

Evolving Views of the Court Interpreter's Role: Between Scylla and Charybdis

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Abstract

Abstract: 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 verbatim interpretation and the Charybdis of interpreter advocacy.

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 & Wallmach, 2005; Tsuda, 2002; and 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:

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly 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)

As the court interpreting profession has developed, standards have been adopted to govern the conduct of interpreters in the judiciary setting. The Grotius project sponsored by the European

Union stated, “Without competent qualified and experienced legal translators and interpreters there cannot be an effective and fair legal process across languages and cultures. ... Reliable standards of communication across languages are therefore an essential pre-requisite to deal effectively with this increasing number of occasions when there is no adequate shared language or mutual understanding of legal systems and processes” (Hertog, 2001: 11-12). These standards vary somewhat from country to country, but they all have certain universal features.

Most of the norms governing court interpreters in different countries (indeed, most codes of ethics for interpreters in general) emphasize the requirement for messages to be interpreted faithfully and completely. For example, Canon 1 of the U.S. Model Code cited above states:

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation. (Hewitt, 1995: 200)

The assertion that an accurate interpretation is one that contains no alterations, omissions, additions or explanations is common in writings on the role of interpreters in the judiciary. As Morris (1995, 1999) has pointed out, it is lawyers and judges who have defined the functions of interpreters in the legal sphere. Language is one of the main tools used by legal professionals, especially in adversarial legal systems, and they are understandably concerned that interpreters might interfere with the outcome of a case by distorting meaning. To be sure, an interpreter who edited out offensive language, added explanatory phrases, or volunteered background information could have a disastrous impact on a court case.

Many discussions of what constitutes an accurate interpretation do caution that a literal interpretation may not adequately convey the sense of a message, and that interpreters should give priority to meaning over form:

(I)nterpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, “word for word” or literal oral interpretations are not appropriate when they distort the meaning of the source language, ... (Hewitt, 1995: 200)

Unfortunately, this caveat seems to be lost on a large number of monolingual judges and attorneys who lack sufficient understanding of linguistic theory and interlingual message transfer. They assume that interpreting is a mechanical process requiring automatic responses rather than judgment or discernment, and they 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:

One of the thorniest issues in court interpreting is clearly the requirement to interpret verbatim. Court interpreters often feel that they lack sufficient status in the courtroom to countermand what

often amounts to explicit instructions by the bench to interpret literally. At the same time, they have a duty to ensure that the accused understands the proceedings. (2005: 87-88)

It should be noted that, ironically, the “duty to ensure that the accused understands the proceedings” is not universally accepted (Mikkelson, 1998). However, the dilemma faced by court interpreters even in proceedings where they are not expected to guarantee understanding is no less real. As interpreters perform their function from day to day they are constantly making decisions and solving problems, navigating between the Scylla of slavish, literal interpretation and the Charybdis of free translation that distorts meaning and thereby perverts justice.

Another major feature of ethical codes for court interpreters, particularly in adversarial justice systems, is the idea of impartiality or neutrality. For example, Article 4 of the Code of Conduct for Court Interpreters published by the International Federation of Translators (FIT) provides:

The court interpreter shall at all times be neutral and impartial and shall not allow his/her personal attitudes or opinions to impinge upon the performance of his/her duties.

No one would want a biased interpreter rendering services in a court proceeding, yet the nature of the interpreting process requires that the interpreter establish a rapport with the individuals with whom she is working. Morris (1999), Witter-Merithew (1999) and others have pointed out that there is a natural tendency for defendants and witnesses to develop a dependency on the interpreter, who is their only link to the other parties in the proceedings. Gile (1995), discusses the shifting loyalties of interpreters, using the term “rotating side-taking” to describe the interpreter’s relationship to the clients in bilingual interpreting. Fowler (1997: 196) highlights the conflicting expectations imposed on interpreters, who are instructed to remain impartial but are also envisaged as having a “warm” and “helping” relationship with the defendant. It is sometimes difficult if not impossible for interpreters to maintain both actual and perceived neutrality when they are working in the highly-charged atmosphere of an adversarial proceeding, in 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 absolute sovereignty of the original and the subservience of the translation, the necessity for faithfulness to the original and, of course, the necessity for the translator or interpreter to remain invisible in the translation or interpreting process. (2005: 79)

The authors go on to point out that “an ethics of anonymity would have the translator remain an essentially passive entity with no identity beyond his or her professional identity” (2005: 79). Indeed, court interpreters are often admonished that they should be unobtrusive (e.g., Gonzalez et al, 1991), though it is also acknowledged that there are times when they need to intervene to protect the interpreting process by requesting clarification, for example. Frishberg (1986), who writes about sign language interpreting, recognizes that it is a “fiction maintained by the interpreter and the clients that the clients are directly interacting” (1986: 62). Fiction or not, the legal professionals in the courtroom consider the interpreter to be “a reluctantly accepted practical necessity” who should fade into the background and allow the parties to conduct their business undisturbed (Morris, 1999).

Such negative attitudes are gradually changing, however, and there are enlightened members of the bar and the bench who have grown to appreciate the skill involved in interpreting as they have been exposed to more professional interpreters. Fenton (2001) lauds the judiciary in New Zealand, for example, for the “general acceptance that a verbatim interpretation even in a strict courtroom setting is an uninformed requirement and only justified on rare occasions.” What is needed is a concerted effort to spread the word throughout the legal profession to help them develop a more nuanced understanding of the role of the interpreter. This effort can draw on recent research on interpreting in a variety of settings – not just the judiciary – which shows that the invisible interpreter is a myth.

2. Interpreting Research: The Visible Interpreter

A number of scholars have taken a sociolinguistic approach to interpreting and examined the impact the interpreter’s presence has on communicative events, particularly dialogues and interviews. Cokely (1992) was one of the first to develop a sociolinguistic model of interpreting, in his case looking at the work of sign 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. (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 (1989, 2000) has examined turn-taking activities by interpreters and concluded that interpreters are essential partners in the interaction. Angelelli (2001) looked at the presence of the interpreter in a healthcare setting and found that interpreters are not nearly as invisible as the traditional models portray them. Other researchers have made similar findings in medical and mental health settings (e.g., Metzger, 1999; Bot, 2003). One of the key conclusions of these studies is that “Interpreters are not merely impartial intermediaries facilitating dyadic interaction” (Metzger, 1999: 23).

It can be argued that medical interpreters should be held to a different standard than their counterparts in legal settings, given the collaborative nature of most healthcare interactions. Nevertheless, the notion of invisibility has been challenged in other types of interpreting as well. Angelelli (2003) surveyed conference, court, medical/community and over-the-telephone interpreters in three different countries to explore practitioners’ perceptions of their function, and found that interpreters “did not consider their role to be invisible in any of the settings” and that they felt “they played a role in building trust, facilitating mutual respect, communicating affect as well as message, explaining cultural gaps, controlling the communication flow and aligning with one of the parties in interactions” (Angelelli, 2003: 26).

With specific reference to court interpreting, Jacobsen (2003), following up on previous studies of how court interpreters actually behave in the courtroom (Berk-Seligson, 1990; Jansen, 1995; Morris, 1989; Shlesinger, 1991), found that Danish court interpreters “are especially preoccupied with pragmatics, that is, with conveying their perception of speaker meaning to end-receivers” (2003: 223), and therefore are prepared to include certain additions in their target texts. She concluded that in the legal setting as well, “the pretence of the court interpreter’s invisibility cannot be sustained” (2003: 224).

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. (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 community and court interpreting, differentiates interpreting from advocacy in this manner: “Interpreting in this context means a close rendering of what was heard with cultural adjustments strictly limited to linguistic elements, while advocacy includes interventions by the interpreter on behalf of the clients and for their perceived benefit.”

Fenton wrote her 2001 article partly to refute a minority position taken in academic quarters, expressed most notably by Barsky (1996), that interpreters should be “legally recognized as active intermediaries between the claimant and the adjudicating body,” and should intervene with questions and clarifications, even to the extent of “compensating for the claimant’s errors of judgment” and “improving the narrative” (Barsky, 1996: 46, 52, 56, quoted in Fenton, 2001).

Fenton points out that such an approach would “open the door to dangerous and unsafe practices for the interpreter” by creating a perception that the interpreter is “part of the decision making personnel.” Her survey of interpreters revealed that “they wanted to be as invisible and unobtrusive as possible.” Other writers (Morris, 1999; Fowler, 1997) agree that it is unfair to interpreters to place such burdensome demands on them.

On the other hand, it is widely accepted that interpreters can and should act as advocates for the interpreting process, as they are encouraged to do in Canon 8 of the NAJIT Code of Ethics and Professional Responsibilities:

Court interpreters and translators shall bring to the Court's attention any circumstance or condition that impedes full compliance with any Canon of this Code, including interpreter fatigue, inability to hear, or inadequate knowledge of specialized terminology, and must decline assignments under conditions that make such compliance patently impossible. (NAJIT, 2005)

In the middle of the spectrum between what is deemed by most as unacceptable advocacy for individual clients and what most consider acceptable advocacy for the interpreting process is a range of options for interpreter intervention that has yet to be fully defined. Clearly there is some appreciation for interpreters’ ability and willingness to provide cultural information if it is necessary for full understanding of the message (e.g., Mildren, 1999). As Keratsa (2005) points out,

The role of interpreters as agents of culture and negotiators of alien elements and meaningful information is underestimated and reduced to that of a translation device. The deficiencies of the legal norms in this field places [sic] emphasis on the need for a formal system that will establish clearer patterns of interpreting behaviour and allow legal interpreters to play an active role in court interactions ... (2005)

Fenton (2001) alludes to a distinction between linguistic elements that reflect culture, which interpreters can and should account for, and broader, more abstract aspects of culture that also impede understanding but are much more difficult to explain without going beyond the normal responsibilities of the interpreter. This issue lies at the crux of the interpreter’s dilemma, and more light needs to be shed upon it. An example of a culture-bound behavior that can lead to serious misunderstanding in the courtroom is the avoidance of direct eye contact by Aboriginal speakers, cited by Mildren (1999). Mildren does not suggest that interpreters should intervene to explain such behavior, but rather places the burden on the legal profession to become more familiar with the culture and customs of the peoples they encounter in the court system.

An example of a more language-oriented problem that illustrates the difference between form-based and meaning-based interpreting is provided by Moeketsi and Wallmach (2005: 88), who report a wrongful acquittal based on the erroneous interpretation of a term that literally means “arrow” in an African language but actually meant “gun” in the context. The linguistic adaptations that interpreters 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 ... (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) to the other extreme of loose, free translation. In some cases the appropriate solution is a mere change in syntax, in others a modulation of an idiomatic expression, and in still others a more esoteric cultural equivalent.

In her observations of working interpreters, Brennan (1999) has also noticed something that other writers have alluded to but has not been examined thoroughly: different standards of accuracy for proceedings interpreting and for witness interpreting (Mikkelsen, 1998, 1999). Proceedings interpreting is provided for an accused so that he or she can hear what is being said, but there is no expectation that the accused will respond or participate actively, and the interpreting is generally provided in the simultaneous mode. Witness interpreting is performed in the consecutive mode, and bears more resemblance to the dialogue interpreting that has been studied by researchers with a sociolinguistic approach (Wadensjö, 1998; Roy, 1989, 2000; Jacobsen, 2003).

Brennan (1999) also emphasizes the power disparities in the court setting, an issue that forms the basis of the argument for interpreter advocacy propounded by Barsky (1996). The power differential has been raised by a number of scholars, however, not for the purpose of promoting a more active role by interpreters but to examine the interactions that take place in the legal setting. This question has been examined in particular by researchers studying sign language interpreting, but it has also been addressed in countries with a history of oppression (e.g., Moeketsi, 1999). For example, Witter-Merithew (1999) traces the evolution of views of the role that interpreters play from that of “machine” and “conduit” to one in which interpreters “more actively engage in creating successful communication events” (p. 57). She calls this the Facilitator Model, and describes how it has further shifted to what is known as the Allies Model, in which “the interpreter makes a conscious effort to recognize power imbalances and strives to create greater balance in power” (p. 58). Witter-Merithew cautions, however, that the interpreter should not be seen as a crusader or champion:

The goal of the Interpreter as Ally is to contribute to the goals of the Deaf Community in positive and supportive ways. It is not intended as a model of leadership, where interpreters “take control” of the deaf agenda and fight to gain rights for the Deaf Community. Rather, it focuses on understanding the nature of oppression, and how interpreters can work to eliminate oppression and power imbalances. (1999: 59)

The author warns that interpreters should not fall into the trap of playing what is known as the Benevolent Caretaker role, which deprives clients of their autonomy. As an example of an appropriate action taken by a legal interpreter adhering to the Ally Model, Witter-Merithew reports on a case in which an interpreter provided a defense attorney with resource information on laws protecting deaf people’s civil rights and experts in the field of deafness, in view of the fact that the attorney “would not have known where to go to get appropriate resources without the interpreter’s assistance” (p. 61). It is significant that the incident in question involved an attorney-client relationship, which can be viewed as a more collaborative situation than an adversarial court proceeding. The purpose of the communicative event being interpreted is an extremely important consideration in analyzing the role of the interpreter. If the goal of the communication is to help someone solve a problem or to ask them to recount their version of a sequence of events, the expectations of the interpreter are quite different than if the goal is to catch someone in an inconsistency or confuse them (as is often the case in cross-examination of witnesses).

4. Evolving Standards

The role conflicts encountered by interpreters as they struggle with competing expectations for accuracy, fidelity, impartiality, and invisibility have made it clear that ethical decision-making is not a mere mechanical process of applying rules or formulae but is, in fact, a treacherous journey fraught with peril. Scholars such as Dean and Pollack (2001) and Witter-Merithew and Johnson (2004) have turned their attention to the stress this creates for practitioners and the confusion that is sown among consumers of interpreting services. Fortunately, they have also applied work being done in other fields to help interpreters sort out the conflicting demands and engage in more productive problem-solving. For example, Hoza (2003) explores the difference between ethical decisions and moral temptations, pointing out that sometimes interpreters face clear-cut right vs. wrong decisions (e.g., a defendant offers a “reward” after being acquitted in a criminal case), but often the decisions are right vs. right, as in the case of a conflict between the duty to interpret the message faithfully and completely, and the duty to refrain from expressing opinions. It is the latter type of dilemma that creates the most stress for interpreters and requires the most expertise to resolve.

In an effort to address evolving ideas and controversies surrounding the role of the interpreter, some professional associations have reexamined their standards of practice with a view to more accurately reflecting what interpreters are actually doing (and should be doing) in the field and to provide more meaningful guidance to practitioners. A good example of this thoughtful approach can be seen in the revised Code of Professional Conduct recently adopted by the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf (RID) in the United States, after extensive consultations and research over a four-year period. The revision committee examined hundreds of ethics codes from other professions, studied journal articles

and consulted specialists, and the resulting draft was submitted to both practicing interpreters and consumers of their services for detailed feedback (Shuey-Morgan, 2005).

The introduction to the revised NAD-RID code states, “It is the obligation of every interpreter to exercise judgment, employ critical thinking, apply the benefits of practical experience, and reflect on past actions in the practice of their profession” (RID, 2005). To help interpreters apply the principles set forth in the code, it introduces the concept of the “reasonable interpreter standard” as a way to “broaden interpreters’ thinking about the choices they make.” A reasonable interpreter is defined as “an interpreter who is appropriately educated, informed, capable, aware of professional standards, and fair-minded” (Shuey-Morgan, 2005).

Newer professional organizations are also benefiting from the enhanced understanding of interpreting that has been gained in recent years, and they have developed robust standards to reflect a more nuanced view of how interpreters should conduct themselves. The National Council on Interpreting in Health Care, for instance, commissioned an “environmental scan” of interpreter standards of practice around the world with a view to developing national standards for the United States, which it issued in late 2005 (NCIHC, 2005). The author of the scan, Marjory Bancroft, makes an important distinction: “Documents about ethics or conduct serve to regulate interpreter behavior and address issues of ‘right and wrong’; whereas, standards of practice typically offer practical strategies to promote quality interpreting” (Bancroft, 2005: vii). In contrast to the mere listing of “shalls” and “shall nots” that many professional associations have adopted, the NCIHC standards explain the objective of each standard and present examples of practical situations to which the standards apply. They also link each standard to a related principle contained in the Code of Ethics, which is a separate document. Interpreters in the legal setting would benefit from a similarly comprehensive set of standards to accompany their codes of ethics.

5. Implications for Interpreter Education

Guidance from professional associations is important for practitioners striving to follow best practices. It is also essential that student interpreters learn about the complexities of the role they will be playing when they embark on their careers. Witter-Merithew (1999) points out in her discussion of the Allies Model that interpreters must have “self-awareness and adequate bilingual-bicultural competence” (p. 59), and laments that “the degree of competence required exceeds the amount of time available in the interpreter education programs in America” (p. 62). This sentiment is echoed by Moeketsi and Wallach (2005), who emphasize the importance of establishing a solid educational foundation for court interpreters to be able to exercise the judgment required in this complex role. They argue that this level of expertise can only be acquired in a full-fledged university degree program. Others contend that only in graduate degree programs can interpreters develop sufficient professional competence (Benmaman, 1999; Hertog, 2001).

At the same time that increased attention has been given to the complexity of ethics and decision-making by interpreters in the field, researchers (Ericsson, 2000/01; Moser-Mercer et al, 2000) have been looking at how novice interpreters gain expertise after they leave “basic training” and begin practicing the profession. Does improved proficiency come automatically

with time, or do some individuals become adept at making decisions and exercising professional judgment more easily than others? If so, what aptitudes are involved in this process, and how can interpreter education programs be adapted to make sure that the acquisition of expertise is not a haphazard experiment but a deliberate path upon which their training prepares them to embark as soon as they leave school? These questions are important for court interpreter educators, who must help their students develop that ineffable 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 superficial 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 flesh out their own ideas about ethical decision-making with a view to developing appropriate teaching materials. The most effective 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 different 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. This gives them personal experience with the dilemmas they are likely to face in the field, and allows them to rehearse possible responses in a safe environment.

The scenarios can range from straightforward situations that test the students' understanding of concepts such as confidentiality and impartiality (e.g., a defendant asking the interpreter what she thinks of his defense counsel) to more complicated circumstances that pose difficult linguistic and/or ethical conundrums (e.g., kinship terms for which there is no equivalent, attitudes about sex roles that differ 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. Their choice will be influenced 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.

They 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. The 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 original. 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 misunderstandings occur. This type of intervention is a slippery slope, they caution, and it takes expertise to know how to navigate that slope. They express strong reservations, therefore, about even broaching the subject with novice interpreters, out of fear that they will fail to exercise good judgment and lose their impartiality. Witter-Merithew (1999: 56-57) has commented on the guilt that interpreters may feel when they move beyond the “narrow and rigid definition of role and responsibility of the Interpreter as Conduit” model, even though they feel it is the right thing to do at the time because of their duty to interpret faithfully. Stepping outside the bounds of an established pattern of behavior is always scary, and most interpreters feel safer in the dispassionate and unbiased role they have been trained to fulfill (Fenton, 2001).

Keeping the subject of interpreter interventions in the shadows does the profession a disservice. It is time to acknowledge that interpreters do depart from the conduit role and are justified in doing so under certain circumstances. Shedding light on what those circumstances may be (and, conversely, making clear when intervention is not justified) will make the decision-making process more transparent and accessible to the uninitiated, that is, newly minted interpreters who have not yet developed the expertise that their more experienced colleagues seem to think comes automatically with time in service. To that end, the following questions may be useful as “handrails for the slippery slope” to help students decide how to respond to a misunderstanding or communication break-down:

1. What is the nature of the interpreted event?
2. Do the interlocutors have a collaborative or an adversarial relationship?
3. What is the goal of the communication (determining the truth, solving a problem, sowing confusion, winning a case)?
4. What if the interlocutors shared the same language and there were no interpreter present – would there still be misunderstanding?
5. Is the misunderstanding related to language or culture?
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):

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.

References

Angelelli, C. (2001). *Deconstructing the Invisible Interpreter: A Critical Study of the Interpersonal Role of the Interpreter in a Cross-Cultural/Linguistic Communicative Event*. Ph.D. diss., Stanford University, UMI, Ann Arbor.

Angelelli, C. (2003). "The Interpersonal Role of the Interpreter in Cross-Cultural Communication. A Survey of Conference, Court and Medical Interpreters in the US, Canada and Mexico," in Brunette, L., Bastin, G., Hemlin, I. and Clarke, H. (eds.) *The Critical Link 3, Interpreters in the Community*. Amsterdam/Philadelphia: John Benjamins. pp. 15-26.

Bancroft, M. (2005). *The Interpreter's World Tour. An Environmental Scan of Standards of Practice for Interpreters*. Woodland Hills, CA: The California Endowment.

Barsky, R. (1996). "The Interpreter as Intercultural Agent in Convention Refugee Hearings." *The Translator*, Vol. 2, No. 1, 45-63.

Benmaman, V. (1999). "Bilingual legal interpreter education." *Forensic Linguistics* 6(1), 109-114..

Berk-Seligson, S. (1990). *The Bilingual Courtroom*. Chicago: University of Chicago Press.

Bot, H. (2003). "The Myth of the Uninvolved Interpreter Interpreting in Mental Health and the Development of a Three-Person Psychology," in Brunette, L., Bastin, G., Hemlin, I. and Clarke, H. (eds.) *The Critical Link 3, Interpreters in the Community*. Amsterdam/Philadelphia: John Benjamins. pp. 27-35.

Brennan, M. (1999). "Signs of Injustice." *The Translator*, Vol. 5, No. 2, 221-246.

Cokely, D. (1992). *Interpretation: A Sociolinguistic Model*. Burtonsville, MD: Linstok Press.

Cokely, D. (2001). "Interpreting Culturally Rich Realities: Research implications for Successful Interpretations." *Journal of Interpretation: Millennial Edition*, 1-44.

Dean, R. and Pollard, R. (2001). "The Application of Demand-Control Theory to Sign Language Interpreting: Implications for Stress and Interpreter Training." *Journal of Deaf Studies and Deaf Education*, Vol. 6(1), Winter.

Ericsson, K. (2000/01). "Expertise in interpreting. An expert-performance perspective." *Interpreting*, Vol. 5(2), 187-220.

- Fenton, S. (2001). "Expressing a Well-Founded Fear: Interpreting in Convention Refugee Hearings." Retrieved 10 January 2006 from the World Wide Web: <http://www.refugee.org.nz/Reference/Sabine.html>.
- Fowler, Y. (1997). "The Courtroom Interpreter: Paragon and Intruder?" in Carr, S., Roberts, R., Dufour, A. and Steyn, D. (Eds.). *The Critical Link: Interpreters in the Community*. Amsterdam/Philadelphia: John Benjamins Publishing Co., pp. 191-200.
- Frishberg, N. (1986). *Interpreting: An Introduction*. Silver Spring, MD: Registry of Interpreters for the Deaf.
- Gile, D. (1995). *Basic Concepts and Models for Interpreter and Translator Training*. Amsterdam/Philadelphia: John Benjamins.
- González, R.D., Vásquez, V.F., and Mikkelson, H. (1991). *Fundamentals of court interpretation: Theory, policy and practice*. Durham, NC: Carolina Academic Press.
- Hertog, E. (ed.) (2001). *Aequitas, Access to Justice across Language and Culture in the EU*. Antwerp: Lessius Hogeschool.
- Hewitt, W. E. (1995). *Court interpretation: Model guides for policy and practice in the state courts*. Williamsburg, VA: National Center for State Courts.
- Hoza, J. (2003). "Toward an Interpreter Sensibility: Three Levels of Ethical Analysis and a Comprehensive Model of Ethical Decision-Making for Interpreters." *Registry of Interpreters for the Deaf: Journal of Interpretation*, 1-48.
- Jacobsen, B. (2003). "Pragmatics in Court Interpreting: Additions," in Brunette, L., Bastin, G., Hemlin, I. and Clarke, H. (eds.) *The Critical Link 3, Interpreters in the Community*. Amsterdam/Philadelphia: John Benjamins. pp. 223-238.
- Jansen, P. (1995). "The Role of the Interpreter in Dutch Courtroom Interaction: The Impact of the Situation on Translational Norms," in *Translation and the Manipulation of Discourse: Selected Papers of the CERA Research Seminars in Translation Studies 1992-1993*. Leuven: The Leuven Research Center for Translation, Communication and Cultures [Publications of the CERA Chair for Translation, Communication and Cultures, 3], pp. 133-155.
- Keratsa, A. (2005). "Court Interpreting: features, conflicts and the future." *Translatum Journal*, Issue 5. Retrieved from the World Wide Web 28 November 2005: <http://www.translatum.gr/journal/5/court-interpreting.htm>.
- Metzger, M. (1999). *Sign Language Interpreting, Deconstructing the Myth of Neutrality*. Washington, DC: Gallaudet University Press.
- Mikkelson, H. (1998). "Towards a Redefinition of the Role of the Court Interpreter." *Interpreting*, Vol. 3(1), 21-45.

Mikkelson, H. (1999). "Verbatim Interpretation: An Oxymoron," available at <http://www.acebo.com/papers/verbatim.htm>.

Mikkelson, H. (2000). *Introduction to Court Interpreting*. Manchester, UK and Northampton, MA: St. Jerome Publishing.

Mikkelson, H. (2000/01). "Interpreter ethics. A review of the traditional and electronic literature." *Interpreting* Vol. 5(1), 49-56.

Mikkelson, H. and Mintz, H. (1997). "Orientation Workshops for Interpreters of All Languages. How to Strike a Balance Between the Ideal World and Reality," in Carr, S., Roberts, R., Dufour, A. and Steyn, D. (Eds.). *The Critical Link: Interpreters in the Community*. Amsterdam/Philadelphia: John Benjamins Publishing Co., pp. 55-63.

Mildren, D. (1999). "Redressing the imbalance: Aboriginal people in the criminal justice system." *Forensic Linguistics* 6(1), 137-160.

Moeketsi, R. (1999). "Redefining the Role of the South African Court Interpreter." *Proteus*, Vol. 8 Nos. 3-4, pp. 12-15.

Moeketsi, R. and Wallmach, K. (2005). "From sphaza to makoya!: a BA degree for court interpreters in South Africa." *Speech, Language and the Law* 12(1), 77-108.

Morris, R. (1995). "The moral dilemmas of court interpreting." *The Translator*, Vol. 1 No. 1, 25-46.

Morris, R. (1989). "Court Interpretation: The Trial of Ivan John Demjanjuk, A Case Study." *The Interpreter's Newsletter* 2:27-37.

Morris, R. (1999). "The gum syndrome: predicaments in court interpreting." *Forensic Linguistics* 6(1), 6-29.

Moser-Mercer, B., Frauenfelder, U., Casado, B. and Künzli, A. (2000). "Searching to define expertise in interpreting," in K. Hyltenstam and B. Englund-Dimitrova (Eds.), *Language processing and interpreting*. Amsterdam: John Benjamins Publishing Co., pp. 1-21.

National Association of Judiciary Interpreters and Translators (NAJIT) (2002). "NAJIT Board of Directors Meeting Minutes." *Proteus* Vol. XI No. 4, p. 12.

National Association of Judiciary Interpreters and Translators (NAJIT) (2005). *Code of Ethics and Professional Responsibilities*. Retrieved 20 December 2005 from the World Wide Web: <http://www.najit.org/ethics.html>.

National Council on Interpreting in Health Care (2005). *National Standards of Practice for Interpreters in Health Care*. Retrieved 20 December 2005 from the World Wide Web:

http://www.ncihc.org/NCIHC_PDF/National_Standards_of_Practice_for_Interpreters_in_Health_Care.pdf.

Registry of Interpreters for the Deaf (2005). *Code of Conduct*. Retrieved 20 December 2005 from the World Wide Web: <http://www.rid.org/coe.html>.

Roy, C. (1989). *A Sociolinguistic Analysis of the Interpreter's Role in the Turn Exchanges of an Interpreted Event*. Ph.D. diss., Washington, DC: Georgetown University.

Roy, C. (2000). *Interpreting as a Discourse Process*. Oxford: Oxford University Press.

Shlesinger, M. (1991). "Interpreter Latitude vs. Due Process: Simultaneous and Consecutive Interpretation in Multilingual Trials." In Tikkonen-Condit, S. (ed.) *Empirical Research in Translation and Intercultural Studies*. Tübingen: Gunther Narr, pp. 147-155.

Shuey-Morgan, E. (2005). "The Code of Professional Conduct: A New Name and Exciting New Document for Our Profession." *RID Views*, Vol. 22, Issue 3, pp. 1, 12, 14.

Tsuda, M. (2002). "Non-Japanese Speaking Suspects/Defendants and the Criminal Justice System in Japan." *Interpretation Studies*, No. 2, December 2002, 1-14.

Valero Garcés, C. (ed.) (2003). *Traducción e interpretación en los servicios públicos. Contextualización, actualidad y futuro*. Granada: Editorial Comares.

Vilela Biasi, E. (2003). "Court Interpreters as Social Actors: Venezuela, a Case Study," in Brunette, L., Bastin, G., Hemlin, I. and Clarke, H. (eds.) *The Critical Link 3, Interpreters in the Community*. Amsterdam/Philadelphia: John Benjamins. pp. 239-245.

Wadensjö, C. (1998). *Interpreting as Interaction*. London & New York: Addison Wesley Longman.

Witter-Merithew, A. (1999). "From Benevolent Care-Taker to Ally: The Evolving Role of Sign Language Interpreters in the United States of America." *Gebärdensprachdolmetschen Theorie & Praxis* No. 4, pp. 55-64.

Witter-Merithew, A. and Johnson, L. (2004). "Market Disorder within the Field of Sign Language Interpreting: Professionalization Implications." *Journal of Interpretation*, 19-55.