The Court Interpreter: Creating an interpretation of the facts

Niklas Torstensson and Kirk P. H. Sullivan

A fair trail is impossible without an interpreter when anyone taking part in the court proceedings does not know the national language, yet the use of an interpreter affects the judging of an immigrant and perhaps their right to a trial as fair as the one offered to a native speaker of the national language. At times courtroom conversation using an interpreter gets confusing, interrupted, and breaks down. These disfluencies can be the result of a lack of linguistic and cultural insight by any of the parties. This paper focuses on how interpreters and legal staff perceive the court interpreter's role, and the creation of the interpretation. Using qualitative semi-structured interviews, it became clear that the interpreter and the lay judge hold different views. The interviews also revealed a degree of mutual mistrust.. Yet, in spite of this, a feeling that the bilingual communication in the courts works reasonably well most of the time also came through in the interviews and that with better education for all parties the courtroom could become a fairer legal context.

Keywords: interpreter, discourse, courtroom, disfluencies

1 Introduction

In Sweden, as in many other countries, anyone lacking knowledge of the national language is entitled to have an interpreter present during contacts with the police, the medical or judicial system. The issues surrounding language, the right to interpretation and their importance for a fair trial are highlighted in Brown-Blake (2006), and Brown-Blake and Chambers (2007). This article focuses on the interpreting process

during court hearings and how the interpreter and legal staff perceive this process. A fair trail is impossible without an interpreter when anyone taking part in the court proceedings does not know the national language, yet how does the use of an interpreter affect the judging of an immigrant and their right to a fair trial?

The interpretation of dialogue as a monologising practice has been studied by among others Wadensjö (2004), and courtroom dialogue and interpretation has been studied by, for example, Angermeyer (2006), Berk-Seligson (1999), Filipovic (2007), Russel (2000), Torstensson and Gawronska (2009) and Wennerstrom (2008).

Torstensson and Gawronska (2009) showed in their case study of hearings interpreted between Swedish and Polish in which they studied "discourse disfluencies and discourse techniques aimed at disfluency correction and prevention" (p.60) that from time to time court-room conversation using an interpreter gets confusing, disfluent, interrupted, and can even break down but that the sources of these disfluencies cannot be ascribed to any specific party in the courtroom, and that regardless of how competent the interpreter is, a lack of linguistic and cultural insight by any of the parties can contribute to courtroom discourse disfluencies. Torstensson and Gawronska claimed that "as these factors generally are unknown, or at least not reflected upon by the legal staff, the witnesses, and the suspects, the occurrence of disfluencies in court hearings is unavoidable." (p. 69). For the purposes of their study they defined discourse disfluencies as: "not only phenomena traditionally defined as speech disfluencies (self-corrections, hesitation marks etc.), but also disruptions of the interpretation process, and of the dialogue as a whole." (p. 60).

The case study, excerpted from Torstensson's (2010) doctoral dissertation, shifts the focus from a linguistic analysis of discourse fluencies in interpreted courtroom dialogue to consideration of how those who work in the courtroom experience view the role of the interpreter and discourse disfluencies that arise in bilingual course hearings. Before presenting the interview study and the discussion of the interviewees' opinions and observations, this article initially places the study in context by overviewing the process of authorization of interpreters for the Swedish courtroom, the rules and guidelines for legal interpretation, and the interpreter's role and dilemmas.

2 Background

A fair trail is impossible without an interpreter when anyone taking part in the court proceedings does not know the national language, yet how does the use of an interpreter affect the judging of an immigrant and their right to a fair trial?

The interpreter fulfils a role in the court proceedings and the certified interpreter aims to follow the rules and guidelines of the Kammarkollegiet (2004a). The court interacts with the interpreter and is neither trained in how to communicate with a witness or the accused through an interpreter, nor in bilingual communication. This lack of training could result in different understandings and expectations about the role of the interpreter and what interpretation is, and possibly contribute to the breakdown in communication in the bilingual courtroom.

Differences in the understanding of terminology could be a source of the possible different understanding and expectations. Morris (1995) discussed how the use of the term interpretation is not without problems as the term has other implications in a judicial setting. Within the linguistic community, the term refers to the process of transferring meaning between spoken utterances in two languages[9], whereas within the legal community, interpretation is an activity associated with the use and manipulation of language reserved for the legally trained staff in the courts, for example, lawyers and judges. As a result of the situation, Morris emphasized the importance of clearly defining the terminology to reduce the risk of misunderstandings and to enable a common view of what interpretation entails. This included making clear the distinction between interpretation as an intralingual process (as in the interpretation of a legal text) and interpretation as an interlingual process (as when conveying the meaning of an utterance from one language to another).

Another aspect that could contribute to the breakdown in communication in the bilingual courtroom is the legal community's attitudes towards court interpreters and court interpreting. Morris

[9] In the linguistic community the distinction is made between interpretation and translation. Translation is the process of transferring meaning between written texts in two languages.

(1993) revealed that the legal community holds a primarily negative view of both the interpretation process and the interpreters performing the task. Further, the prevailing opinion among legal staff was that court interpreters should perform a verbatim translation of what is said in one language into another language. Morris pertinently summarized the situation as follows:

> The activity of interpretation, as distinct from translation, is held by the law to be desirable and acceptable for jurists, but utterly inappropriate and prohibited for court interpreters (p. 26)

Using qualitative semi-structured interviews (Kvale & Brinkmann, 2009) with an experienced lay-judge and an experienced certified interpreter, this case study investigates the interpreted court dialogue, the problems the interpreter faces, and the views held by the interpreter and the court personnel about the nature of the commission as interpreter. Together the interview data on these topics of investigations will provide a snapshot of the feelings, attitudes, and observations about the use of interpretation in court proceedings from these two perspectives and possibly indicate the frequency with which the court dialogue is interrupted due to differences in the expectations of the interpreter's role in the court.

3 Authorization of interpreters

The Legal, Financial and Administrative Services Agency is responsible for the authorization of interpreters and translators in Sweden. Applicants for authorization undergo tests and a proficiency examination at the Agency. The successful candidate interpreter is certified for a period of five years and authorized to interpret between Swedish, and one or more other languages. An authorized interpreter can specialize and be authorized as a court interpreter and/or medical interpreter after further examination. The specialization authorization tests, among other things, knowledge of legal and/or medical terms in both Swedish and the interpretation language(s), and fundamental legal and/or medical knowledge. The applicants also undergo oral tests in simulated court- and/or medical care situations in a role-play setting.

Every five years the authorized interpreter is required to undergo re-testing to retain their accreditation as a general and a specialized interpreter. This process is designed to ensure that the interpretation produced by the interpreter is both competent and reliable. This is an important feature that is designed to overcome the paradox that most often the only person able to judge the quality of the interpretation in a court setting is the interpreter themselves. Only infrequently are there other people in the court with advanced knowledge of both the source and the target languages. In Sweden, the rules and guidelines published by The Legal, Financial and Administrative Services Agency work to create a frame for dealing with this paradox.

4 The set of rules

The Legal, Financial and Administrative Services Agency's rules and guidelines for interpreters are collected in the documents "God tolksed" (Kammarkollegiet 2004b) and "Kammarkollegiets tolkföreskrifter" (Kammarkollegiet 2004a). Further rules are found in the Swedish law, for example in the Code of Judicial Procedure, the Administrative Judicial Procedure Act (1971, p. 291) and in the Official Secrets Act (1980, p. 100). The aim of these rules and guidelines is to ensure that interpreter follows a legally and ethically well-formed practice.

The directions from The Legal, Financial and Administrative Services Agency state, "During interpretation, the authorized interpreter shall reproduce all information as faithfully as possible" (Kammarkollegiet 2004a, 14 §). This has implications for the manner of interpretation beyond the pure linguistic. The Legal, Financial and Administrative Services Agency recognize this fact and write, as a comment to the statement, that "…terms and expressions as far as possible should be reproduced correspondingly. Cursing, emotional expressions or body language should not be diminished." Thus, if a suspect, or witness, answers a question with hesitation or in anger, this must come through in the interpretation as it could prove of importance for court's deliberations.

Similar rules and guidelines for interpreters can be found in other countries including Denmark, the USA and South Africa. In Denmark, as discussed in Jacobsen (2002), the guidelines are laid down by the

National Commissioner of the Danish Police (Rigspolitichefen) in a similar way to Sweden. In the USA, the Code of Ethics and Professional Responsibilities is issued by the National Association of Judiciary Interpreters & Translators (NAJIT) (NAJIT 2008) and follows the four cornerstones for interpretation: Accuracy and Completeness, Impartiality, Confidentiality and Conflict of Interest. In the USA, the need for legal interpreters has resulted in graduate programmes in legal interpreting. The need is however far greater than the education system can provide; Benmaman (1999) pointed out that the general impression was one of too little, too late as only two graduate programmes existed at the end of the 20th century to meet the USA's total demand for qualified legal interpreters.

South Africa has 11 national or official languages, with the associated need for interpreted communication. The South African constitution stipulates that, in order to get a fair trial, a person is entitled to an interpreter if he or she does not understand the language of the court. This means that the demand for court interpreters is high. However, as pointed out e.g. by Moeketsi (2000), the quality of the interpretation has historically often been low with inconsistencies, irregularities and inaccuracy. To raise the standard of court interpretation and to ensure the quality of the interpreters a university programme leading to a BA in court interpreting has been established in South Africa (Moeketsi & Wallmach 2005; Moeketsi & Mollema 2006) that follows the standards for legal interpreters follow the NAJIT (2008) guidelines.

These and other national rules and guidelines create a frame for legal translation, yet there still remain many issues surrounding the interpreter's role in the court room, the nature of the interpretation process and its dilemmas, and how these are understood by the various parties involved in the legal process.

5 The interpreter's role and dilemma

The interpreter's main task in always is to convey the linguistic message between people who do not share a common language. This is, in many cases, the only important task. In some cases however, for example, in a court hearing, the linguistic message alone is not always

sufficient. The manner in which something is said can have consequences for the judgement of the trustworthiness of a statement. The interpretation should, therefore, also convey feelings like excitement and hesitation, and, ideally, a broader picture of the client than can be gained from an emotion-free verbatim translation.

It would be natural to think that the greatest difficulties in legal interpreting arise when translating legal terminology between two languages. This can certainly pose a problem, but it is a fairly minor one once the terminology has been learnt. Far more problematic for the interpreter are the differences in pragmatic aspects such as illocutionary equivalence between the two languages of interpretation. Hale (1999) studied the consecutive courtroom interpretation of discourse markers between English and Spanish and found that discourse markers were often overlooked. Overlooking these markers considerably changes the illocutionary force and the way an utterance is understood. Incorrectly interpreted fillers such as conjunctions, interjections and particles, alter the force of an utterance and make it hard for a listener to determine, for example, the degree of hesitation, politeness or determination with which an utterance is made.

Hale (1999) furthermore found that some fillers were frequently omitted in the translation, thereby retaining the illocutionary point but changing the illocutionary force. Hale studied the English discourse markers "well", "see" and "now" in interpreted hearings, and how these were interpreted into Spanish. He found that the interpreters omitted the markers systematically. The resulting interpretations "…alter the force or strength with which the illocutionary point is presented, such as the difference between 'I suggest' and 'I insist'" (Hale 1999, p. 80). The main reason for this seems to be that translation equivalents are difficult to find in the short time available to the interpreter.

That the lack of time available to the interpreter can result in, among other things, shifts in illocutionary force illustrates the need to see interpretation more as building a bridge between people and cultures that comprises more than the verbal manifestation of language. Moreover, as pointed out by, for example, Chesterman (2001), translation and interpreting involve an extensive ethical dimension that defines the basic attitude to the translation or interpretation task, and

adds a further dimension to the dilemmas of cross-linguistic communication.

Chesterman (2001) argued that there are four partly incompatible models that describe the ethics of the translation and interpretation process: ethics of representation, ethics of service, ethics of communication and the ethics of norms. The first model, ethics of representation, focuses on the source, without adding, omitting or changing anything. In this respect, the model is similar to what Nida (1964) defined as formal equivalence and what Newmark (1988) classified as semantic translation. The second model, ethics of service, focuses on translation as a service performed for a client. The ethic goals for this model have their focus on the client, and the translator's main virtue is loyalty to the client. In this sense, it resembles Nida's (1964) dynamic equivalence.

The third model, ethics of communication, represents a shift in focus from representation to communication with others. The goal is to facilitate intercultural communication even if this is at the expense of faithfulness to the source and the target. Chesterman stressed understanding as paramount for this model, and defined this as: "*Understanding a translation means arriving at an interpretation that is compatible with the communicative intention of the author and the translator (and in some cases also the client) to a degree sufficient for a given purpose*" (Chesterman 2001, p. 141). In this respect, the model has points in common with Newmark's (1988) communicative translation with its focus on the cultural aspects of the message.

The fourth model, ethics of norms, strives to uphold the norms regarding the way a translation is supposed to be in the target language culture at the time that translation is made. The key word for this model is trust, and by conforming to predictable norms, and not surprising anyone, the translator gains trust for him- or herself and thereby for the profession.

The complexities of interpretation and the dimensions of the associated ethical dilemma feed into the different views of interpretation that members of the legal profession may hold. To explore these issues and others that may help explain why communication in the bilingual courtroom collapses and possibly impact on how an immigrant is judged, two semi-structured interviews

were conducted. These interviews have the function of providing a first insight into the explored issues and provide a basis for future interviews with court employees. The interviewed interpreter and lay judge were selected, therefore, due to their ability to analyze linguistic and narrative situations

6 The interviewees

Both interviewees have extensive experience of working in Swedish District Courts. The Swedish District Courts deal with criminal cases, contentious cases (civil law disputes) between private persons, for example family cases, and various other matters such as adoption (District Court – Sveriges Domstolar, 2009, September 30). Judgements are made by a legally trained judge together with three lay judges. The lay judges non-legally trained and are appointed by the municipal assembly for a period of four years that coincides with municipal assembly elections. The recruiting of the lay judges is run via the political parties. Recently it has become important to broaden recruitment for lay judge positions to include those who are not member of political parties. In the court deliberations the lay judge's vote has the same value as the legally trained judge's vote. Lay judges come from many walks of life, have no legal training and very few have formal insights into multilingual communication or translation theory.

The interviewed interpreter was a young certified interpreter. She has lived in Sweden for over 10 years and has extensive experience of medical and legal interpreting in a range of situations. She is fluent in Swedish at a near-native level with a moderate foreign accent, holds a PhD from a Swedish university and at the time of the interview held an academic post at a Swedish university.

The interviewed lay judge was a 54-year old Swedish native speaker who has several years of experience of judging in the District Court, and has attended many hearings with interpreters present. She holds a PhD, speaks English and French at near-native level, and at the time of the interview held an academic post at a Swedish university.

7 The interviews

The interviews were semi-structured, with open questions allowing for the posing of follow-up questions to obtain further data (Williamson 2002). The interviews were held in Swedish and lasted approximately 40 minutes. The length of the interviews was not set in advance to allow the respondents to reflect and expand their answers as they wished. The interviews were conducted on separate occasions and recorded in a studio to allow further analysis of the answers and to prevent note taking disturbing the conversation. After the interviews had been transcribed the transcriptions were sent to the interviewees for approval. This ensured the correctness of the transcription, allowed for correction of misunderstandings and answers that the interviewees felt gave incorrect impressions and allowed the interviewees to remove anything they felt could point to a specific case. The questions and the collected data were discussed in depth with colleagues in the field to ensure the internal validity of the material and analysis. In the following presentations the core findings of the interviews are presented.

7.1 Interview I – the interpreter

Asked if the legal staff show an understanding for the interpreter's work, and an awareness of what it means, that is if they realize it takes time, the interpreter reported that it varies between different courts and different settings.

> In some places they know exactly how things should be. They have planned for the extra time and they inform all involved that an interpreter is present and that they should not talk too long and that the interpreter may interrupt. Other times I come to places where they obviously have not used an interpreter before, so they go about it as usual and that makes things a little more difficult.[10]

One situation described by the interpreter as frequently difficult was the questioning of witnesses since

[10] The interview quotes are translated by the first author and agreed by the second author.

> …witnesses often are a bit stressed and not really comfortable with the situation and often not used to be in a courtroom at all. It is maybe their first time there, and they want to answer the questions really quickly and that makes things a little more difficult.

A further complicating factor is that the interviewee brought up is when a witness is questioned over the telephone. These witnesses do not have the visual clues about what is going on in the courtroom and are easily forget that an interpreter is present. Normally the court clerk will inform a telephone witness that an interpreter is present. However, it is not uncommon, in the interviewee's opinion, that this information has to be repeated during longer sessions, as what is not seen tends to be forgotten. The interviewee, however, feels that these situations are recognized by the legal staff as potentially problematic, and they most often have strategies for alleviating them.

Greater challenges exist for the court interpreter who is obliged to translate everything that is said by a client, in the same manner and style that it is said. It is not uncommon that the defendant, who might be tense and nervous, speaks incoherently with many self-corrections, hesitations and empty phrases. This poses a challenge to the interpreter as the tension, nervousness and hesitation shall be reproduced in the target language. As the manner of answering can be of significance for the judgement of a witness's truthfulness, it is important that these aspects are also conveyed in the interpretation. The interviewed interpreter admitted that this is a challenge, but one that is possible to overcome. If the person talks, but really does not say very much, for instance if the witness begins with self-corrections and empty phrases like *mmm, well, maybe, I don't remember, I don't know if...* the interpreter cannot interrupt and translate these self-corrections and empty phrases to the court but has to wait until a sentence has been spoken. About the phrases, the interviewed interpreter said:

> I think that it is evident, but as an interpreter I have to do it.

This suggests that the court may also think the self-corrections and empty phrases are evident, and their translation could irritate the court.

The interviewed interpreter pointed out that causes for confusion are not always easily recognized, as these may not primarily concern the purely linguistic aspects of the communication, but rather relate to cultural dimensions. In the case of interviewed interpreter, who interprets between French and Swedish, the majority of her clients are not immigrants from France, but rather immigrant and refugees from Africa. She estimated that 90% of her clients are from Africa. These clients often speak French as this is the language of the authorities and of the education system of their home country and not because it is their first language. The interpreter explained the cultural aspects of how questions are answered in the following way:

> Things are very formal within the political system and the school system, so it is common with very long expositions where the speaker starts to argue for a cause. That depends of course on which country they come from, but in the majority of cases I have had to interrupt when the presiding judge is irritated because he wants an answer. You ask a question and you get an answer. But this has really nothing to do with the language but more with the manner of arguing or debating that is learned.

This illustrates one of the central dilemmas with interpretation, namely that it is not merely a question of translating words but rather also a way of translating culture. The interviewed interpreter saw this situation as one of the major obstacles with the profession when all focus lies on the linguistic aspect rather than the broader communicative aspect and suggests that education is needed for everyone in the court to understand this:

> The point of us being there is to help everyone communicate, and the rest is really nothing we can do much about. One can only hope that everyone in the room or the involved parties can understand what can be related to cultural differences, and that is where I think there is a lack of education. This goes for lay judges as well as other involved, and it is the same story in health care and when interpreting in different contexts. Many people get irritated and interrupt the interpreter as well saying ”I’m not asking you – I want an answer” and that makes

> the situation difficult because as interpreter I have to interpret everything that is being said. And then suddenly you are faced with a couple of utterances that you don't have the time to interpret because of this… so I'm being blamed when the other person is doing the talking…

Similar situations can occur when translating proverbs and metaphorical or lexicalized expressions, as these are often culturally dependent and have no corresponding expression in the target language. The interpreter deals this with either by using a similar expression in the target language or, if no such expression exists, by explaining that "…this is a saying or proverb meaning…" This more practical or pragmatic view on interpreting is investigated in Jacobsen (2002) who found that using explanations is a common practice among interpreters. The principle of reproducing all information as faithfully as possible is thus broken in favour of the goal to convey the meaning as clearly as possible.

7.2 Interview II – the lay judge

When asked if hearings with an interpreter are generally seen as more troublesome than hearings only in Swedish the interviewed lay judge answered that this was indeed that case. She thought that one reason for this was that people do not know who they should address:

> It is impolite not to look at the one you are talking to, and that leads to that you in a way get stuck in the interpreter. That way you talk to the interpreter, not to the addressee.

The interviewed lay judge also saw the client as being, in some way, alienated by the presence of an interpreter and believes that in some way the client is perceived as more of a stranger by the court than it they were Swedish speaking.

On the other hand, the lay judge saw having an interpreter by ones' side as possibly beneficial for the client. The interpreter can, as well as translating, explain terminology and make sure that the client properly understands and follows the court proceedings in a way that is often not available for a Swedish speaker:

> Because the language used in courts can be quite complicated even for a native Swedish speaker, but the client has such a relation to the interpreter that he asks and makes sure he has understood everything. A speaker of Swedish might not always do that.

If this is the case, someone using an interpreter gets more support, morally and perhaps also judicially, than a person without an interpreter. The lay judge continued:

> I think that it may be easier for someone who has an interpreter than for a native speaker because you may have things explained in a more informal way instead of the usual legalese jargon. The translation is more ordinary in a way… And you also get the feeling that it is a bit more 'we two' so you can have things explained… so in that way it is an advantage to have an interpreter. It is a bit like having a person to support you.

When discussing what gets translated and whether everything that the client says actually gets translated, the lay judge's feeling based on her court experience was that parts of the conversation sometimes are not translated by the interpreter. Earlier field studies of court hearings have revealed that this is not uncommon view (e.g. see Case study 4). The lay judge also reported that the interpreter at times interacts with the client to explain or make something clear, and these pieces of conversation take place without translation into Swedish.

7.3 Summary of Interviewee Opinions

The interviews revealed a number of potentially problematic situations in the bilingual courtroom when an interpreter is present. It also became clear that the interpreter and the lay judge held different views.

The situations that are identified as problematic by the interpreter can be summarized as:

- Lack of experience of an interpreter being present complicates the task
- Witness hearings with stressed witnesses
- Telephone hearings

- Incoherent dialogue from the client
- Cultural differences in dialogue strategies

The situations that are identified as problematic by the lay judge can be summarized as:

- Uncertainty as to whom to address – the interpreter or the addressee
- The interpreter is perceived to more on the non-native speaker's side and rather than neutral
- Interpretation is time consuming
- It is not clear whether everything is translated?
- Even if translated – is the full message conveyed?

8 Discussion

The interpreter's mission and function in a legal setting in Sweden is clearly defined, both by the rules and guidelines for court interpreters and by the National Courts Administration. There is, however, a discrepancy in the views held by the interviewees as to how this functions between interpreters and legal staff. For someone primarily concerned with the dispensing of justice, the focus of the interpretation lies in the linguistic aspects, such as the translation of words in another language into Swedish. For an interpreter, often with deep knowledge not only of the language being translated but also of the cultural context and cultural differences, it is also necessary to, and impossible not to, include this cultural dimension in the interpretation process. The insights presented by the interviewees of their experiences and perceptions of translation in the courtroom support the claim made by Torstensson and Gawronska (2009) based on linguistic analysis of recordings of bi-lingual Polish-Swedish courtrooms that "as these factors [linguistic and cultural] generally are unknown, or at least not reflected upon by the legal staff, the witnesses, and the suspects, the occurrence of disfluencies in court hearings is unavoidable." (p. 69), yet provide insights for ways to work to reduce the frequency of disfluency occurrence.

Some of the difficulties and problematic situations are known and recognized by the involved parties, and can thus be resolved without too much concern. This includes the plan for working with an

interpreter; this includes making everyone aware of the fact that an interpreter is present. Some short instructions given to the court about the basics of working with interpreters and about giving sufficient time for interpreting is often enough. In the case of a witness being interviewed over a telephone line, this information needs at times to be repeated, to compensate for the lack of visual information that there is an interpreter present in the courtroom. Problems of this nature are, in other words, possible to eliminate with a minimum of effort and planning.

Greater challenges arise when the reasons for the problematic situations are unclear, or not known. These include the situations that originate in differences in expectations of the interpretation process in the court context, and areas of knowledge that are not shared by the legal staff, the interpreter and the interpreter's client. An example is when a client starts a narrative in a very hesitating and incoherent style, leaving the interpreter with words but without meaning. The interpreter's normal strategy is, rather than a verbatim word-to-word translation, to convey the meaning of an utterance to the court. This is clearly not an achievable goal if there is no meaning to convey. As a result, the impression of the court is that not everything that is said is translated.

When evaluating the interpreter's and the lay judge's interviews, it is apparent that both identify situations that are experienced as cumbersome or problematic. Strikingly, these situations are not experienced in the same way; something mentioned as being experienced as awkward by one of them was not reported as being experienced as awkward by the other. One explanation for this, offered by Jacobsen (2002), concerns the interpreter's focus on conveying a speaker's meaning rather than a verbatim translation. Jacobsen argued that the experienced interpreter's goal of successful interaction between the interactants presupposes more than literal translation. A common strategy is to include additions to the translation when necessary to compensate for the receiver's lack of background- or cultural knowledge. This view is not explicitly shared by the interpreter interviewed in this study, but similar ways of reasoning can be seen in the interview.

The three situations most likely to cause problems during a hearing, according to the interviewed interpreter are, one, witness hearings and witnesses heard over the telephone in particular. Witnesses are often stressed, anxious about being in the court setting and not familiar with the situation. A witness heard over the telephone is furthermore likely to forget about the interpreter as he or she does not have any visual or audio reminder that there is an interpreter at work. This also makes it more difficult for the interpreter to interrupt or be an active part of the conversation. The telephone interview sound quality has an impact as well, as difficulties in perceiving the witness often makes simultaneous interpretation impossible and the interpretation has to be conducted consecutively.

Two, the underlying meaning can easily be lost when translating proverbs, lexicalized expressions and idiomatic expressions. The interpreter is obliged to interpret everything that is said but cannot, strictly speaking, add or explain anything to make a statement clearer. It is however a known that these kinds utterances do not often translate into another language because of their cultural origin. The pragmatic way of avoiding misunderstandings in situations like this is for the interpreter to simply say something like "…and that is a proverb meaning…". Even though this procedure does not follow the rules and guidelines for interpreters, it is praxis for many interpreters. The interviewed interpreter said that her strategy is to use a corresponding proverb if one such exists, and when this is not the case to explicitly explain the meaning of the utterance.

Three, an incoherent client is always an obstacle for successful interpretation, and a reason for misunderstandings. Educating about how dialogues work and what interpreting entails could considerably reduce the uncertainty in such situations. The incoherence of the statement can have many reasons: stress, uncertainty as to what the question concerns, uncertainty about what to answer, uncertainty about in what manner to answer and being unwilling to answer. These reasons can often easily be exposed if they are expressed in a language and cultural code shared by the questioned and questioner. However, when an interpreter is being used in the questioning, the shared cultural code can be weak making resolution of the incoherence difficult and something that rests to a large degree with the interpreter. This task

would be less complicated if some knowledge about the interpretation process had been given to all the participants in the court case beforehand.

The lay judge pointed out that she had observed differences in the verbal behaviour of prosecutors and barristers when questioning occurs via a translator rather than directly in Swedish in monolingual hearings. This observation is based on informal observations of the same people from a number of hearings. It seems that many lawyers over time develop a personal style of running a case or questioning.

> This may be from watching TV, because at times you get the feeling that they sort of play a role in a way. They have their own styles, and a certain way of asking questions switching between rubbing someone the right way and then sting a bit harder. So, they have their attitudes, their body language and their voice and all of that falls absolutely flat when interpreted. It is a lot of acting from their side that is all in vain. You can tell that this is disturbing to them, when it more comes down to just reading their lines instead of acting them, as they usually do.

This observation underlines that more than the language differentiates a monolingual from a bilingual hearing. The presence of an interpreter affects both what is said and the manner in which it is said.

A more serious reflection made by the lay judge concerns the right of law based on the doubts about whether everything really comes through in the interpretation process. At times there seems to be a lurking feeling among the legal staff that everything said in a conversation is not translated. Furthermore, doubts can arise about whether the meaning of what is said and translated really comes through, or if some things are lost in the translation. This may have its ground in the incoherence-problem. If someone is speaking incoherently, or nonsensically, in a language that is not understood by the listeners and an extended passage of speech is translated to a few short sentences, the listener has a feeling of translation incompleteness.

The interviewed lay judge reported occasionally experiencing doubts about translation incompleteness both into Swedish and from Swedish. She also pointed out that when something is translated it is not possible to know how much of what is being said is understood by

the translator or the witness. This is however a factor, that is not limited to bi- or multilingual dialogue situations; these contexts however make it more difficult to notice that the witness is not, for example, understanding the questions, or the court, not understanding the answers to the questions.

Chesterman (2001) proposed a fifth model of translation; an ethics of professional commitment. Chesterman's considered the desire to be a good translator who makes the right decisions when translating as the primary motivating factor for a translator. For a translator to be able to do this, Chesterman stressed the need for language skills and cultural knowledge. The knowledge of culture and cultural difference is necessary to make translation decisions and to anticipate the effect of different choices. As part of his proposed model, Chesterman proposed the development of an official oath, the Hieronymic Oath, for all translators that would underline the importance of the work. The suggested Hieronymic Oath could, if it became widely known outside the translators' guild, have a positive impact on the view of the process of translation and interpretation, and thus also on the quality of the justice in the bilingual courtroom.

9 Conclusions

From the two interviews, the one with the interpreter and the one with the lay judge, a degree of mutual mistrust can be detected with feelings of not knowing what is being interpreted and what not, and what is being understood and what is not penetrating the courtroom. Yet, in spite of this, a feeling that the bilingual communication in the courts works reasonably well most of the time also came through in the interviews. Situations where communicative disturbances could impact upon the court process and ultimately jeopardize the dispensing of justice or the rule of law were acknowledged. One way of reducing the impact of these could be to create an awareness of these problematic situations; the introduction of a Hieronymic Oath as proposed by Chesterman (2001) could be one action that could help creating this awareness. Another action could be the introduction of training about the interpretation process for those who work in the legal system; such a training programme would hopefully facilitate the process for all

involved in bilingual hearings, and aid in the dispensing of justice. The situation, expressed by the interviewed interpreter in the following way:

> This is really the problem – you engage an interpreter to understand another person, but only to understand in the linguistic sense. Communication reaches far beyond linguistics, and that is the main concern. It is possible to be in command over two languages, but still not manage to mediate this!

illustrates the need for all members of the court to have a knowledge of multilingual, multicultural, and interpreted communication. An improvement in this competence would be beneficial for non-native speakers, for the ease of court proceedings and, ultimately, for the legal rights of the individual. This is particularly central when the accused is an immigrant, or visitor, who knows little or no Swedish (or the national language of the courtroom); the divergent views of what interpretation is, given a case, need to be reduced to increase fairness in court judgements and legal security.

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Niklas Torstensson received his Ph.D. in Cognitive Science from Umeå University, Sweden in 2010. He lectures at the University of Skövde, Sweden and is currently Assistant Department Chair in the Department of Humanities and Information. He currently has little time for research but his primary interests and research activity are in the areas of cognitive science, sociolinguistics and forensic linguistics. Email: niklas.torstensson@his.se.

Kirk P. H. Sullivan received his Ph.D. from the University of Southampton in 1992 and his Ed.D. from the University of Bristol in 2010. He was a post-doc at the University of Otago, New Zealand before moving to Umeå University in 1994. Since then he has been promoted to Professor of Linguistics. He has been awarded a number of research grants for projects in forensic linguistics, and in literacy acquisition. He occasionally works as an expert witness. His current research interests span education, linguistics, language acquisition and teaching and forensic linguistics. Email: kirk.sullivan@ling.umu.se.