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Evolving views of the court interpreter's role

Between Scylla and Charybdis

Holly Mikkelson

Monterey Institute of International Studies

The role of the court interpreter in the United States, as in many other countries, has been defined by the legal profession in light of important precepts of the adversarial justice system. Interpreters, who are considered officers of the court, are strictly forbidden to give advice or provide explanations to clarify intended meaning, and are often instructed by judges to provide a "verbatim" interpretation. However, scholarly research on the role of the interpreter has revealed the shortcomings of the argument that interpreters are mere conduits transferring verbal messages from one language to another. This paper will examine the dichotomy between the need for interpreter neutrality in an adversarial setting and the limitations this imposes on their ability to convey the full meaning of culture-bound terms. It will conclude with some suggested guidelines for navigating the treacherous waters between the Scylla of literal interpretation and the Charybdis of active intervention in the communicative event.

1. Current definitions of the court interpreter's role

Interpreters have become increasingly ubiquitous in the courts of the world (see, for example, Hertog 2001; Moeketsi and Wallmach 2005; Tsuda 2002; Valero Garcés 2003). Though definitions and standards vary considerably from one place to another depending on factors such as the legal system and prevailing attitudes towards immigrants and minority groups, the overall purpose of providing interpreters is viewed similarly. The Model Code of Professional Responsibility for Interpreters in the Judiciary developed by the National Center for State Courts in the United States frames the role of the court interpreter in typical fashion:

... particularly situated persons for whom there is no such barrier. As officers of the court, interpreters help ensure that such persons may enjoy equal access to justice, and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice. (Hewitt 1995:199)

compare the interpreter to a phonograph, a transmission belt, and other mechanical devices (Morris 1999). This misconception of interpreting creates a moral dilemma for judiciary interpreters, as they are bound by their code of ethics to be faithful to the intended meaning of the message while at the same time the judge instructs them to “just translate verbatim” (Morris 1995). Moeketsi and Wallmach (2005) also highlight the conflict this creates for interpreters:

which power imbalances are heightened (Brennan 1999; Witter-Merithew 1999). Moeketsi and Wallmach (2005) cite a number of works on attitudes about translation when noting:

It is precisely to eliminate the ever-present danger of transgression that translation and interpreting practices assume the

language interpreters. More recently, Cokely (2001) has defined interpreting as:

the competent and coherent use of one naturally evolved language to express the meanings and intentions conveyed in another naturally evolved language for the purpose of negotiating an opportunity for a successful communicative interaction in real time within a triad involving two principal individuals or groups who are incapable of using, or who prefer not to use, the language of the other individual or group.

(Cokely 2001:4)

Whether examining signed or spoken languages, researchers have found that the presence of the interpreter significantly alters the way the parties interact. For example, Wadensjö (1998) has portrayed interpreted communication as “a peculiar type of three-party talk” in which the interpreter is an active participant. Roy

3. Interpreters as advocates, cultural intermediaries, allies?

Vilela Biasi (2003) is another scholar who has examined the work of interpreters in the judiciary, particularly in countries where legal reforms are dramatically changing the way proceedings are conducted. In Vilela Biasi's case, the country is Venezuela, which has introduced adversarial proceedings including jury trials in its justice system in recent years. She notes that amid the turmoil of instituting new procedures, the rights of minority-language speakers are often overlooked, and she calls for interpreters to take a more active part in ensuring due process under these circumstances:

Within this uncertain scenario (in which training programs and regulatory frameworks do not exist) Venezuelan court interpreters can take on a dual role: facilitating communication within the legal system on one hand, while serving as social actors on the other hand. Thus, they not only face the intellectual challenge of understanding the new system in force, but must also accept the practical challenge of adapting to, controlling, or helping to guide changes that may be required.

(Vilela Biasi 2003:244)

This is hardly the passive role envisioned by the framers of legislation and regulations governing interpreting in the courts. It is worth noting that even in the United States, where court interpreters are governed by some of the strictest rules on impartiality and non-intervention, the National Association of Judiciary Interpreters and Translators (NAJIT) has formed an Advocacy Committee to respond to issues of concern to the profession and promote public awareness (NAJIT, 2002). Thus, a distinction is drawn between the advocacy efforts of a professional organization and actions by an individual interpreter to champion the cause of an oppressed minority. Fenton (2001), writing about

ers appropriately make when bridging two languages representing very distinct cultures are also discussed by Brennan (1999), who observed a British Sign Language (BSL) interpreter working between witness and lawyer who behaved differently than two proceedings interpreters serving the defendant in the same case:

The most important point to stress here is that major differences can be noted between the interpreter working between witness and lawyer and the other two interpreters. The witness-lawyer interpreter uses the resources of BSL more fully, including non-manual elements, referencing and some, though limited, spatial grammar. She is clearly influenced at times by the witness's own usage, picking up signs and signed expressions from him. It appears that the demands of ensuring that the witness has fully understood the question make themselves felt in the interpreter's signing. For the other two interpreters there is no such immediacy: they do not expect their interpreting to be interrupted by the accused, or indeed the lawyers. They tend to use much more English-based structure, fingerspelling and mouth pattern, with very little use of non-manual components. This suggests that the interpreter's usage is not influenced simply by the nature of the language, but also by the nature of the client demands. The interpreter for the witness appears to use whatever is available to ensure that the witness has understood the message; the others may see themselves as serving a wider role in the court. (Brennan 1999:243)

It is the ability to "use the resources [of the target language] more fully that interpreter trainers attempt to impart in their classes by heightening awareness of interlingual differences and exposing their students to basic translation theory, among other subjects (Moeketsi and Wallmach 2005). This is how interpreters develop an understanding of the spectrum of possible interpretations of a term, from one extreme of form-based, word-for-word interpretation (usually meaningless) retr-126(h)4yo/MCIDm6(h)4yo/M 57.0239 297.87;5-153(h)4(eir)-1(e)-5(d)6(,)-153(v

that ethical decision-making is not a mere mechanical process of applying rules

op that ine able quality, professional judgment, that will help them navigate the shoals of adversarial legal proceedings while remaining true to their role.

Authors writing about court interpreter education programs agree that no matter how comprehensive or super cial the training, instruction in standards of conduct and good practice is essential (Mikkelson and Mintz 1997; Hertog 2001; Moeketsi and Wallmach 2005). Many of the basic textbooks on interpreting contain chapters on ethics that can be used in teaching student interpreters to apply critical thinking (cited in Mikkelson 2000/01), and articles such as the excellent one by Hoza (2003) can help instructors esh out their own ideas about ethical decision-making with a view to developing appropriate teaching materials.

he most e ective way to help students acquire the critical thinking and decision-making skills they need to interpret interactions in the legal setting is by creating realistic scenarios in which they must act out the roles of the di erent parties involved and then discuss the issues raised. As they play the roles of the interlocutors, they must solve both linguistic and cultural problems that arise in the communication process. is gives them personal experience with the dilemmas they are likely to face in the eld, and allows them to rehearse possible responses in a safe environment.

he scenarios can range from straightforward situations that test the students' understanding of concepts such as con dentiality and impartiality (e.g.a defendant asking the interpreter what she thinks of his defense counsel) to more complicated circumstances that pose di cult linguistic and/or ethical conundrums (e.g.kinship terms for which there is no equivalent, attitudes about sex roles that di er greatly, or gestures that are easily misunderstood). Examples of scenarios can be found in Mikkelson (2000). As the students perform the role-play exercises, they realize that applying ethical principles is not a matter of blindly applying rules memorized by rote learning, but rather a thoughtful selection from a range of choices along a continuum. heir choice will be in uenced not only by the ethical principles and standards of practice they have learned about in the course, as well as their enriched understanding of the languages and cultures in question, but also by their personal moral code.

ey will also discover that the appropriate solution will vary depending on the circumstances of the interpreted communication. In a setting where the goal of the communication is collaborative, such as an attorney–client conference, the interpreter might take a more active role and provide a culturally equivalent interpretation or suggest questions that can be asked to elicit a more comprehensible answer. he interpreter may even feel it is appropriate to suggest other resources, as in the case reported by Witter-Merithew (1999). By contrast, in an adversarial setting such as witness testimony in a jury trial, it will probably be more suitable to render a conservative interpretation that adheres closely to the form of the ori-

ginal. In some cases it may be acceptable to leave the term in the source language and allow the attorneys to ask follow-up questions, or to simply alert the court to the fact that a misunderstanding has occurred and allow the parties to decide how they want to proceed (Gonzalez et al., 1991).

6. Handrails for the slippery slope

When the issue of cultural mediation arises, some veteran court interpreters will acknowledge that they occasionally depart from the strictly neutral role of the judiciary interpreter and offer to provide suggestions or explanations when communication breaks down or to decide how

6. What would happen if the interpreter did not intervene?
7. Is the interpreter the only one who is aware of the problem?
8. Who else is in a position to solve the problem?

Another aid for making the appropriate choice along the continuum of form-based vs. meaning-based interpretation is to visualize the factors that need to be considered in a matrix, with the x axis being the type of misunderstanding or problem (ranging from purely linguistic to purely cultural) and the y axis being the nature of the communication (ranging from adversarial to collaborative) (see Figure 1).

7. Conclusions

As scholars and researchers reveal more about the dynamics and implications of the interpreting process, and as practitioners' and clients' views of the interpreter's role evolve, professional standards and training programs must adapt. Ultimately, the real problem-solving will be done by interpreters themselves on a daily basis as they venture out into the world of interlingual, cross-cultural communication.

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