

Discourse/textual challenges in legal interpreting and translation

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Introduction

“Translate, don’t interpret!”

What is legal interpreting?

- “Interpretation that takes place in a legal setting such as a courtroom or attorney’s office, wherein some proceeding or activity related to law takes place” (Gonzalez *et al*, 2012: 93)
- Without engaging in the debate of conference interpreting versus court interpreting, the latter however, “requires an exactitude that far exceeds that which is required in other areas” (Gonzalez et al., 2012: 96).
- **“legal equivalence demands not only strict conveyance of all the meaning in an original utterance, including all repetitious language, false starts, and speech errors and characteristics, but also absolute fidelity to the style, tone, and register, to the extent of mimicking these elements in the interpreted rendition”**

Legal Implications of interpreting

Obligation to interpret accurately, impartially and to maintain confidentiality, as interpreters bear liability for inaccurate or incomplete renditions or breach of confidentiality.

What is legal translation?

Legal translation can simply be defined as any translation undertaken in the field of law. It may involve documents such as:

- Motions
- Witness testimonies
- Judgements
- Contracts
- Affidavits
- Certificates

However, there are different legal systems in the world and translating a legal document requires much more than the language, but also the legal system, to ensure that the document is familiar to

the TL reader without losing the essence of the original. Legal translation, like legal interpreting, requires accuracy, completeness and confidentiality.

It is not what you say, but how you say it!

Interpretation: The delivery in the relevant modes (simultaneous, consecutive, sight translation) is expected to meet high standards of accuracy, consistency and faithfulness to the spirit, style and nuances of the original and observe the established terminology and usage

The pillars of legal translation and interpreting:

- Accuracy
- Completeness
- Impartiality

Role of legal translators and Court interpreters in the judicial process

Court interpreters are experts in language and are assigned only to render linguistically equivalent interpretation from one language into another. They are not parties to a case, have no interest in any case, and remain completely neutral in all matters. They work for the court and do not represent any party. A court interpreter's sole responsibility is to bridge the communication barrier necessitating his or her presence

- Statutory provision (included in some constitutions, Statutes of international tribunals and courts)
 - Considered as experts in language matters (clarify ambiguities and other semantic issues)
 - Mediators to facilitate communication between the parties
- Judicial, legal and human right (right to the free assistance of an interpreter, right to have documents presented in the language of the defendant,)
- Officers of the court (solemn declaration, integrity of the record, linguistic mediator, duty of confidentiality)
- Time allotted for the translation of documents in legal proceedings (example of Butare case where it took close to 3 years to translate 1000s of pages of documents and impacted the scheduling of the appeal hearing)
- Translation as a judicial requirement and fair trial right

Profile of Legal Translators/Court Interpreters

- Credentials (relevant training and experience in the areas of translation and interpreting)
- Conversant with the law (keeps abreast of developments and jurisprudence, knowledge of procedures and statutes)

- Top-notch proficiency in working languages
- Mastery of relevant terminology
- Extensive general knowledge
- Excellent professional skills – interpreting and translation
- Proficiency in the use of IT (research, work aids, communication medium, e.g. remote interpreting)
- Ability to work within tight deadlines and/or under continued stress and maintaining a high standard of accuracy
- High ethical standards

Discourse Challenges

- Language challenges (*The interpreter's vocabulary must be sufficiently expansive to support the wide variety of subjects that typically arise in the judicial setting*)
 - Peculiarity of legalese (repetitions, euphemisms, forms of address, ambiguity, etc.)
 - Language variety (Canadian French, Australian English, etc.)
 - Accents (non-native users of languages, most of employing court language as foreign language)
 - Register (formality vs informality, nature of proceeding, type of testimony)
 - Proficiency (mastery of SL and TL and retour interpreting)
- Knowledge of law, legal concepts and procedures
 - Arcane nature of legal concepts (already quite complex for jurists)
 - Inadequate mastery of subject matter
 - Culture-specific legal concepts
 - Untranslatability of some concepts
- Ethics
 - Adhering to ethical standards
 - Impartiality,
 - Confidentiality
 - Professionalism (error reporting and correction, seeking clarification, seeking judicial intervention to safeguard working conditions and standards and protection from abuse and liability)
 - Blurred roles or lack of understanding of the role of interpreters
 - leading to undue expectations from parties (e.g. correcting the record without leave of the court. Also applicable in translation, changes may require a court order)
 - Stakes of proceedings
 - Leads to faulty findings
 - Distorts the record
 - Infringes due process rights
 - Disclosure of highly classified information (State secrets, military and other strategic information) that could endanger the safety of states and persons
 - Personal safety and integrity (threats to life, suborning, etc.)
 - Interpreter interventions in the proceedings
 - When to intervene –

- immediately
 - wait for a pause
 - Is it justified? –
 - to preserve integrity of record
 - report an error
 - speed or breach of other guidelines
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- Interpretation skills
 - Accuracy
 - Often mistaken for literality
 - Maintaining speech acts
 - Growing user verification requests (interpreter said this, instead of that!)
 - Completeness
 - Exhaustiveness (taxing on cognitive and physical abilities)
 - Accounting for every unit of meaning
 - Modes of interpreting
 - Transitioning from one mode to another e.g. simultaneous without text to with text
 - Number of languages used and relay challenges
 - IT-mediation
 - Remote interpreting
 - Live transcripts
 - monitors
- High speed of delivery (200wpm)
- Lack of training
- Stress
- Understanding and acceptance of the role of interpreters by other parties
- Non-provision of documents in a timely manner
- Lack of resources (databases, funding for training, technology, personnel)
- many officials, including judges and attorneys, do not understand the role of the interpreter
- ethical issues – signaling or correcting patent errors
 - While remaining impartial may be challenging, the interpreter should always interpret accurately, regardless of who might benefit or be harmed by the outcome
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Addressing challenges

- Continuous learning and deliberate practice (interpreters and translators are reputed to have the longest apprenticeship in any profession):
 - Performance monitoring and enhancement
 - Review transcripts and recordings of performance
 - Seek and act on feedback from colleagues and supervisors
 - Research unfamiliar terminology and solve problem areas

- Specialized training for legal translators and interpreters
 - Knowledge of law
 - Advocacy skills
 - Interpreting techniques
 - Voice management
 - Stress management
- Preparation prior to any assignment
 - Reading case material
 - Researching further
 - Attending briefings and rehearsals
 - Consulting colleagues and parties
- Enhancing collaboration with the parties to clarify roles
- Training:
 - nurturing of critical mass of trainers to identify, respond and supervise training needs
 - provision of training by employers (introduction of mandatory regular training for specified periods), interpreter/translator associations, faculty
 - increased participation and interest of interpreters in professional development activities