The gum syndrome: predicaments in court interpreting

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ABSTRACT This article examines aspects of communication relevant to the process of interlingual interpretation, and considers the law's equivocal attitudes to interpreters. It identifies a tendency by many of the professional figures in the courtroom to consider the interpreter a mere instrument, and by many language-handicapped defendants to view the interpreter as a linguistic and psychological haven. The effects of variations in the physical courtroom setting are considered, and some aspects of interpreter role delineation are reviewed. A number of predicaments typically experienced by court interpreters are described, and their effects on interpreters as individuals analysed. Examples are drawn from a variety of contemporary and historical sources, including case reports and two email discussion forums.[1] Although most of the material comes from the Anglo-Saxon legal tradition, it is argued that the interpreter's position on the one hand as a humble technical instrument and on the other as the potential saviour in a situation of language handicap is a constant in the legal arena irrespective of time frame or jurisdiction.

KEYWORDS court interpreters, attitudes, interpreter role, predicaments

INTRODUCTION

The actions and attitudes of different participants in legal proceedings convey a number of conflicting messages about the role expected of interpreters. The actual practice of interlingual interpretation in a court of law may be subject to a variety of codes of ethics or other formulations, whether originating with the judicial system, with a professional association or elsewhere. Professionalism and experience provide a second set of guidelines which help to determine interpreters' behaviour. A third element relates to the interpreters' human condition: although they may suppress their personal feelings while providing interpretation services, in interpreting situations they are inevitably exposed to stresses, and various affective responses are generated.

The 'gum syndrome' refers to two contrasting situations typical of the provision of court interpreting and interpreters' ways of coping. One is a direct result of what is known as the 'conduit' approach, in which the interpreter is perceived as an invisible pipe, with words entering in one language and exiting – completely unmodified – in another language. The law therefore views the interpreter as a mechanical instrument, to be

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used entirely as the court sees fit. In the contrasting situation, defendants who have no command of the language relate to interpreters as their saviours. Finally they have found somebody with whom they can communicate readily and who represents home. Interpreters' attempts to correct this misconception tend to be remarkably unsuccessful. Caught between these two extremes, the court interpreter may be made to feel like the merest of incidental items and, at the same time, the most important person in a defendant's life. These two contrasting situations have been likened by interpreters to being a piece of gum on the bottom of a shoe – ignored for all practical purposes, but almost impossible to remove.

COMMUNICATION AND INTERPRETATION IN THE COURTROOM

The essence of the problem involved in the process of transferring meaning between languages generally is to be found in Halliday's social-semiotic theory of language as a system of meanings, according to which 'language not only reflects and transmits the values and relationships of a society: it actively creates and maintains them' (Roberts, Davies and Jupp 1992: 67). The precise concepts that underlie a particular word or phrase as used in one society are therefore almost bound to differ from their counterparts in a second language: indeed, another language may lack an equivalent concept, value or expression. This problem is particularly acute in the oral practice of interlingual interpretation in judicial contexts on which this paper focuses. The following is a classical definition of the court interpreter's role:

> A court interpreter is an officer of the court trained to listen in one language and interpret into another during courtroom and related judicial proceedings. The interpreter's job is to minimize language obstacles between the court and all parties to a legal proceeding.
>
> (*Policies, Procedures and Practices Governing the Operation of the Office of the Court Interpreter* 1992)

What is the hapless court interpreter to do? To what extent – if at all – is a court interpreter at liberty to elucidate, to 'make explanation' of the concept in question?[2] Where a 'literal' rendering will be meaningless in the target language, is the interpreter not *more* of a 'traitor' if no clarification is provided?

Interpreters are in a 'no-win' situation. The process by which they undertake to convey meaning from one language into another involves gaining an understanding of the intentions of the original-language speaker and attempting to convey the illocutionary force of the original utterance. Not to do so is to run the risk of betraying the 'meaning' of the

original message. Yet inevitably the understanding will be to some extent a personal, i.e. subjective, one. Judicial circles do not, however, wish to be presented with such pre-processed material. Where ambiguity or polysemy exists, triers of facts ideally wish to be presented with *all* the linguistic options. Thus in the 1986 Canadian case of *Cormier* v. *Fournier*, Godin J. noted (at 681) how listening to a consecutive target-language rendering after he had heard the original testimony would, unacceptably, suggest an interpretation to him. Similarly, in the 1939 English case of *Dies*, Stable J. argues, disapprovingly, that a 'mere translator' may put his own construction on a document, and then impose that construction on the Court by the medium of the translation selected (*Dies* at 733–43).

Noting that the court interpreter must constantly make 'judgement calls' as to whether it is proper to use the techniques of amplification, explicitation or compression, González observes: 'In case of any doubt, it is preferable to stay closer to a direct translation of the SL [source language] message' (1991: 314). The interpreter must inevitably exercise judgement in deciding how much latitude to assume. Thus subjectivism can never be excluded altogether, even if it amounts to a decision not to adopt a subjective approach.

TRAITOR AND INSTRUMENT

The essence of the interpreter's predicament is that during courtroom situations, to all intents and purposes the jurist seeks to ignore the interpreter's presence, professing to believe that the interlingual interpreting process consists of purely mechanical factors. The particular image used to convey this view of the interpreter may vary over time. Thus the court interpreter has variously been compared to a phonograph (*Gregory* v. *Chicago, R. I. & P. R. Co.)*; a transmission belt; transmission wire or telephone (*United States* v. *Anguloa* at 1186); a court reporter (*People* v. *Resendes* at 612–13); a bilingual transmitter (*Gaio* v. *R.* at 430); a translating machine (*Gaio* at 431); a medium and conduit of an accurate and colourless transmission of questions to and answers from the witnesses (*State* v. *Chyo Chiagk* at 704); a mere cipher (*R.* v. *Attard* at 91); an organ conveying sentiments or information (*Du Barré* v. *Livette*); a mouthpiece (*Gaio* v. *R.* at 429); and a means of communication (*Gaio* v. *R.* at 432). Such images equate interpreters with unobtrusive devices or channels, straightforward technical adjuncts. In this way the individuals performing language-mediation activities are depersonalized, and denied any personal input or interactive role. Attention is deflected away from them as individual participants in their own right.

Lawyers' negative views of interpreters are long established and well documented. Perhaps the most infamous expression of this attitude is that of Norman Birkett, the British Alternate member of the Nuremberg

War Crimes Tribunal Bench, who viewed 'translators' as 'a race apart – touchy, vain, unaccountable, full of vagaries, puffed up with self-importance of the most explosive kind, inexpressibly egotistical, and, as a rule, violent opponents of soap and sunlight' (quoted in Hyde 1964: 521).

The 1889 American case of *Rajnowski* v. *Detroit* contains a somewhat less emotive, albeit highly cautious view of court interpreting services:

> But the danger of mistakes in legal proceedings is such that nothing but practical necessity can justify the intervention of an interpreter between counsel and witness or witness and jury, although it is well settled that on a proper occasion it is allowable, and the occasion must usually be judged of by the trial court.
>
> (*Rajnowski* v. *Detroit, B. C. & A. R. Co.* at 850)

For the defendant, however, the interpreter may constitute far more than a reluctantly accepted practical necessity.

THE SHANGRI-LA OF COMMUNICATION

At the other end of the spectrum, for defendants without a working knowledge of the judicial system's language, interpreters as individuals constitute the Shangri-La of communication. In their presence defendants feel that they can finally, without linguistic constraints, express their feelings and thoughts and escape from the isolation to which they are sometimes condemned long before their trial takes place, and certainly long before any sentence is passed. Paradoxically, interpreters' attempts to explain the strict confines of their role may further reinforce defendants' propensity to cling to them as potential saviours, providing not only a linguistic, but also a cultural and legal haven.

Courts are well aware of the natural tendency for a defendant to feel close to an interpreter. In *State* v. *Mitjans*, a police officer investigating the case had acted as an (unsworn) interlingual interpreter in interviewing the defendant. The Minnesota appeal court's comments reflect a not-unsympathetic awareness of the possible occurrence of interpersonal aspects in the interpreter/client relationship:

> Interpreters should be neutral and objective if at all possible ... Because of the close relationship and natural empathy between a translator and a defendant dependent on that translator to communicate his thoughts and feelings, a translator should be someone a defendant can place trust in and rely on to protect his interests. This is an unnatural burden to place on the shoulders of a peace [sic] officer actively working to gather evidence to help convict a defendant.
>
> (*State* v. *Mitjans* at 225)

A hard-line formulation of the official line on this issue expresses the relationship as follows: 'Interpreter's relationship with the subject is professional, never sympathetic or personal' (Code of Ethics, in Superior Court of Arizona 1992). Rigidly implementing such an approach may not be easy. Writing as a former interpreter who subsequently became a barrister in the English legal system, Morgan (1982: 51) describes the interpreter's predicament as follows:

> While a barrister must maintain and establish a relationship of polite aloofness with his client, there is almost inevitably a strange, transient intimacy between interpreter and defendant. This is exacerbated by the fact that the interpreter stands alongside the accused in the dock and on the witness stand and repeats his words as they are uttered, using the first person singular. The result is a curious identification with the defendant, akin to the actor's identification with his role. The accused, for his part, nearly always responds warmly, regarding the interpreter more as a friend and ally than as a person paid by the prosecution to do a job. After all, in many cases the interpreter is the only person around with whom he can hold a direct conversation! It is sometimes hard for him to accept that the interpreter's role is other than friend and mentor.

The following text shows how one court interpreter in the United States extricates herself from situations where defendants begin to talk to her about their case: 'I understand your situation. However, I am here just to help you communicate with the court. I have no legal training and am bound by the canons of my profession not to give legal advice' (Barbara Bresnahan Duarte, Courtinterp-l email discussion forum, 3 August 1998). This phrasing conveys in a sympathetic but firm fashion the same message about the interpreter's role as formulated in an official text: 'Interpreter is assigned as a linguistic aid only. He does not serve in an advocacy or clerical function for subject, and ethical rules prohibit his having direct conversation with subject regarding the facts of his case' (Superior Court of Arizona1992).

THE EFFECTS OF THE PHYSICAL SETTING

As Morgan has pointed out (1982: 51), the physical setting can be a highly relevant factor in determining the degree to which a defendant will tend to 'cling' to the interpreter. In the United States, the defendant is seated at counsel table with defence attorney and defence interpreter. In jurisdictions which more closely follow the English system, the defendant will be alone with the interpreter in the dock, apart (normally) from a dock officer. However, even in the United States, if the defendant is not represented the interpreter will be similarly on his or her own with the defendant. This can exacerbate the gum syndrome.

It may be precisely to prevent the occurrence of the phenomenon described by Morgan that some jurisdictions, such as the Austrian, rigorously separate the interpreter from the defendant. In the *Kamasinski* appeal report, the European Court of Human Rights describes the conditions under which interpretation was provided to the American defendant as follows:

> A registered interpreter was present, sitting next to the applicant's defence counsel to the left of the judge's bench, while the applicant was sitting at a distance of about 6 to 7 metres from his defence counsel facing the bench.
>
> (*Kamasinski* v. *Austria* at 45)

In the Austrian setting, defendants are thus utterly isolated from both their lawyers and their interpreters. In an English court defendants may find it difficult to communicate with their legal representatives, but non-English-speaking defendants do at least have interpreters by their sides who can unobtrusively provide them with an ongoing version of everything being said in court. The physical arrangements of the Austrian courtroom made it very difficult for Kamasinski to complain about the incomplete interpretation he received when witnesses were being examined. The record of the trial, which he described as being 'virtually devoid of details', failed to mention what he describes as his 'loud complaints' in this connection (*Kamasinski* v. *Austria* at 67).

Nevertheless, in *Kamasinski* the European Court of Human Rights ruled (at 38) that 'it cannot be regarded as unreasonable to limit challenges on the grounds of inadequate interpreting services to those where a motion was brought at the trial'. There is, of course, a basic problem here: frequently the lawyer will not be aware of interpreting problems, and the language-handicapped participant (who may or may not be aware that faulty interpreting is leading to difficulties) may have no way of communicating with the lawyer other than through the interpreter whose performance is sub-standard, and who may therefore tend to repress any such comments, even if the individual attempts to make them. In the absence of an aware third party, therefore, such motions are unlikely to be made during the proceedings. Or, as in *Kamasinski*, even if the language-handicapped defendant does complain about an absence of interpretation, failure to note such observations in the court record, and further failure by the defendant's lawyer to bring a motion to that effect, will automatically lead to rejection of interpreting-related challenges in any subsequent appellate proceedings. A system such as Austria's thus ensures that, in all probability, complaints about interpreting will not be made at all or, due to failure to interpret them, not be made effectively at the original proceedings; but unless they are, they cannot be entertained

in a subsequent appeal. This seems to be a particularly refined variation on the catch-22 theme. The upshot is to reduce even conscientious interpreters to a partially silenced piece of gum, unable to provide in full the services for which they were engaged and to which the defendant may consider himself entitled (Article 6(3)(e), European Convention for the Protection of Human Rights and Fundamental Freedoms).

Modern technology can, of course, allow interpretation to be provided relatively unobtrusively from and to almost any location. Again, such provision requires a willingness on the part of the judicial system to accept the use of the requisite equipment. Reports indicate that in the United States, interpreter convenience and performance, as well as client comfort, are much improved and proceedings less disrupted by the use of wireless equipment which originally, in the best American self-help tradition, was provided independently by interpreters and whose use is generally accepted by the courts. In contrast, to this day in English courts interpreters are prohibited from bringing their own electronic equipment into court, even though this could reduce physical and acoustic strain for themselves and language-handicapped defendants. Yet no expense or trouble was spared to set up a complete simultaneous interpretation installation for a group of Russian jurists who visited a Central London court in the early 1990s to observe the workings of English justice.

ROLE DELINEATION

An alternative scenario involves the defendant who has no lawyer, where attempts are made not only by the defendant but also by courtroom personnel to substitute the interpreter for the absent lawyer. The interpreter's predicament at this end of the spectrum is pithily described by a practising interpreter from the United States as follows:

> I truly hate it when the defendant shows up without an attorney. It puts the interpreter in a very uncomfortable position. You are the only person who speaks the defendant's language and it's only natural that the defendant would look to you for advice and support. At times putting distance between you and the defendant can be like trying to pull gum off the bottom of your shoe – the more you try the more it sticks. Attorneys, judges, and DAs sometimes are all too willing to hand the defendant over to you since 'you're the only one who can communicate with him'. To which I reply: 'I do not initiate the communication. I facilitate its flow between two languages and across cultural barriers. You start it, I channel it, OK?'
>
> (Barbara Bresnahan Duarte, Courtinterp-l email discussion forum, 3 August 1998)

This comment illustrates an experienced interpreter's ability politely but firmly to 'lay down the law' to the other professionals in the courtroom, when on occasion they exacerbate the defendant's dependence on the interpreter by using the language issue as an excuse to relinquish responsibility and act as if the interpreter were not a conduit, but a substitute lawyer – the 'saviour' syndrome. The degree of 'adhesion' between interpreter and defendant can be considerably reduced by proper linguistic and ethical behaviour on the part of the other courtroom participants.

There are limits, however, to the degree to which the interpreter's role should be reduced. At times defence lawyers may be – or consider themselves to be – fluent in the defendant's language. This may make it possible for lawyer and client to communicate directly, without the services of an interpreter. Indeed, at times courts have considered the provision of such linguistically adroit lawyers to meet the requirement of enabling language-handicapped defendants to follow the proceedings against them. How lawyers are supposed to act effectively at one and the same time both as lawyers and as competent interpreters has never been satisfactorily explained. The following anecdote illustrates one interpreter's highly effective approach to obtaining better lawyer behaviour:

> Last year during a plea, the Public Defender kept talking to the defendant in Spanish and sort of repeating what I was saying simultaneously but in very broken Spanish. His voice and the defendant's questions when he (the defendant) did not hear/understand a word were driving me bonkers. Not only was I losing my concentration, but the defendant was not getting the full benefit of the information. Fortunately, the municipal judge (whom I absolutely revere) is Hispanic, cares greatly about interpreters and speaks enough Spanish to save his bench. He noticed what was going on but did not say anything. After two rights and two waivers, I raised my hand. The judge motioned me to speak. 'Your Honor, the interpreter would like to stipulate. The interpreter doesn't do law; counsel doesn't do language.' The judge chuckled, 'Any objections, Mr. XX?' The attorney turned red, 'None, Your Honor.' This is the same attorney who addresses an interpreter by saying, 'Hey, you, we'll talk to my client now'. When he did that to me, I looked at him, did not budge and said, 'So ... you don't have a tongue? And, for your information, the name is not U, it's Madame Interpreter.' Very calm, very professional, very intent and very cordial ... He says hello now every time he sees me. Some people learn the hard way.
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> (Irene Tenney, 25 August 1998, Courtinterp-spanish email discussion forum)

COURT INTERPRETERS' PREDICAMENTS

A number of predicaments may be encountered in court which relate to expectations about the function of court interpreters. These are dealt with on the spur of the moment on the basis of individual interpreters' experience, as well as whichever of the expedients available to them is considered appropriate – covering the gamut from delicacy through humour to obstinacy. Such predicaments may arise in a number of situations, such as attempts by judicial figures to silence an interpreter; truculent attitudes on the part of a defendant seeking to exploit the language situation; inadequate interpretation being provided by another interpreter in the same case; linguistically or culturally based confusion; expressions of prejudice against the defendant, witness or interpreter by other participants in the proceedings; and, a related but separate issue, the predicament of realising that the defendant has not received proper interpretation. Each of these predicaments will be examined in some detail below.

Judicial figures' attempts to silence an interpreter

Probably the most famous instance in the literature of a judicial figure's attempts to silence interpreters is the 1988 Australian case of *Gradidge*, in which a sign-language interpreter refused to obey the judge's instructions to refrain from interpreting exchanges between the court and the barristers. As the appeal report puts it (at 422), the interpreter formed – and expressed – an opinion 'about her duty to interpret exchanges between the court and the barristers, and to do so despite an instruction by his Honour, with the acquiescence of counsel then appearing for the appellant'. When the judge remonstrated with the interpreter because she was still interpreting to her client, this indomitable individual continued interpreting the exchange between herself and the bench. The case was subsequently appealed.

The analysis of Samuel J., one of the New South Wales Supreme Court judges, touches upon a number of issues relating to the nature and scope of the interpreter's task, the interpreter's interaction with the language-handicapped party, and the trial judge's control of everything that happens in the court generally, including when an interpreter is present:

> The task of an interpreter is not restricted merely to passing on the questions when the party is giving evidence; it must be extended also to appraising a party of what is happening in the court and what procedures are being conducted at a particular time. We are all aware that this is not uncommonly done and sometimes a judge may have to ask an interpreter to speak a little more quietly or remonstrate when altercations develop, as they sometimes do, between the interpreter and the party. All of these things, when they occur, must be determined and dealt with by the trial judge. I emphasize, however, that it

> is quite wrong to imagine that all an interpreter is supposed to do is to translate questions for a person in the witness-box ... I readily understand that there are some cases that the use of an interpreter, particularly one as indefatigable as this one, might produce irritations and frictions which heighten the emotions which are commonly to be tapped in most forensic procedures; but that is simply a matter which cannot be helped. A judge must resolve these conflicts if they occur as well as he or she can.
>
> (*Gradidge* v. *Grace Bros. Pty. Ltd.* at 426 and 429)

And while the judge is resolving any such conflicts, the interpreter must continue to handle communication as he or she sees fit.

Truculent attitudes on the part of a defendant seeking to exploit the language situation

Defendants may seek to exploit their non-standard speech patterns and cultural backgrounds in the court setting. In the following example, Barbara Bresnahan Duarte has described how she evolved techniques for dealing with a black Puerto Rican defendant who claimed that no one could understand his Spanish: not the interpreters, nor the Hispanic attorney first assigned to his case. Every time he made a statement, he later filed a motion to have it suppressed, claiming it had been misinterpreted. Bresnahan Duarte and a male interpreter worked on his case both in and out of court. Despite gender and ethnic difference, the defendant (called 'Mr Macho' by Bresnahan Duarte) preferred the 'Anglo' woman. At one particular hearing, where the defendant again claimed 'foul' on the Cuban's interpretation, the judge asked Bresnahan Duarte to comment on his dialect and culture. In her own words, 'this white American woman' then engaged in a long discourse about the black Caribbean culture and language, defending a Cuban interpreter who, claimed the defendant, could not communicate with him. The following vivid description makes clear the dynamics and techniques required of both the lawyer and the interpreter in order to ultimately deal with a situation of this kind:

> Now I was really getting fed up with this guy and his games, but I held my professional head up and rolled with the punches. Two weeks later, I'm back in court again with, you guessed it, the same guy. Now they have a new attorney assigned to his case. The joy of waiting for my moment of revenge was over. This new attorney was also fed up with this guy. The attorney let go with a string of not-so-nice words in English to the defendant, and, in exasperation said to me: 'in whatever language you have to use, get it across to this *#%@!! that I am not going to take any more #%@**!! from him!' So, overjoyed that

> I had permission to exact my revenge on this jerk, I began my own string of some not-so-very-lady-like words not found in any Spanish dictionary. To add insult to injury, I fixed my baby blues directly at him. His eyes grew round, his jaw dropped, and for the first time he had nothing to say. We're still not through with his case yet (six months down and a trial to go), but he is definitely a changed man. He defers to me when I enter the court, and has not made one complaint since our little exchange of words.
>
> (Barbara Bresnahan Duarte, 31 July 1998, Courtinterp-l email discussion forum)

The relevance to other female professionals of the interpreter's behaviour described in this anecdote has been confirmed by a male interpreter:

> I've also interpreted for women attorneys and probation officers whose strong personalities actually shocked male Hispanic defendants into compliance. Self-assurance and powerful approaches (for instance, clinical detachment or a no-nonsense attitude) can build up rapport faster than sweetness or kindness. Few things can get a macho's attention like sharp remarks or unflinching demands from a woman.
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> (Juan Vaquer Jr., 31 July 1998, Courtinterp-spanish email discussion forum)

The above comments by practising interpreters make it crystal clear that communication skills in the courtroom setting involve far more than the literal conveying of words. This is supported by research into the social significance of speech and speech styles which has highlighted the importance of styles of presentation, and in particular so-called 'powerful' or 'powerless' language features (Conley, O'Barr and Lind 1978; Danet 1979; Lind and O'Barr 1979; Tannen 1984). Gender may specifically be a further complicating factor in communication. In this spirit, Vaquer Jr. notes further in respect of demeanour that 'uneducated [that is, lacking in social graces, not necessarily unschooled] Hispanic men must be reached keeping in mind their respect for strength and contempt for weakness. Reached by men and women alike, that is; however, these men seem to be particularly stunned by assertive women.' The court interpreter's repertoire of skills includes the ability when necessary to confront a truculent defendant or lawyer intent on undermining the interpreter. To do so may require an assertive demeanour which conveys a positive message about the reliability of the interpreter's performance. The appropriate combination of firmness and tact must be applied. Such situations involve aspects of

communicative competence which go far beyond the neutral or empty condition of a conduit.

Inadequate interpretation being provided by another interpreter in the same case

On occasion, two interpreters may be present in court, one providing a version of witness testimony for the court, the other interpreting for the defendant. Such a situation existed in the 1993 Scottish case of *Mikhailitchenko*, involving a Russian-speaking Ukrainian footballer (at the time with the Glasgow Rangers football team) charged with drink driving. Although a defence interpreter was present in court, having been engaged by the defence for the purpose of confidential communication between defendant and counsel, she was specifically warned by the judge to take no other part in the proceedings before the court. The judge required the court interpreter to interpret everything stated in court, to ensure that the charge was interpreted to the defendant and to obtain his confirmation of the plea of not guilty. Clear difficulties arose in the course of this exercise as a result of the Bulgarian court interpreter's lack of proficiency in Russian. The court interpreter sought aid from the defence interpreter, who made it clear that she was not allowed to assist. It was obvious to defence counsel, at least, that the defendant was not following the court interpreter's attempts to interpret. The court interpreter, however, stated that she had interpreted 'in a general way' and that the defendant in her view had understood and was pleading not guilty. The upshot of the whole sorry business was summed up as follows by the appeal court:

> Throughout the whole time the matter was before the court, from 10.35 a.m. approximately until 1.35 p.m. when the sheriff made his pretended order, the complainer was totally confused and did not understand what had transpired.[3] Further, throughout this time the defence interpreter attempted to assist but the sheriff forbade her from doing so and in particular warned her to remain silent and not to speak at all. It was thereby impossible for the complainer to understand the proceedings, and further it was impossible for the said complainer's solicitor to obtain full instructions from the complainer.
>
> (*Mikhailitchenko* v. *Normand* at 59)

For the defence interpreter, seated in the well of the court between the solicitor and the dock, the situation must have been professionally embarrassing and frustrating. Her predicament was acute: she was prohibited by the bench from exceeding a very narrow brief, while professional canons require interpreters to assist linguistic communication in court. For the defendant, subjected to a linguistic chaos which probably heightened a certain degree of cultural mystification, the situation must have

been most disagreeable. The judge in the case commented (at 60): 'I said I was prepared to adjourn if Mr Peacock felt, as he seemed to indicate, that the court interpreter was not discharging her duties satisfactorily. I suggested he might care to have me swear in his interpreter as a substitute. He then told me he required her for his confidential communings with his client. That seemed reasonable and I did not pursue the matter.' Perhaps somewhat uncharitably it might be speculated that the 'reasonable nature' of the defence argument may have been associated with what ultimately turned out to be a successful defence counsel strategy.

Ultimately, the Scottish court's failure in *Mikhailitchenko* to engage a competent interpreter resulted in a possible miscarriage of justice: the case was dismissed on a technicality relating to the fact that the judge granted an adjournment despite the inadequacy of the court interpreter's rendering, and hence notwithstanding the defendant's failure to understand through the court interpreter what was going on. For once – due to the fact that the defence lawyer was willing and able to appeal a case on linguistic and technical issues – a linguistically handicapped defendant *benefited* from inadequate interpreting arrangements. All too frequently such individuals suffer as a result. Either way, justice is not served.

Linguistically or culturally based confusion

Yet another set of circumstances generating interpreter predicaments involves linguistically or culturally based confusion or miscommunication, whether actual or potential. In the pure 'conduit' role, the interpreter is viewed as a neutral machine through which a message passes untouched apart from the change in language. It is thus not normally acceptable in court for an interpreter to point out to an examining lawyer that for cultural reasons a particular form of questioning is either impossible to render in the target language or would be understood erroneously by the non-English speaker; nor for the interpreter to explain the cultural implications of the witness's reply. However, interpreters may at times wish to act in certain ways precisely in order to come closer to the vital goal of achieving enhanced accuracy in their performance. This may include seeking to identify and understand speakers' intentions. Such behaviour may draw attention to their role in the judicial proceedings and may, potentially, be perceived as critical of the functioning of judicial participants.

This predicament, which is the result of the vagaries of communication in general and interlingual interpretation in particular, is acknowledged in certain codes of ethics or professional practice. For example, the 1998 South Yorkshire Police *Notes of Guidance for Interpreters and Police Officers* specifically state that an interpreter may intervene to point out that a party might not have understood the message given, although the interpretation was correct, or to alert

the parties to a possible missed cultural inference, i.e. an item of culturally based information which has not been stated but the knowledge of which has been assumed.

A notable and fully documented example of such 'resourceful' interpreter behaviour is to be found in the proceedings for adultery brought in 1820 against Queen Caroline, the estranged wife of King George IV of England, who was accused of having committed adultery during an extended trip abroad. Two Italian interpreters were present at the trial: the second was engaged separately by the defence for fear that the prosecution interpreter would fail to satisfy the standards of impartiality required for the doing of justice. In practice, the two interpreters alternated with each other and monitored each other's performance. Some of the judges hearing the case also had a limited knowledge of Italian, and various interpreter renderings were queried. Sometimes an interpreter actually volunteered information in order to prevent misunderstanding. In the following extract, for example, the interpreter was aware that the English participants in the proceedings would not understand the way the Italians told the time, and that the literal rendering would be misleading:

Question: As nearly as you can recollect, what hour was it you passed through the garden of the Villa d'Este with Domenico Brusa?
Witness (through interpreter): About one or half-past one.
Interpreter: The Italian and the English time is reckoned by a different manner.

When it turned out on further questioning that the witness used the Italian method of telling the time, the lawyer was able to explore the witness's statement further:

Question: When you say it was about one or half-past one that you saw Pergami and the princess sitting in the manner you have described, according to the best of your recollection, how long was it after sunset?
Answer: The sun had been setting for an hour and a half.
Mr Cohen (second interpreter): My lords, I was born in Lombardy myself, and I know this is the mode of reckoning.

It is often stated that interpreters should not volunteer information on their own initiative: but in this case, not to have drawn the court's attention to the issue would have led to a complete misunderstanding of the evidence. Without the information provided by the two interpreters on their own initiative, the court might have understood that the Princess had been in the garden in broad daylight and not, as was actually the case, in the evening.

Expressions of prejudice against the defendant, witness or interpreter by other participants in the proceedings

Court interpreters often, but not always, belong to the ethnic or national group from which the defendant or witness comes. Indeed, as the following vivid description illustrates, sometimes an interpreter's membership of the majority group may appear linguistically suspect:

> There is one more element to the effects of gender, age, socio-economic status, education, etc., on communication, something that I have to battle every time I begin to interpret. You see, I am not only a woman entering middle age, I am a 'gringa', as white as they come. Every time I step up to the plate, I get curve balls thrown at me from the non-Spanish-speaking parties involved. They challenge my language abilities (four years of high-school Spanish did THEM no good) and my understanding of the culture. I have had to work the crowd for over three years to earn their respect. As for the Spanish-speakers, there is always a moment of awkwardness and hesitancy as we begin to speak, but, for the most part, they soon open up and accept me. In fact, I have had less challenges from the Hispanics as to my abilities and qualifications than from the Anglos.
>
> (Barbara Bresnahan Duarte, 31 July 1998, courtinterp-l email discussion forum)

In the 1820 proceedings against Queen Caroline, the Attorney-General was fully aware of the place that the English prejudice against foreigners might play in the hearing. All of the witnesses who were to give evidence against the Queen were foreigners and were examined through interpreters. Opening the hearing before the House of Lords – which examined the charges against the Queen in the form of a parliamentary bill – he therefore began by addressing the issue head-on, admitting that, given the acts with which Her Majesty was charged, it is only by witnesses 'who filled menial and domestic offices' that facts could be proved. Moreover, Queen Caroline having established an Italian household, most potential witnesses to her behaviour were Italians: 'Your lordships are told that Italian witnesses are not to be believed, because they are foreigners ... if the facts rest on their testimony, they will not be believed; they are branded with perjury and infamy.' The Attorney-General covered all the issues relating to the giving of evidence by foreign witnesses who are predominantly of low birth and Catholic and made no reference to language and interpreting arrangements.

It would seem that the Attorney-General did not view as problematic the issue of a witness giving evidence through an interpreter. In the event, the standard of interpreting in the case – involving Italian, French and German – was high. It was distinguished by quality assurance, teamwork and awareness of cultural issues. Particularly noticeable was the co-oper-

ation between interpreters. In addition, they provided considerable culturally relevant input, both in response to queries by lawyers and members of the House of Lords, and also on occasion on their own initiative. The quality of the record-keeping was also high, as was to be expected in legal proceedings reported in the official parliamentary record. Perhaps the professional standard of the interpreting helped reduce any residual xenophobia among their lordships. (For further examples from the proceedings, see Morris 1993: 363–4).

In the intervening decades, prejudice against foreign defendants would not appear to have dissipated entirely. For example, in 1991 an interpreter commented on the basis of his own and others' experience with regard to the French court interpreting situation that 'it is very hard sometimes for the court interpreters to stay neutral and impartial because of the judges' attitude towards the defendant and the interpreter' (Awad Mansour in Picken 1991: 105). Such observations testify to additional stresses to which the interpreter may be sometimes subject in the courtroom, apart from the strain inherent in the linguistic juggling required to achieve communication. They show how far, in practice, interpreters may be from a neutral mechanical conduit, through no fault of their own.

Absence of proper interpretation

The last of these six categories of interpreting-related predicaments involves the absence of proper interpretation for a defendant or witness. In an ideal world, of course, such situations would not arise. However, in the day-to-day realities of courtroom life, all too often individuals may suffer because of linguistic chaos. A 'Chinese' (Cantonese) interpreter may be called to interpret in an immigration hearing, only to find, on reaching the venue, that the would-be immigrant is not a Cantonese speaker. Despite pointing out this state of affairs to the clerk of the court, the hapless interpreter may be compelled by the judicial authorities to remain and 'interpret' to the applicant, knowing full well that most of what is said will not be understood (personal communication, relating to a situation in Birmingham, England). This is unsatisfactory for all concerned, and clearly made it impossible for the interpreter to act in accordance with the oath administered to interpreters in English courts. For a conscientious individual, who has through force of circumstances been required to do something against her better judgement, being placed in such a predicament is highly distressing. Attempts to draw attention to the fundamental injustice of such a situation and refuse to participate in it might result in undesirable professional or personal complications for the interpreter involved. The authorities' lack of linguistic sophistication to which such situations testify cannot be readily remedied, but unless protests are made, interpreters will continue to find themselves in such predicaments.

Interpreters may, through their professional contacts or through their own presence in a courthouse, become aware of situations in which there has been an absence of proper interpretation. An example would be a tape-recording of an interpreted pre-trial interview where the interpreter did not accurately and fully interpret all questions and answers, or where the interpreter – and not the police officer – questioned the suspect at the police station (personal communication). Such delicate situations confront interpreters with a genuine predicament. Interpreters' professional associations have no remit to intervene in respect of specific cases of inadequate interpretation where the individuals concerned are not members. Rather, it is the legal profession which must, through the appellate system, seek to remedy such injustices (as in the English case of *Iqbal Begum*, see below). The question is whether individual interpreters can draw legal attention to such instances.

It is only natural that lawyers or interpreters rarely appear in the literature with a *mea culpa* about such situations involving their own shortcomings. In contrast, a number of appellate judges have written sensitively about the effect on a language-handicapped defendant of the absence of effective interpretation in the 'court below' or other instance. The following are a few examples of such insights:

> This court is appalled by the apparent lack of concern which EOIR and the immigration judges have demonstrated for the rights of the alien respondent. Fundamental fairness and procedural due process appear to have taken a back seat to administrative convenience and bureaucratic guidelines.
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> (*El Rescate Legal Services Inc., Central American Refugee Center, et al.*, v. *Executive Office for Immigration Review, et al.* 1989 at 727 F. Supp. 557)

> The right of a criminal defendant to an interpreter is based on the fundamental notion that no person should be subjected to a Kafkaesque trial which may result in the loss of freedom and liberty.
>
> (*People* v. *Mata Aguilar* 1984 at 1199)

> It would be as though a defendant were forced to observe the proceedings from a soundproof booth or seated out of hearing at the rear of the courtroom, being able to observe but not comprehend the criminal processes whereby the state had put his freedom in jeopardy. Such a trial comes close to being an invective against an insensible object, possibly infringing upon the accused's basic 'right to be present in the courtroom at every stage of his trial.'
>
> (*State* v. *Natividad* 1974 at 733)

> To Negron, most of the trial must have been a babble of voices ... Not only for the sake of effective cross-examination, however, but as a matter of simple humaneness, Negron deserved more than to sit in total incomprehension as the trial proceeded. Particularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its criminal processes chooses to put in jeopardy.
>
> (*Negron* v. *the State of New York* 1970 at 388 and 390)

Sometimes views are expressed as a minority opinion, such as that of Tobriner J. in *Jara*, disagreeing with 'the majority's assessment of the confusion, the despair, and the cynicism suffered by those who in intellectual isolation must stand by as their possessions and dignity are stripped from them by a Kafkaesque ritual deemed by the majority to constitute, nonetheless, a fair trial' (*Jara* v. *Municipal Court for the San Antonio Judicial District of Los Angeles County* (1978) at 849).

One sentence above all encapsulates the Court of Appeal's approach to the communication issues arising in the 1991 English appeal of *Iqbal Begum*:

> It is beyond the understanding of the court that it did not occur to someone from the time she was taken into custody until she stood arraigned that the reason for her silence, in the face of many questions over a number of interviews upon the day of the hearing and upon many days previously at various times, was simply because she was not being spoken to in a language which she understood.
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> (*Iqbal Begum* [1991] at 100)

However, defence counsel similarly failed to realize that the defendant was not receiving proper interpretation in the 1917 English murder case of *R.* v. *Lee Kun*. In the subsequent unsuccessful appeal, the lawyer made the following eloquent admission: 'The matter never occurred to me until the verdict was interpreted to the prisoner, and he said in Chinese, "Who is the witness?"' (*R.* v. *Lee Kun* (1916) at 294).

One can but imagine that lawyer's feelings following the passing of the death sentence on his client, who had sat uncomprehending throughout all the uninterpreted evidence given against him – a state of affairs of which his own barrister had been completely unaware.

If documented expressions of remorse by lawyers at their failure to insist on proper interpreting arrangements are highly unusual, instances of interpreters notifying the authorities of misgivings about their own linguistic behaviour at a trial are even rarer. An exception is afforded by the 1880 Indian case of *The Empress* v. *Vaimbilee*. At the

trial, the Tamil-speaking defendant had pleaded guilty through the interpreter, 'minister of the Madrassee Church' Mr Daniel. Two days later, Mr Daniel appeared before the Additional Sessions Judge and made an affidavit that he had failed to use the correct terms in Tamil to convey the full meaning of the word 'murder'. The word that he actually used indicated only the killing or being the cause of the death of Trevedee, the victim. The Additional Sessions Judge recorded that 'the Government Pleader read out the charge of murder of Trevedee to the interpreter, who having spoken to the prisoner interpreted the latter's statement, "yes, I did kill Trevedee". I thereupon at once said that the answer was insufficient, that he must distinctly ask the prisoner whether he pleaded *guilty to the charge of the murder of Trevedee or claimed to be tried*. He then spoke again to the prisoner, and rendered his statement, "yes, I am guilty"' (*The Empress* v. *Vaimbilee* at 827; italics in original).

The appeal judgment drew attention to the special meaning of the term 'murder' under the Indian Penal Code. The judge should, therefore, have been careful to explain its meaning to the interpreter in order that he might convey its full sense to the prisoner, and so enable the latter to understand thoroughly the nature of the charge to which he was asked to plead. 'Here manifestly, as described by Mr Daniel, no sufficient explanation of the charge, such as the law contemplates, was made upon which a plea of guilty could be properly accepted …' Under these circumstances, the appeal court formed the opinion that the prisoner could not be held to have pleaded guilty, and accordingly directed that a retrial be held in the Sessions Court.

Like many an 'ad hoc' interpreter, Mr Daniel faced a linguistic challenge to which he was unequal. As not infrequently happens, the court provided him with no assistance in his predicament. However, unlike the overwhelming majority of such non-professional interpreters who have appeared in the court system since time immemorial, in *Vaimbilee* Mr Daniel found a way to right the injustice which had resulted from his rendering.

THE EFFECTS OF INTERPRETING-RELATED PREDICAMENTS ON INTERPRETERS AS INDIVIDUALS

Regardless of local and historical differences in practice, it may be argued that the essential predicaments facing interpreters tend to be the same across time and space, including prejudices against 'foreign-speaking' witnesses. Court interpreting practice in certain countries may improve in times of affluence or in certain political climates, but there is no guarantee that resulting higher standards and more generous financing will be maintained. Interpreters are regularly made to feel the 'low Indian' on the judicial system totem pole (quoted in Morris 1999).

Even in jurisdictions with large populations requiring interpretation and concomitantly large bodies of qualified interpreters, such as California, a basic problem appears to remain on the level of organization and attitudes in the court system:

> There is dissatisfaction with the unpredictability of working schedules, so that where – and if – one is going to work is often up in the air until the last possible minute ... Many of our colleagues were very discouraged by the appalling lack of respect and appreciation displayed by court administrative personnel. One very experienced interpreter mentioned that he felt that interpreters are generally 'gum on the bottom of somebody's shoe' when they are working in the courtroom setting. (Burris 1998: 7)

Some organizations such as those dealing with asylum-seekers tend, in recognition of the stresses resulting from the harrowing material with which their language personnel must deal, to provide debriefing and counselling for their interpreters. Similarly, on its establishment, South Africa's Truth and Reconciliation Commission anticipated stress on its interpreters, both because of the emotionally charged nature of the material which they would have to relay and because of their arduous working conditions, and made appropriate provision for suitable psychological support (Wiegand 1998). At the time of writing, no such arrangements have been made for the interpreters at the International Criminal Tribunal for the Former Yugoslavia, who are similarly subjected to great stress in their work. An internal survey carried out in the course of 1998 found that among its personnel, post-traumatic stress (PTS) disorder affects interpreters most frequently. However, there is a great emphasis on teamwork, which helps to reduce the likelihood of the disorder (Carrieri-Drazenovic 1998). The forerunners of these two groups of interpreters – the 1945–46 Nuremberg Trial pioneers – developed their own coping strategies, which reportedly included a degree of revelry in a life-affirming reaction to the horrors they were daily relaying in court (Gaiba 1998). Levy-Berlowitz (1998) reports a comparable response among the interpreters at the similarly harrowing Eichmann trial which took place in Jerusalem in the early 1960s. Among both groups, some interpreters eventually found themselves simply unable to cope with the emotional strain and were forced to give up their court engagements.

Empirical research is needed in this field. Possible areas of investigation include the causes of stress among court interpreters, stress-related aspects of working conditions, the extent to which training might be helpful in reducing stress, the feasibility of courts' expectations of interpreter performance, the personal qualities required for effective functioning, and so on. The advent of electronic discussion forums provides the researcher with an intriguing tool for at least the initial identification of

dilemmas and predicaments facing today's courtroom interpreter, as well as a body of concerned and experienced practitioners to investigate.

CONCLUSIONS

Interpreters in a variety of courtrooms may find themselves the objects of conflicting messages as to what other people expect of them. These predicaments can generate a considerable amount of additional stress for the interpreter (who is, after all, a person with feelings), even if the more experienced and capable individuals gradually evolve their own ways of dealing with the situations that arise. Anecdotal evidence indicates that many interpreters learn on the basis of experience and professionalism (gained in part through sharing with colleagues, whether face-to-face or electronically) how and where to draw the line in a number of situations. In the United States at least, there appears to be a slow but definite trend towards interpreters proactively seeking to make members of the legal profession aware of issues which are relevant to the efficient provision of interpreting services. It may be hypothesized that frustrations in the United States over lack of professional advancement, cutbacks in court interpreting services, and levels of pay, among other things, also relate to the feeling that the American justice system as a whole still does not take seriously the issue of providing proper interpretation services in its courtrooms. In this respect court interpreters in the United States are, largely, in the company of their counterparts in places such as Great Britain and Australia, despite the considerable advances made relative to the situation as recently as fifteen years ago. The 1998 Critical Link 2 Conference on Interpreters in the Community showed that despite overall progress in various issues relating to court interpreting, the legal profession's attitude in most countries – Australia being something of an exception – still leaves much to be desired.

It may be argued that as court interpreters develop an increasing sense of professionalism (fostered in part by the ready availability of electronic means of communication), there is evolving in parallel a deeply felt desire to draw the attention of all those involved in the justice system to interpreting issues and to work towards improvement. Specific cases involving documented instances of incompetent interpretation, whether during police procedures and/or court proceedings, may lead to 'coalitions' of concerned citizens who seek to bring the matter to the attention of the judicial authorities and to right injustices caused wholly or in part by interpreting issues (examples include England's *Iqbal Begum* and Ohio's *Alejandro Ramirez*, where, reportedly, the Mexican government has become involved in representations at the time of writing). On the whole, interpreters' associations as such do not, for a variety of reasons, become involved in such specific lobbying efforts. The need for court interpreters not only to be, but also to be seen to be, impartial figures in the legal

system may also preclude their involvement in such coalitions. However, on an individual level, no professional interpreter can remain indifferent to instances of incompetence, particularly where the consequences can be major. The following *cri de coeur* from an interpreter who is deeply disturbed by what she has observed in her local court system, speaks of the additional predicaments confronting interpreters as a result of judicial attitudes to interpretation issues in the justice system:

> When I tell you they don't know an interpreter's role I am not exaggerating. Some are not even aware that there is a Federal Court Interpreters Act. You think that the attorneys would know, but they really don't. It is beyond my understanding as to why attorneys and judges handle non-English speaking defendants' cases in a different way than they would handle English-speaking defendants' cases. Wouldn't Miranda warnings apply the same way?? Whether you speak English or not??? So what is the confusion??? Like I said I just don't get it. Educate the Bar/Bench on common sense???
>
> (Isabel Framer, 1 May 1998, courtinterp-l email discussion forum)

Interpreters who work in the judicial system are subjected to constant stresses in the performance of their job, deriving not only from the linguistic difficulties inherent in interlingual interpretation but also from the diverse predicaments in which they may find themselves on occasion. Additional concern and distress result when cases are encountered where members of the justice enforcement and legal professions show themselves to be indifferent to the ethical standards and principles espoused by interpreters' associations and conscientious interpreters. The situation is even more upsetting for interpreters when representatives of the judicial system show disdain for, ignore, or blatantly flout such professional canons. The system may treat interpreters like a piece of gum on the bottom of a shoe, and defendants may stick to them like the same proverbial piece of gum, but perhaps by 'holding fast' interpreters may be able to bring about changes in attitudes by bench, bar, and court administrators which will result in much needed improvements in the provision of court interpretation and help to raise the standard(s) of justice.

NOTES

1 Permission to quote has been obtained from the authors of the texts cited, whom the author thanks.

2 The standard form of the interpreter's oath in an English court reads as follows: 'I swear by Almighty God that I will well and faithfully interpret and true explanation make of all such matters and things as shall be required of me according to the best of my skill and understanding' (Archbold 1992: para. 4–31).

3 The adjournment order was 'pretended' or invalid because of the defendant's inability to follow the proceedings, which precluded the lawful issuing of any such order.

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