpretation". She also affirms that coherence is the "gold standard" of interpreting, "the most highly valued quality" (*ibid.*: 9). Accordingly, she has developed a "coherence profile" for both source and target texts.

Peng starts from the premise that trainees must be aware of quality standards to attain their goals, and that they "inherit the way trainers describe quality" (2006: ii). However, unlike the working interpreters and end-users surveyed in the studies cited previously, Peng notes that trainers do not "share a common meta-language to discuss quality attributes of interpretations" (*ibid.*). Therefore, she researched standards accepted by professional interpreters and academics and devised a feedback tool to enable student interpreters to assess their own output, particularly with respect to coherence. She analyzed a number of consecutive interpretations by students and professionals and concluded that the two groups took different approaches to dealing with coherence: "Trainees tend to focus on local cohesion while professionals tend to emphasise the global structure of the discourse" (*ibid.*: iii).

The feedback tool devised by Peng (2006: 82-83) is quite detailed, including many different elements for evaluating the coherence of interpretations. The elements of coherence most relevant to this discussion can be summed up as follows: 1) accuracy and completeness (correctness of factual information, conserving the speaker's intent and emotion); 2) quality of the interpreter's language (grammar and usage, making sense, correct use of terminology, complete sentences); and 3) delivery (clarity of articulation, proper intonation, pauses in appropriate places, pacing). It is important to point out however, that the source speeches given to the interpreters were themselves quite coherent. The following excerpt of one of the English speeches is representative of their quality:

> Thank you very much all of you. I look forward to all those contributions and perhaps from my personal point of view particularly to hearing the Greeks' perspective on immigration which I have some familiarity. But before we begin, I would like to a few words about the causes of immigration. I like to turn first of all to the question of asylum seekers, and examine statistics over the past ten years for asylum seekers entering the EU. Over the past ten years more than a half of the asylum seekers entering the EU came from former Yugoslavia, Iraq, Romania, Sri Lanka, Iran, the Democratic Republic of Congo, Afghanistan, Turkey, Bosnia and Somalia. And I like first to think for a moment what these countries have in common. Why is it that so many asylum seekers are coming from these regions? I think what these countries have in common

> is perhaps not so much poverty or an increasing population or a low life expectancy, but some kind of conflict. (Peng, 2006: 172)

Although this speech contains some errors in English style, it is quite easy to follow, particularly considering that it was delivered orally (and therefore, the lack of commas would presumably be overcome by pausing in the appropriate places). The criteria against which the interpretations were being judged, therefore, were in keeping with the quality of the source speeches. Returning to the topic of this chapter, users of interpretation services have the same expectations for coherence, regardless of how coherent the source speech was. If we compare the sample speech from Peng's research to that excerpted from the Miguelez (2001) study, we see an obvious contrast. One other caveat is in order: Peng's work focused on consecutive interpretation, whereas simultaneous interpreting would be required in the case of speeches in the European Parliament and expert witness testimony in court. It is commonly accepted that consecutive interpreting allows for greater coherence of the target language text because the interpreter benefits from having heard the entire speech (Russell, 2000: 43). Nevertheless, the criteria identified by Peng are useful tools for evaluating some aspects of quality.

## 6. Legal language

With respect to the judicial context that is the focus of this chapter, the incomprehensibility of legal language in general has been the subject of much criticism. Melinkoff's (1963) seminal work on English legal usage is still relevant, despite the many years that have passed since he wrote it, which reveals the reluctance of the legal profession to change its ways. Translators of legal texts, already challenged by the barriers that separate different countries' legal systems, also struggle with the nearly impenetrable style of writing adopted by lawyers as they draft contracts, treaties, and other documents. For example, Loiacono (2010: 257), examining the translation of bilateral agreements between Italy and Australia, comments, "The Agreements are not always written to make their content easily understandable for ordinary readers". To illustrate his point, he presents this excerpt:

> There shall be a Mixed Commission equally composed of representatives of the Contracting Parties jointly chaired by officials from the Italian and Australian Film Industries and assisted by experts appointed by the respective competent authorities to supervise and review the working of this Agreement to resolve any difficulty which may arise and to make any proposals considered necessary for any modification of this Agreement. (*ibid.*: 257)

This sentence is not impossible to understand, just convoluted; an educated layperson reading the text can eventually figure out what it means (though if it were delivered orally, it would be difficult to follow). Loiacono contrasts the "legal equivalence approach" to legal translation, which emphasizes preservation of the letter of the source text with a view to guaranteeing concordance between the two versions, with the "functional approach" whereby the translation "expresses the intended meaning and leads to the intended results" (*ibid.*: 246). The English-Italian translations of the bilateral agreements he evaluated adopt the former approach and do "not make any great effort to be easily comprehensible for either the Italian-speaking or English-speaking public" (*ibid.*: 260). The dichotomy between these two approaches to translation is analogous to the choice between a literal interpretation and a target-language version preserving the "sense consistency" of the original message, which was presented to the users of conference interpreting services surveyed by Kurz (1993/2002), Collados Aís (2002), and Moser (1996).

Even though interpreted court proceedings are oral rather than written, much of the language in the courtroom is based on written texts (jury instructions, criminal and civil codes, contracts, and the like). To fully understand such discourse, court interpreters must read similar texts and become familiar with the legal register in their preparations for interpreting. They must adopt strategies similar to those described by Loiacono (2010) when rendering the discourse of judges and attorneys into the target language. Framing communication in the courtroom in the terms adopted by Kent (2006), the language of legal professionals in the courtroom is a product of their shared identity, and for those outside the "inner circle", the language may seem like gibberish. The subject of this chapter is not only the complex, dense, abstruse language of legal writings and the spoken form of that language, but also the genuinely garbled and nonsensical language of spontaneous oral speech that often occurs in court proceedings. For that, we must turn to the work of scholars (cf. O'Barr 1982; Charrow 1982; Tiersma 1999; Dumas 2000a, b, and Harris 2001), who have studied in particular the use of the English language by legal professionals in oral court proceedings.

Looking at the application of oral legal discourse in the multilingual courtroom, Stern (2004) studied the translation and interpretation services provided at the International Criminal Tribunal for the Former Yugoslavia (ICTY), where the official languages are English and French and the working language Bosnian/Croatian/Serbian (BCS). Like the European Parliament interpreters quoted by Kent (2006), the respondents in Stern's survey described the language that resulted from attempts to bridge the gaps between French and English legal terms as a "*langage-hybride*, a jargon" that made the proceedings difficult to understand for witnesses (Stern 2004: 66). The translation staff, faced with the familiar problem of the lack of lexical equivalents for legal terms, relied on their own research and reference works such as dictionaries to arrive at suitable translations. These translations were often "verbose solutions" with explanations in

brackets or footnotes (*ibid.*: 65-66) that could not be used under the time constraints of simultaneous interpretation. Stern analyzed the strategies employed by interpreters, and found that they:

> […] use either a literal, semantic, speaker oriented, approach, or a pragmatic, communicative, recipient-oriented one, ensuring the comprehensibility of the message transferred to the listener. The latter consists of the interpreter's resorting to what may appear to be a freer interpretation. It relies on lexico-grammatical changes, conveying the intention of the speaker in order to ensure comprehensibility to the recipient in the TL. (*ibid.*: 67)

Stern elaborates further on the recipient-oriented or listener-centred approach: "The listener-centred approach to the interpreting of legal language is a pragmatic one. It relies on paraphrasing, or on a brief explanation of a phenomenon using existing signs". To illustrate this strategy, she cites the interpretation of the English term "examination-in-chief" with a BCS phrase meaning "main examination by the prosecutor" and "you are going to be cross-examined" with a phrase back-translated into English as "you will be examined by the defence". Although Stern cautions that this approach has its limits – and indeed, solutions such as these two run counter to standards such as the NAJIT Code of Professional Responsibility (NAJIT, n.d.) – she emphasizes that "the value of paraphrasing lies in placing the terms or expressions of the SL in a context. It is the added explicitness by reference to the context that makes the equivalent in the TL more comprehensible to the listener. That is the essence of the listener-oriented approach to interpreting" (Stern, 2004: 70).

Another scholar frames the judiciary interpreter's dilemma as "the tension between adequacy and acceptability" (Ng, 2009). Ng's research focuses on bilingual court proceedings in Hong Kong, where both Chinese and English are official languages. Interpreting predates the translation of statutes in Hong Kong, since it was not until 1974 that Chinese was added to English as an official language, but witnesses had been giving testimony in Cantonese and other Chinese dialects for a long time before that (*ibid.*: 39). The first bilingual ordinance was enacted in 1989, and from that time onward all legislation was gradually translated into Chinese, resulting in a completely bilingual set of laws at present. Because court interpreters had already developed a repertoire of Chinese translations of legal terminology before translators began grappling with the difficult task of finding legal equivalents in two very different languages and two very different legal systems, they were using customary terms that did not match those eventually adopted by the translators. Ng sums up their dilemma in this way:

> The customary translations, which have gained wide currency over the years, nonetheless continue to thrive in the courtroom. The official translations, however adequate[ly] the legal translator believes they represent the meanings of their English counterparts, sound alien, especially to laypeople. Thus, when putting a charge to a defendant – one without legal representation in particular – the court interpreter often

> has to resort to the customary translation, or to supplement the official translation with the customary one for fear that the defendant might think s/he is being charged with a different offence. (*ibid.*: 40-41)

To illustrate further, Ng cites a case in which a defendant's conviction was overturned on appeal because she "could have been guilty under the law in English but innocent according to the Chinese translation" (*ibid.*: 45).

Whereas translators "prioritise accuracy over acceptability", interpreters are "concerned not only about the accuracy or adequacy of the interpretation, but also the comprehensibility and acceptability of the interpretation". She goes on to say that "in the process of interpreting, court interpreters benefit from a known or well-defined audience, which allows them to adopt a more flexible interpreting approach depending on whom they are interpreting for" (*ibid.*: 41). Ng also makes the very pertinent observation that the meaning of legal terms changes over time, and common usage does not necessarily coincide with legal language. For example, the term "burglary", which used to be translated and commonly accepted in Hong Kong as *baoqie* (meaning "breaking in to steal"), is now translated as *ru wu fanfa* (literally "entering a house to commit an offence therein") in the Chinese version of the Theft Ordinance because the Chinese term *baoqie* corresponds only partially to the common law concept of "burglary" (*ibid.*: 42). Further on, she points out:

> However, the acceptability of *ru wu fanfa* remains low. As of today *baoqie* remains an oft-cited term both inside and outside the courtroom. In courts, it is not uncommon for court interpreters to supplement *ru wu fanfa* with the old customary term *baoqie*. Similarly, the news media use the term *baoqie* – instead of *ru wu fanfa* – most of the time in reporting burglary cases. (*ibid.*: 43)

A similar assertion could be made about the English term "court", which is commonly translated into Spanish with the cognate "corte" by the news media and laypersons, even though lawyers would use the terms "juzgado" or "tribunal". There are undoubtedly many instances of this phenomenon in languages that come into frequent contact with English.

A related problem with legal terms is that a term may coincide with a perfectly ordinary word in the source language, and therefore, be readily accessible to laypersons, but the equivalent in the target language may be obscure and inaccessible to anyone without legal training. For example, "dismiss" in English is a high frequency word, whereas the Spanish equivalent, *sobreseer*, is a low-frequency word that most laypersons would not understand. In cases such as this, an interpreter would be justified in selecting a commonly accepted term rather than the proper legal term.

In his analysis of legal translations, Loiacono (2010) refers to the "skopos" theory, "the notion that translation depends first and foremost on the intended function (*skopos*) of the target text as well as the nature of the source text: this

is the 'functional approach'" (*ibid.*: 246). It is worth asking what the function of courtroom discourse is, i.e. who the intended audience is. In some cases, there may be multiple audiences: the monolingual or bilingual legal professionals present in the courtroom, the monolingual laypersons participating in the proceedings (most particularly, the accused), and the appellate courts, should the matter be appealed. This may explain why interpreters in Hong Kong provide two alternative equivalents, the "official translation", for consumption by legal professionals, and the "customary translation," to be understood by the defendant (Ng, 2009). In the context of the European Parliament, Kent (2006) also alludes to the purpose of the communication and the intended audience when she describes what has been called "documentary interpreting":

> 'Documentary interpreting' refers to the realm of media not law: specifically, interpreters perform *for the show*. Documentary interpreting in this sense should not be confused with interpreting for the record. Although described as 'debate,' the speeches given by Members during plenaries are mainly directed to consumption by home country audiences via the internet, television, and radio rather than as engagement with colleagues who are in the same room. (*ibid.*: 57, emphasis in original)

Returning to the courtroom, it can also be said that much of what goes on in jury trials is "for the show", either an attempt to sway the jury or to get something into the record for later appeals. Although the defendant has a right to be "present" during all stages of the proceedings, that right does not make him an active consumer of the testimony. When an expert witness testifies, for example, the purpose is to convey to the jury (and to the appeals court, if necessary) the scientific or technical basis for the evidence. The witness is addressing the jury, not the defendant (who is the user of the interpreting service, hence the interpreter's audience). In contrast, when a judge directly addresses the defendant or an attorney questions a witness through an interpreter, the interpreter is more constrained by the "legal equivalence" principle and the concept of equality before the law (i.e. a defendant who does not speak the language of the court should not benefit from any clarification or explanation that a defendant who does speak the language would not receive). Lee concluded from her survey of judiciary interpreters and legal professionals that "[t]he different nature and purpose of communication and the different levels of formality in court and tribunal settings may have implications" for the interpreter's role (Lee, 2009: 50).

## 7. Interpreters' solutions

The strategies adopted by interpreters when faced with source messages that are incomprehensible vary according to the situation in which they are working. In conference interpreting, there is somewhat more freedom to adjust the output to the audience and the type of conference (cf. Moser 1996; Kurz 1993/2002; Col-

lados Aís 2002), whereas court interpreters are bound by the requirement to conserve "legal equivalence" (Gonzalez *et al*. 1991).

There is some evidence that interpreters correct speaker errors, whether consciously or not. The interpreters in the Miguelez study did not reproduce speakers' grammatical and syntactical errors in the source language (Miguelez 2001: 11), a finding corroborated by Lee (2009). In addition, Miguelez discerned a tendency to eliminate redundancies and repetitive language when interpreting proceedings simultaneously for the defendant (Miguelez 2001: 14). In Lee's survey of court interpreters, some of the respondents "indicated that they sometimes simplified questions, or explained legal terms rather than simply using the equivalent terms in the target language, or that they conveyed only the main point of the question if they perceived that the witness was having difficulty understanding" (Lee 2009: 47). An example of what some might consider an improper addition or clarification is experienced interpreters' tendency to restate witnesses' answers once they become clearer in context, which Miguelez attributes to the interpreters' ability to "monitor and/or correct their renditions" (Miguelez 2001: 13). Other strategies are employed by veteran interpreters when speakers make false starts:

> In these cases, interpreters use many strategies including ignoring a clear and easy-to-omit false start […], reproducing the phrase that comprises the false start using prosodics to help convey meaning and ensure comprehension […], or waiting to grasp the meaning of the utterance and eliminate the false start […]. (*ibid*.: 16)

The study of juror comprehension by Napier *et al*. (2009) also suggests that interpreters may improve the clarity of messages, because in some instances, the deaf participants in the mock jury trial (who used the services of interpreters) gave correct and more detailed answers to questions about the judge's summation than hearing participants (*ibid*.: 110).

In other cases, interpreters could not improve the clarity of the message even if they wanted to, and must opt for a more literal rendition. One of the examples of incoherent witness statements cited in Miguelez (2001: 18) is the following:

> At this time I obtained test bullets using 38 S&W caliber ammunition of Winchester Western manufacture or loaded with bullets which were copper-coated lead and recovered test bullets from State's Exhibit I.

Miguelez comments:

> In these cases, the interpreter has no choice but to render an ongoing interpretation of what she/he hears as it is virtually impossible spontaneously to correct or improve the quality of spoken language when cohesion and coherence are so totally lacking. On some occasions, the context and previous testimony aid comprehension by both the interpreter and the target language receiver and, of course, their willingness and desire to achieve communication also plays a significant role. (*ibid*.: 18)

Another solution is to develop and memorize a compendium of scripted formulas in a sort of "phrasebook". In this case, a formula is "a group of words which is regularly employed to express a given typical and recurrent idea, regardless of the form that this idea takes in the source text" (Henriksen, 2007: 9). Thus, even though the idea is expressed repeatedly but in slightly different ways, the interpreter resorts to the same formula every time. In the courtroom, for example, one judge may use the term "right to counsel" while another uses "right to legal representation" or "right to an attorney", and an interpreter might have a single pat phrase to render all three of these terms. It is important to point out that the interpreter must have extensive experience with the genre of speech in order to develop formulas that are truly equivalent in meaning (*ibid.*: 13). In other words, interpreters must be part of the "shared identity" emphasized by Kent (2009) in order to fully comprehend the source message and develop formulas that are truly equivalent in meaning.

A distinction should be made between the simplification or editing noted by Lee (2009) and providing "functional equivalents" (Miguelez, 2001; Loiacono, 2010). Many interpreters resort to the latter expedient, particularly in the case of culturally bound references (Gonzalez *et al.*, 1991: 488; Lee, 2009: 45). That is, they focus on speaker intent rather than rather than producing literal translations. As interpreters gain experience and familiarity with the genre of courtroom discourse, they become more adept at the conveying meaning of obscure terms such as "ran the plates" or "run density" instead of simply translating them literally, as interpreters-in-training do (Miguelez, 2001: 9). Miguelez makes an important point about the motives behind interpreters' decisions when she indicates that they have a desire to achieve communication (2001: 18). Moreover, the *skopos* of the message is an important factor:

> As a simultaneous rendition of expert testimony provided to the defendant in order to protect his/her due process rights does not become part of the record or contribute to a judge's or jury's perception of credibility or trustworthiness, the primary goal becomes achieving communication. Hence, the high degree of equivalence required for interpreted testimony that does go on the record is not required in these instances. (*ibid.*: 16)

The strategies discussed above can be summed up as follows:

1. interpret literally, adhering to the form of the source language message, regardless of whether the listener understands it;
2. correct errors in the source speech and improve on the style;
3. provide a functional equivalent that better reflects the meaning of the source message;
4. use a memorized formula, developed with experience, that reflects the meaning of the source message.

The appropriate choice among these strategies depends on whether the source message is incomprehensible because the recipient of the interpreting is not the intended audience and, therefore, does not share the same contextual framework, or because the message is so garbled that it is impossible for anyone to understand. The interpreter must also consider the *skopos* of the target message, the intended audience of the speaker, and the intended recipient of the interpretation. In short, interpreters must exercise a great deal of judgment in choosing among these options, and the more experienced they are, the better their decisions are likely to be.

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