

## Linguistic and Paralinguistic Aspects in Legal Interpretation: Some Strategies and Programs

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### ABSTRACT

In Spain the increase in minorities who speak different languages and come from different cultures has, on a social level, given rise to a growing sense of concern with regard to their integration into society, and, at the judicial level, when it comes to regulating their stay in the country. However, in my opinion, there is one aspect that is being overlooked in official circles: the lack of attention to the immigrants' linguistic problems and the need for competent interpreters.

First, I will analyze a few examples of legal translation and interpretation taken from court rooms; then, I will explain briefly some programs on community interpreting, and will analyze the role of the interpreter as well, the result of which could wind up causing a different or even the opposite social/psychological effect on the receiver. I will make references, primarily, to United States federal, state, and municipal court cases because it is there that a Spanish-English interpreter is most often needed, for the very fact that Spanish is the most widely spoken language after the official language. All of this is done with the idea of calling attention to the need for the creation of training programs for legal interpreters.

In Spain the increase in minorities who speak different languages and come from different cultures has, on a social level, given rise to a growing sense of concern with regard to their integration into society, and, at the judicial level, when it comes to regulating their stay in the country. However, this foreign community is rather varied. I could talk about groups from Latin-America, from central European countries, from North Africa, or from China as being the most representative in Spain, but there is one aspect that, in my opinion, does

not receive sufficient attention in official circles. I am referring to linguistic problems. The Spanish language continues to be an impassable barrier for many of the immigrants who come, primarily, in search of a better life, but who instead find a multitude of problems that they are unable to solve due in part to their low (or non-existent) level of Spanish. Even knowing English rarely helps them in official circles, in hospitals, at their children's schools, or at work. When these immigrants are faced with a legal problem resulting from their transitory situation or their legalization process, they may have to appear before a court of law which, on occasion, would then need the aid of an interpreter to establish communication. But we are immediately faced with new questions: "What do we understand by 'interpreter'?" "Can anyone who knows the two languages in question be an interpreter?" or, on the other hand, "Does he or she need special training?" I believe the latter to be true.

In Spain, the interest given to training community interpreters (the term which substitutes "legal interpreter" or "social interpreter" given that their role is not solely based on the translation of legal or economic texts) is far from adequate. Two years ago, a simple test based on the translation of legal or economic texts, held by the Spanish Ministry of Foreign Affairs, seemed to be a guarantee that the person who passed it could consider him- or herself an officially recognized interpreter and that he or she could be called on by the court to administer his or her skills. With the new law, any person who has a degree in Translation and Interpretation and has completed a certain period of practice time (though not a specified number of hours) on legal and economic interpretation can be considered an official interpreter. Nevertheless, neither of the solutions seem adequate enough for some reasons:

- a) translating written texts and interpreting oral messages requires different strategies and training;
- b) languages do not merely constitute different language systems; they also reflect culture;
- c) interpreters may be exposed to a great variety of situations that need specific training and practice. These points serve to demonstrate the need for training programs. Let me begin by establishing which are the characteristics and skills that should be taught in these training courses, which, in turn, could possibly raise legal interpretation to be considered a profession.

The analysis of situations in other countries, taking for example the United States, which is faced with an immigration problem much larger than Spain's, can serve to illustrate the importance of the community interpreter. Their immigration problem makes Americans more conscious of the problems derived from a large number of languages and cultures, and forces them to use certain professional guidelines. I will not attempt to analyze the similarities and differences between translation and interpretation for two reasons: first, because it is an area which has already been investigated thoroughly and I would only be repeating what has already been said, and, second, because in the community interpreter's training, translation should not be forgotten, because, on more than one occasion, he or she will have to make use of it, and for that reason it should not

be overlooked, although it is not a basic part of his or her training. Let me start by calling attention to the fact that I am talking about inter-cultural processes in which other factors, besides just the simple transfer of information from one language system to another, take place. What I mean is that to be a good interpreter, it is not enough just to be bilingual, interpreters need to be familiar with both cultures and have other skills as well.

The characteristics that professional interpreter organizations and linguistic experts believe necessary to work effectively are the following:

1. A good knowledge of the source language (SL) and of the target language (TL).
2. The ability to listen, understand, and discern the message in the SL.
3. The ability to extract and maintain a certain logic in communication and distinguish between *primary and secondary information*.
4. The possession of a good short-term memory and the ability to continue listening and taking notes simultaneously.
5. A wide vocabulary range including specialized terminology and a general knowledge of various areas.
6. Capacity to reproduce messages in the TL with good diction and pronunciation.
7. Knowledge of and experience with dialects, colloquial language, regionalisms, and cultural differences.
8. The ability to keep the same register and language level (formal to formal, informal to informal), keeping in mind the wide variety of speakers with different levels of education which might be encountered.
9. Knowledge of idiomatic expressions in both languages.
10. An important sense of professionalism and respect for ethnic considerations.

The command of these abilities, the work environment, the need to constantly change languages, their ethical obligations and the possibility of having to assume responsibility for their mistakes differentiates the community interpreter from other interpreters who work at conferences, international organizations, or in community services. They are the ones in charge of transferring the words of the speaker to the language of the listener, using either of the principal modes of interpretation - simultaneous or consecutive - or even sight translation, the mastery of which requires a different preparation. They are not the authors of the message, but they must capture the meaning and style of the discourse quickly, search for an equivalent in the other language, and be able to express it, all of which requires a great deal of effort in the pursuit of maximum fidelity to the SL, faced with the knowledge that their words can have an influence on the decisions of the jury and of the severe consequences that an inadequate interpretation may have.

They must also concentrate on several speakers in a short period of time and preserve the style, the language level, the idiosyncrasies, and the idiomatic language these speakers might use or any other aspect, as well as have the linguistic and cognitive ability to, in a matter of minutes, be able to change registers, styles, content, and languages too, since they must flip the words of the defendant into L1 and what the other parties say into L2. Let's remember that the nature of the discourse in a trial is often argumentative and spontaneous. With the exception of the opening and closing statements, which have a more

formal tone, lawyers can formulate unpredictable questions and the answers to these questions and the reasoning done out loud is often also unforeseen. On the other hand, one needs to keep in mind that when we find ourselves under a great deal of stress, as is usually the case in a court room, the way of expressing oneself can be affected. And even the questions made in these circumstances possibly hide another kind of message which the interpreter should not decipher: in the interpreter's case only translating what he or she has heard. It does not matter if the message makes no sense, if it is fragmented or contradictory, or if the language is scholarly, philosophical, colloquial, or highly technical. The interpreter must transmit exactly that sensation. He or she should never convert imprecise testimony into a clearer version, something which the interpreter as linguist could find intolerable, but which a judge or a jury could find informative.

The different cultures that may be found in a court room make up another fundamental obstacle, and cases of a lack of understanding can be counted by the dozens when talking about those cultures remotely connected to our Western culture, like Oriental ones for instance. Day after day, the court rooms of America are faced with hundreds of cases which are not always resolved by using the most satisfactory methods, and the defendants find themselves in these situations merely because they come from cultures with different values, a different behavioral code and traditions which conflict with those in the new society. A simple case will show what I mean: In a California court room, a judge, aided by an interpreter, directed himself to a young man of Asian descent and said, "What you may call courtesy, we call abduction. Don't let it happen again. I will tolerate one cultural clash, but no more. Do you understand?" (Lakoff, 163). The young man, after listening to the interpreter, sat down and the case was closed. The words of the judge clearly showed what had happened: The young man was accused of abduction and brought before a judge. But the sub-text is much more complicated and, for this very reason, a source of problems. In the young man's culture, marriages are arranged through abduction. That is to say that the man, or members of his group, kidnaps the woman he wishes to marry and she is kept hidden away until either she or her family gives in and the marriage is held. Sometimes the ritual has been agreed upon beforehand. That is, sometimes both parties know the details of the situation and how it will unfold, and sometimes they do not, but always to the satisfaction of both parties, and nothing else usually happens. The abduction is not, in this case, considered a crime. It is an immoral tradition, but the practitioners find it hard to admit that something is wrong with it or that marriages can be agreed upon in a different way. Problems of this sort, though on other levels, can appear in Spanish court rooms with Spain's recent influx of illegal Chinese immigrants or the large Moroccan population being the ones affected.

When considering vocabulary, the interpreter must have a solid knowledge of legal language, since his or her services can be solicited for such diverse matters as ballistics reports, chemical analysis reports, or for matters relating to drugs, as well as for sophisticated legal arguments, all of which indicate that the interpreter must have an active and ample range of vocabulary and be constantly prepared. But even when the interpreter knows the two languages well, he or she must consider other, extra-linguistic problems, like dealing with bad court-room acoustics without relying on the aid of any technical device or without forcing the members of the trial to speak any louder or clearer.

Interpreters must also observe a different ethical code from those interpreters who work at conferences or with famous personalities, since these former must stay completely out of the plight of the defendant or witness so as not to give the impression that they are on their side, even when the interpreter is sitting right next to him or her, speaking in whispers and often leaning over their shoulder. Interpreters must be totally impartial and sufficiently prepared so as not to overstep their role as linguist communicator.

Apparently, the presence of an interpreter does not have to affect the proceedings of a trial, which seems to be a rather gratuitous remark. In theory, the interpreter is an extra element in the court room and the way he or she works can decisively influence the final outcome of the proceedings. Until just recently, research has focused mainly on the role of lawyers and how they controlled defendants thanks to a series of well-defined strategies, like, for example, making the witness talk before he or she was really ready, stopping him or her from talking when he or she was going to do so, or using different ways of examining the witness, be it through yes/no questions, by keeping up a rapid pace throughout the examination, by interrupting, or by talking at the same time. The studies done by American researchers such as Atkinson and Drew (1979), Danet and Kermish (1978), Danet and Bogoch (1980), and Dunstan (1980), or by judges like Philips (1979) are relevant here. However, in a bilingual trial, the presence of an interpreter is felt more than once. In the first place, he or she must swear an oath before beginning to work, and while working, judges and lawyers often address themselves to the interpreter to try to clear up a certain point, ask that a question be repeated, or simply to check that the defendant has understood completely. In the same way, the interpreter makes his or her own presence felt by asking the judge's permission to ask something specific, clear up a point, ask that a question be repeated, or, if he or she is using simultaneous translation, by interrupting the speaker when he or she does not feel able to transfer the message to the other language due to its length.

But there are still other ways of exercising his or her influence during a trial. For example, by clarifying some points or by giving the defendant more information than that specifically provided by the lawyers or the judge, knowing fully well that, spoken in another language, it will not be recorded as evidence. Other means of control can also be:

1. *Inciting the defendant to speak, by talking to him or her directly; for example, by saying, "Answer, please!"* with the consequences it might have with respect to the impression the answer has on the jury, be it doubtfulness, uncertainty, or a willingness to cooperate, — consequences which have not been exhaustively studied.

2. *Asking that what the witness or defendant has said be repeated because the interpreter is not sure that he or she has heard it correctly, because he or she has not understood something, because he or she has forgotten part of the information, or simply as a way to give the witness or defendant time to reformulate the answer.*

3. *Asking the witness or defendant to remain silent in the face of an objection. In this case, it is the interpreter's duty to interpret what the judge rules and, at the same time, successfully stop the witness or defendant from continuing with his or her statement, even in mid-sentence, or keep him or her from answering, since if he or she does, even though the answer must be ignored, it will have been heard by the members of the court. It is a really difficult task, and there are no clear directives to follow. In the American court*

system, it is specified that even when the defendant gives his or her answer in the case that the objection has been sustained, the interpreter must not translate that answer. If the objection is overruled, then the interpreter must translate the answer or ask that both the question and the answer be reformulated, in which case the method of consecutive translation is recommended. But regardless of this recommendation, the actual choices made by interpreters are quite varied, from interrupting the defendant at the moment the objection is made, to letting him or her finish and even translating everything he or she says. If the interpreter uses simultaneous translation, this increases the risk of the defendant answering even when it is not necessary. In this case, a non-verbal signal could come in handy, like the interpreter raising his or her hand or using a different gesture to tell the defendant to stop talking.

There is another aspect that I would like to focus on. I am referring to the way the interpreter uses language, even within the same register. Various studies of cases of legal interpretation based on the testimony of witnesses, and *not* on the control lawyers have over witnesses, reveal that different effects on the hearers (or the jury in this case) will be produced, depending on the type of statement being given by the witness - either narrative or fragmented. Studies done by Duke University's O'Barr and his colleagues Conley, Erickson and Lind (Conley et al. 1978, Erickson et al. 1978; Lind et al. 1978; Lind and O'Barr 1979; O'Barr and Atkins 1980; O'Barr and Conley 1976; O'Barr and Lind 1981; O'Barr et al. 1976), or by Berk-Seligson (1985) are worth mentioning. These studies show that the presence of the interpreter breaks the face-to-face relationship between the witness and jury, that it changes the length of the testimony and can even change the information. In his studies, Berk-Seligson reveals that there is a systematic repetition of methods or techniques used by interpreters, making explicit reference to English-Spanish interpretation, but which I believe can be applied to a broader context. These techniques are: (1) addition of particles, words or phrases which modify the degree of relationship of a predicate or a noun phrase within a context and which can give a text a certain tone of vagueness and ambiguity not present in the SL. For example, phrases like: "a kind of," "a certain type," and "some;" (2) introduction of linguistic material which is considered to be implicit or obvious in the original message, with the possibility of giving the statement a much more emphatic and definitive character than expected, transmitting a sense of security, or possibly a sense of uncertainty, which could be decisive in the jury's deliberations, like giving a complete answer instead of just saying "yes" or "no," for example; (3) not using contracted language, in the case of English with its auxiliary verbs and modals, or, in the case of Spanish, repeating the complete verb form; (4) re-elaboration or repetition of information already said by the interpreter, sometimes consciously, with the purpose of achieving greater precision and exactness in the answer, or, unconsciously, to buy time in order to think of the final form of his or her intervention. This is a mechanism that is often used in monolingual situations as well; (5) addition of forms of courtesy, whose use varies according to the language and usually has a lot to do with the social status of the person being interpreted. From this, we could expect that the defendants in trials dealing with illegal entry into a country or with residence permits, who are often working-class people, use these types of expressions when answering the questions of the judge or lawyers. However, it is not so normal for the interpreter to use

these formulas when talking to the defendant, as often happens. The interpreter's desire to appear more polite in front of the witness may simply be the result of his or her need to be polite when talking to the judge, but, in this latter case, it is the interpreter, not the witness, who is transmitting the final message to the judge; and (6) the use of particles and doubtful forms. In this sense, it might be worthwhile to mention that one of the basic rules of interpretation is, as I have said before, that the information should "sound" the same in the SL as it does in the TL, that it should produce the same effect. To accomplish this, apparently unimportant elements in a discourse such as "ah," "this guy," and "well" must not be forgotten. But they must also not be included in the witness's testimony when he or she has not used them. In cases where this occurs, it is due in large part to the high degree of mental concentration the interpreter subjects him- or herself to. So, many of the interpreter's frequent "ahs" are in fact his or her own, and not a transfer of doubtful forms from the SL. Such interventions make the witness's words seem to lack the confidence and certainty which he or she said them with, possibly affecting the jury's deliberations. These are expressions which are unconsciously included by the interpreter, but which could alter the effect that the information should have had on the hearers.

Other categories of errors could be analyzed as literal, word-for-word translations, use of a different register, grammatical errors, lexical errors, omissions, or as addition of information. These are the most easily detected errors and, perhaps, the easiest to be corrected, but which I am not going to discuss for lack of space. It is, however, important to mention that in legal translation, certain changes due to the role of the interpreter are produced which can lead to the witness's testimony being less convincing, too correct, lacking in veracity, or full of doubts, all of which proves that interpretation is not always innocent. In this way, when the witness is in need of an interpreter, he or she puts his or her answers, and to a large degree, his or her future, in the hands, or should I say in the mouth, of another.

Every day, more and more state and privately run institutions around the world are more and more interested in the development of training programs not only for legal interpreters, but also community service interpreters - people who have adequate training to work in court rooms, hospitals, refugee centers, or official institutions. I will limit myself to mentioning just a few of the programs being offered, perhaps not the best-known, but not necessarily any less interesting for it, with the purpose of highlighting the content and activities that could help us in the development of a legal interpretation course. Vancouver Community College has had a legal interpretation program since 1979, and since then it has worked with more than 14 different languages, offering a minimum of five or six languages per course, depending on the demands of the community. The course consists of 150 hours of instruction broken down into two semesters, and the curriculum is made up of six different modules: laws, which includes the study of legal systems, procedures and terminology - total time 39 hours; imperative skills (theory classes and exercises) - 40 hours; interpretation practice (in the language laboratory using consecutive and simultaneous interpretation exercises as well as simultaneous oral translation of written legal texts in a limited time period - sight translation) - 56 hours; professional seminars on ethics, the development of public-speaking techniques, or the development of research projects are also included - 15 hours each. As well as holding mock trials and

attending real trials, students also visit libraries to gain experience in finding and using terminological sources, such as legal dictionaries or specialized publications.

Since 1983 the University of Arizona, Tucson, has held an intensive summer course on legal interpretation from English to Spanish and vice versa. The program centers primarily on consecutive and simultaneous interpretation and sight translation exercises done in the language laboratory, but also deals with criticism and analysis of problems that arise, court-room visits, and conferences on subjects related to their profession, like, for example, legal and medical terminology, forensic medicine, weapons, immigration, or drugs. The activities and their results are evaluated on a daily basis, and the teaching strategies are modified or new techniques are proposed which help the students maintain their interest level and enthusiasm.

The Institute of Linguistics Educational Trust in Cambridge, England, has had a program, also since 1983, on community interpretation which includes three specialties: legal services, medical services, and local government services (social services and education), and, in accordance with them, the training and subsequent evaluation through a final exam, are organized. This final exam consists of the following areas:

1. Interpretation: Consecutive and simultaneous, in a lowered voice (30 minutes)
2. Translation: From and into English (2 hours)
3. Sight translation and oral summaries: A simultaneous translation of a text in English (10 minutes) and an oral summary in English of a text (10 minutes)
4. Knowledge of the public services in accordance with the specialty chosen (1 hour)

The diploma given upon successful completion of the course is not officially recognized by any governmental agency, but it is widely accepted as a guarantee of professionalism and competent service.

The University of Minnesota has run the Twin Cities Interpreter Project (TCIP) since 1989, which is primarily dedicated to improving the quality of interpretation services for refugees, social services, and for doctors. In 1993 a legal interpretation program as a specialty was created for those who successfully completed the community interpretation program. It consisted of a semester (90 hours) of theory and practical subjects, and an intensive summer course (90 hours) which was basically practical and offered to those who passed the previous program. In 1994, the program was extended to another semester so that a complete course was offered and was continued in 1995 at the same time that a community translation program was introduced. For the last three years, I have collaborated with this program as an instructor of the Spanish group and as a professor of a translation course. The activities which are given the greatest emphasis are the practical activities in the language laboratories, sight translation exercises, and the writing of summaries of legal texts in a limited time period. There are also classes on terminology and analysis of the fundamental differences between the Spanish and American legal systems, talks on the use of specialized vocabulary, videos of trials in which an interpreter intervened, and the realization of many role plays which, on occasion, were videotaped to later be analyzed and commented on in the self-evaluation sessions at the end of each day.

In these kinds of simulations, not only were the different qualities and different types of interpretation the students needed to use focused on, but so were their reactions, movements and tone of voice, and the resources they used when faced with a difficult situation. In other words, their physical presence was also part of the focus. I have to say that the use of videos in which the students took part was one of the most enriching activities and which received the most support as a means of constant self-criticism and learning that could be put into practice in following sessions.

A different case is that of William Patterson College in Wayne, New Jersey, which has had an undergraduate program in legal translation since 1988 as part of the preparation for graduate studies in legal interpretation and translation or to take the Federal Interpreter Test, a test which, in 1989, was passed by only 6% of the participants (Tayler 31), due in part to the lack of preparation on the part of the participants and to the lack of centers for such preparation, as is the case in Spain. I could mention many more cases and offer a more detailed study of these programs to show that the majority of them have an influence on the practical aspect of those qualities that, as I mentioned before, are essential to achieve guaranteed competence and effectiveness. But I will limit myself to saying that in the last few years, many courses of this type have been created in the United States due to the large number of immigrants from all over the world and to the legal, cultural, and communication problems that inevitably arise. I am talking about a new profession.

Spain does not have either experience with or a tradition in training community interpreters, but, as a way of summarizing, and keeping in mind all that has been said up to this point, as well as the socio-political situation that the Spaniards are currently living in, the growing interest in translation and interpretation at the academic level, the recent law for legal interpreters, added to an evident lack of preparation and the inadequacy of the testing methods when compared to real-life situations, I am led to believe that the time has come to develop the necessary mechanisms to train specialized interpreters. There have been pioneering efforts (such as the program offered at the University of Alicante), but they are insufficient. More financial support is needed, as well as institutions to offer such courses, a variety of programs with different levels, duration, and specialization with adequate content and special attention given to the practice of fundamental skills, together with sufficient technical resources to be able to carry them out (for example: language laboratories, video equipment, visits to court houses, and the possibility of working outside the classroom). I trust that this paper serves to call attention to the situation.

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