

The Moral Dilemmas of Court Interpreting

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Abstract. In court interpreting, the law distinguishes between the prescribed activity of what it considers translation – defined as an objective, mechanistic, transparent process in which the interpreter acts as a mere conduit of words – and the proscribed activity of interpretation, which involves interpreters decoding and attempting to convey their understanding of speaker meanings and intentions. This article discusses the practicability of this cut-and-dried legal distinction between translation and interpretation and speculates on the reasons for its existence. An attempt is made to illustrate some of the moral dilemmas that confront court interpreters, and an argument is put forward for a more realist understanding of their role and a major improvement in their professional status; as recognized professionals, court interpreters can more readily assume the latitude they need in order to ensure effective communication in the courtroom.

Among members of the linguistic professions, the terms **interpretation** and **interpreting** are often used interchangeably to refer to the oral transfer of meaning between languages, as opposed to **translation**, which is reserved for the written exercise. *Interpretation*, however, becomes a potentially charged and ambiguous term in the judicial context, where it refers to a specific judicial process. This process is performed *intralingually*, in the language of the relevant legal system, and effected in accordance with a number of rules and presumptions for determining the ‘true’ meaning of a written document. Hence the need to adopt a rigorous distinction between interpreting as an *interlingual* process and interpretation as the act of conveying one’s understanding of meanings and intentions within the same language in order to avoid misunderstanding in the judicial context.

Morris (1993a) discusses the attitude of members of the legal community to the activities and status of court interpreters, with particular reference to English-speaking countries. The discussion is based on an extensive survey of both historical and modern English-language law reports of cases in which issues of interlinguistic interpreting were addressed explicitly. The comments in these reports record the beliefs,

attitudes and arguments of legal practitioners, mainly lawyers and judges, at different periods in history and in various jurisdictions. By and large, they reflect negative judicial views of the interpreting process and of those who perform it, in the *traduttore traditore* tradition, spanning the gamut from annoyance to venom, with almost no understanding of the linguistic issues and dilemmas involved. Legal practitioners, whose own performance, like that of translators and interpreters, relies on the effective use and manipulation of language, were found to deny interpreters the same latitude in understanding and expressing concepts that they themselves enjoy. Thus they firmly state that, when rendering meaning from one language to another, court interpreters are not to *interpret* – this being an activity which only lawyers are to perform, but to *translate* – a term which is defined, sometimes expressly and sometimes by implication, as rendering the speaker's words verbatim.

When it comes to court interpreting, then, the law distinguishes between the prescribed activity of what it calls translation – defined as an objective, mechanistic, transparent process in which the interpreter acts as a mere conduit of words – and the proscribed activity of interpretation, which involves interpreters decoding and attempting to convey their understanding of speaker meanings and intentions. In the latter case, the interpreter is perceived as assuming an active role in the communication process, something that is anathema to lawyers and judges. The law's attitude to interpreters is at odds with the findings of current research in communication which recognizes the importance of context in the effective exchange of messages: it simply does not allow interpreters to use their discretion or act as mediators in the judicial process. The activity of interpretation, as distinct from translation, is held by the law to be desirable and acceptable for jurists, but utterly inappropriate and prohibited for linguists.

The law continues to proscribe precisely those aspects of the interpreting process which enable it to be performed with greater accuracy because they have two undesirable side effects from the legal point of view: one is to highlight the interpreter's presence and contribution, the other is to challenge and potentially undermine the performance of the judicial participants in forensic activities.

1. Interpretation as a communicative process

The contemporary view of communication, of which interlingual interpretation is but one particularly salient form, sees all linguistic acts of communication as involving (or indeed, as being tantamount to) acts of translation, whether or not they involve different linguistic systems. Similarly, modern translation theorists see all interlingual translation as

being essentially communicative in nature. Seen from this complementary perspective, the distinction between communication and language that the law seeks to make in respect of interpreting becomes untenable. Its insistence that the interpreter is not a communicator within the judicial process thus becomes logically unsound, as does its premise that court interpreters should not put their own interpretation on a speaker's words.

A further issue concerns the unreliable nature of the communication process in general. As a subset of communicative activity, interpretation is inevitably subject to constraints on success, due to a variety of physical and psychological factors. It is further influenced by differences in cultural and other conditioning, factors which shape our thought patterns and perceptions. In order to convey these aspects, the interpreter needs to understand not only linguistic but also many other elements related to speakers' and listeners' worlds of knowledge. When the law calls for interpreters to restrict themselves to verbatim translation and prohibits the use of techniques which go beyond the referential use of language, it is making it impossible to achieve anything approaching the in any case unattainable goal of 'true' communication.

A critical examination of written judicial statements on interpreters' skills and performance shows that some members of the legal profession have recently become aware of the range of issues involved in interpreting. However, individual pronouncements, whether in case reports or other types of legal documents, have rarely led to the adoption of the requisite administrative action by judicial and political authorities. The New Jersey Interpreter Project (New Jersey Task Force on Interpreter and Translation Services - Final Report 1985; Tayler 1990, Tayler et al. 1989) is an outstanding example of this state of affairs: a vast amount of valuable research led to the formulation of precise policies, but these ran into difficulties on the political implementation level. Another typical instance is the British Crown Colony of Hong Kong. Right from the colony's beginnings in the mid-nineteenth century the need for properly trained interpreters was identified and a training policy proposed but never implemented. Frequent press reports decried the resulting negative impact on the doing of justice, but the authorities took no steps to remedy the situation.

Judicial opinion as reflected in case reports from a variety of jurisdictions is found to vary widely in respect of attitudes to interpreters. On the whole, the dominant view of the interpreting process is of something which is performed in a mechanical fashion by a transparent presence. Much recent work, including my own, adopts an opposing view, one which sees interpreting – in court as elsewhere – as a particular form of communication in which performance of the activity is

grounded in a judicious sensing of speaker meaning. This is then conveyed in a form in which latitude to depart from a verbatim standard may, and frequently must, be taken in order to convey what the interpreter judges to be the speaker's intention, and not merely the speaker's words. Apart from seeking to identify and understand the intentions of speakers, interpreters may at times also see fit to act in certain ways precisely in order to come closer to the vital goal of achieving enhanced accuracy in their performance. 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. It is thus not normally acceptable for an interpreter to point out to an examining lawyer that, for cultural reasons, a particular form of questioning is either impossible to render in the target language or would be understood erroneously by the non-English speaker; or to explain the cultural implications of the witness's reply. A notable exception to this rule is to be found in the 1820 proceedings against Queen Caroline of England, where the interpreters were frequently asked to clarify connotations in foreign-language material.¹ Even the possibility of such active behaviour by the interpreter is ignored or precluded under the distinction, widely accepted in English-speaking legal circles, between inter- and intralingual interpretation. The verbatim approach expected of court interpreters, an activity which lawyers call 'translation', is treated as a mere technical adjunct to proceedings, which are in no way varied by its performance. Modern studies (Berk-Seligson 1990a, 1990b, Morris 1989, 1993a, Shlesinger 1991) demonstrate the fallacy of such an approach, using numerous real-life examples. Judicial frustrations with the essentially communicative difficulties that arise in interpreting situations are often extended to the interpreters themselves, assuming what at times become vitriolic forms. At times, representatives of the legal systems take their frustrations, which arise from their dependence on the interlingual interpretation process and, occasionally, from incompetent and/or unethical interpreting performances, and transfer them not only to the providers of those services, but also to their clients (normally witnesses and defendants).

Legal attitudes to court interpreting in a number of English-language jurisdictions may also be examined in terms of juridical rejection of and antipathy towards the alien element, that is the non-English-speaking individual. The law's denigratory attitude to foreigners, and its related distaste at having to deal with the problems which arise from their presence in the host country, exclude its making proper interpreting arrangements for its dealings with them. In this way, its dire fears about defective communication become self-fulfilling.

As I have discussed elsewhere (Morris 1993a, 1993b), whatever the reasons for the low quality of court interpreting, the law overwhelmingly ignores the legal implications of relying on what is inevitably a flawed product when interpreting services are provided by unskilled, untrained individuals, often deficient even in high-level skills in two languages, let alone in interpreting skills as such. Despite this prevailing state of affairs, the product of the interpretation process is almost always treated as a legally valid equivalent of the original utterance. The words of an individual who bears the misnomer of *court interpreter*, often modified by the even more misleading term *official*, to all intents and purposes literally supplant the words of the foreign-language speaker. Tape recordings of non-English utterances produced in the courtroom hardly ever exist; written transcripts are almost never produced. The alarming implications for the doing of justice are rarely considered by the law.

1.1 The legal view of interpreting: sources of misconception and reasons for upholding them

In his challenging discussion of justice and translation, White (1990:258) observes that translation represents

an attempt to be oneself in relation to an always imperfectly known and imperfectly knowable other who is entitled to a respect equal to our own. It is ultimately a question of understanding and attitude: recognizing, while we compose our text, its inadequacy as the representation of another, and finding a way to express that recognition in what we say. To put it differently, it means the perpetual acknowledgment of the limits of our minds and languages, the sense that they are bounded by the minds and languages of others. It is in these ways that the activity I call 'translation' - making texts in response to others while recognizing the impossibility of full comprehension or reproduction - becomes a set of practices that can serve as an ethical and political model and, beyond it, as a standard of justice.

The prevailing legal view of interlingual interpreting identified above embodies the complete antithesis of the approach thus eloquently expounded by White. Its consequences are almost entirely ignored by jurists.

Instructions and guidelines provided to interpreters in a judicial setting are anchored in a view of language which Robinson (1991) identifies as "romantic". This view insists on achieving perfect identity in the translation process between the source and target texts or utterances, between source and target languages.² Robinson (ibid:88) speculates that the source of this approach may lie in the mystical tradition of

Kabbalism,³ where “absolute cosmic correspondence, translating sense-for-sense, word-for-word, even letter-for-letter, was essential, or more than essential, crucial (anything less meant doom and destruction)”. An echo reverberates here between the law’s demand for the verbatim performance of interpreting activities, and the verbal ritual that had to be followed meticulously in the oral pleadings of the early law.⁴ The verbatim prescription that contemporary legal practice seeks to impose on the interpreting process would thus seem to derive its ethos directly from the oral tradition of the early law. But whereas in bygone days the smallest deviation could nullify proceedings, the law faces no such dangers today as a result of slips in interpreting: the prescription of “verbatim” (and hence, presumably, reliable) renderings is taken for the performance. In other words, the law assumes that no deviation whatsoever is taking place.

This view of the interpreting process has a major pragmatic advantage from the law’s point of view. It enables the court to function effectively as a monolingual setting, since the absolute verbatim requirement has been laid down and will, it is presumed, be met. This may be defined as the legal fiction that enables the court to hold that what is stated originally in a foreign tongue can, after ostensibly being switched into the language of the proceedings, continue to function, with few exceptions,⁵ as an original text. A two-level supposition is at work here: that as a matter of general principle, one language can be switched into another with no loss of substance or form, and, furthermore, that a standard of absolute accuracy will be achieved in a particular interpreting performance.

White (1990:253) suggests that the classical, positivist view of translation – that what is said in one language can be said in another – is the result of a defective view of language generally, namely that language is a code, into which messages are encoded. In this view, language is conceived of as transparent, which means that the device which performs switching between one language and another can similarly act as a transparent conduit or decoder through which messages can flow unimpeded and undistorted from one code into another. The interlingual interpreter is thus ideally viewed as a mere disembodied or mechanical presence which can, to all intents and purposes, be ignored. The law may recognise that the input is in a foreign language and the output is in the language of its monolingual setting, but in practical terms it relates only to the product. The process can thus be ignored, and its outcome treated as identical with its origin.⁶

I have already explained that this view of the translation process runs entirely counter to what is now generally accepted: that no rendering can exactly replicate an original text or utterance, and that failure to

reproduce an identical replica across the language barrier is inevitable. This inevitable failure and treacherousness of the translation process is precisely what the law cannot allow itself to recognize, and for very good reasons. The law has to displace and personalize the failure, attaching it to the individuals whom it engages to pursue the unattainable Holy Grail of translatory perfection that will enable it to ignore the differences that exist between speakers of different languages. The principle is sanctified: the instructions 'to translate truly' are given; any fault lies with the imperfections of the human performers, the translators or interpreters. No taint can be attached to those who gave the instructions, who conduct the proceedings, or who listen to the performance.

Apart from refusing to acknowledge inevitable failures in the translation process, the law cannot allow itself to recognize or accept a related fact, namely that its own activities are also at risk in an inherently flawed communication process. If the difficulties of interlingual interpreting are inherent in all communication then intralingual communication is also inevitably flawed. But how can the law respond to this internal difficulty without undermining its own authority? Once again, it has to try to control the difficulty by projecting it on to the interpreters themselves. It prescribes the requisite behaviour, namely word-for-word translation, and proscribes the forbidden behaviour of interpretation. It assumes that it can dictate different rules for communication through interlingual interpreting from those that apply in its own sphere, as if contingent meaning-in-context were suspended in the interlingual exercise, being reserved exclusively for judicial (intralingual) interpretation. Where there is no context to an ambiguous phrase, interlingual interpreters are nevertheless expected to render the ambiguity exactly in the target language. Where ambiguity is deliberate and bound to a particular language, the law still expects it to be reproduced and preserved in the interpreted utterance.

Lawyers pride themselves on their ability to manipulate language and express themselves with precision; if they are not understood by those who rely on interpreters to participate in the proceedings or by interpreters themselves, the fault clearly lies with the latter, not with the lawyers. To admit that an argument has not been made cogently, that a sentence has not been completed, that a word has been misused, that a grammatical construction has been flawed, that hesitation has been present, is to admit to imprecision and imperfection. The mechanical, transparent provider of interpreting services is not supposed to interrupt or comment on lawyers' performances, for this can generate a negative impression of judicial functioning.⁷ Instead, in an unspoken and unwritten code of good practice, interpreters, like court reporters, are expected to improve on such defects in lawyers' and judges' performances. In

these cases, the verbatim prescription is suspended.⁸ In witness statements, however, such imprecisions are held to be sacred and the interpreter is not expected to intervene. On the surface, therefore, the prescriptive approach appears monolithic, but on closer examination the ‘translate, don’t interpret’ admonition turns out to be relativist in philosophical and practical terms.

For interpreters to be able to play a more active role in the legal forum, they have to adopt an interactional stance which takes account of both speaker intention and listener understanding, they have to adopt their own strategies for identifying misunderstandings, elucidating context, investigating intention, and clarifying meaning explicitly. These are all activities which may force the law to admit and confront its own uncertainties and inadequacies, an admission it can ill afford to make. In this sense, the whole interpreting process contains within it the potential to undermine the entire edifice of legal procedure. For an interlingual interpreter to seek to clarify with a cross-examining lawyer a question that was deliberately framed in an ambiguous fashion is to restrict the examiner’s freedom. To seek clarification of a badly phrased question is to draw attention to sloppiness. To point out that a particular question cannot be rendered into the witness’s language in the particular form in which it was asked is potentially to make the lawyer aware of his/her own deficiencies; or to draw attention to the foreignness of the witness. Each strategy adopted in the interpreting process entails a certain cost. Not to clarify means to guess, to conjecture, to put the interpreter’s own interpretation (or belief) on what was said. For an interpreter to seek clarification means identifying ambiguities and potentially querying time-honoured legal conventions. Challenges to language use – to the ‘linguaging’ which is the very essence of the law – can shake its foundations. No wonder then that the law’s reaction to factors inherent in the interpreting process frequently becomes personalized in vitriolic diatribes directed against all court interpreters. No wonder also that interpreters are sometimes exploited in the tactical manoeuvres employed by lawyers, who take advantage of current legal views of the interpreter’s status and role in court.

A few examples from the multilingual Demjanjuk war crimes trial (*The State of Israel v. Ivan John Demjanjuk*, Criminal case 373/86) might help illustrate the complexity and Catch 22 situation in which court interpreter often find themselves. During his cross-examination, the Ukrainian-speaking defendant, John Ivan Demjanjuk, was questioned in Hebrew about a description he had given in his examination-in-chief of the appearance of a Russian general. Back-translated into English, the prosecutor said:

You (m.) said he was tall [tamir] - that's how you (f.) translated it, didn't you?

The Ukrainian-Hebrew interpreter, who (rightly) thought the second part of the prosecutor's question was addressed to her in an attempt to verify her rendering of the defendant's answer, began to comment in response: "That's what I said..." The Presiding Judge, seeing a seemingly personal exchange beginning between counsel for the prosecution and an interpreter, immediately reprimanded both: the interpreter for (allegedly) making a personal contribution, and the lawyer for commenting on interpreting-related matters, on which he should consult later with the head of the interpreting team. Thus a commendable attempt by a lawyer to verify the precision of both his memory and the interpreter's rendering was foiled by the presiding judge's determination to reduce the interpreting process to a mechanical cut-and-dried product.

A further illustration shows the interpreter's dilemma in dealing with unclear material. Rules imposed by the court forbade the court interpreter to address questions of her own directly to a witness. Consequently, she attempted on various occasions to draw the attention of the bench to her uncertainty about the precise meaning of the English-language original where an item or utterance had been difficult to hear or understand. However, such interpreter requests were largely ignored, except in case where the three members of the bench, who followed the testimony directly, were themselves interested in a clarification. The upshot of this practice was that the legally authoritative Hebrew-language record of the proceedings was flawed and incomplete, despite the interpreter's repeated attempts to draw the court's attention to potential deficiencies in her renderings. The court interpreter was eventually forced to ignore the rules and clarify material directly with the speaker, thereby improving the quality of the record.

A similar dilemma occurred in the case of German-language testimony which was rendered simultaneously into English, consecutively into Hebrew, and (on relay from the Hebrew consecutive or English simultaneous versions) into Ukrainian using the 'whispering' technique. At times during his examination-in-chief, counsel for the prosecution (who had understood the testimony in the original German) politely indicated to the bench that his understanding of what the witness had stated was different from what was conveyed to the court through the court interpreter's Hebrew-language rendering. Such statements by the prosecution, which embodied an implicit challenge to the official interpreted version, were themselves interpreted simultaneously into English. The English-speaking defence lawyer, who had to follow both

German-language testimony and Hebrew-language comments through English interpreting, charged his opposite number with putting words into the witness's mouth. After a number of such incidents, the English-language interpreters were asked to produce their version on relay from the Hebrew consecutive rendering. This unprofessional suggestion was adamantly rejected by the interpreters. It should be noted that all the corrections suggested by the prosecutor were justified and were subsequently incorporated into the record of the proceedings. The English interpreters' rendering always coincided with the prosecutor's understanding of the German. Hence, the defence lawyer's charge that the prosecutor was putting into the witness's mouth was a classic trial tactic, one which took advantage of the inherent difficulties in the interpreting process and the readiness with which the law is willing to dismiss them.

Slips of the tongue, as in the inadvertent confusion of two dates, are often a source of further dilemmas for court interpreters. In the Demjanjuk trial, for example, one lawyer referred to a triangle, when the referent (visible in a photograph) was clearly a rectangle. In this instance, the interpreter corrected the error, which passed without comment. A more delicate problem arose when an expert witness testifying in German inadvertently gave two incorrect dates in a single sentence: 1976 (instead of 1946), and 1978 (for 1948). In both instances, the English interpreter substituted the correct date, which could readily be inferred from previous references. By replacing the wrong dates with the right ones, the interpreter avoided the charge of incorrect interpreting, but she also infringed the rule that interpreters should repeat all original material, including errors. And since the English interpretation did not contain the second error, those who listened to it were confused by the prosecutor's correction of what appeared to them to be a non-existent error.

In the following example, the interpreter gave both the original, erroneous, date and the correction by the bench, but as a result of her belated delivery was forced to act more as a reporter than an interpreter:

Prosecutor (in Hebrew): When did the Russo-German war break out?

Witness (in Hebrew): 22.6.1921.

Bench (in Hebrew): '41.

English interpreter (late interpretation, after bench): Witness says 1921; bench corrects: 1941.

At times the interpreter deliberately drew attention to the slip, indicating its origin with the speaker, and also interjecting a comment as to presumed speaker intention. In the following example, where the refer-

ence is to witnesses examined in Israel for a war crimes trial in the Federal Republic of Germany, the interpreter again acted as a reporter, and also added some editorial comment of her own:

Witness (in German): Some said they would not travel to Israel.

Interpreter: ... to Germany: witness says Israel, but it must be Germany.

On one occasion the court interpreter was reprimanded for indicating what she presumed to be the intention of the German-speaking witness, rather than her precise words:

Interpreter (in Hebrew): I imagine that she wanted to say the photograph.

Bench (in Hebrew): Did she say “document”?

Interpreter (in Hebrew): She said document - yes.

The deliberate use by interpreters of techniques such as those illustrated in the above examples reflects an attempt to distance themselves from what may or may not be speaker error. In using these techniques, they inevitably draw attention to themselves as individuals in their own right, and thus flout the legal authorities’ implicit ‘out of sight, out of mind’ policy towards court interpreters. On occasion, as Harris (1981:198) reports in relation to another WWII war crimes trial, interpreters feel required to specifically distance themselves from material that they have uttered, such as a question asked through them. The interpreter observed by Harris began each of her renderings with a formula identifying the speaker whose particular words she was about to convey; this allowed her, when a witness asked her why she was asking her pointless questions, to respond by saying that the questions were being asked by the judge and the lawyers, not by herself. Conference interpreters sometimes also a similar technique by adding a comment to the effect of *says the speaker*, which is equivalent to the editorial [*sic*], to qualify what they perceive as a statement which makes no sense or which is incorrect in some way. Such distancing tactics clearly draw attention to the interpreter as a participant in the communication process in his or her own right.

In the transparent view of language, an interpreter is a non-person. This is the ideal conception for the law. Examining the issue in a philosophical context relevant to our present concern, White (1990:259-260) asks whether that inherently marginal figure, the interpreter, who lives “in the space between two languages”, can ever have a voice or identity of his or her own. Going even further, he queries why it should not be possible for the interpreter to actually enter one or another of these worlds, and “speak with momentary, if qualified, confidence within it”. The attitude of the law, as reflected in law reports, would not

seem to welcome the possibility of interpreters speaking with their own voices, rather than as mere alter egos.

In determining its attitude to interpreting, the law finds itself facing uncomfortable implications about its own role.⁹ If law, as White suggests, is a form of translation, then it is marred or marked by the same lack of certainty and perfection characteristic of the process of interpretation.¹⁰ At its best, according to this argument, it acknowledges its own shortcomings. Logically, at its worst, it denies them. In denying the inadequacies of the interpreting process, the law seeks to deny its own inherent deficiencies. A particular interpreted utterance may be acknowledged as flawed, but it will be considered an aberration. Even if attention is drawn to an accumulation of interpreting deficiencies, these will be attributed to the failings of the approach adopted by the individuals responsible for the product. The inherent fallibility of the interpretation process will be denied, for to acknowledge it is to question the very nature of the law, itself a system of translation. An interpreter who goes beyond the “literal” (primary, explicit meaning) or “verbatim” (word-for-word) norm is using his/her own understanding, his/her own words, putting words into the witness’s mouth – is interpreting, not translating. And interpretation, as we have seen, is a proscribed activity for court interpreters.

II Court interpreting in action: the case for interpreters’ latitude

The pitfalls and impracticability of the ‘translate, do not interpret’ prescription outlined in the previous sections can be further illustrated by reference to a number of extremely common expressions in the judicial context: the English *character reference*, *certificate of good conduct* and *criminal record*, and their counterparts in other languages.

In English-speaking countries, a character reference or certificate of good conduct (also known as a reference, character, or testimonial) may be issued by anyone who has known the individual in question in a formal capacity, particularly as an employer. The French *acte de bonne vie et mœurs* or *certificat de moralité*; and the Dutch *verklaring van gedrag* are issued by the police, as is one version of the German *Führungszeugnis*. The Dutch document is obtained by making an application to the local town hall, which forwards it to the Ministry of Justice in The Hague.

The term *criminal record* is often rendered in French as *casier judiciaire*, which is a misleading term, insofar as every citizen of a country influenced by the Napoleonic Code has the equivalent of a *casier judiciaire*, whether *vierge* (clean) or otherwise. Thus the question *Does he have a record?* cannot be rendered by *Est-ce qu’il a un casier judi-*

ciaire?, since for all citizens of these countries the answer to the French rendering must be in the affirmative, giving an entirely false implication in an English-language legal context. When a citizen of such a country needs to prove that s/he has no criminal record, the Ministry of Justice issues the equivalent of an *extrait de casier judiciaire*, which indicates the absence of any prior convictions. This term is rendered in Le Docte (1982) as “certificate of non-punishment or of penalties incurred”, showing clearly the absence of the institution in English-speaking countries and the vital modifying effect of context. The same dictionary renders *casier judiciaire* as “(UK) convictions record; (US) record of prior convictions”. A verbatim rendering of *extrait de casier judiciaire* would be “extract of a legal/judicial compartment, locker, drawer or cabinet”; even taking account of some of the connotations would give the entirely misleading “abstract (or excerpt or copy) of convictions (or police) record”. Only the pragmatic approach will work here, and it is therefore reasonable to argue that the court interpreter should be given a wide degree of latitude, which may include providing an explanation of the relevant procedure in order to site the document within its cultural context. In written texts, the translator can always append a translator’s note, but consideration needs to be given by the judicial authorities to the correct approach to be adopted by the court interpreter in this kind of context.

2.1 *The issue of latitude*

There would appear to be no way out of the conundrum: the interpreter has to use his or her own words, and judgement, in rendering speaker meaning. The issue of latitude may be examined in more detail by drawing a comparison between court interpreters and another group of professionals who work in a similar context and under similar restrictions, namely court reporters. This comparison should help bring into sharper focus the issues facing the interpreter, who essentially does much the same thing as the court reporter. Both attempt to transfer meaning from one domain to another: the court reporter transfers meaning from an oral to a written mode, and the court interpreter transfers it in an oral mode only but across a foreign-language divide.¹¹

A major dilemma facing both types of professional concerns the degree to which the material being transferred may be edited. Strictly speaking, editing by the court reporter or court interpreter in a judicial setting is prohibited: yet even court reporters are not supposed, for example, to include “false starts, stutters, uhms and ahs and other verbal tics” in transcripts - unless the exclusion of such verbalizations “could change a statement’s meaning”.¹² The court reporter is therefore sup-

posed to edit these “verbal tics” out of the transcript, except in cases where they are significant to the meaning of the statement. In order to follow such a rule, reporters must clearly use their subjective judgment, and are governed not by verbatim standards of performance but by the need to evaluate and convey meaning. In court reporting, Walker (1988) identifies the issue of editing as involving the tension between verbatimness and readability.¹³ In a conference interpreting situation, the tension is less obvious, since professional ethics on the whole require the interpreter to render the speaker’s intended meaning (as identified by the interpreter) in as eloquent a form as the speaker would probably have wished to achieve, rather than to reproduce the often imperfect form of the original. For the interpreter to do “somewhat better than the original” (Herbert 1952:62) is accepted practice in the conference setting. In the courtroom, on the face of it, the same practice would be taken to constitute highly unprofessional behaviour.

Like the court reporter, the court interpreter is confronted by difficulties and dilemmas which are inherent in the activity being performed, as well as by unattainable or undesirable prescriptions laid down by the system. Walker’s studies of the performance of verbatim court reporting identify related problems encountered in attempting to comply with the law’s ostensibly objective standards of what to record and how to render an oral event in a written medium. She ascribes these problems to basic differences between the characteristics of and expectations about speech and writing.¹⁴

Most of the obstacles to the court reporter’s understanding of speech in the courtroom setting that Walker (1990:214-217) identifies and analyses are equally applicable to the performance of interlingual court interpreters: lack of context, inability to hear, insufficient knowledge of linguistic code and professional jargon, insufficient background knowledge, garbled or dialectal delivery, overlapping or co-speech, and being discouraged by custom from interrupting speakers for any reason. Walker’s studies (1988, 1990) show that, in addition to the discrepancies likely to result from the ensuing problems, transcripts differ in innumerable ways from the unrealistic verbatim standards prescribed by the system and are therefore not a ‘true’ representation of the original spoken material.¹⁵ Wolchover (1989:787-8), for example, explains that

... even when judges stick to doing 'almost nothing' - 'The pattern that cannot go wrong' of simply recapitulating the evidence in the order in which it was given - they are still notoriously capable of performing the role of prosecuting counsel. Thus, with a studied mix of intonation, inflexion, timing, and movements of head, eyes and hands, the determined judge can make his opinion of the facts

known in a way that will never find its way onto the official written transcript.

The parallel with the interlingual interpreter's activities, although these are confined to the oral sphere, is obvious.¹⁶

Walker (1990) identifies the existence of significant appellate consequences of variable court-reporting customs and conventions, which the system fails to recognize,¹⁷ just as it ignores the implications of the vagaries of interpreting activities. She carried out a nationwide survey of court reporting practices and literature in the United States, and analyzed her own experience as a court reporter. One of the things that she discovered was that the actual degree of editing performed by a court reporter was affected by the speaker's ranking within seven categories, including sworn or unsworn, educated or uneducated, expert or lay, and liked or disliked.¹⁸ Unsurprisingly, sworn testimony was edited least; most editing was normally carried out on ungrammatical and similarly substandard material from judges or lawyers, unless they fell into the 'unliked' category, at which point verbatim reporting could be used to emphasize speakers' incompetence. She also notes that judges are aware of the potentially disastrous impact of their words being recorded verbatim in a deliberate approach adopted by a critical reporter which she dubs the *GIGO* policy: Garbage In, Garbage Out (ibid:229). My own findings from a detailed case study of interpreting at a multilingual war crimes trial in Israel (Morris 1989:33-34) are similar to those identified by Walker concerning the behaviour of court reporters. I found, for instance, that interpreters at the Demjanjuk trial refrained from editing the speech of testifying witnesses, but tended to edit lawyers' questions in order to improve intelligibility and effectiveness of communication. Speakers in the Demjanjuk proceedings, like those in most other contexts, regularly hesitated, failed to finish their sentences, used incorrect grammar, suffered from slips of the tongue and so on. Under particularly stressful situations some tended to speak rapidly. In addition, certain speakers suffered from speech defects, or were required (and/or willing) to express themselves in a language of which they had an imperfect command. In standard conference interpreting practice, interpreters normally compensate for these foibles as far as possible. But, as Berk-Seligson (1990a:171) and Gonzales et al., (1991:17) confirm, the prescriptive rules of court interpreting do not allow for such behaviour. Strictly speaking, the rules require any errors in the original to be reflected in the interpreted version, even at the risk of the interpreters themselves sounding incompetent. In the Demjanjuk trial, however, the practice adopted by the court interpreters varied considerably, both on a personal basis and according to the status of the original speaker.

Shlesinger (1991:149) discusses the issue of latitude explicitly and reports that interpreters at the Demjanjuk trial frequently discussed whether or not they had a 'legal mandate' to accommodate their listeners by using what she calls the explicitation technique. She further demonstrates how the interpreters into Hebrew flouted the 'accuracy' pledge by routinely omitting constantly recurring formulaic expressions of deference and courtesy used by the American defence lawyers, because a faithful reproduction of such formulae would have had a farcical effect in Hebrew (ibid:151). Roberts (1981) similarly discusses the tension between the legal requirements and socio-linguistic conventions which determine the performance of court interpreters.

2.2. The professional status of court interpreters

In most of the world's jurisdictions, court interpreting has not, on the whole, attained professional status in terms of either recognition or performance. Where, exceptionally, the interpreter holds some form of certification or registration, this can affect the evaluation of specific behaviour as either professional or unacceptable. Such was the case in the 1988 Australian civil case of *Gradidge v. Grace Bros. Pty Ltd.*, where the litigant was deaf and interpreting was performed between English and sign language. The issue considered on appeal was whether the interpreter had been wrong in ignoring the judge's instruction to stop signing at a particular phase in the proceedings. The appeal court discussed the interpreter's behaviour and the judge's control over the courtroom generally, together with many other issues affecting the provision of court interpreting. The comments of one of the appeal judges, Justice Samuels, show an understanding of the frustrations experienced by judicial participants as a result of interpreters doing what they consider to be their duty:

I readily understand that there are some cases that [sic] 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.¹⁹

However, because the individual concerned in this case was on the government panel of interpreters, Justice Samuels noted that she was governed by a code of practice and could therefore be dealt with appropriately if she were subsequently found to have been in breach of her professional responsibilities.²⁰ In the meantime, it was held that the goal of interpreting - to put language-handicapped individuals in the same posi-

tion as their hearing or English-speaking peers - should not be artificially hampered.

The following comments of Samuels J.A. in *Gradidge* contain important guidelines for the behaviour of all court interpreters and the rights of all language-handicapped participants in legal proceedings. Legal authorities everywhere should consider them and draw appropriate conclusions:

The task of the interpreter ... is to remove any barriers which prevent understanding or communication... 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 emphasise, 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.²¹

The case of *Gradidge* demonstrates that professionally certified status (commoner in the more regulated world of sign-language interpreters than in that of their foreign-language counterparts) can help to improve the legal view of interpreters and their activities, irrespective of their actual level of proficiency of particular interpreters. When interpreters are perceived as professionals who are regulated and governed by a code of conduct, they acquire a status which enables the law to recognize them as something closer to officers of the court. The interpreting process then becomes a less controversial and more technical activity. As soon as this happens, the law's attacks on interpreters as intrusive, meddling outsiders become less vitriolic. In *Gradidge*, Justice Samuels acknowledged that certain things may take place between the client and the interpreter which affect forensic procedures; yet the overriding consideration, that of fairness of procedure, must prevail and the interpreting process must be allowed to proceed. It is worth noting here that the silent nature of the sign-language interpreting activities which were taking place in *Gradidge* proves conclusively that it is not the acoustic element of interpreting which disturbs judicial figures, but the mere fact that something is occurring in the courtroom which is beyond judicial control, and indeed, is likely to be beyond the understanding of other participants in the judicial process.

3. Conclusion

Despite growing interest in the process of interlingual and intercultural mediation which takes place in court and community interpreting, few legal systems seem to acknowledge the delicacy of the interpreter's task and the moral dilemmas which are inherent in performing it. A study of case reports from a variety of English-language jurisdictions shows that, on the whole, members of the legal profession appear to be unaware of these dilemmas and/or unwilling to consider their implications for the doing of justice. The professionalization of court interpreting can go some way towards improving the status of court interpreters, thus allowing them to exercise the necessary latitude in dealing with the inherent difficulties of their profession. On the other hand, the professionalization of court interpreting can only be achieved if legal practitioners and judicial authorities alike are willing to recognize the same need for latitude in *interlingual* interpreting as in *intralingual* (legal) interpretation and to drop their untenable insistence on verbatim translation in the courtroom.

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NOTES

- ¹ Bill of Pains and Penalties against Queen Caroline (September 1820), Parliamentary Debates, New Series, Volume 3.
- ² The achieving may be against all odds, as Robinson (1991:88-89) argues: "Important things are at stake in this notion, so important as to override (for the romantics and their heirs, at any rate) all practical, commonsensical objections regarding its impossibility. So what if it is impossible? *It has to be done!* It is not something we would sort of like to try to do; it is a messianic imperative, a question of life or death for all humanity. The translator is the romantic savior, charged with the task of undoing the damage done at Babel." Emphasis in the original.
- ³ *Kabbala* (or *cabbala*) is an ancient Jewish mystical tradition, based on an esoteric interpretation of the Hebrew Bible.
- ⁴ Mellinkoff (1963:41) elaborates on the need to use particular words - "not words of inherent precise meaning, but magical words that could stir a God or wreck a soul...formula, part of a ritual. Its repetition in this exact form - and in no other - would produce the desired effect."
- ⁵ The major exception is the area of libel, in which it has traditionally been recognized that the "very words" must be given in the original language.

- ⁶ Robinson (1991:68) shows how the dichotomous view of the translator as the saviour who achieves the impossible, a view which opposes salvation to oppression in a messianic approach, leads to a success/fail mentality in the language-switching area: “Actually, the romantic ideal is word-for-word and sense-for-sense: the Augustinian display of determined fortitude in submerging despair over the impossibility of ever knowing or translating God’s (or the SL writer’s) total meaning is here intensified into a powerful (although still always frustrated) messianic hope. Translation soon becomes an all-or-nothing affair, either total meaning, total understanding, total liberation from oppression, or total failure, total untranslatability.”
- ⁷ Berk-Seligson (1990:195b) shows that interpreters’ interruptions of lawyers were perceived by mock jurors (particularly Hispanics) as showing the lawyer to be less competent and intelligent.
- ⁸ Walker 1988, like Morris (1989), finds that lawyers, judges and other similarly placed individuals prefer not to have their slips of the tongue reproduced .
- ⁹ White 1990:81: “While lawyers can of course make the mistake of thinking that their language is the only one, the pressures of the law are against it, for the law is a constant linguistic competition. How to characterize the facts and the law, how to conceive of and feel about the case, and what, therefore, to do about it, are the central questions for the lawyer, who knows that her categories are those of argument and judgment, not simple factual description. The terms of her language itself are always arguable. The legal conversation must therefore proceed, if it is to proceed well, with a kind of structural tentativeness about itself. *The law, at its best, is a system of translation that acknowledges its own inadequacies.*” Emphasis added.
- ¹⁰ White 1990:261-262: “What is true for the lawyer is true for the law as well: it is a discourse that mediates among virtually all the discourses of our world, all ways of talking, and it does this not on the premise that meaning can be translated from one discourse directly into a different one, but the creation of texts that are new compositions. In this sense the law (like the lawyer) is both central and marginal at once: it exists at the edge of our discourses, outside all of them, structurally supplementary; yet it is also the discourse of power in our official world... It is crucial to its democratic power that in the end it make sense not only to those who speak the language of the law by profession but to the men and women of a jury: the ultimate translation is into the ordinary language of the citizen.”
- ¹¹ Walker (1988:1-2) compares the activities of court reporters and court interpreters as follows: “the most interesting similarity is not really that you both deal with someone else’s words, but that all those words must pass through you, and in passing, become to some extent your words too,

- shaped by your background, your knowledge, your experience, your beliefs – your hearing.”
- ¹² Federal Guidelines for Transcribers, quoted in Walker 1988:21.
- ¹³ Walker 1988:17. “In the practice of their profession, the tug toward verbatimness vies with readability, objectivity with interpretation, statutes with common sense”.
- ¹⁴ Walker 1990:206: “The central task performed by court reporters...is to transform an event from its spoken manifestation into a written one, thus performing what some scholars say flatly is an impossible operation: providing an equivalence in two different media” (Catford 1965:53). Elsewhere (Morris 1993a:205-268)) the author discusses dilemmas facing court reporters and interlingual court interpreters.
- ¹⁵ Walker’s approach is clear from the title of one of her articles: “The Verbatim Record: The Myth and the Reality” (1986).
- ¹⁶ When transcribed, interlingual interpretation clearly crosses the talk-to-type divide.
- ¹⁷ Walker 1990:242: “Without awareness, and without inquiry, institution-based discrepancies will continue to be irregularly characteristic of verbatim transcripts, and the customs and conventions of court reporters will continue to carry unknown consequences for the appellate process and those who enter into it.”
- ¹⁸ The seven categories are: (1) sworn or unsworn; (2) educated or uneducated; (3) expert or lay witness; (4) ins or outs; (5) employer or non-employer; (6) liked or disliked; (7) sees transcript or doesn’t see transcript (Walker 1990:233).
- ¹⁹ *Gradidge v. Grace Bros. Pty. Ltd.* (1988) 93 FLR 414 at 427.
- ²⁰ *Gradidge v. Grace Bros. Pty. Ltd.* (1988) 93 FLR 414 at 422: “The interpreter was a member of the Government panel. If the interpreter misconducted herself, that would be a breach of her ethical and professional duties. It could be dealt with accordingly. It could even amount to a criminal offence. It would warrant action against her to discipline her or remove her from the list of Government interpreters.”
- ²¹ *Per Samuels J.A. in Gradidge v. Grace Bros. Pty. Ltd.* (1988) 93 FLR 414 at 425-426. Emphasis added.

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