Session III

Legal Professionals, Spoken Language and Signed Language Interpreters: What Can We Learn From Each Other?

Karin Banna
Freelance translator

Karin Banna has eight years experience as an Auslan (Australian sign language) interpreter. She has also been a member of the Australian Sign Language Interpreters Association (NSW) during that time and has held the roles of Treasurer and Secretary on the executive committee of the association. Karin completed her MA in Interpreting and Translation at Macquarie University Auslan/English Interpreting at Macquarie University at the end of 2004. Her current research interests include the impact of interpreters on interaction, interpreting at university, theatre interpreting, and bilingualism. She is particularly interested in opportunities for spoken language and sign language interpreting researchers and practitioners to share knowledge and experience.

Introduction

Current literature about legal interpreting, demonstrates that there are differences between the legal perspective and the practitioner's perspective of the interpreters' role and that reconciling these differences is one of the key challenges faced by interpreters working in the courtroom. (Berk-Seligson, 1990; Brennan & Brown, 1997; Cooke 2002; Laster & Taylor, 1994; Mikkelson, 1998; Morris 1999). This paper discusses the results of a pilot study that examines the perceptions of nine professionals regarding the role of the interpreter in courtrooms in Sydney, New South Wales, Australia. One aim of the study was to compare participant's views with those expressed in case law and literature about the role of the interpreter. A further aim was to compare the perceptions of the spoken language interpreters and the signed language interpreters.

Interpreting in the Australian Context

As a starting point it is important to outline the context in which interpreters work in Australia. Australia is a 'multicultural society…that comprises a diversity of cultures, races and linguistic communities.'(Laster & Taylor, 1994, p. 1). The Department of Immigration and Multicultural and Indigenous Affairs indicates that the population of Australia reached 20 million by 2003 and states that "According to the 2001 Census, 23% of Australians were born overseas. An additional 20% had at least one parent born overseas. Between us, we speak about 200 languages and practise a wide variety of religions." (Australian Multicultural Policy, 2005).

It is in this multicultural context that the National Accreditation Authority of Translators and Interpreters (NAATI) was established in 1977 with the following mission,

"To set and maintain high national standards in Translating and Interpreting to enable the existence of a pool of accredited translators and interpreters responsive to the changing needs and demography of the Australian culturally and linguistically diverse society." (NAATI Mission Statement, 2005, para. 1).

In the 2003-2004 financial year, NAATI provided testing for 55 languages (NAATI, 2004, p.15). Auslan (Australian Sign Language), the native sign language of the Australian Deaf community (Johnston, 1998, p. 560) is one of these languages.

The Cases

The Australian legal system is an adversarial legal system inherited from the English common law system (Carvan, 2002; Laster & Taylor, 1994). Literature about legal interpreting in adversarial legal systems such as in the United States (Mikkelson, 1998), United Kingdom (Morris, 1999) and Australia (Laster & Taylor, 1994) reveals that case law plays a critical part in determining how the role of the interpreter is established in the courtroom.

The following three Australian cases have been selected for discussion because they contribute to the legal understanding of the interpreter's role and how this perception changed over time. Gaio v. The Queen (1960) 104 CLR 419 focuses on the interpreter as 'bilingual transmitter' or 'telephone' (p. 422) and therefore emphasises the role of the interpreter to be an accurate and impartial language machine reflecting the 'conduit' metaphor described by Roy (1993). Gradidge v Grace Bros Pty Ltd (1988) 93 FLR 414 draws a link between the role of the interpreter and the rights of the non-English using clients and also addresses the authority of the court. Finally, Perera v Minister for Immigration and Multicultural Affairs (1999) FCA 507 (28 April 1999) demonstrates a more detailed analysis of the realities of the interpreting process including recognition of the skills, knowledge and judgement required by interpreters, the complexity of the task and the need to assess competence and standards. It is evident from these cases that interpreters impact or alter the courtroom interaction and make a range of linguistic decisions during the interpreting process as suggested in the literature (Berk-Seligson,1990; Hale, 1997a, 1997c, 1999, 2001, 2002; Laster & Taylor 1995).

Methodology

A qualitative approach was selected for this pilot study to analyse views of Auslan interpreters, spoken language and legal professionals regarding the role of the interpreter in the courtroom. Three Auslan interpreters, three spoken language interpreters and three legal professionals were individually interviewed. The interviews were audio taped and transcribed. The data collected from the interviews was then analysed in relation to issues raised by the three cases above and compared to current literature in the field. This approach draws on previous qualitative research carried out in the United Kingdom in which views of legal interpreters and Deaf consumers were elicited by questionnaire and interview (Brennan & Brown, 1997).

Limitations of the study were also noted including difficulty of obtaining participants from the legal professions, quality of the recording, limitations of the interviewing technique, different levels of familiarity with the participants, new issues arising during the interviewing process. Most significantly, it was beyond the scope of the study to determine the perceptions of all interpreters and legal professionals working in Sydney, in the state of New South Wales, Australia. It is recognised that the views expressed were those of a small sample size of nine individual participants.

The study

Despite the limitations, the findings of the study raised significant issues. The responses of the legal professionals were analysed to reveal some similar views to those expressed in the literature, although varying degrees of understanding about the interpreting process – the nature of the task of interpreting between two languages and varying degrees of comfort with the role. The responses of the spoken language interpreters and the Auslan interpreters were compared to reveal similar understanding of the Code of Ethics (AUSIT, 1996; ASLIA, 1997) but some differences in the way that the Code is applied in practice.

This paper will discuss differences and similarities revealed in the responses of the participants. This exploration leads to further questions about these differences, why they exist and what role training and different client groups plays in creating these differences. This pilot study highlights the need for further discussion as well as collaborative training of these three groups of professionals. This would provide a forum to address some of the differences in expectation and as an educative process to prepare legal professionals and interpreters for working together in the courtroom.

Bridging the Language Divide: Testing for On the Phone Interpretation, Training for Globalization

Fabiann-Sophie Chauderlot
NetworkOmni Communications

Dr. Fabienne-sophie Chauderlot has a Ph.D. in Critical Theory and an MBA in International Marketing Strategy. She has taught French and Philosophy for decades in American Universities and Puerto Rico, worked as a Consultant in Cross-Cultural Awareness for major corporations. Dr. Chauderlot is NetworkOmni's Director of Language Services. She manages Quality Assurance and their Certification Program created with leading testing and training experts – many of them MIIS associates – to train highly professional on the phone interpreters. Dr. Chauderlot has published a French Grammar book and articles in prominent academic journals whose topics range from translation to global ethics via phenomenology.

The history of knowledge and ideas has shown that, while fields of academic expertise may vary drastically, they all have something in common: they regularly go through epistemological ruptures. There always comes a time when experts of a field are confronted with an event, a discovery, or even a social factor that indicates to them the need for a rethinking of the postulates, theories, as well as beliefs and objectives governing the practice of their teaching.

The object of this presentation is to investigate the possibility that the art and/or science of interpretation may have come to such articulation in its development due to two major factors. The first one is the maturity thorough research that concerns the internal mechanics of the profession: the extensive and detailed work having been accomplished by leaders in the field of testing and assessment has thrown remarkable light on the cognitive, linguistic, and pedagogical aspects of interpretation. Without such grounding work, little theory and no progress are possible. On the other hand, a variety of phenomena that are external to the understanding of interpretation as an intellectual exercise are exerting pressure on all parties involved in the process: the interpreters, as well as the agencies, the clients, and the foreign speakers. They cover the entire range of key components that normally prevail over the exchange of meaning between two individuals. I would like to argue that social, cultural, economical, and political factors are becoming a force such that we need to rethink our most essential principles. While a few years ago the question of "the validity of the specific inferences made from test scores" was crucial, I suggest that today we may want to question the validity of the postulates that originally let to our choice in testing approaches, methods, objectives, and desired impact – not to mention philosophy as a whole.

In a famous article, the philosopher Walter Benjamin defined what he thought was "The Task of the Translator." His essay was motivated by a series of circumstances not unlike the current ones, the most important of them being an increase in the mass consumption of canonical texts in translation. Benjamin's both highly theoretical and poetic text responded first and foremost to a change in the market, the industry of Literature. As a professional translator and an academic who recently joined a company offering interpretation on the phone to hundreds of people and dozens of company across all industries on a daily basis, I have had to rethink many if not all my preconceptions as well as beliefs about the nature and the purpose of interpretation, although I thought they were by now legitimate. It has been my professional experience so far that, as interpretation is evolving from being a context specific, in elite circles, or punctual interventions expert activity to having to become an every day mass consumed product, its practice confronts us to the limits of our theories. In other words, while we test people to act as interpreters, we need to be aware that we may actually need to train them to become part of a much larger work force, the one that not only responds to but drives globalization. This presents as many challenges as opportunities for our students, as it does to us, and our entire profession: I propose to discuss the main ones I see and hopefully be shown the many others that still escape me.

Beyond a Linguistic Conduit: A Study of Community Interpreter Competencies

Izabel S. Arocha, M.Ed.
Boston University

Izabel S. Arocha, M.Ed. is an experienced consultant, trainer and group facilitator with a long history of multicultural experience and advocacy. She worked as a medical, conference, and court and federal interpreter for many years As a presenter on interpreting and cross-cultural communication topics, she draws on her own cross-cultural upbringing, having been raised in several countries, and having worked through cross-cultural communication issues all her life. She has worked with program coordination, strategic planning and monitoring, and evaluation at community, state, and national levels. In addition to training and consulting, her skills include risk assessment, advocacy, curriculum development, program planning and management, marketing and media initiatives, community outreach and cultural awareness. She is currently a faculty member of Boston University's Medical, Legal, and Public Service Interpretation program. At Cambridge Health Alliance, as the Cultural and Linguistic Educator, she provides continuing education services to 155 interpreters and educates health care providers on culturally competent care and on how to work with interpreters more effectively. She also works as a consultant for CultureSmart, developing, expanding and promoting the consulting practice, curriculum design, and developing customized training programs for health care organizations. She holds a Bachelor in Management from Lesley University, a Translation Certificate from University of Cambridge, and a Masters in Education from Boston University. She is fluent in Spanish and Portuguese and speaks French.

There is no question that interpreters are language professionals who utilize their terminology knowledge and interpreting skills as their primary tools. Interpreters need to master several different linguistic abilities in order to perform their work competently (Setter, 1988). Community interpreters reflect other important roles of enabler and facilitator as one who empowers the Limited English Proficient (LEP) immigrant seeking human services *and* those individuals/organizations providing such services. In a public service bureau, the interpreters ensure that all persons have access to information about government programs and that services reach all populations. In the courtroom, interpreters give all parties the chance to participate in the legal process. In a medical encounter, interpreters allow providers and patients the ability to work together to determine appropriate and needed treatment. This study will propose a new model that looks at expanding the view of a community interpreter's competencies.

What is the purpose of a *Cross-Disciplinary Community Interpreter Competency Model*? It will help define what interpreters need to know and do to be successful in the community interpreting field regardless of the setting(s) they work in. There is a growing demand for community interpreter professional standards, and often the associations that represent these interpreters are working simultaneously yet separately in their own standards of practice, with stronger emphasis on the intricacies of the settings rather than focusing on some of the important common denominator competencies required for all community interpreters. This model uses the framework of expounding the necessary competencies that are required for all community interpreters. It benefits the profession by defining it, creating standards, and positioning it for the future. It benefits individuals by offering a means to prove their value and identifies a map for professional development in different areas of competencies. It benefits employers by providing competency areas to help evaluate job candidates. Last, it benefits educational institutions by providing a better framework for curriculum design development.

Levels of Competencies

This model has four levels of competencies. The first level is the Human Services Level. This level incorporates three sets of competencies that are most important for community interpreters: Communication Skills, Interpersonal Skills, and Intercultural Skills. These are required competencies on a daily basis in the work environment and at every single interpreted encounter and in their work outside interpretation. They are very important to the success of community interpreters yet are applicable across a wider range of occupations. The second level involves the language area of expertise. This relates to the proficiency level of the interpreter in each of the languages worked in. Unlike translators or conference interpreters, community interpreters need to work in both directions in their A, B and/or C languages. It is competency that will require continuous development throughout the professional career of the interpreter, as linguistic skills in any language can always be improved no matter how fluent an individual is. Acquiring and maintaining a professional/educated level of proficiency requires a concerted effort from the part of the interpreter. Also in the second level of competency is the field specialty which is defined as the different settings the interpreters work in: medical, legal, public service, immigration, workmen’s compensation, and others. The second level includes areas of expertise that comprise interpreter profession specific competencies. These areas can be expanded or compacted, depending on the interest and scope of the individual interpreter. The third area of competency is called the area of the core competencies. The core competencies are most visible to those who work with interpreters. These include the functions and roles interpreters engage in mostly in interpreted encounters, however not always. These are interpretation skills (consecutive, simultaneous, sight translation, paraphrasing, note-taking), facilitation skills, presentation skills, intercultural mediation skills, LEP advocacy skills, and change agent skills. These involve clusters of skills, but are commonly viewed as roles to those that observe the interpreter as they perform each set of competencies. The presentation will present this model graphically and in greater detail to allow participants an opportunity to assess how it can be useful for their work individually and to their work with interpreters. It will be particularly beneficial to interpreter employers or educators. This will be an interactive presentation.

Interpreting the Uninterpretable in Japanese Courts

Yuko Wada and Hiromi Nagao,
Kobe College, Japan

Yuko Wada is a graduate student of Kobe College. Hiromi Nagao is Associate Professor of Kobe College Graduate Course for Interpreting and Translation

I. Introduction

With the recent increase of foreigners entering Japan, the number of criminal cases involving foreigners has been steadily on the rise. According to the Criminal White Paper published by the Ministry of Justice, the number of foreign defendants who were found guilty in the first trials almost tripled between 1991 and 2000. Accordingly, the demand for court interpreters is also growing.

I have worked as an English-Japanese court interpreter for 15 years, mainly interpreting for criminal cases at the Osaka and Kobe District Courts as well as the Osaka High Court. I will never forget my debut in court. It was a disaster. I could not understand the Japanese terminology used in the court, and could interpret less than half of the defendant’s testimony, which was in machine-gun, rapid-fire English.

Now, some fifteen years later, although my understanding of the legal terminology has improved substantially, there still remain many Japanese expressions and phrases that are challenging in terms of accurate interpretation into English. This is mainly because while a court interpreter is expected to faithfully render source language speech into the target language, while adding or deleting nothing, wide semantic and syntactic disparities between the two languages (Japanese and English) make this process difficult.

This presentation will focus on, among the many challenges that Japanese-English court interpreters face, the ambiguity of the Japanese language represented by the existence of an extremely large number of homophones that could sometimes lead to misinterpretation or incomplete interpretation. However, this paper has no intention of stressing the “uniqueness” of the Japanese language, but to emphasize that court interpreters should be well aware of the snares that homophones set up for interpreters.

II. Homophones Confusing Interpreters

1. Homophones

Homophones are words with different origins and meanings, but have the same pronunciation as other words whether or not they are spelled alike (e.g. principal and principle). Homophones are created when a language with a simple phonetic system imports a large stock of words from another language with a complex phonetic system. The tonal Chinese language has a wider variety of sounds than Japanese. When Japan imported kanji (Chinese characters) from China, the Chinese pronunciations of kanji words were transliterated into the narrower range of the Japanese phonetic system; the result was a great number of compound words with the same pronunciation.

According to the second edition of Daijirin (a Japanese dictionary), the word that has the largest number of homophones is kosho, which can be expressed in 45 different combinations of kanji.

2. Confusing On- and Kun-Homophones

There are two types of homophones: on (Chinese derived) and kun (native Japanese) homophones. Since each character in a kanji compound conveys a distinct meaning, generally speaking, on-homophones are easily distinguished in the written Japanese language. However, in oral expression, there is no way of defining the meaning of the homophone, except to guess from the context.

Legal terminology is no exception: it contains a number of homophones that are confusing in meaning. The Horitsu-yogo Taiyakushu (a legal terminology dictionary) edited by the Ministry of Justice includes 60 homophones out of 4,000 entries. For instance, koryu in terms of criminal procedures has two different meanings: 1) to detain a suspect for investigation or a defendant pending trial (勾留) and 2) to imprison a convict for between one and 29 days (拘留). Karyou is also a confusing word with two different meanings regarding punishment: 1) karyou (科料) , a minor fine prescribed by the Penal Code, 2) karyou (過料), a penalty to impose as an administrative punishment on a person who committed a minor offense.

Kun-homophones present more difficulty. Not only can each kanji have many kun readings, but many kun words can be written in a wide variety of ways. In addition to that, the distinctions between kun-homophones are often so subtle that even native speakers are confused. As mentioned earlier, this is because the Japanese language, with narrower phonetic system, adopted different Chinese characters to yamato (native Japanese) words to distinguish meanings. For instance, the verb sasu has multiple meanings: to aim at, to point at, to stab, to pierce, to offer and etc. Each of the meanings is represented by a different kanji. Kojien (a Japanese dictionary) contains ten different kanji for the word sasu. If the interpreter has a preconceived notion about the defendant, he or she may make a grave error when the defense counsel asks a question such as: “When you were sharpening the kitchen knife, Ms X came into the kitchen. Did you sasu her with the knife you were holding?” (In this case, the Japanese word sasu could mean either “stab” or “point at”, thus creating confusion.) In this case, this question was actually made by a defense counsel, who immediately realized the homophonic verb he used. He wrote the corresponding Chinese character in the air with his index finger to indicate which sasu he meant, but it is doubtful that the non-Japanese-native interpreter without sufficient knowledge of Kanji understood the difference.

Another confusing kun-homophonic verb is toru, which means to take, remove, subscribe, accept, steal, rob, among other meanings. The interpreter should be particularly careful about the distinction between “to steal” and “to rob”. “To rob” signifies “stealing money or goods from a bank, store, or person, especially by threatening that person by using violence.” Whether a crime is classified as robbery or theft makes a great difference in the severity of punishment. In one case, an interpreter, ignorant of the distinction between the two verbs kept using the verb “rob” for toru. The defendant, who claimed he had no intention of harming anyone, continued to deny this claim. The prosecutor was very much annoyed and accused the defendant of being a liar. The interpreter still failed to realize the confusion created by his ignorance of accurate legal terminology. Consequently, the duration of the court hearing was extended unnecessarily.

III. Conclusion

This paper focuses on the issue of homophones. The examples cited here, however, are only a fraction of difficulties that court interpreters encounter in interpreting from Japanese into English in Japanese courtrooms. Unless court interpreters fully understand the unique characteristics of the Japanese language, accurate and faithful-to-the-original interpretation cannot be guaranteed. Ambiguity makes the Japanese literature very intriguing and lyrical, but it is a potential pitfall for interpreters.

Definition-defying aspects of deposition interpreting - Potential topics for new research

Kayoko Takeda
Graduate School of Translation and Interpretation
Monterey Institute of International Studies

Assistant Professor, GSTI, MIIS, Freelance Conference Interpreter and Translator,
MA, Translation and Interpretation, MIIS, PhD Candidate, Translation and Intercultural Studies,
Universitat Rovira i Virgili

In U.S. civil procedure, there is a fact-finding process called “discovery”, during which each party attempts to obtain relevant information before trial. One of the methods employed during this process is depositions. In a deposition, a witness testifies under oath outside of the courtroom. No judge is present, but the testimony is recorded by a court reporter, and often videotaped, and the transcript and/or the videotape may be used during the trial.

Interpreting such depositions in corporate litigation (patent infringement, product liability, contractual disputes, etc.) represents a significant segment of the Japanese interpreting profession in the United States. This is one of the characteristics of the practice by Japanese interpreters, as compared to legal interpreters of Spanish and other languages, whose work has been mainly studied in the context of criminal proceedings (e.g. Berk-Seligson, Hale, Mikkelson, Morris).

There are distinct aspects of deposition interpreting as practiced by Japanese interpreters in the United States. (Hereafter, “deposition interpreting” refers to deposition interpreting practiced by Japanese interpreters in corporate litigation in the United States.) One of such aspects is the frequent presence of one or more check interpreters contemporaneously monitoring and correcting the interpretation by the official interpreter. Secondly, sight translation off a laptop screen with real-time reporting is widely practiced, and this transcript on the screen is also used for discussion among the interpreters on their disagreement. Lastly, the interpretation is recorded, transcribed, and can be used as evidence at trial and in other cases; and interventions by the checker(s), subsequent discussions and ultimate agreement or disagreement among the interpreters are also recorded.

All these features seem to defy generally accepted concepts such as immediacy and ephemerality in the definition of interpreting. For example, Pöchhacker focuses on immediacy in defining interpreting. “Interpreting is a form of Translation in which a **first and final rendition in another language** is produced on the basis of a **one-time presentation** of an utterance in a source language”. (2004:10-11, emphasis in original)

This seems to describe the core characteristics of interpreting in most cases. And while it is true that a rendition in anther language must be presented immediately in deposition interpreting as well, in deposition interpreting, an utterance in a source language (English) is presented not just one time when real-time reporting is available. It is actually presented once in oral form and once in written form. The presence of real-time reporting enables the interpreter to listen to the utterance AND to read the transcript for immediate or later use (for discussion with the check interpreter on his/her intervention, for example).

Also, in deposition interpreting, the first rendition that is produced in another language is not always final. It is sometimes challenged by the check interpreter(s) and the "final" rendition is achieved after discussion among them. (It should be noted that all of these exchanges, which can be looked at as "team interpreting", are recorded and transcribed as long as the utterances are in English.)

How can interpreting researchers address these definition-defying aspects of deposition interpreting?

One of the approaches used in interpreting research is to focus on the interactional aspects of discourse, especially in dialogue interpreting. For example, Wadensjö draws on Goffman's "participation framework" in her studies, and this could also be applied for describing how the official interpreter and the check interpreter(s) behave in a deposition in terms of realigning their "footing" during their exchanges. However, this would be a challenging task because of the difficulty in getting permission from all the concerned parties for using the transcripts and/or videos. It has been my experience that such parties are extremely unwilling to disclose the transcripts and/or videos of depositions, even for academic purposes, because of the nature of litigation.

Although inaccessibility to the transcripts or videos limits the scope of potential topics in researching deposition interpreting, there could be other approaches in studying some of its distinct features:

1. The role of deposition interpreters; why checkers are needed – user survey

There are studies on the role of interpreters based on survey results (e.g. Pöchhacker, Mesa, Kelly). If attorneys who are willing to cooperate can be found, a user survey can show their expectation profile on the role of deposition interpreters. Do they expect interpreters to be an invisible conduit? Do they acknowledge interpreters' function as a discourse coordinator as well? And most of all, why do they want have a check interpreter? Where does their "distrust" of interpreters' competence and neutrality come from?

2. Survey research on quality – interpreters vs users

Without transcripts or videos, it is not possible to analyze interpreting quality in terms of "accuracy" or "fidelity". But surveys on quality perceptions can be carried out with interpreters and their users. Results can be compared and analyzed between the two groups. They can also be compared with previous literature dealing with quality surveys of conference interpreting, if the same criteria are used. (e.g. Bühler, Kurz)

3. The effect of sight translation on interpretation

In a preliminary survey conducted with Japanese interpreters, 58% of the respondents felt that the use of real-time reporting makes their interpretation more literal. All the respondents said they use real-time reporting because it "helps to achieve accuracy and completeness of the interpretation", and 65% of them cited the reduction of the workload as another reason. A simulation with two groups of interpreters (one with real-time reporting and the other without it) may identify if there is any difference in the quality of interpretation (literalness, speed, etc.) and the fatigue of interpreters, for example, between the two groups.

4. Professional Conduct

The presence of a check interpreter creates different types of dynamics among the participants of a discourse. This aspect can be studied from the perspective of professional conduct by carrying out surveys and interviews and referring to various existing codes of interpreter ethics. The results of the above-mentioned survey indicate a calling for certain professional conducts among interpreters in the exchanges between the official interpreter and a checker/checkers.

In summary, deposition interpreting presents distinct features that have not been discussed much in the previous interpreting studies. Although the difficulty in accessing the transcripts and/or videos of discourse limits the scope of such studies, there are potential methods for researching certain aspects of deposition interpreting, such as simulations, surveys and interviews.