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Evaluating Legal Protection of the Consumer[1]

Robert Stefanicki

The project has met with a great response from practitioners, domestic and foreign experts, as well as representatives of European Commission, courts, public administration bodies and various organisations, including ordinary consumers. Consumer protection strategy is based on the paradigm through comprehensive and transparent information. But obligations imposed on businesses have created the problem of the real costs incurred by them and the effects of these obligations that might be undesirable. An important role in the evolution of the legal culture today is played by the doctrine, with interesting element of this type of transnational cooperation. Materials, in particular the resulting conference and study meetings, have aroused considerable interest and remained a useful source of information for the above persons concerned, whereas in this professionals and legal practitioners. Discussed material is based on the results an independent and external research in education institute.

Keywords: consumer protection, essence of this right, cooperation of universities, multi-level analysis and discourse

1 Some preliminary remarks on consumer law

European consumer law is undergoing a transformation with a clearly defined shift towards complete harmonisation of selected domains of that law and promotion of horizontal instruments. The new approach to the harmonisation of national consumer law provisions should be considered in a wider context, including European Commission's

[1] This is finished project co-funded by the European Union under the European Social Fund.

efforts to harmonise contract law. EU authorities mention the multitude of legal orders but often we hear the question was multiculturalism out of date? Multiculturalism, it should be stressed, was intended to create a more tolerant society.

2 Introduction

In the years 2009-2011 we completed the project entitled *"Scientific and educational potential of the Law, Administration and Economics Faculty of the University of Wrocław in the service of a consumer legal protection".* It constituted the first undertaking of this type at the Faculty[2]. This aspect caused that the undertaken initiative was pioneer in its character and entailed risk and some degree of organizational and administrative difficulties while implementing it[3]. It can be described as an enormous scientific and logistic challenge. It was necessary to work our proper procedures to govern the implementation process. However, due to the fact that the project was paving the way for others, our Institution benefited from it as subsequent initiatives will be simpler to implement. The project evaluation report, which is discussed in detail below, notes that *"it was a promotion of the University as it would be perceived as an academic centre implementing such a consumer's project. So far we have not had an equivalent project aimed at a consumer in another academic centre. Due to the fact that we acquired specialists from other centres (...) the knowledge on the project was transferred to the centres".*

The general project's objective concerned supporting a dynamic development of the educational and scientific potential of the Law, Administration and Economics Faculty of the University of Wrocław, concentrating especially on the activity of the staff of the home Institution in the area of promotion of high consumer legal protection standards in Poland, established by the European Union law with the

[2] The idea behind the project was to create conditions for sustained dialogue with the external environment of the University of Wroclaw; on this concept are open, in principle, our research units, as well as judicial authorities.

[3] In interviews it was noted that the project *"was a phenomenon as it was organizationally difficult for the dean, project manager, coordinators to implement, as there were no procedures which could foresee certain things and as far as I know there were certain problems with settlements and completing certain formalities which gave the project a pioneer distinction".*

use of an appropriately selected set of means (tasks). The project assumed exposure of the academic staff and doctoral students to the widely understood environment, including research centres of other institutions and institutions participating in the process of applying the law. In order to fulfill the above assumptions we worked out specific objectives along with specially accommodated actions. The latter comprised the actions included in the application: study meetings, scientific conferences with the participation of European law experts and representatives of the Western doctrine, open Internet forums, internships, scholarships for young scientists and specialized trainings. We are currently at the stage of closing the project implementation process. Some of the results will be spread over time. Still, we hope that thereby we promoted true academic cooperation which will be continued in various organizational and substantive forms by different centres not only at the home Institution.

3 A report becoming an inspiration …

The material presented below is based mainly on the Project Evaluation Report which was prepared upon request of the University of Wrocław by an independent and external Research in Education Institute (Instytut Badań w Oświacie). The evaluation activities were aimed at general assessment of legitimacy of the undertaking which was co-financed with EU funds, analysis of the expectations of the project participants and results of its implementation. Therefore, they do not concentrate on the substantial results of the programme implementation by various organizational forms (applied instruments). However, it does not change a positive evaluation (legitimacy) of the analysis and attempts to make a synthesis on the basis of the collected material, conducted by an independent institute. Evaluations were carried out with the use of anonymous questionnaires including mainly open-ended questions aimed at evaluating particular parts of the project during individual in-depth interviews (IDI). The evaluation was carried out among project participants, i.e. academic staff of the Law, Administration and Economics Faculty of the University of Wrocław, doctoral students who are also beneficiaries of the project and scientists of various chairs and institutes, whose scope of scientific interest

includes among others: consumer law, including the scope of the commercial, international, European, constitutional and civil law. Representativeness of standpoints (opinions) is supported by the fact that some qualified project participants, apart from their academic work, work within justice institutions, legislative commissions or law firms.
Initial analyses concerning the assessment of the subject covered by the project were a starting point for the evaluation. The presented compilation shows that at the initial stage of the project implementation opinions were expressed by independent employees, who usually have a strong relationship with the subject matter and who enjoy professional experience in the area of the consumer law. For them, undertaking the challenge relating to the project was legitimate for axiological purposes, seemed realistic as regards the attainment of assumed results. All parties covered by the evaluation, notice that consumer rights protection is in fact a currently developing branch triggered by the dynamic EU policy, which in Poland is still treated as a niche and placed "*on the fringes of serious research*". The respondents comment that in contrast to the West[4] – the issue of consumer protection is ranked very low as compared to other branches of law. Respondents even indicated that *"it is treated like a poor cousin"*. The fact that "*for the law practitioners it is not profitable"* translates to this condition. *It is much easier to represent companies than a poor single consumer. Additionally, students studying to become lawyers, become interested in other branches of law".* In order to diagnose the current condition the observation of one of the respondents that also economists "*do not treat the topic seriously although it is of fundamental significance as regards the functioning of the market and competition systems"* appears to be highly accurate. It is noticeable that lawyers-practitioners and young scientists taking part in the project notice the need to work out a common approach to the system of consumer legal protection. In the dialogue between the legislature and

[4] As compared to Western schools, Polish schools in this branch are not so much advanced. "In such comparison we are a bit behind. *Because in European schools such research has been stimulated by the EU and they have practiced such approach for a long time. I myself went to Paris to a conference on the consumer issues and the research works there are very much advanced".*

judicature the doctrine shall assume a principal role[5]. The science of law is not only to diagnose visible, especially in relation to implementation of the EU law in the national order, issues and to propose concrete solutions. The efficiency and comprehensiveness of protective mechanisms must include both an appropriate standard of the positive law but also efficient tools in its enforcement. The respondents directly stressed the need of effective application of adopted regulations: *"it is not so difficult to enact a law and to impose it. What is more difficult is to make it function, i.e. so that judicature accepts it and begins to apply it – it is a huge effort. Yet, the most enormous effort is to make the law (...) part of the awareness of people living in given times"*. The article presented below includes opinions of the project participants concerning particular project tasks, planned and completed, aimed at obtaining assumed results. It also contains general reflections diverting from the assessment of concrete instruments aimed at complete attainment of the project objectives.

4 Study meetings

The participants covered by the project evaluation agreed that it would have a positive impact on the development of the scientific unrest[6] in the area of the consumer law at the University of Wrocław. In fact, the evaluation of particular tasks carried out as part of the project differs but at the same time participants indicated their coherent and multifaceted character: *"the programme was very well prepared, it was multifaceted and in fact it covered all the subject matter. It is like to watch a film in ten episodes with every episode covering a very important issue from a bit different area".* It was noted that "*the consumer law is very difficult as it is not a single branch in which you open a book and everything is there. It works when one has a comprehensive approach and is able to present it as a whole. This project was very well prepared as it comprised civil-legal and public-civil approaches and penetrated the sectors. It is mastery in selection of issues".* Among the means aimed at attaining the project results,

[5] For example, on the background of diverging interpretations of Directive 2005/29: U. Bernitz, U., S. Weatherill (2007).
[6] One of the respondents defines "scientific unrest*"* as stirring interest among young people.

participants stressed the importance of study meetings and stressed basic functions of this instrument as a tool to integrate expert environment in the examined area. Looking realistically at the work of integration of scientists and practitioners of the examined field we may, having completed the project, assume with full responsibility that we are only at the beginning of the way. However, the initiative will further evolve not only within the University of Wrocław. The attitude towards authentic cooperation of scientists within different spheres of the law is rare[7] in Poland. This objective cannot be achieved by a forum which is founded on fifteen-minute long lectures where participants do not have time to concentrate on the issues and carry out an authentic legal discourse. As part of the two-year project we assumed and completed the concept of cyclic two-day study meetings of a fixed set of twelve experts in the consumer law. The fact that we introduced a rule that from the first to the last meeting we would have the same set of people working on the issues allowed for achieving an in-depth and comprehensive approach to selected issues, continuation of started threads on subsequent meetings, working out certain conclusions in the area of mastering the law, which is very often enacted, due to the requirements of timely implementation, in hasty procedures and in a thoughtless manner. The participants openly indicated that the structure based on a fixed team of specialists dealing with the consumer rights protection is advantageous as it allows obtaining subject integration and facilitates achieving concrete scientific goals. *"The period of the last two years facilitated the integration of search and research to a great degree. A team was created thanks to cooperation with acknowledged specialists from other centres. Thanks to study meetings we were able to revive activities in this area."* So far in Poland *"science has been on a quite good level but it is dispersed. Meanwhile (...) cooperation between institutes proved that the work on the protection of consumer rights is not only dispersed but the area as a whole is highly diversified."* Moreover, it was pointed out that this form of cooperation of scientists creates favourable conditions for development of the legal

[7] This rarity is stressed by A. Mączyński, Comments on the condition of Polish civil law education, 2011, no. 6, p. 13.

culture[8] and initiating research undertakings as every centre will feel appreciated. It should be noted that in the said meetings participated doctoral students and young doctors who did not participate in them as qualified persons. The project *"influenced, first of all, the development of research elements, as the scope and scale of the project was broad enough to enable the University to establish cooperation with a broad substantive scope and in a broader scope it enabled cooperation aimed at specific goals in the whole Poland."*

The format of the study meetings was evaluated by the participants as *"extraordinary"* giving a chance for effective and creative cooperation. Fixed participation of experts of various branches and institutes was assessed as an optimum environment from the perspective of assumed objectives. It gives great satisfaction to the initiator and the person conducting the project at the same time as this person managed to retain the concept despite raised doubts as to the selected strategy. The respondents stated among others that *"these were persons dealing with different branches of law. The core of the team were persons dealing with private law but we had specialists from the public law, economists and legal theoreticians, who addressed the issue from the side of economic analysis of law. It is a combination of various specialists and different points of view on the same issue which had such a good result"*. Moreover, they stated that *"constant contact between participants ensured the possibility of collaboration while selecting topics and regular supplementing of the agenda".* The participants also stressed the friendly and *"unique"* atmosphere of the meetings: *"very interesting format (...) it enabled a smooth flow (...) of observations, unification of positions, expressing doubts which were freely presented during discussions in which we could agree and discuss issues more openly than during a conference."* The above opinion does not change the fact that in many substantive issues the assessment of the same phenomena was diversified. As long as the discussion revolves around specific arguments the legal discourse brings value even if in many issues the agreement is not achieved.

Persons giving opinion on the project placed a lot of stress on including a comparative approach during meetings and conferences,

[8] The differences in modern contract law between the Europe and Asia mainly result from the historically determined different functions and substance of party autonomy, Fu J. (2011).

especially at the conferences the comparative legal analysis was supported by the participation of renowned Western consumer law experts, participating in the national process of implementing the law and co-creation of the European normative achievements [9]. The conclusions of the meeting participants prove that in smaller circles, especially younger scientists and doctoral students feel more relaxed and are more open to exchange their opinions. They stated that the openness, following the format of the study meetings, was only present in informal discussions held during breaks in conference sessions. Putting it differently, the respondents stressed the possibility of holding an informal discussion behind the scenes: *"the atmosphere was relaxed and was a continuation of the atmosphere created at study meetings. It allowed a lot of freedom of expression and sometimes leaving the organized linear thread of the discussion and allowed for discussing margins of the topics covered by a given speaker"*. However the image created on the basis of the report must be corrected due to the fact that not all project participants agreed to completing a questionnaire or giving a relevant interview. Thereby, I wish to stress the fact that at the first conference, young project beneficiaries were a bit embarrassed and might have been uncertain of their viewpoints and therefore their participation in the discussion at an open forum was insignificant. However, the second conference, also organized as part of the project, was based among others on the knowledge and experiences gained at study meetings, completed national and international internships and achievements resulting from the use of the scholarship system (within the project). When looking at the positive project experience as a whole one can see significant and substantially mature participation in the discussion during the last conference concerning, among others, the weakness of the process of transposition of the EU law into the national system, lack of tools for adjustment of the procedural law to the consumer protection standards provided in the substantive law and different barriers in the access of a consumer to the courts of justice. Their observations and conclusions were a reflection of the clash of practice and theory, ideas on the proper functioning of institutions (authorities) versus the reality which clearly diverges from the model.

[9] See F. Cafaggi F. and S. Grundmann S. (2011), J.-Ch Hülper,.,T. Jürgen (2011), G. Howells., R. Schulze (2009).

The belief demonstrated by participants that it is possible to improve the existing standards was really inspiring.

Thanks to the study meetings we were able to present, discuss and achieve agreement or openness to important issues related to the consumer legal protection. It was possible due to the multi-level and in-depth analysis of specialists who contributed their scientific experiences and observations concerning the functioning of positive law standards in practice to the meetings. The respondents stressed the fact that *"it was possible to create a team, which for two years met and discussed a few very important issues concerning the consumer legal protection. This is the problem of transposition, implementation of the EU law in Poland and difficulties related to it, further approach, a problem of an optional tool which was brought up during the project because earlier it was, in fact, non-existent (at the beginning of the project there was a spirit of maximum harmonization)".* Current problems of the European legislation were at the centre of discussions and the mentioned conferences. Based on the model of complete harmonization, the proposal of the European Commission of 8 October 2008 on the consumer rights covering four consumer directives sparked a wide-spread discussion of interested circles and attracted criticism of member states and the very European Parliament. Discussion on the limits of EU legislation and private law of member states constitutes an important lesson for young scientists who are only beginning to explore the subject of the project. In the presented opinions there appeared a thread of interdisciplinary approach to research in the environment of the home Institution and to include external experts in the programme: *"not only employees of our faculty but also representatives of other faculties not only of one branch of law but of many branches participated in the meetings. It became another layer which lead to the development of certain issues which would not have been brought up if such meetings had not taken place. For me the in-depth analysis of all subject threads would not have been possible if I had studied the issues on my own".*

The report asserts that we were able to establish a thread of cooperation with various research centres. The respondents noted that the project only starts the integration of the legal environment and the process should be continued after the project: *"we with the persons who*

came here have been cooperating for a very long time still maybe in different areas. In the case of the consumer legal protection the cooperation was increased". Even the beneficiaries of the project who met project participants before (before the project) on various levels indicated that their participation in the team was an added value: *"I know most of the people. (…) We got to know each other better with the people here, apart from that only in the area of the consumer law, so we could get to know each other better and discuss certain issues more openly (…) and we could also get to know people dealing with the subject matter in the nearest surrounding and establish direct contacts with the persons who deal with the subject matter outside the faculty and at the faculty"*. It is a very important comment concerning the significance of interaction also within the Institution.

The presented results show that thanks to the implementation of the project, i.e. using this instrument, we were able to prepare a collective publication based on author's materials prepared by participants of the study meetings outside lectures delivered as part of the project. In accordance with the project assumptions it was to bring a new value, a collective work based on the initiative and experiences of study meetings. The group of participants of the forum from the very beginning of the project implementation knew that the final result of collective activities, exchange of experiences over two years' time span will be a publication which will be also addressed to the Codification Commission (*de lege ferenda* proposals). The respondents noted that *"the value of the work will be the fact that it was produced at the time of very important EU changes"* implemented under the influence of critical reactions of institutions and opinion-forming circles as a reaction to the attempts of the union legislation to penetrate too deeply national orders, especially in a situation when another set of regulations is based on the model of complete harmonization.

The evaluation report provides that the added value in the area of education was achieved. The project assumed that the implementation is to be subjected to attaining tangible results both in the scientific and educational areas. Both subject matters are closely intertwined with each other and their scopes merge. In order to realize this two-fold perspective in the project, organizers guaranteed participation of both scientists – lecturers with vast experience in the substantial law as well

as representatives of young scientific staff and doctoral students. It is worth noticing that the format of study meetings and substantial conferences and the Internet forum, described below, were open to all parties. Putting it simpler it allowed students, doctoral students and doctors to participate in the project as qualified persons and not as participants. The doctors prepared papers for study meetings and thereby contributed to the project in manner not related to formal benefits (benefits under contracts of mandate).

Young project participants noted a change which was brought about in their approach to the subject matter under the influence of the project. Some of them stated that they put more emphasis during their classes on the practical application of law: *"It is worth stressing the practical aspect as there is very little of the law; there is still too much theory and too little [setting] in practice. Study meetings put pressure on the law in practice, from the practical side. It is of high importance to teach students how the law operates and not what it is like but how it works in practice".* As a valuable teaching experience, participants indicated the inter-disciplinary approach to the achievements of the consumer law. Thanks to the study meetings young scientists could enrich their knowledge and experience as they could participate in joint discussions and disputes: *"we were able to collect the most recent views concerning the branch, the most current and from very good specialists. It is very valuable when people who deal with the subject matter may sit at the same table and talk about it. It does not happen so often. We were able to listen to each other at the same time and ask questions and talk about the most important issues"*. It is inspiring that young people manifest their willingness to take an active part in the process of mastering the law and will to affect actual standards: *"the most valuable for me was the possibility of discussing (...) views (...) and the possibility to obtain information on the latest trends in the area of EU consumer protection"*. This added value cannot be perceived from the individual point of view but it should be perceived in the category of usability for the Institution both in the educational and research area. One opinion stressed that *"the benefit is that the quality of knowledge of university employees is improving and this is (...) an investment in people who thereby develop, which will bring benefits in the future by increasing the quality of classes and maybe by some*

collective works on the subject prepared by people participating in the project". It was also stressed that *"as far as the institutions are concerned many people became involved in the project which increased the level of knowledge thanks to participation, preparation of papers, articles etc*".

The analysis reveals that the study meetings were highly appreciated. During the first discussions on the project, respondents started to talk about them spontaneously which means that they treat it as a hallmark of the project. Some of the respondents noticed the need to plan more such meetings or devote more time for particular meetings so that additional areas of the examined field could be also covered: *"it is worth following good solutions adopted in other legal systems and make use of experiences of others. If we had more time during the meetings I think we could include a legal-comparative perspective and it would have been an added value here"*. One comment on the proposed lengthening of study meetings and increasing their number is of importance. In theory this concept is right considering the wealth of legal issues relating to the contemporary consumer protection. In practice it is difficult to implement as for the participants it was very difficult to devote two days out of their normal professional (teaching) and scientific activities. The obligation to meet cyclically in such meetings was an enormous challenge. Therefore, I must state that the process of organizing a team was very difficult and required a lot of organizational activities and involvement of the supervisor of the study meetings and the whole project team. Many respondents indicated that the study meetings were this part of the project activity which facilitated accumulation of scientific experience: *"(...) it was the highest dose of scientific experience"*. It was also noted that *"the format of meetings in smaller groups (...) enabled direct discussion"*. Young scientists (doctoral students) highly appreciated the partnership atmosphere which was created among the persons participating in the programme. However, it should be stressed that we had to work hard for such state. It is worth noticing that young beneficiaries of the programme co-financed from EU funds were thoroughly prepared to the participation in different forms of the project implementation by a

cycle of meetings organized by the meetings supervisor[10]. It created a final feeling of distinction and also of accountability relating to the participation in the project[11]. Participants appreciated argument-based discussions held in this forum which also contributed to empowerment of the centre: "*I could present my intentions at this forum and I could expect comments, observations and suggestions as feedback.*"

5 Scientific conferences

As part of the tasks envisaged in the project a weighty place was given to scientific conferences. Every one of them served a different function but both of them were subordinated to basic objectives of the undertaking. They were designed as an open forum were people exchange their scientific experiences and those resulting from practice in the field which nowadays is called a strategy of consumer legal protection. The first of them concentrated on the current trends in the EU consumer law and the second on the potential and real standards of consumer legal protection in Poland. An important feature was to open the home Institution to external environments including national and foreign scientists, representatives of EU bodies, representatives of legal professions, institutions implementing consumer law in the public interest and consumer organizations and entrepreneurs. This wide representative group of carefully selected conference participants and lecture subjects allowed for working out a multi-level and comprehensive approach to the subject matter and identifying weak points in the protection mechanisms. The latter included, first of all, consequences of the selected manner of implementation of consumer directives for the national legal system. The degree of difficulty of the transposition process becomes more severe when some of the secondary acts of the law are based on a model of complete harmonization. Therefore, the exchange of experiences of member states in this area is of significance. Respondents participating in evaluation sessions unanimously stressed the importance of the very

[10] Professor Józef Frąckowiak was the supervisor.

[11] Meetings preceding the study meetings and commencement of the first session reflected the climate of mistrust and in particular lack of understanding for the role of the project manager, whose task was to promote valuable initiatives and good practice in science".

participation in this forum given the fact that it was a layer of comprehensive exchange of national and foreign experiences. Contact with the Western science is today more close and the Western doctrine is open to invitations to participate in the exchange of scientific thought and invited guests do not have unreasonable demands. By completing a list of lecturers I was nicely surprised by the approval of the presented offer. Such positive experiences may constitute an assumption for future scientific initiatives. A comparative approach serves broadening of the scientific perspective, building a common Europe based on different values and traditions and common rules. The conferences brought together renowned experts of the European doctrine who very much care about the negotiation-based model of creating both European and the national law. Creation of the latter is particularly difficult when legislative competences are held by both the European Union and the national legislator. Lecturers of the forum concentrated on the issues of national implementation of the directive based on the mentioned model of complete harmonization and discussed the issue of limits of spreading of the European regulation throughout the sphere of the private law, especially when relying on the assumption of uniformization of legal standards. The respondents gave straight answers that "*there is a huge difference in comparison to what was before [before the project]. I remember when I started work on my doctoral dissertation I had more limited possibilities to meet experts, people who have knowledge on the subject"*. They also indicated that the representatives of the foreign doctrine were also active in the discussion held both at the conference forum and behind the scenes: *"usually such persons appear in Poland only where they are to deliver their official and formal lecture and after that they leave and that is it. And here it was really favourable to gain our subtle experiences".* The project respondents also noted that during the conferences the disputes that the participants engaged into were based on substantive arguments which are specific for mature circles. They directly pointed to the fact that *"there was a lot of debate, critical discussion on the EU's approach to the consumer issues and we had a great lesson in the European Union law, consumer law harmonization and a clash of the concept of a EU legislator and the national legislator".*

The possibility to collide the theory and practice, opinions of representatives of the material and procedural law, institutions exercising the consumer law under different procedures was an asset of the conference forum. The respondents noted that: *"there was a practical approach, that is a lot of judicial decisions (...) As creation of law is one thing and the application of law another and it is very often the case that the EU legislator has an idea which appears to be fantastic and in practice it fails. (...) It was very valuable for me to listen to practitioners, civil lawyers, private law specialists and learn what kind of problems the European Union generates"* in the process of law harmonization, *"if the instruments are too far reaching"*. The comments include a very visible confrontation of the hitherto experiences of beneficiaries and the experiences gained in the course of the project: *"I had a different view of a theoretician so I benefited from the meetings with practitioners to a great degree; they made me realize that some things do not work in practice or sometimes work ineffectively. For me it was very beneficial as so far I have had views on how the European Union sees it, how the European Commission sees it but I did not have much knowledge about how it works in practice".*

Summing up experiences relating to the participation in the project, the respondents expressed opinions that by this project this branch of law increased in importance and likewise their individual ideas of the importance of development and undertaking scientific challenges in this area. It was caused by, among others, participation of the top doctrine representatives who guaranteed high quality of lectures and legal discourse and who encouraged to undertake scientific initiative. One of the project participants summed her experience in the following way: *"I had a lot of fun to talk to people I know from literature. (...) the possibility to house specialists of this format and to strengthen international cooperation. We received an invitation to Santiago for our employees and to exchange the employees."* In our opinion it stresses the tangible benefits of substantive interaction with the Western centres for our research work: *"when a person has some doubts while working on an article then one may call and discuss the issue with another person from another faculty which is highly valuable as sometimes when studying someone's publication it is worth*

consulting it with the source and ask about the author's arguments while adopting a view".

While implementing and finalizing the project one can not foresee how spontaneous and positive reactions will translate to future scientific research directions and other activity in the area of the general consumer law. As such far reaching impact of the project or its lack (diminishing) will have influence on later professional and scientific experiences and the entirety of external conditions. Currently some participants declare directly that they will pursue their professional career in this area: *"the project sparked off revival of the issue. At the forum of our chair, the issue became a more frequent subject of our discussions and subject of Master's theses given to our students".* Participants frequently noted that *"thanks to the project the law grew in importance, and made people aware that one may actually deal with it, examine it and change something with it especially in the legislative scope. (...) For instance in our chair there are other important topics – for example the commercial companies law – which unfortunately pushes the consumer into the background. I believe that the law gained prestige."* We should be optimistic about the opinion that *"the project aroused interest of new people in this field and if the project had not taken place I would not have become involved in the protection of consumer rights with such intensity"*. Given the anonymous character of the responses included in the evaluation (questionnaire) one may hope that the declarations are spontaneous. Younger scientists see benefits first of all for themselves. Thanks to the gained knowledge, established contacts and the publicity which accompanied the project, they are building their confidence in the field which they are currently dealing with.

Both organized conferences were assessed by the respondents positively. Young scientists indicated that the conferences allowed them to extend and systemize their knowledge. They stressed the cross-sectional, diversified and attractive character of the lectures. They also appreciated the search for a common platform for economic and legal research at the conference. In this area we are only at the beginning of the way and we cannot go back. This direction of integration of science is desired as economic analyses of law constitute a current basic standard in the assessment of legislative projects and should be

performed also *ex post*. This integration approach to the fields was noticed and accepted. The lecture of the representative of the European Commission on the economic analysis of law, in particular discussing *"the impact analysis"* of the proposal of the Commission dated 8 October 2008 was assessed positively. *"The lecture of Professor Lissowska from the European Commission on the impact analysis is engraved in my memory. A very difficult topic was presented very plainly – I liked it very much. There are few persons in Poland who deal with it. For me it was the icing on the cake"*. Also during the second conference the economic approach was reflected in another lecture of the European Union specialist. Among the benefits of the assumed format, the respondents included interdisciplinary and multi-level approach [12] in standpoints presented by experts, combining material, legal and procedural instruments in the consumer protection strategy: *"The lectures covered different branches of law. However, as far as consumer law is concerned the perspective was diversified"*. Project participants noted the complexity of the problem which is created by a comprehensive approach to the strategy, i.e. consumer rights protection: *"people of different branches of law participated in the project and the things we talked about from the perspective of different solutions made us realize that when looking at the issue of the consumer law we must not be limited to only one law as the issue is broad and extends outside a conventional train of thought. It is a separate branch of law which combines elements of various laws, more elements of some branch and less elements of the other but it is not something unidimensional"*. It was repeatedly noted that *"it is a branch which covers a selection of different branches of law in particular component elements which create the whole of the consumer law"*. A lot of pressure was placed on the use of foreign experiences, which is of importance here as – as I mentioned it above – the Western doctrine has a significant impact on the entirety of the codified law: *"the international character of the lecturers including the European Commission, participation of experts and practitioners – different*

[12] However, in accordance with another opinion *"the weakness of the project was that there were no representatives of other sciences. I highly appreciate the intimacy which the project created but I feel there might have been a more inter-disciplinary approach*". In my opinion, given the composition of the conference lectures this opinion cannot be upheld.

views, different emphasis of the consumer legal protection policy". Participants appreciated the diversified approach of people of science to the consumer protection standards set to a large degree by the EU law: *"a professor who represented one of the German universities presented his research perspective and these are always interesting considerations connected with the implementation of directives which is performed by the states differently"*. The value of "*the legal comparative approach to the consumer legal protection*" was also recognized. The approach should serve the improvement of the quality of our national law: *"the conferences were to present certain self-evident facts but also totally new both by persons who have dealt with the issue for years now and also by persons who have just started. Every approach presented to us was useful (...)".*

The respondents in their opinions frequently mentioned the need for more intensive, than it actually was, involvement of law practitioners and representatives of particular institutions and consumer organizations in the above discussed activities. They pointed out among others that *"a competent representative, i.e. the president of the Office of Competition and Consumer Protection was missing". It is good that we were privileged by the presence and participation of a representative of the Office of Competition and Consumer Protection from Wrocław. I believe that the protection of collective interests of consumers should not be, as it was pointed out by a representative of the Polish consumers, "on the fringes of the office activities".* The above observation fully deserves an approval as participation of the said groups would enable to achieve a comprehensive approach to the strategy of consumer protection and would enable to examine weak, present in practice, points in the legal protection of an entity which is the last link in the market exchange. Some of the respondents indicated that this institution should be also present at the study meetings and conferences by saying that *"maybe the Office of Competition and Consumer Protection should be rather present at study meetings. Firstly, this institution would bring its own real-life experiences. Secondly, the office would be the addressee, of many presented demands, and could listen to them"*. In other comments the need of participation of representatives of different institutions was mostly associated with conferences. However, it should be noted that

representatives of bodies implementing a public-legal procedure of protecting collective interests of a consumer were invited to take part in the conference. Among others, the president of the Office of Competition and Consumer Protection in Warsaw was invited to both conferences but she did not grace us with her presence and she did not delegate a competent representative. The president did not give reasons for lack of interest in this forum. It might be useful to mention that a representative of the Łódź Office of Competition and Consumer Protection took part in the second conference. His comments cannot be overestimated as he clearly listed basic problems of the office in the area of protection of collective interests of consumers and indicated complex problems relating to practical application of the consumer legal protection.

Young scientists pin their hopes on the project that it will significantly enrich their own scientific experiences: *"The project enriched my own doctoral dissertation. I benefited from it and I think I was lucky that at the end of my doctoral studies I had the chance to participate in these conferences and it really enriched my dissertation. (...) My dissertation was written from the perspective of public law instruments so I relied mainly on the elements of the administrative law. However, by participating in the project I could have a look at the whole and I saw one hundred percent. For my dissertation it was important because the public-private and civil-private trends clash not to say that they compete with each other. It was a really enriching experience. If the project had not taken place I would not have devoted so much attention to the civil and legal protection."*

Moreover, programme participants perceived the tasks realized as part of the project in a wider scope also as activities supporting Polish specialists who at different forums participate in the creation (giving opinions on) of the European law: *"it is necessary to build a base for Polish specialists who participate in the creation of the EU law. It is an important element as we are not only consumers but also creators of law. It is important that a Polish specialist has sufficient information on what the situation is like here in Poland and could present and defend Polish interests at the EU forum."* In comparison to the forum of study meetings i.e. small groups, scientific conferences which are governed by different rules, they attract wide publicity, however, as a

rule they do not create a climate to establish strong interactions of scientists or scientists with practitioners.

6 Internet forums

One of the tasks realized as part of the project was to create and ensure functioning of the Internet forum. The vision and character of the forum was presented at the first conference by its supervisor[13]. With the use of the instrument the environment of the home Institution and external entities were to gradually open to crucial issues of the subject matter covered by the project. While preparing the project concept in this area, the creators experienced some dose of uncertainty as to the success of this tool as it is new, it is not supported with practice as compared to other similar organizational and subject matter tools. Therefore, it was difficult to specify actual usefulness of this tool and most of all the scale of Internet users' activity, the degree of their involvement in enriching the forum content, disputes. According to the opinions of the respondents, they liked the idea of the Internet forum very much as an idea of quick communication also in the area of consumer rights: "*it was an innovative idea to exchange scientific views via the Internet forum and this is only the beginning. This is a pioneer idea. The direction is definitely good. We should build some information base on in".* However, the respondents were also aware of the difficulties which may be experienced in the process of implementing this concept: *"It is necessary to fight to make it even more popular and it is a long process. This is a pioneer activity and I have not seen such a scientific forum. The best way to exchange information and hold discussions is the electronic form and we can not change it. I deal with public information on a regular basis and I see that there has been a fundamental shift over the last few years and the conclusions and discussions moved to the Internet".* It was also noted that *"it is a forum of exchange of ideas and it serves the purpose of communication and consultation between centres. It could be a*

[13] Anastazja Kołodziej Ph.D. was the supervisor.

permanent solution. If it could be prolonged it would be an important [development] in the exchange of ideas".

Young scientists liked the very format of exchange of scientific thought and experiences of practitioners via the Internet and the possibility of confronting one's own viewpoint with the opinions of the others: "*This format allows for presenting one's observations not only by writing an article. One may present his/her viewpoint and it does not have to be elaborated on ten pages. (...) It allows for better exchange of information"*. In some observations, traditional forms of scientific communication were confronted with author's materials presented at the said forum: *"an article has its requirements and it is obvious that not every thought may be effectively presented in an article. And here one may write and read faster"*. The respondents giving opinions on the forum note that *"the unlimited reach is the most valuable. One could express one's opinion and confront it with a great number of people (...). A positive thing about it was that there was a forum where one could discuss consumer rights"*.

The addressees, in a broad sense, of the tasks – the project did not introduce any limitations – could select topics in the subject matter covered by the project, express doubts, get involved in a legal discourse. The forum supervisor at the conference opening the programme presented an open set of issues for discussion not imposing any limits on the resourcefulness of potential users. In the questionnaires the respondents noted that the presented *"topics were interesting and users can discuss current issues. I myself reported an issue of selling medicaments via allegro. One may write about an issue straight away, about an issue which has just arisen".* Therefore, we are able to update the materials in this manner very quickly. To some degree the quality of posts was guaranteed as users had to register upon the access to the Internet forum. However, there was no censorship on posts but the above indicated limitation related to the logging requirement and allowed for directing communication to the project's objectives.

The respondents noticed the need of using modern forms of communication, i.e. this forum and see it as a promising means of communication, still they admit that they do not use this form actively on a regular basis. Sometimes as a reasons for being passive they indicated the hitherto habits concerning the use of traditional forms of

scientific expression. Among presented opinions there were views, fortunately rare, that this Internet form is in contradiction with scientific expression: "*I am opposed to Internet forums as there are so many of them and they are so laconic and shallow that they do not extend anybody's knowledge. (...) Internet forum is not worthy of dealing with scientific matters. It does not allow for subtle presentation of content and a relevant exploration of the subject".* One cannot agree with the position that forum posts *"are by nature short, laconic and they do not have any dynamics which is usually displayed by a lecturer and every post at a forum should be a twenty-page long article and this would be a contradiction to the forum".* It should be noted that the rule established for the Internet forum was the freedom as to the selection of subjects and the character of discussed issues of consumer law and the variety of presented material. Some of the respondents indicated that lack of time is the cause of not getting involved in this challenge: *"I took a passive part in the forum, i.e. I observed the forum with interest but so far I have not posted anything".* Anyway the Internet forum aroused interest in the project beneficiaries*: "I visited the forum and I like it. However, I must excuse my absence due to time shortage. Frankly speaking, I did not have time. I read some posts on the forum and I like it. I think that the idea is right and I would like to devote more time to it".* There also comments summing up this undertaking: *"The result was rather satisfactory. It was not disappointing but we did not achieve such interest as we had assumed"*. Definitely, for the creators of the initiative such comments as below are inspiring: *"It is necessary to fight to make it even more popular and it is a long process. This is a pioneer activity and I have not seen such a scientific forum so far.* Therefore, the respondents see the need to work on changing habits and a traditional approach to new forms of communication, also in science. It should be an effect of long-term activities performed in various programmes.

7 Scientific internships

Amongst the instruments used to implement the project a prominent place was occupied by the national and international internships. The purpose of internships was to increase competences of the academic

staff of the Law, Administration and Economics Faculty of the University of Wrocław. The trainees were selected in an open competition. While working on the concept of the application I believed that the internships would become attractive to potential addressees by the very fact that the centre concerned would not incur any costs and there is a wide selection of internship destinations. They may become a source of new experiences and inspiration for further surveys. The reality forced us to modify our approach. In total, we organized seven internship competitions. The assessment presented in the report shows that the internships served a scientific, academic purpose and became an important experience in the project subject matter. Programme participants indicated various benefits of the internships. First of all, the practice of this type, if employed in EU institutions, allows for learning the mechanisms of creating the European law. A trainee has the possibility to observe the process on the basis of vast documentation which proves that e.g. the dialogue between the European Commission and Member States takes place. One of the trainees indicated benefits of the internship: *"That was the time when the directive on the consumer loan was being implemented along with the Polish regulation and I have been dealing with it for more than 10 years. It was a great moment to see how the directive functions in different countries. From clearly substantial reasons as I know the area very well but I do not know how it functions in Europe."* Thanks to the internship I could obtain information which otherwise I could not have obtained. And lastly, it will allow for publication of analyses corresponding to the reality *"It gives the opportunity to go over procedures files, documentation (...) knowledge which normally is inaccessible"*. Another participant of the programme noted: *"I benefited from the library a lot. I worked out public and legal protection in the Spanish law. I am very glad because I worked in Spanish only, with a huge help of my supervisor who recommended appropriate publications to me. (...) I am planning to write an article – public and legal protection in the Spanish law."*

The respondents put emphasis on the results such as the opportunity to establish a regular cooperation with foreign centres where the internships were held: *"I will continue cooperation with the University of Santiago de Compostela, where I have just returned from*

and I met fantastic professors of the branches I am deeply interested in." In one of the comments the respondent stated that "*the established contact resulted in a proposal of writing a joint study on the consumer law in France and Poland"*. Benefits of internships are visible on many layers also in the category of enriching the host institutions and the contribution made by the beneficiaries of this form of support: *"My study will be provided to the main pharmaceutical inspector and the minister of health. I hope that it will bring fruit in the future. They were very much interested in the aspect of a patient's protection as the consumer's aspect is here of secondary importance. They definitely do not have such knowledge and I already provided them with the EU judicial decisions in the cases of selling medicaments to civilian population and they were very much interested in it."*

The benefits of the internships include both the substantial (cognitive) and teaching sphere. Experiences gained in other academic centres may become an inspiration for a teaching process: *"I appreciate the Spanish very much because they are very straight-forward and they treat students as partners. I am not saying that it is bad or very bad here. It is different. The distance is great and sometimes huge. The cooperation between a teacher and a student is very flexible there (…). A close, friendly contact with a student does not exclude high requirements. I liked this teaching approach very much and I will surely try to learn something from them"*. Among the benefits of internships for the teaching and scientific work are the mechanisms of applying the law which were learnt in practice in the institutions: *"One may provide students with information on how an office works and what kind of problems are experienced there."* The interactions between the completed internship and a teaching work are directly indicated in the following statement: *"[I obtained] a lot of information which I can provide to my students"*, in particular "*how certain regulations are created and the manner of implementing procedures in the European Commission".*

Internships in institutions and bodies responsible for creation and implementation of law identify problems in practical dimension which appear on the way to the assumed but still not achieved coherence of the system approach to the core of the consumer law. Lack of coordination between particular directories of the European

Commission and also changes in the task distribution become one of the reasons for regulations incoherence, overlapping of regulations and institutions' competences which causes that the EU law is not clear enough. The respondents in their opinions stress that the experiences gained in various public institutions gave them a view of the reality differing from reasonable expectations as to the desired condition.

The evaluation of the project proves that the scientific and teaching experiences gained during internships enabled to achieve scientific results in the form of new publications of author's materials and even the possibility of joint studies with scientists from host institutions. These practices opened the path to cooperation of the University of Wrocław with the centres where internships were carried out especially as part of exchange between institutions. Internships in public institutions strengthened the need to learn the reality of applying law and in certain cases they resulted in proposals for trainees to prepare legal opinions. Substantial and practical experiences translate to understanding of legal issues and extend the teaching skills of trainees.

Scientific scholarships

Scholarships – among the project activities – given their objective were an important element – for people dealing with the consumer protection issues, doctoral students and doctors. Beneficiaries participating in the research indicated among others the possibility, thanks to such support, of concentrating on scientific work: *"one of the main motivations to participate was the scholarship, which was not low, which allowed me to concentrate on my scientific research. (…) It gave me financial independence". "The scholarship is an ideal form as it allows the beneficiary to concentrate on one problem for a longer period of time which results in better outcome".* They indicated concrete manner of using the funds i.e.: *"purchase of materials and scientific aids, monographs and commentaries"* and organizing trips for scientific purposes. Awarded means enabled: *"to visit different scientific centres, to conduct a preliminary survey of the library holdings. Therefore, I could afford a few trips to Germany. I also examined the Czech and Slovak law. (…) The EU law is an extra-national law and the differences in its implementation are visible in the national law"*. Scientific works are tangible results of the scholarships. Trainees stressed the strengthening of the relationship with the

Institution by creating a chance of development within the project: *"I must complete my doctoral dissertation but I think I have a few more ideas for development in this direction, a few articles to write and in the future I will pursue a career in this area."* Due to a limited time span of the internship in many cases gained experiences became a starting point for further pursuits: *"I did not exhaust the whole subject matter, I will continue examining it".* Therefore, various instruments used in the project constitute – or could constitute – a scientific inspiration for further research and enriching teaching skills.

The results which the respondents achieved concern both soft and hard results of the project: *"I could write articles and studies within a short period of time, which requires a great outlay of time and the scholarship enabled me to deal with the subject matter. I conducted questionnaires among pharmacists and it was only possible thanks to the scholarship."* Thanks to the scholarships young scientists could intensify their research work into the widely understood protection of consumer rights. Scientific studies – publications and subsequent parts of doctoral dissertations are the main result of the scholarships. The effort invested in the research translated into the awareness of complexity of the subject matter and possibilities of further exploration. One may come up with a more general reflection. Scholarship beneficiaries of the project took part in different tasks which were discussed above, including study meetings and conferences and most of them also in internships. These instruments serving to enrich the research perspective and useful experiences for education affected the beneficiaries of the project[14].

8 The merits of consumer law

Research project related to search for links between substantive law and the processualisation of consumer law and the role of public instruments in the consumer legal protection system. Procedural law is not an embellishment but an important element of achieving the aims

[14] A monographic study – Konsumencka sprzedaż leków w aptekach internetowych, Wrocław 2011 - by M. Podleś, is an example of the multi-level influence. Another result of the project is a guide for businesses – I.B.Nestoruk, M. Pietraszewski – Przeciwdziałanie nieuczciwym praktykom rynkowym, Wrocław 2011.

by substantive law. It determines the consumer's access to the justice and efficiency of protection system. The theoretical point of view consumer protection as specified by positive law was juxtaposed with opinions of practitioners. A proposed regulation is analyzed by means of quantified indicators to access its impact on various areas, including not only the situations of consumers but either consequently economy. Economic tools should be also used in ex post analyses of the law[15].

9 Conclusion

Respondents, boasting also earlier experiences connected with the implementation of other, external scientific undertakings, stressed such elements as thorough preparation: *"this project was much more "designed" that is better prepared and we knew what was going on"*, extensive and insightful: *"The project stands out with the scale and the scope of the subject matter. This element of a detailed approach makes this project special"*. It was stressed that *"the project differs from others as is assumes intensification of cooperation of people from various centres"*. It is also long-term which supports obtaining substantive results. Respondents stressed among others the importance of the cyclic meetings which took place over a large period of time: *"which allowed for becoming involved in the subject matter using conclusions of the first meeting at the next one and others which followed. The fact that it was spread over time was highly valuable. The concepts could sprout and develop".* The synergy between particular tasks comprising the whole project was also stressed.

By attempting to sum up the evaluation report results it was noted that the assumed results of study meetings, conferences, internships and scientific scholarships were achieved on a very good level, yet as regards the Internet forum on a satisfactory level[16]. Participants in the discussed research indicated the inspiring effect of the project, in the scope which becomes a starting point for team work in legal studies**:** *"it was something which is missing so much (...) There are no real teams. The project is a starting point for team work. In general the conclusion is that everybody is working on something. Of course there*

[15] R. Stefanicki (2010 and 2011)
[16] The conclusion of the Report even indicates *"exceptional quality"* of the project in question.

are collective studies but these are often compilations of particular articles and not a real team (...)" Respondents indicated also another objective justification for the team effort: "*nowadays phenomena are really complex and are beyond the power of a single person".* Therefore, with regard to the above *"there must be a division of tasks and a common approach. Just like in other branches of science. It is not surprising that physicists work together and create research groups. However, in the legal environment it is different and sometimes there is a very individualized approach."*

When trying to make an assessment on how the assumptions of the project were accomplished we need to be careful and detached. Where one is self-satisfied with the attained results the person stops pursuing. Realization of the project definitely constitutes a valuable experience which could not have been achieved without taking the risk and spending necessary effort. Anyway, the author's concept of the project and its implementation was treated by the author of the undertaking as an authentic public mission. The continued success of the project will be reflected in the use the beneficiaries of the project will make of their experiences and outsiders who also by means of a few publications from the project came into contact with our idea of mastering the law and a comprehensive approach to law.

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Language in Criminal Justice: Forensic linguistics in Shipman trial

Roya Monsefi

Inquiry sessions of a court play a vital role in juries' decisions and consequently fate of the defendant. In the present paper, attorneys' questioning strategies in 146 examination-in-chief sessions of Dr Shipman's murder trial are comprehensively studied. Applying the descriptive method, this study is equipped with Quirk, Greenbaum, Leech, and Svartvik's (1980) linguistic, Stenström's (1984) pragmatic, and Goldberg's (2003) legal perspectives as its cornerstone framework. Seven types of question categories with regard to two elements of elicitative force and conduciveness are thoroughly scrutinised. The outcome reveals an eye-catching difference between different categories of questions. Yes/No question is the dominant and tag question is the minor category in both examination-in-chiefs of witnesses and the defendant. Attorneys deliberately use certain kinds of questions in examination-in-chief sessions. Though they are encouraged to use more open-ended questions, they suffice to Yes/No questions to have optimal control over responses.

Keywords: forensic linguistics, courtroom discourse, adversarial system of justice, question types, examination-in-chief, elicitative force, conduciveness

1 Introduction

The field known as "forensic linguistics" is growing in prominence in the past couple of decades. Forensic linguistics is all about taking linguistic insight, method and knowledge in the context of law, judicial

procedures, police investigations, trials and in short about studying the language of law and solving crimes. Olsson (2004) defines it as an application of linguistics in the context of crime, court proceeding, or arguments in law. This newly grown area has a multifaceted domain. It can involve using linguistic knowledge in murder, rape, stalking, fraud and variety of other crimes. It can even go further to analyse threatening letters and suicide notes, emails, internet chat conversations and cell phone text messages. Forensic linguistic experts are capable of describing the likelihood of the disputed document to be written by a particular author. Coulthard and Johnson (2010) mention that forensic linguistics ranges from courtroom discourse and legal language to plagiarism. Briefly, plagiarism is using other person's work for personal advantage without mentioning his/her name. Forensic linguistic experts who are proficient in plagiarism cases and copyright infringements provide evidence to find out which work is based upon another.

Courtroom talk is the fundamental part of the institutional context of the courtroom. Analyses of courtroom discourse incline towards focusing on the interaction between specific linguistic features and their socio-interactional functions. For example, the grammatical form of the question in inquiry sessions can affect the elicited response. According to Santos (2004), courtroom talk is the basic component of judicial system in which language plays a vital role. This talk is not an ordinary verbal exchange in that there is an asymmetrical power relationship between interlocutors. The nature and structure of attorney-witness and attorney-defendant question-answer exchanges provide a rich source for studying the strategic and persuasive use of language. Whatever goes on in inquiry sessions of a courtroom portrays an authentic context for studying the real life language. In this context, merely prosecutors are capable of determining the type of question, the content of question, and even with the use of special persuasive devices the answers that they tend to elicit.

In some situations attorneys act just like magicians. Attorneys know that words may or may not create a special legal effect. Du Cann (1986 as cited in Hale, 2004) mentions that in the courtroom the attorneys have only "words" as their sheer weapon. Evidence is presented orally in the courtroom in the form of questions and answers.

Therefore, language becomes a means of power and control. By formulating special types of questions, attorneys thoroughly shift the direction of the talk to their client's benefit. With the smart use of words they can create a story in such an atmosphere to persuade the jury and win their client's case.

There are officially two legal systems around the world which are the *Adversarial* and *Inquisitorial* systems. Adversarial (Accusatorial) system is customary in United States, United Kingdom and Australia, and the Inquisitorial system is conventional in Europe. The case that forms the data for this study is the United Kingdom court case which is adversarial. This case, which Coulthard and Johnson (2007) also begin their book with, is about Dr Shipman. He is the UK's biggest serial killer and is definitely worth studying. Dr Shipman's case is elaborated in detail in 2.1 under *Method* section.

In the adversarial system of justice, trials look both like a battle and a story telling. On one side, it is like a battle that each party tries to win its own case. On the other side, it is a story telling that different narrative stories are being evaluated by the judge and juries. Attorneys are the directors and writers of the plot and theme of the story. Kubicek (2006) asserts that the adversarial system consists of two opposite parties that each battles for their own case. The evidence is given by adversaries, each side presenting its own evidence and attacking the other side's case. Reese and Marshall (2003) believe that the adversarial system leans on the skills of attorneys to represent their party's position to a judge who must either be persuaded into, or dissuaded from believing a specific story.

In the adversarial system, the parties to a controversy call and question the defendant and witnesses; and within the confines of specific rules manage the process. Commonly, a judge or jury remains passive and neutral throughout the proceeding. The adversarial system is often characterized by a high dependence on attorneys. As Hale (2004) states, the adversarial courtroom relies mainly on oral evidence that is presented in the form of questions and answers. She means that in the adversarial courtroom the pragmatic function of attorneys' questions becomes dominant which differs according to the intention behind them.

A prosecutor is obligated to turn over factual evidence that is favourable to the defendant, while the defense attorney tries to move it in opposite direction and support the defendant. In such a scenario, questions become central tools for attorneys. Moisidis (2008) points out that attorneys use questions in different contexts, and the features of questioning differ in particular ways in the various contexts. The questions that are posed in examination-in-chiefs have a quite different nature with those that are asked in cross-examinations.

In the adversarial trial, a greater reliance is based upon oral evidence given by witnesses, rather than documentary evidence. It is a general rule, according to Keane (2008), in both civil and criminal trials that any fact that needs to be proved by the evidence of witnesses must be proved by their oral evidence given in public. In the adversarial process, the parties call witnesses and usually not the court. The opposing party can challenge the evidence of testifying witness either by calling its own witness to provide a contrary viewpoint or by cross-examining the present witness. The questioning of witness in the English adversary system of justice falls into three stages of examination-in-chief, cross-examination and re-examination. The first stage, examination-in-chief or direct examination, is the stage of adducing evidence from witness by the party calling him.

The primary phase of questioning the witness is called examination-in-chief in the adversarial trial. In this phase, attorneys obtain evidence from their own witnesses. In fact, witnesses are introduced to a trial by their examination-in-chief. Based on Hale (2004), in the examination-in-chief the witnesses are supposed to be given a chance to tell their own stories, to build acceptability and thus persuade the jury of their version of facts. This is usually achieved by asking questions that allow the witness more freedom to speak and supported by the rule that leading questions may not be asked during examination-in-chief except when asking non-controversial, uncontested information.

In simple words, a leading question is one which tries to guide the respondent's answer. It is intentionally designed to make the respondent think in a certain way. A general guideline is provided by the court for defining the leading question. It is putting words in the mouth of the witness by an attorney proposing questions during a trial.

In Cochran, Kelly and Gulycz (2008), it is a question that requires a yes or no answer, without elaboration. They claim that although a question such as "Did you kill him?" is a yes/no question, it is not leading. It doesn't suggest that a specific answer is sought or desired. On the other hand, "You didn't want to kill him, did you?" is leading because the answer is expected to be "No, I didn't want to kill him."

In examination-in-chiefs, attorneys are not permitted to ask leading questions in order not to lead the responses. Though using open-ended questions are encouraged in this phase of examination, attorneys seem reluctant in using them. Attorneys want to exploit those questions that let them convince the jury of their desired story. According to Goldberg (2003), the real reason for the rule that attorneys should not lead the witness on examination-in-chief, but they should lead on cross-examination is not an evidence rule; it is a rule of persuasion.

It is crucial for the attorneys that their called witness does not digress from the relevant facts, and display the evidence in the best possible way. Accordingly, attorneys control responses with the use of altering questions. Dillon (1990) suggests that during examination-in-chief the questions are less controlling of the witness than during cross-examination. However, in the study conducted by Luchjenbroers (1997), she states that witnesses are the attorney's puppets even during the examination-in-chief, the questions asked are not leading; nevertheless, they exert high control over the witness's responses and actually do not permit him to freely mention his story.

Following examination-in-chief, attorneys for the opposite party get an opportunity to question the witness. The purpose of cross-examination is firstly to advance the party's own case and secondly to attack the other side's case. The main intention of cross-examination, according to Kassin and Wrightsman (1988), is to impeach the credibility of the testifying witness to lessen the weight of unfavourable testimony given in examination-in-chief and to persuade the jury not to take the witness' testimony into account.

As with examination-in-chief, the attorneys are only permitted to ask questions during cross-examination. They are thoroughly aware that cross-examination is not the time to ask witness to tell his/her story. Consequently, they attempt to control the responses with asking more close-ended questions. Bergman and Bergman-Barrett (2008)

propose that attorneys may not make speeches remarking on adverse witness's testimony or argue with a witness. The questions that attorneys ask during cross-examination must be within the scope of the topics that were discussed on examination-in-chief. Asking leading questions during cross-examination is the key for eliciting evidence without giving a witness a chance for retelling a story.

Attorneys are giving a speech in the form of questions. The only way to keep control of the witness in cross-examination is to ask questions that allow for the minimal responses. In any trial, cross-examination is used to persuade the jury of specific points important to the client. According to Reser (2005), cross-examination is an excellent engine for the discovery of truth. Tanford (2002) states that the success of cross-examination depends not on the ability of the attorneys to ask clever questions, but on their ability to control the flow of information. Therefore, the witness's testimony is confined to the selected items the attorneys want to bring out.

The juries do not like to see the constant conflict between attorneys and witnesses. Skilled attorneys know that the winning key for them to dominate the courtroom, crush the opponents and prove their own story to be true is by persuasion not brutality. By nature, persuasion may seem coercive but it does not coerce. Persuasion just changes the belief and thought of the addressee by providing him/her with a new perspective. MacCarthy (2008) believes that the ultimate goal of the trial attorneys with respect to the jury in every aspect of the trial is persuasion. The attorneys are trying to persuade the jury and judge to accept their client's version of the facts as told by them, the lawyers. MacCarthy (2008) also claims that cross-examination is not a time for a dialogue; rather it is a time for a monologue or a soliloquy.

Attorneys' acrimonious manner of speech just destroys their own face. Their abrasive and abusive behaviour impedes the fundamental goal of persuasion. Keane (2008) defines cross-examination as a powerful weapon given to attorneys that should be handled with a measure of restraint and politeness to the witness. Sometimes, under difficult situations, attorneys may lose their patience and that is the time their failure is guaranteed. Wellman (2005) mentions that controlling manner toward witnesses, even under the most difficult circumstances is the first lesson for attorneys in the art of cross-

examination. It is true that by shouting, threatening style attorneys often confuse the wits of the witness but they fail to discredit the witness with the jury.

For being able to discuss the effects of questioning on the participants in courtroom discourse, it is better to first classify questions. According to Quirk, Greenbaum, Leech, and Svartvik (1980), those utterances that are recognised by their function as questions can be categorised into three major classifications as to what response they may elicit:

1. Yes/No questions
2. WH questions
3. Alternative questions

In this classification, declarative questions and tag questions are laid under the umbrella of Yes/No questions. One of the minor types of question categories in Quirk et al. (1980) is interrogative echo which repeats part or all of the previous utterance said by another speaker as a way of checking its content. Interrogative echoes can be divided into yes/no and WH types.

1.1 Persuasion in the Adversarial System

The trial has been described by many scholars in rather emotive words – it is a battle (Hale, 2004), a story telling (Luchjenbroers, 1997), a theatre (Goldberg, 2003), an Art (Wellman, 2005), a war of words (Ehrlich, 2001), etc. All the labels are based on the fact that there are two opposing parties which present their version of the facts to the judge and jury.

Persuasion is at the very heart of an adversarial system. A proper advocacy is the determining factor between a winner and a loser. As Burkley and Anderson (2008) mention, the ultimate goal in the judicial process is persuasion. They mean what is said is not the only cause that can make a difference. How an argument is presented to the jury tends to be more productive.

Although the judge remains above the fray, his role in the adversarial system is more like a referee at a sport event in which the parties are the athletes. Justice is done when one party is able to convince the judge and jury that its version of the fact is the true one. Convincing the judge and jury is based upon the way fact is presented.

Goldberg (2003) claims that in the adversarial system the actual presentation is much more important than the truth. With considering the fact that your play stands against the play of your opponent, "persuasion" becomes a fundamental issue. The tactics by which the attorney can persuade the jury that her/his version of the facts is the true one not the opposite party's, is significant in the adversarial system.

1.2 Question Functions

Two functions of elicitative force and conduciveness, due to Stenström (1984), are effective in terms of the degree of persuasion of the addressee.

1.2.1 Elicitative Force

Elicitation is request for information in conversation, and elicitative force of a question is its ability in eliciting and extracting a response. According to Stenström (1984), questions have different elicitative force which means they vary in eliciting or inviting a response. Questions and responses are closely related. The degree of elicitative force of a question is related to its form and consequently to its specific function. Therefore, the demand on the respondent to respond seems stronger in some cases than in others, for example a response is necessary after request for information but it is optional after request for acknowledgement. She (p. 70) maintains in her study that a direct relationship exists between form of the question, elicitative force and response options:

Form	Function	Elicitative Force		Response Options	
	Request for:				
WH-Q	identification	strong		many	
Yes/no-Q	polarity decision		↕		↕
Tag-Q	confirmation				
Declarative	acknowledgement	weak		few	

Figure 1: Relation of form, function, force and R-options

Therefore, it is possible to respond to request for identification in different ways while in the case of request for acknowledgement there

is hardly any choice open to respondent. WH questions possess the strongest elicitative force and this force is reflected in the shape of the responses. Attorneys' questions are likely to influence the witness's answers. Archer (2005) believes that question types force the structure of the witness's response in the courtroom.

1.2.2 Conduciveness

A conducive question conveys a preference for one response than another. The questioner's belief underlies these kinds of questions. We may tag conducive questions as biased questions. Koshik (2007) states that the grammatical form of the question can impose constraints on the form of the expected answer and the design of the question can show preference for a particular answer. The term "conducive" is used by some linguists for describing this preference.

By asking the conducive questions, the attorneys expect the respondent to comply with the underlying presupposition of their questions. Conclusively, conducive questions can be highly controlling and powerful in the context of courtroom. Stenström (1984) believes that there is a relationship between question form and its conduciveness. The form of the question can be influenced by a particular situation in which it occurs. She emphasises that the common factor in all conducive questions is that they are not sheer requests for information. They just seek confirmation of the questioner's assumption.

Yes/No question and declarative and tag question, due to Stenström (1984), are similar in that they take yes or no for their response, but they differ in one decisive respect: Declarative and tag questions are always biased towards one response or the other, but yes/no question is so only occasionally. The bias of declarative and tag questions is the immediate outcome of their grammatical form but assertive lexical items, negation and contextual features have effect on the bias of yes/no question.

In comparison to other types of questions, WH questions can solicit more information from the respondent. They do not restrain limitations on the responses. According to Stenström (1984), WH question is the least conducive question form because the respondent is

free to produce any response as long as the answer is relevant and within the limits established by the underlying presupposition.

Example: What did Mary do? She did *something*.
How did she do it? She did it *somehow*.
Why did she do it? She did it *for some reason.*

1.3 Courtroom setting

In the adversarial system, courtroom discourse seems to be a power talk. Power is not distributed identically in the courtroom. Berk-Seligson (2002) infers that linguistic power in the courtroom lies basically in the hands of attorneys and judges and this power is achieved through the interrogation process. Luchjenbroers (1991) states that there is a hierarchical power relation in the physical layout of the courtroom. The judge occupies the dominant position and is usually placed in upper place with a big chair and witness is considered to be at the other end of power continuum. The witness is in the center of focus absorbing all eyes and ears. Attorneys rise during testimonies and juries are seated in rows. The jury, attorneys, and especially the judge look down on witness (Figure 2).

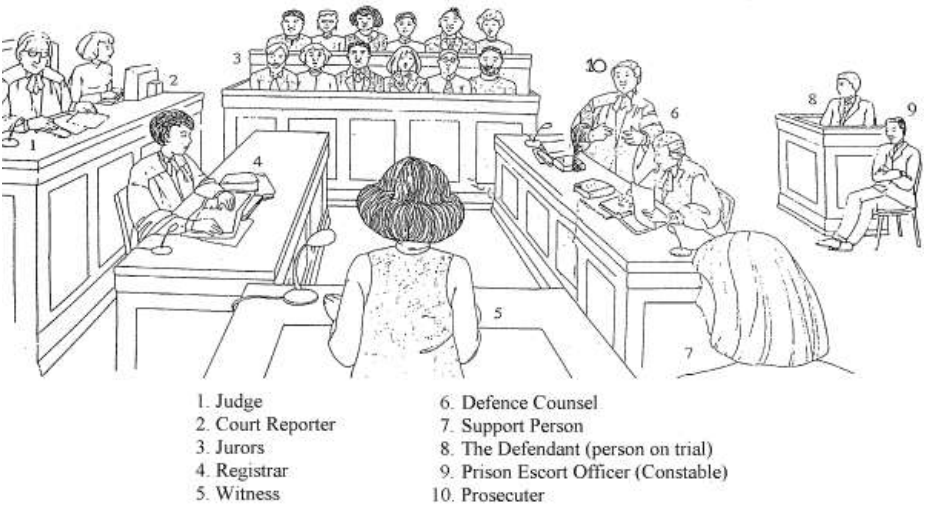

Figure 2: Typical criminal court layout (adopted from www.tki.org.nz/r/socialscience/curriculum/SSOL/crimes/court2.gif)

1.4 Interaction in the Courtroom (from 17th century to modern time)
There seems to be a triangle shape interaction between the judge and juries; defendant and witnesses; and attorneys. Parties' attorneys try to persuade the judge and juries to the benefit of either the victim or the defendant with the presented evidence by witnesses and the defendant. Modern trials differ from 1640-1700 trials in number of ways. As Archer (2010) mentions, in 1640-1700 there was the highest interactivity between judges and defendants in English courtrooms. During 18th and 19th century, there was a decline in defendant-judge interactivity and increase in attorney interactivity. As a result, there is a move toward adversarialism. Archer (2010) maintains that judges were more interactive in 17th century courtrooms than their modern equivalents. He also adds that in the beginning of 18th century, examination-in-chief and cross-examination procedures were not as stringently defined as they are today and to some extent the active interaction between defendants and judges was still visible in courtroom procedure. The emergence of advocacy in criminal trials, according to Archer (2010), started from 18th century but professional advocacy was what appeared to matter seventy years later.

In the courtroom, interaction may be portrayed by simply exploring a response to who speaks what language to whom, when, where, and why. Opposing attorneys in different parties use persuasive language to witnesses during inquiry sessions in courtroom to persuade the judge and jury. The adversarial system prompts attorneys to identify all the evidence beneficial to their client's side. Interaction in the legal system, according to Coulthard and Johnson (2010), is illustrated with mentioning three themes of asymmetry, audience and context. Linell and Luckmann (1991, as sited in Coulthard and Johnson, 2010) define asymmetry in terms of inequalities in amount of talk, in distribution of interactional moves, in determining the topic and finally in contributing the most important interventions. In the case of the second theme, audience, Coulthard and Johnson (2010) believe that in symmetrical/asymmetrical balance the fact that who is speaking to whom is of crucial importance. Those who have the power of designing the questions can dominate ones that are merely allowed to be the sheer respondents. Finally with regard to context, Linell and Luckmann (1991, as sited in Coulthard and Johnson, 2010) believe that

asymmetries are contextualised first within the dialogue, later in the institutional context and ultimately in the broader social context.

1.5 Turn-taking

The major types of turns, according to Burns and Seidlhofer (2002), are "adjacency pairs" that happen together, mutually affect one another, and make it possible for interlocutors to allocate or give up turns. One of the most common adjacency pairs is "question and answer" which includes two parts: a first pair part and a second pair part.

Courtroom context provides a rich collection of turn-takings. Turn-taking process in the courtroom is affected by the power relations between attorneys and the defendant/witnesses. The more powerful participants (attorneys) ask questions and the less powerful participants (defendant/witnesses) are expected to reply them. Atkinson and Drew (1979 as cited in Stenström, 1984) mention that the court dialogue in examination sessions consists of institutionally enforced adjacency pairs, one part is labeled as a question and the other part as an answer. They claim that two characteristics separate examination from conversation:

1. Turn order is predetermined.
2. The type of turn is predetermined.

Raising the topics and allocating turns are in the hands of the attorneys. Atkinson and Drew (1979 as cited in Gibbons, 2006) indicate that in a court it is against the law to speak without being allotted a turn and it is illegal not to speak when questioned. Gibbons (2006) asserts that turn-taking in courtrooms has been controlled along power hierarchy lines.

The purpose of this study is to analyse the types of questioning used during the 146 examination-in-chiefs of Shipman trial who was convicted at Preston Crown Court on 31 January 2000. From the pragmatic perspective, the researcher studies the persuasion devices inherent in each category. The persuasive illocutionary force of each question category, considering two features of elicitative force and conduciveness, are examined. The researcher wants to find out which question category is the most frequent one and find pragmatic justification for its exploitation. Accordingly, the following research questions are proposed:

1. What is the most frequently used question category in different sessions of examination-in-chiefs of witnesses and the defendant in the Shipman trial?

2. What are the persuasion devices inherent in each question category?

2 Method

2.1 The Case

Harold Fredrick Shipman was a General Practitioner at Market Street, Hyde, near Manchester. He was declared guilty at Preston Crown Court on January 31, 2000 of the murder of 15 of his patients and of one count of counterfeiting a testament. Shipman was convicted to life imprisonment. Police have also inspected allegations that he may have killed many more patients while he was a GP in Todmorden and Hyde.

Shipman was under suspicion of the murder of more than 116 patients over 14 years. He is known by British media as Dr Death. The inspection into Dr Shipman's practice started after family members of Kathleen Grundy, 81, a prior mayoress and prestigious charity worker from Hyde, near Manchester, found out that she had left nothing in her testament to her daughter and two sons.

Three attorneys appeared on behalf of the prosecution and two attorneys appeared on behalf of the defendant in this trial. Mr Henriques, Mr Wright, Miss Blackwell appeared on behalf of the prosecution. Miss Davies and Mr Winter appeared on behalf of the defendant. Mr Justice Forbes presided all the sessions of inquires. Although the attorneys directed the questions to the witnesses and the defendant, the ultimate addresses were the judge and the juries. Members of the jury were silent during the attorneys' inquires.

Thirty four witnesses in the case of Kathleen Grundy, seven witnesses in the case of Bian Pomfret, 15 witnesses in the case of Winifred Mellor, six witnesses in the case of Joan May Melia, seven witnesses in the case of Ivy Lomas, six witnesses in the case of Marie Quinn, eight witnesses in the case of Irene Turner, eight witnesses in the case of Jean Lilley, three witnesses in the case of Muriel Grimshaw, four witnesses in the case of Marie West, seven witnesses in the case of Lizzie Adams, seven witnesses in the case of Laura Kathleen Wagstaff,

four witnesses in the case of Norah Nuttall, seven witnesses in the case of Pamela Marguerite Hillier, nine witnesses in the case of Maureen Ward, and one witness in the case of fingerprint took part in the 29 days of Inquiries in the Shipman trial. Dr Shipman himself got through 15 sessions of examination-in-chiefs.

2.2 Data Collection Sources

The material for analysis is provided in the official trial transcript made available on the internet (The Shipman Inquiry, retrieved from http://www.the-shipman-inquiry.org.uk/trialtrans.asp). Fifty-eight days of the trial are downloaded and 29 of them which are in fact the enquiry sessions, selected for detailed study.

2.3 Design of the Study

The method of this study was descriptive in which the researcher called on pragmatic theory to describe how the different types of questions comply with the goals of the legal situation. Their illocutionary forces were interpreted and compared to the discourse tactics of the defence and the prosecution.

A quantitative and qualitative discourse analysis based on pragmatic interpretation was employed for analysing the data. In the first part of data analysis, the tabulation of the frequency of the different types of question categories during 146 examination-in-chiefs was conducted. In the next step, the percentage of their occurrence was calculated. A Chi-Square analysis was run on the data to detect the difference in persuasion devices inherent in different question categories. Later, descriptive analyses and pragmatic justifications were provided.

2.4 Procedure

The researcher analysed the type of questions used during the 146 examination-in-chiefs during the 29 days of the Shipman Trial. She arranged different question categories according to their frequency of occurrence in the inquiry.

As courtroom discourse is a field of study approached by both linguists and lawyers, two frameworks were adopted in this study for discussing the effects of questioning on the participants in the

courtroom. One based on the legal perspective and the other based on the linguistic approach. The linguistic framework proposed by Quirk et al. (1980) in which questions are divided into seven categories of Y/N questions, Y/N-echo questions, alternative questions, WH questions, declarative questions, tag questions and questions with lexical tag.

After classifying the question categories, the frequency and percentage of each question type were calculated. The counting procedure was accomplished manually. The next step was using the chi-square analysis for detecting the significant difference between categories of questions in each examination phase dependently for witnesses and the defendant. The differences are also shown with pie charts in result section, under relevant titles.

For legal perspectives, the researcher leaned on Goldberg (2003) and for pragmatic justifications regarding the persuasive illocutionary force of each question category she relied on Stenström (1984). From the point of view of pragmatics, this paper studied the persuasion devices inherent in each category. Among the features that affect the persuasive illocutionary force were elicitative force and conduciveness. The differences in force with regard to general context of conversation and the specific institutional context of the courtroom were studied.

3 Results

3.1 Results of the First Research Question

The primary concern of the researcher in this study is grasping the most frequent question category in different sessions of examination-in-chiefs in the Shipman trial. She starts with a meticulous account of the 131 examination-in-chiefs of the witnesses:

3.1.1 Quantitative Results of the Examination-in-chiefs of Witnesses

In Shipman trial, 131 examination-in-chiefs of witnesses were held. Each of these examinations is analysed separately. The sum of the frequencies of question categories asked from witnesses can be summarised in the following table:

Table 1
The sum of the frequencies of question categories asked from witnesses in 131 examination-in-chiefs

Question Category	Frequency	Percentage
Y/N Questions	3986	65.13%
Y/N-Echo Questions	211	3.45%
Alternative Questions	138	2.25%
Declarative Questions	484	7.91%
Tag Questions	19	0.31%
Questions with Lexical Tag	41	0.67%
WH Questions	1241	20.28%
Sum	6120	100%

As it is clear, the most frequent question category and the highest percentage belong to Y/N questions with an eye-catching difference in comparison with other question types. In order to detect the significant difference in frequency of question categories, a one-way (goodness of fit) chi-square is run in this phase:

Table 2
The frequency of different question categories in 131 examination-in chiefs of witnesses

Examination of Witnesses

Question Category	Observed N	Expected N	Residual
Y/N	3986	874.3	3111.7
Y/N Echo	211	874.3	-663.3
Alternative	138	874.3	-736.3
Declarative	484	874.3	-390.3
Tag	19	874.3	-855.3
Lexical Tag	41	874.3	-833.3
WH	1241	874.3	366.7
Total	6120		

The Observed number shows the number of the times that one question category is repeated in the data and the expected number which is (874.3) is what the researcher expects due to probability. The residual shows the difference between the observed frequency and

expected frequency. Tag question category, for instance, has the frequency of (19) in examination-in-chiefs of witnesses. Therefore, the observed frequency is (19). The researchers expected it to have the frequency of (874.3). The residual is (-855.3).

The following table shows the test statistics for the descriptive table above:

Table 3
Test statistics

	Examination of Witnesses
Chi-Square[a]	14157.284
df	6
Asymp. Sig.	.000

a. 0 cells (.0%) have expected frequencies less than 5.
The minimum expected cell frequency is 874.3.

Based on the results of above-mentioned calculations, the difference in frequency between different categories of questions (Y/N Questions, Y/N-Echo Questions, Alternative Questions, Declarative Questions, Tag Questions, Questions with Lexical tag and WH Questions) is highly significant ($p < 0.001$):

χ^2 (6, N=6120) =14157.284 $p < 0.001$

The calculated value of the most frequent question category, Y/N Question, is (3986) which is much bigger than the expected value of (874.3). The least frequent question category is "Tag Question". Its value, 19, is much smaller than the expected value of (874.3).

Therefore, the null hypothesis can be rejected and it can be said that there is a significant difference in frequency between categories of questions with regard to examination type. The less constraining and more open ended types of questions predominate in the examination-in-chiefs of witnesses.

The following pie chart clearly shows the significant difference between categories of questions:

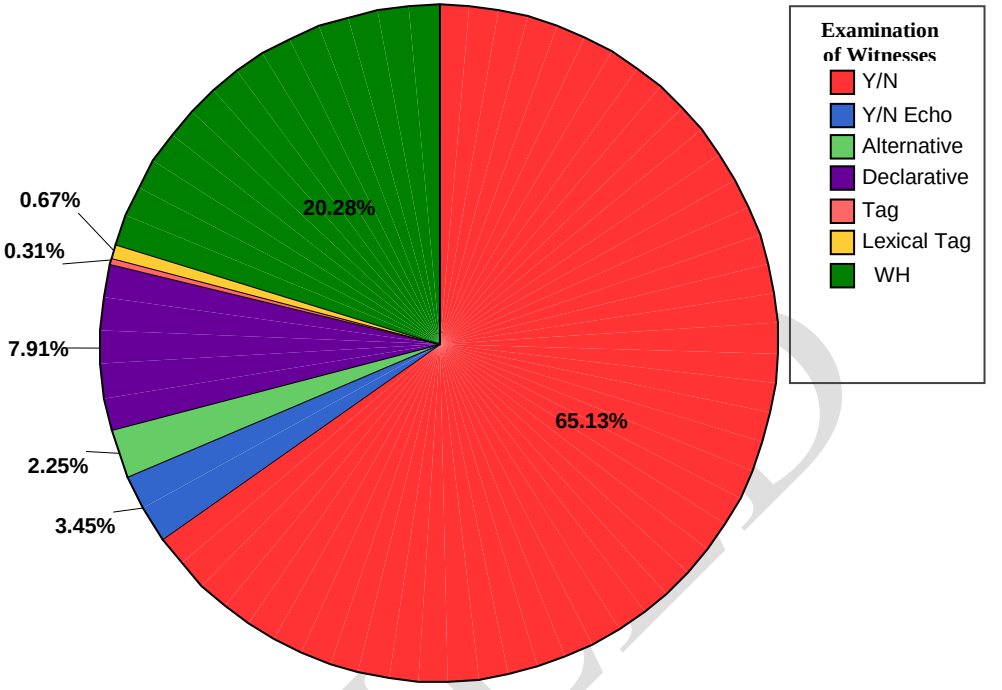

Figure 3
The distributions of question categories in 131 examination-in-chiefs of witnesses

3.1.1 Quantitative Results of the Examination-in-chiefs of the Defendant, Dr Shipman

Dr Shipman was examined in 15 sessions of trial. All these sessions are downloaded and each question category is classified under its own heading. The outcome of these analyses can be summarised in the following table:

Table 4
The sum of the frequencies of question categories in examination-in-chiefs of Dr Shipman by Miss Davies during 15 sessions of trial

Question Category	Frequency	Percentage
Y/N Questions	1355	41.95%
Y/N-Echo Questions	24	0.74%
Alternative Questions	103	3.19%
Declarative Questions	881	27.28%

Tag Questions	2	0.06%
Questions with Lexical Tag	45	1.39%
WH Questions	820	25.39%
Sum	3230	100%

It is quite obvious that Y/N Question category is the most frequent and the Tag Question category is the least. The result of the one-way (goodness of fit) chi-square for detecting the difference in frequency between different categories of Questions (Y/N Questions, Y/N-Echo Questions, Alternative Questions, Declarative Questions, Tag Questions, Questions with Lexical Tag, and WH Questions) is presented in *Table 5* and *Table 6.*

Table 5
The frequency of different question categories in examination-in-chiefs of the defendant

Examination of Shipman

Questio	Observed N	Expected N	Residual
Y/N	1355	461.4	893.6
Y/N Echo	24	461.4	-437.4
Alternative	103	461.4	-358.4
Declarative	881	461.4	419.6
Tag	2	461.4	-459.4
Lexical Tag	45	461.4	-416.4
WH	820	461.4	358.6
Total	3230		

Table 6
Test statistics

	Examination of Shipman
Chi-Square[a]	3916.935
df	6
Asymp. Sig.	.000

a. 0 cells (.0%) have expected frequencies less than 5.

The minimum expected cell frequency is 461.4. It is clear that the difference between the above-mentioned categories of questions is highly significant ($p < 0.001$):

$\chi^2 (6, N=3230) = 3916.935\ p < 0.001$

Y/N Question category bears the most frequent repetition in the examination-in-chiefs of Dr Shipman. The least frequent question category is Tag Question which occurred only two times of the overall (3230) questions. Its value is much smaller than the expected value of (461.4). Thus, the null hypothesis can be rejected and it can be inferred that there is a significant difference in frequency between different categories of questions, considering examination type. The less constraining and more open-ended types of questions predominate in the examination-in-chiefs of the defendant. These frequencies are reflected in the following pie chart:

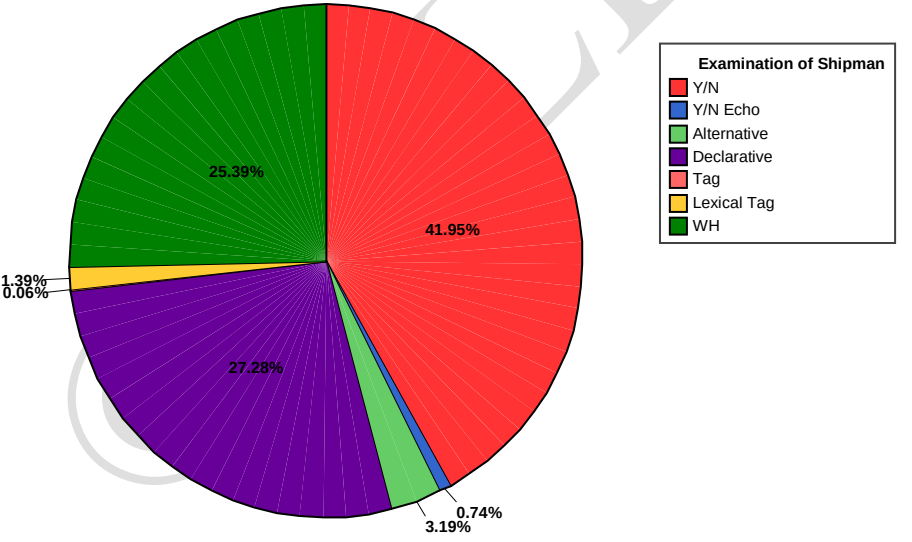

Figure 4: The distributions of question categories in examination-in-chiefs of the defendant

3.2 Qualitative Results of the Second Research Question

Detecting the persuasion devices inherent in each question category is another concern of this study. The following figure illustrates the degree to which the four factors of "elicitative force", "questionness", "conduciveness", and "interrogation control" play role with regard to different categories of questions:

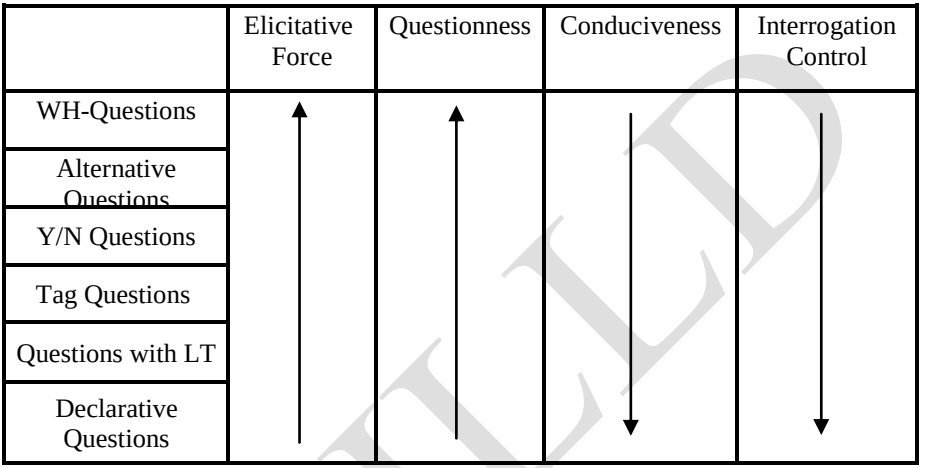

Figure 5: The degree of incidence of different question functions

WH question category is in the highest degree of elicitative force and questionness which means that this question is in the highest degree of eliciting and drawing out information from the respondent. In contrast, declarative question category is in the highest degree of conduciveness which means that the form of the question implies a preference for one type of answer that is expected. Declarative question category closes the chance of narrative responses to the respondent. Most often, this question category can be answered merely by yes or no. Therefore, the interrogation control is the highest in declarative questions. The questioner can highly control the respondent's answers.

There is a direct relationship between the above-mentioned question functions. The higher the degree of elicitative force, the higher the degree of questionness, and the higher the degree of conduciveness, the higher the degree of interrogation control. The higher the degree of

elicitative force and questionness, the lower the degree of conduciveness and interrogation control.

WH questions and declarative questions are at the two ends of one continuum. WH questions open the ways for narrative responses, but declarative questions close any ways of narrative responses. It is difficult to answer a mere yes or no to WH questions, but often declarative questions can be answered with a one-word yes or no.

According to Quirk et al. (1980) and Stenström (1984), each question category has a specific function. Based on their definitions, the researchers came to *Figure 5* which shows each category of question with regard to its specific functions (Elicitative Force, Questionness, Conduciveness, and Interrogation Control). The figure above is the outcome of the findings after analysing each category of question and its related functions. Y/N-Echo question can be treated as an elliptical form of Y/N question, it merely repeats what had just been said and according to Quirk et al. (1980), "question" is contextual rather than formal label. Therefore, it is not included in *Figure 5*.

4 Discussions

Yes/No question category is the most frequent one in 131 examination-in-chiefs of witnesses and 15 examination-in-chiefs of the defendant. Drawing on Quirk et al. (1980), the grammatical form of the question sets constraints on the response that follows; in that it creates preferences for a certain type of answer – yes or no, or rather agreement or negation. It seems that attorneys formulate their examination questions in such a way that they elicit a minimal response. Thus they exercise great amount of control over the response possibilities of witnesses and the defendant.

Some examples are selected from the examination-in-chief of Dr Shipman in the case of Bianca Pomfret (Trial Day 28) to clarify two elements of elicitative force and conduciveness):

Q. Was the positions this, Dr Shipman, that Mrs Pomfret was a regular attender at your surgery?
A. She was.

Q. In fact, had she been to Germany to see her family at about that time?
A. She had.
Q. In respect first of all of the phone call on the 9th December, were you aware of that phone call?
A. I was aware of that phone call.
Q. Apart from anything else would you have your afternoon surgery to carry out?
A. That's right.
Q. We have seen in other cases that there are backdated computer entries. During the period from 1992 onwards when you were utilising the computer for medical records, did you back date entries if you thought it necessary on occasion?
A.Yes.
Q. Were you aware whether in fact of others at your practice also did that, that is back dating?
A. I know that happened.

It is mentioned in Goldberg (2003) that Leading Questions, legal term for Tag Questions, may not be used during the examination-in-chief. Therefore, attorneys employ other forms of restrictive questions to have a control on the responses. In the study conducted by Hale (2004), tag questions had the least frequency during examination-in-chiefs. She stated that leading questions, which provide more information than they ask, are not allowed in examination-in-chief except when asking non-controversial information. The results of this study thoroughly proved Goldberg's (2003) and Hale's (2004) claims; in that tag question category has the lowest frequency in both examination-in-chiefs of witnesses and the defendant.

Attorneys are encouraged to ask free-response questions during examination-in-chiefs in order to let the jury decide on the basis of the witness's story. However, the attorneys prefer to tell their own version of the story from witness's mouth through the questions that they pose. They strategically ask Y/N questions in order to achieve their purposes of controlling the responses. Y/N questions let the respondent take the floor, but in contrast with WH questions the respondents are not free enough to produce their desired information. To sum up, the function of

Y/N questions can be polar as the grammars would claim, however the majority of these questions will be asked with a bias towards a given answer; their function thus is being that of confirmation-seeking.

5 Conclusion

In this paper, a fairly large body of data devoting a considerable amount of time was analysed to provide a comprehensive case study of the process of questioning in a criminal trial. Different categories of questions in examination-in-chief sessions of Dr Shipman's trial were classified and meticulously studied.

Question types are related to the types of examination. In the analysis of the present data, Y/N question category shaped the majority of questions asked in both examination-in-chiefs of witnesses and the defendant. During examination-in-chiefs, witnesses are supposed to be given a chance to tell their own stories because the evidence needs to originate from the witnesses. Open questions are also limited in examination-in-chiefs; however, they are more likely to appear than in cross-examinations.

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"We Have to Get By": Court interpreting and its impact on access to justice for non-native English speakers

Stella Szantova Giordano

Non-native English speakers find themselves on an unequal footing in American courts. While some of them possess reasonable proficiency in conversational English, almost all have poor or no proficiency in legal English, including the complex legal terminology used in the courtroom. Since legal language is heavily dependent on the legal system in which it is used, litigants who lack this understanding may fail to fully appreciate what is transpiring in the courtroom. Worse still, interpreters who lack it may interpret inadequately or completely incorrectly. While American federal and state judiciaries purport to provide non-native English speakers with equal access to justice through court interpreters, the reality is that the existing court interpreting system fails to protect their rights. Two pivotal problems are the lack of certification programs for prospective interpreters of minority languages and a deficient system of court interpreter appointment, often resulting in the selection of unqualified "interpreters." This article explores the issues in the current court interpreting regime and suggests systemic improvements in court interpreter appointment and administration.

Keywords: court interpreter, access to justice, legal language, non-native English speakers

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1 Introduction

Mrs. W is a pleasant Korean woman in her early fifties who owns a nail salon. Her English is not ideal – she speaks with a heavy accent, her grammar is flawed, and sometimes she struggles to find the right word. Nevertheless, having lived in the United States for 28 years, she runs a network of successful businesses in two states and owns a home in an affluent town. With her limited proficiency in English, she stood her ground in a suit brought against her by a customer who claimed that Mrs. W had damaged her designer purse. Mrs. W appeared in court pro se, told the judge her version of the events – again, using her limited English vocabulary – and won the lawsuit.

While undoubtedly a success story, Mrs. W is an exception to the rule when it comes to first-generation immigrants in American courts. In an overwhelming majority of instances, they lack the access to justice that native English speakers enjoy. A more prevalent sentiment among first-generation immigrants who struggle with limited English proficiency can be summed up in the words of another immigrant woman: "If I had to go to court here, I would not understand everything. I would not know who the people in the courtroom are, where to stand, what to do. But I speak English, so I should be OK, right? I guess we just have to get by." This article endeavors to show just how many people in the United States have to "get by" when they find themselves a party or a witness in court proceedings. Although the federal court system and some states have developed and implemented programs for the certification and testing of court interpreters, the grim reality is that there are not enough qualified interpreters for languages other than Spanish and a handful of others. Other than the Court Interpreters Act of 1978 and its amendment, the Access to Justice Act of 1988, no cohesive statutory scheme for equal access to justice exists for immigrants with limited English proficiency, ones who do not speak English at all, or who speak unusual languages. Moreover, while Codes of Ethics and Codes of Conduct for court interpreters do exist on both federal and state levels,[1] they have little or no effect on the quality of interpreting actually delivered in American courtrooms.

[1] See, e.g. Model Code of Professional Responsibility for Interpreters in the Judiciary (2002). National Center for State Courts,

This article surveys the current landscape of court interpreting services provided in state and federal courts in the United States, including the appointment and certification of court interpreters. It also explores the different methodologies judges employ when appointing court interpreters, and illuminates the linguistic barriers first-generation immigrants face when they participate in legal proceedings. My background in both law and linguistics makes me uniquely qualified to explore different facets of the issue of court interpreter appointment and qualifications.[2] Through my experiences as a court interpreter and informal interviews conducted within the local immigrant communities, it became evident that non-native English speakers are severely handicapped when engaging the American legal system. In support of my argument that the proficiency in legal English, rather than conversational English, should be dispositive in determining whether an interpreter needs to be appointed, I conducted a brief empirical study of first-generation immigrants. The results indicate that these individuals are largely unfamiliar with the meaning of several legal terms commonly used in American courtrooms, which suggests that they may be unable to comprehend the proceedings without the assistance of a competent court interpreter. The findings from this pilot study will be used to create a follow-up study with a large enough number of respondents to extrapolate the results across more significant immigrant populations. Finally, this article also identifies practical suggestions for improving the status quo in court interpreting administration and implementation.

2 Background

2.1 First-generation immigrants and their limited access to justice

http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter9Pub.pdf (last accessed June 16, 2012). California, Maryland, Washington, New Jersey, Massachusetts, Idaho, and Connecticut are among the states that have adopted their own versions of the Code of Professional Responsibility for Court Interpreters.

[2] Before receiving my legal training in the United States, I was educated and practiced as an interpreter and translator of legal documents in Europe for several years. My linguistic training allows me to appreciate the inadequacy of standards established by American courts for court interpreters, as well as the need to consider proficiency in *legal* English rather than *conversational* English when determining whether an interpreter should be appointed.

Immigrants have been transplanted into the culture and society of the United States from vastly different economic, cultural, educational, and social backgrounds. These differences play an important role in the quality of their access to justice in American courts. Due to their general unfamiliarity with the legal process in their home countries, many immigrants lack any meaningful grasp of American legal proceedings, including who is in charge and what the roles of the various persons in the courtroom are. Moore (1999, p. 18) explains the differences between the legal system in the United States and other parts of the world: absence of juries, cultures that prefer informal dispute resolution to engaging the judicial system, and the view that judges are political appointees prone to being corrupt and who are to be feared.

In addition to cultural limitations and general unwillingness to engage the court system to resolve disputes, immigrants also face significant language barriers. Despite the sincere desire and earnest attempts by recent immigrants to the United States to learn English well enough to assimilate fully into the society of their new host country, the truth is that many of them struggle to achieve that proficiency. Nearly one out of every seven Americans over the age of five does not use English as a primary language. Of those 32 million persons, 43.9 % speak English "less than very well" (Moore, 1999, p. 32). As a result of language acquisition barriers, many immigrants, especially those who moved to the United States as adults, have mastered English at a "casual" conversational level – which allows them to handle everyday tasks like discussing job duties or taking care of their grocery shopping, – rather than at a fully bilingual level (Moore, 1999, p. 32).

2.2 The right to a qualified interpreter

The American legal system purports to have legal protections in place that guarantee individuals with limited English proficiency equal access to justice. Let us now examine how these rights are protected in practice. As Shulman (1993) notes, the United States Supreme Court has yet to answer the question of whether a constitutional right to an interpreter exists. However, most lower courts agree that in criminal trials, the defendant does have a constitutional right to an interpreter. In

the seminal case of *United States ex rel. Negron v. New York,*[3] the court-appointed interpreter translated the defendant's testimony into English for the court, but the interpreter was unavailable to interpret the testimony of the English-speaking witnesses for the benefit of the defendant, so the defendant was unable to understand most of the testimony presented against him. The court held that if a defendant has difficulty understanding English, the court must inform him that he has a right to a competent interpreter.

The Court Interpreters Act of 1978[4] recognizes the rights of non-English-speaking persons and those with limited English proficiency in the federal courts of the United States, and stipulates that both parties and witnesses who have trouble understanding judicial proceedings because they primarily speak a language other than English should be provided interpreter assistance. In 1988, the Court Interpreters Act was amended by the Judicial Improvements and Access to Justice Act.[5] Specifically, the 1988 Act reiterated how important it was that "the highest standards of accuracy be maintained in all judicial proceedings in which interpreters are utilized," and introduced the classification of different levels of interpreters that are allowed to work in federal courts (deJongh, 1992, pp. 14-15).

2.2.1 Interpreter Certification

Under the Court Interpreters Act, as amended, a *certified* court interpreter shall be used unless one is not reasonably available, in which case an *otherwise competent* interpreter shall be appointed. Federal courts classify court interpreters as follows: 1) certified interpreters;[6] 2) professionally qualified interpreters;[7] and 3) language

[3] United States ex rel. Negron v. New York, 434 F.2d 386 (2d Cir. N.Y. 1970).
[4] 28 U.S.C. 1827-1828.
[5] 100 PL 702.
[6] A certified interpreter has passed the Administrative Office certification examination. Interpreter Categories, http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx (last accessed June 12, 2012).
[7] This category applies only to languages other than Spanish, Navajo, and Haitian Creole. Credentials for professionally qualified interpreters require sufficient documentation and authentication, and must meet the following criteria: a) passed the State Department conference or seminar interpreter test in a language pair that includes English and the target language; b) passed the interpreter test of the United Nations in a language pair that includes English and the

skilled/*ad hoc* interpreters.[8] deJongh (1992) provides a detailed account of the interpreter certification proceedings: an interpreter becomes certified for a particular language by passing the Federal Court Interpreters Examination for that language. The certification examination consists of an oral and a written portion and tests the interpreter's ability in both English and the foreign language. The examination is difficult even for experienced interpreters; as a result, only a small percentage of candidates receive certification. Between 1980 and 1991, 388 persons were certified for Spanish-English proceedings out of a pool of 9,579 candidates (deJongh, 1991, p. 285). What the record does not indicate is how many of the successful candidates took several attempts to complete the certification, as is often the case, particularly with the interpreters for Spanish, who often struggle with the oral portion of the examination.[9]

Identifying the need for an interpreter by the court system is one thing; meaningfully fulfilling that need by appointing a qualified interpreter is quite another. Let us look at specific examples of problems that the current system of classifying and managing federal court interpreters poses. In federal courts, certification is available for only three languages: Spanish, Navajo, and Haitian Creole.[10] All other languages are essentially relegated to a "minority" status, and will be interpreted either by a professionally qualified interpreter or, as is more likely due to the rigorous qualification criteria involved, a language skilled/*ad hoc* interpreter. This in itself raises the question of the availability of competent court interpretation for true linguistic minorities. The following example is illustrative: The author is a Slovakian interpreter, with a near-native fluency in English. She holds a Master's degree in translating and interpreting of Slavic languages,

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target language; c) is a current member in good standing of Association-Internationale des Interpreters de Conference (AIIC), or The American Association of Language Specialists (TAALS).

[8] Refers to an interpreter who does not qualify as a professionally qualified interpreter, but who can demonstrate to the satisfaction of the court the ability to interpret court proceedings from English to a designated language and from that language into English.

[9] Telephone interview with Andrea Krlickova, Court Interpreter Program Coordinator, Supreme Court of Nevada (Jan. 10, 2011).

[10] Categories of Interpreters, http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx (last accessed Feb. 21, 2011).

and she received comprehensive five-year training in the simultaneous and consecutive interpreting modes. According to the federal court classification of interpreters she does not, however, meet the criteria for professionally qualified interpreters.[11] Yet based on the information available from the interpreting agency for which the author sporadically completes interpreting assignments, she is the *only* Slovakian interpreter the agency has on its roster. There has been an instance where an attorney wishing to take a deposition of a Slovakian party was willing to accommodate the author's schedule in order to be able to conduct the deposition as no other Slovakian interpreter was available in the entire state of Connecticut at that time.

This example, hardly isolated, illustrates the importance of establishing a better-working system of providing interpreters to linguistic minorities. The need is particularly pressing in state courts, which see the fastest growing number of cases involving non-native English speakers. Most state courts recognize a right to an interpreter for non-English speaking defendants in criminal cases, and in some states such a right is protected by the state constitution. In terms of certification efforts, many states have endeavored to mimic the certification guidelines and requirements outlined in the federal Court Interpreters Act. In 1995, the State Court Interpreter Certification Consortium was created to develop and administer tests to certify court interpreters for state courts. The Consortium currently consists of 40 member states.[12] However, even the Consortium member states only have limited resources at their disposal: oral examinations are available for only 15 languages in addition to the ones tested by the federal court system.[13] As for unusual languages, the member states rely on "registered" interpreters, who are essentially uncertifiable due to the unavailability of formal testing even though they have passed a foreign

[11] See Note 10 for professionally qualified interpreter credentials.

[12] Court Interpreting Consortium Member States, http://www.ncsconline.org/D_Research/CourtInterp/Res_CtInte_ConsortMemberStatesPubNove07.pdf (last accessed June 12, 2012).

[13] Court Interpreting Consortium Certification Test, Consortium Oral Examinations Ready for Administration, http://www.ncsconline.org/D_Research/CourtInterp/OralExamReadyforAdministration.pdf (last accessed June 16, 2012). Languages for which testing is available are: Arabic, Cantonese, Chuukese, Bosnian/Croatian/Serbian, French, Hmong, Ilocano, Korean, Laotian, Mandarin, Marshallese, Polish, Portuguese, Turkish and Vietnamese.

language proficiency exam administered by each member state, and met all the other requirements that a certified interpreter in a member state would otherwise have to meet.

For languages in which the oral examination is not available, the Consortium member states utilize an "oral proficiency interview."[14] This is performed with the help of outside agencies that provide an independent interpreter to gauge the skills of the candidate in the language for which she seeks to become certified. Customarily, only the highest level of language proficiency, "superior/native-like mastery," will satisfy the requirements of most member states. Of course, even these efforts do not guarantee that an interpreter for every language or dialect requested by the court will be available in a particular locale. In emergency situations, court administrators have been known to reach out to colleagues in other states to locate a qualified interpreter for a particularly unusual language, or to resort to community interpreting if no other interpreter can be located.

2.2.2 Interpreter Appointment

This section illustrates the vast disparity between law on the books and law in practice when it comes to providing persons with limited English proficiency a competent court interpreter. The American court system is not properly set up and administered to handle the volume of defendants and witnesses who do not speak English well enough to participate meaningfully in legal proceedings. A significant part of the problem is that the appointment of a court interpreter in federal courts is at the discretion of the judge. The Court Interpreters Act mandates the appointment of an interpreter not only when the defendant speaks no English at all, but also when not having an interpreter would limit the ability of the defendant to understand the proceedings (Shulman, 1993, p. 181). Problems arise when the individual before the judge at first sight appearing reasonably proficient in conversational English has lived in the United States for some time. The judge is faced with a dilemma: if he appoints an interpreter, it may be a waste of judicial

[14] I am grateful for the details of the oral proficiency interview to Ms. Andrea Krlickova, Court Interpreter Program Coordinator, Supreme Court of Nevada (telephone interview, Jan. 10, 2011).

resources since the defendant arguably may not need one. Moreover, if the defendant speaks an unusual language, a search for a competent interpreter would delay the speedy resolution of the case. On the other hand, a prudent judge may elect to appoint an interpreter as a precautionary measure so that the defendant is not able to appeal the case on the grounds that an interpreter was denied to him (Shulman, 1993, p. 182).

The Act provides no specific, practical guidelines to aid judges in selecting a competent interpreter. Moore (1999) and deJongh (1992) report that in practice, appointment procedures range from taking whoever is available and swearing them in, to conducting *voir dire* of a prospective interpreter, to summoning a certified interpreter from another jurisdiction at the expense of delaying the trial. Some judges have ruled that no interpreter is necessary if someone has overheard the defendant speaking English (Shulman, 1993, p. 179; ABA Standard, 2012, p. 32). Romero (2008(2), p. 20) suggests that many judges employ what he calls an "appearance model" when appointing court interpreters.[15] In most instances, monolingual judges are not good "judges" of who can act as a qualified interpreter:

> At the courtroom level, judges . . . are generally unaware that being bilingual is not a sufficient condition for being able to function adequately as a court interpreter. As a consequence, they do not realize how often errors committed by untrained interpreters distort evidence relied on by the court, mislead and threaten the fairness of proceedings. (Mikkelson, 2010, p. 4)

Ideally, when faced with the prospect of no interpreter or an individual who is biased or under-qualified, the judge should continue the proceedings until a competent interpreter can be summoned.

[15] According to Romero, this model is based on three factors: looks, self-affirmation, and assumptions. If a prospective interpreter appears to come from the country of the desired language, or meets the stereotypical expectation of a minority visage, then she is accepted as an interpreter. If, subsequently, such an individual affirms that she indeed *is* an interpreter, this self-proclamation is usually accepted by a judge or an attorney selecting the interpreter at face value. The legal professional conducting the interpreter selection process thus *assumes*, without actually confirming the candidate's educational or professional credentials, or inquiring about the level of fluency and training, that the candidate is competent to interpret in legal proceedings.

Another factor adversely affecting the appointment of court interpreters for a limited English proficiency defendant or witness is the bias certain judges feel when the individual before them speaks very little English or none at all. In this situation, judges sometimes mistakenly assume that if an immigrant speaks no English, he is uneducated (Moore, 1999, p. 91). Even worse, some judges are reluctant to appoint interpreters because they harbor a belief that immigrants "feign ignorance of English in the courtroom," and are of the opinion that interpreters "waste the state's money."[16] Many immigrants are hesitant to speak English in court or to ask for an interpreter: they are ashamed to admit that they need help understanding the proceedings and expressing themselves to the court; they may be embarrassed about their English proficiency; or they may fear that there is a cost associated with the interpreter's use (Moore, 1999, p. 91). In some instances, a foreign-born defendant for whom English is a second language is so intimidated and anxious about being in court, he is rendered practically speechless. One of the respondents in the empirical study reported below said that when she had been charged with child neglect and had to appear in court, she was unable to speak to defend herself, even though she has lived in the United States for over ten years, speaks perfectly adequate (if not always entirely grammatically correct) English, and runs a successful small business. "I was not able to put one sentence together. It felt as if I had forgotten all the English I spoke. I felt stupid and helpless because I could not tell the judge the truth about my case, and that I was innocent," she said.

On the other end of the spectrum are non-native English speakers who are unjustifiably over-confident in their linguistic abilities. They assume that since they do not experience any difficulties in everyday communication, participating in legal proceedings will not be any different. When a judge is presented with such a confident and outspoken individual, he is unlikely to appoint an interpreter because the interpreter does not appear to be needed. However, once the legal

[16] Deborah M. Weissman, *Between Principles and Practice: The Need for Certified Court Interpreters in North Carolina*, 78 N.C.L. Rev. 1899, 1917 (2000) (citing a study by Justin Brown et al., *Should the North Carolina Administrative Office of the Courts Certify Language Interpreters?* 4 (1997).

proceedings are underway and the individual realizes that he understands little or none of the legal terminology discussed in the courtroom, it is too late to ask the judge for an interpreter. The results of the empirical study strongly suggest that non-native English speakers, particularly recent immigrants, go to great lengths to appear competent in front of native speakers, and are very unlikely to report to the judge that they do not understand the proceedings once it has been determined that they speak English well enough to proceed without an interpreter.

The previous two points illustrate how important it is for the judges and the court personnel to weigh the many factors that can influence non-native English speakers' ability to fully understand the case being made against them. If judges are aware of these pitfalls and conduct proper *voir dire* of the defendants or witnesses to determine their true English proficiency, there will be fewer instances where an interpreter is not appointed for an individual who truly needs one.[17]

2.3 "Competent" court interpreter – ideal and reality

Perfect interpretations, just as perfect interpreters, do not exist. Even under ideal conditions (with the judge and all parties to the proceedings speaking slowly and clearly; with the interpreter alert and not fatigued by working for several hours with little or no rest time; and with an interpreter who possesses excellent linguistic proficiency in both his native language and English), losing some of the meaning as well as the ability to evaluate the witness's credibility is inevitable.

Many factors influence the skillset of a competent interpreter, and a comprehensive enumeration is beyond the scope of this article. deJongh (1992) provides an excellent summary. In addition to being bilingual, a truly competent interpreter must also possess a high level of bicultural proficiency to account for the transfer of information from

[17] Wisconsin suggests a protocol a judge can follow in to trying to determine a person's English proficiency for purposes of appointing a court interpreter. While I argue that assessing the proficiency of only conversational English is not sufficient to determine the full extent of a person's linguistic abilities and their capacity for understanding the legal proceedings, this type of *voir dire* is significantly better than not conducting any type of questioning at all as happens in many U.S. courtrooms. Voir dire of person of possible limited English proficiency, http://www.wicourts.gov/services/judge/docs/interpreter1.pdf (last accessed June 12, 2012).

one culture to another (deJongh, 1992, p. 53). Bilingualism is a fluid state that can develop or diminish over time depending on the effort or circumstances of an individual. In practice, this means that someone who was born and educated in a foreign country is more proficient in the foreign language than a "heritage" speaker (i.e., someone who was born in the United States and only learned the foreign language here, while English is his first language). Romero (2008(2)) suggests that heritage speakers are not well suited to act as court interpreters. I argue for the appointment of first-generation immigrants as court interpreters, since their language abilities in their native language are qualitatively better and, for lack of a better word, "fresher" than those of heritage speakers. On the other hand, the longer an individual lives in the United States and does not use his native language, the faster he loses fluency and vocabulary, which can impair his performance as a court interpreter. This is why a proper *voir dire* by the judge is necessary in order to ensure that only truly competent individuals are appointed as court interpreters.

The nuances of legal language add another layer of complexity to the job of the court interpreter. Consider a hypothetical, where the defendant was born in the former Soviet Union and Russian is his native language. Although he has lived in the United States for over 10 years, he resides in an immigrant community where everyone speaks Russian, and as a result his English is broken at best. The interpreter appointed by the judge is a young woman who has only recently emigrated from the Russian Federation, speaks English fluently, and is currently completing her MBA in the United States. During the course of the trial, the issue of a limited liability company comes up. The interpreter correctly interprets the terms into Russian as *tovarichesto na vere.* The Russian defendant does not understand, but the judge notes his dismay and the issue is clarified through the interpreter. As it turns out, this is an instance of the introduction of terms into the legal language of a particular country – new words are created to account for the changes in the economic or political climate. Limited liability companies did not exist in the Soviet Union, and therefore the defendant would never have learned the Russian term that describes them. If, during his time in the United States, he has not been exposed to a situation which would allow him to learn the word in Russian, he

will not know its meaning even though his interpreter would have used the correct translation of the term. A similar situation occurs when terms are "reintroduced" into a language – in this instance, a particular term, such as *gubernator* (governor), had existed in the czarist Russia, but had fallen out of use because governors were eradicated under the communist regime. Since the Russian Federation has returned to using governors, so has the term that describes the position (Mattila, 2006, p. 114 n.29).

A variation of this scene probably happens in many courtrooms every day – only the defendants and the languages they speak change. However, not every judge is a keen observer of facial expressions; not every defendant speaking English poorly would speak up to say that he does not understand; and if a less-than-competent interpreter is selected, she may not know the correct translation of a particular term, and interpret it either incorrectly, or not at all. Unfortunately, many people involved in the administration of the court interpreter system are not aware of the difficulties that both the individuals needing interpreting assistance and the court interpreters themselves face. The empirical study described below illustrates the importance of understanding the legal proceedings, the complex terminology used in American courtrooms, and how first-generation immigrants struggle with mastering both these categories.

3 An empirical study

Lack of fluency in both conversational and legal English is a serious obstacle to obtaining equal access to justice for first-generation immigrants. Even for individuals with a good grasp of conversational English, participating in legal proceedings in American courts poses a serious difficulty. For an immigrant party to be considered bilingual in a legal proceeding, his proficiency should be at least at the 12th grade level in both English and his native language (Moore, 1999, p. 32). This level of fluency may be unattainable, particularly for undocumented immigrants, many of whom have less than a ninth grade education, and almost a half have not completed high school (Passel & Cohn, 2009, p. 10). In addition, the immigrant party must possess the

same familiarity as a native English speaker with crucial English legal terms used in the courtroom.

My research revealed no existing study on the comprehension of legal English by LEP[18] individuals. Therefore, I conducted a brief empirical survey of first-generation immigrants in Connecticut to gauge their understanding of legal terminology and, consequently, their potential to appreciate what transpires in the courtroom proceedings in which they may find themselves participating. As the study did not cover a large- or representative-enough demographic sample, I cannot extrapolate from the findings to any conclusions about the entire immigrant population of the state or the country. Nevertheless, the results of the study help support the argument that this segment of the population as a whole generally does not possess the requisite linguistic proficiency to brave legal proceedings without assistance of a competent interpreter.

3.1 Participants

In this simple study, 12 questions were posed to some 30 first generation immigrants[19] to gauge their knowledge of conversational English while at the same time collecting demographic data. The countries of origin included Poland, Czech Republic, Slovakia, Venezuela, Colombia, Georgia, Ukraine, Belarus, Latvia, Bulgaria, Hungary, India, Germany, and South Korea. The respondents had lived in the United States anywhere from 2.5 to 49 years, and several had become naturalized citizens of the United States. Their ages ranged from 21 to 72. Their occupations were: homemaker; small business owner; construction worker; nanny; clerical/administrative/customer service employee; accountant; hairdresser; photographer; dental assistant; engineer; paralegal; law student; hairdresser; and assistant branch manager of a bank. Many respondents received their education (in some cases as high as a Master's degree) in their respective home countries; some were educated both in the home country and in the United States; and one exclusively in the United States. The lowest level of education reported was high school, with some respondents

[18] "LEP" refers to Limited English Proficiency individuals.

[19] Individuals born outside of the United States currently residing in the United States, irrespective of their immigration status.

having completed vocational school[20] or a business school.[21] The highest level reported was an MBA obtained abroad; and a Masters of Science from the United States.

TABLE 1
Highest Level of Education Achieved

	High School	**Vocational/ Business**	**Bachelor's**	**Master's**
Abroad Only	√	√	√	√
Partial U.S. Education			√	
Full U.S. Education			√	√

3.2 Design/Methodology

Respondents were first asked twelve relatively simple questions (see Appendix A). The goal of these particular questions was three-fold: 1) To gauge their proficiency in conversational English (since some questions required elaboration past monosyllabic answers); 2) to collect demographic data – age, education level, length of stay in the United States – in order to analyze the results across different sets of metrics; and 3) to determine the respondents' extent of use of their native language versus English in different areas of their lives. Some of these questions have been identified by several sources (Moore, 1999; NAJIT, 2005) as useful in *voir dire* examination of LEP individuals by judges when deciding whether a court interpreter should be appointed.

Respondents were then asked to define six legal terms in their own words. I used a combination of simple, commonly used words that the majority of lay people associate with the judiciary, along with several more complex words that are, at the same time, pivotal to a good understanding of the judicial proceedings under the common law system. The purpose of this design was to determine whether an

[20] A two-year program geared at trade-specific education in lieu of high school education commonly used in many European countries.

[21] An equivalent of high school education in some European countries with a degree comparable to a high school diploma.

individual who might appear to a judge to be proficient in conversational English actually has enough proficiency in *legal* English to warrant the judge's decision not to appoint a court interpreter to assist her. The respondents (8 male and 22 female) were interviewed in person, which allowed for the evaluation of behavioral and extra-linguistic clues. One questionnaire was completed and returned via email. A sample questionnaire is attached as Appendix A.

3.3 Results

In designing the study, I expected that the respondents would be more or less proficient in conversational English, but that they would struggle with legal English, particularly when asked to explain specific legal terms. However, the results proved to be even more dire than I had anticipated. An overwhelming majority (27 out of 30) of the respondents spoke their respective native language at home and English at work and in everyday public life. Only one respondent indicated that she spoke English everywhere, and another reported speaking both her native language and English at home. Interestingly, the length of stay in the United States and the level of education achieved did not directly correlate with the language proficiency in both conversational and legal English.

The second part of the survey was designed to measure the respondents' ability to explain six legal terms: *prosecutor; evidence; defendant; arrest; bail*; and *plaintiff*. The results are recorded in Table 2 below.

TABLE 2
Understanding of Legal Terms

	Prosecutor	**Evidence**	**Defendant**	**Arrest**	**Bail**	**Plaintiff**
No Recognition	1	1	3	0	1	6
Unclear/Confused Understanding	21	16	14	0	13	21
Satisfactory Understanding	8	13	13	30	16	3

Somewhat surprisingly, every respondent could explain what *arrest* meant in reasonably satisfactory, even if often very simplified,

terms. Even the one respondent (R10) who spoke very little English and did not understand the other four legal terms at all, used a telling gesture of crossed hands held together to indicate being handcuffed.

While respondents were generally familiar with the term *bail*, many did not have a clear understanding of what the term implied. Some erroneously assumed that bail was a "fine" or a way of "get out of jail," and failed to appreciate the temporary nature of the freedom the payment of bail affords the defendant. Many struggled with verbalizing their understanding of *evidence*, although they did have a general notion of what the word meant.[22] A significant number of respondents did not understand the prosecutor's role, particularly that he is involved only in criminal, not civil, cases. More respondents knew the term *defendant* than the term *plaintiff*, and in most cases they understood the adversarial nature of the plaintiff-defendant relationship. Several respondents reported that they had learned the difference between a plaintiff and a defendant from watching "court TV," and specifically mentioned *Judge Judy*.[23]

Forty-six percent of the respondents reported some level of prior interaction with the American court system: whether as non-participating parties (27%), or defendants in criminal (16%) or civil (3%) proceedings.[24] However, while one would expect that appearing in court would enhance their general understanding of the legal terminology, the respondents did not report this, with the exception of one respondent who had been a defendant in a civil tort case. The other respondents who had appeared in court in the United States were conversant in English only on a false beginner to intermediate level, and therefore most had trouble expressing their understanding of the

[22] For example, a common explanation was "things that prove a crime;" "show something to prove a case;" or "the fact that proves something," which suggest an insufficient understanding of the term for purposes of meaningfully participating in legal proceedings.

[23] *Judge Judy* is a daytime syndicated reality show in which a former family court judge, Judith Sheindlin, arbitrates over small claims matters. While the cases are real, the "courtroom" that appears on TV is not since the matters are arbitrated. www.judgejudy.com (last accessed June 18, 2012).

[24] Respondents reported the following instances of involvement with the U.S. courts: going to court to fight a traffic ticket; defending a civil tort case; filing an uncontested divorce; having been prosecuted for immigration-related charges and for child neglect; appearing in court in connection with naturalization proceedings; attending a civil wedding ceremony of a friend; and serving as a juror.

legal terms with adequate amount of detail and eloquence. Interestingly, many respondents were readily able to identify *bail*, *arrest*, and *evidence* in their native language, even if they failed to explain the terms adequately in English. This may have been due to a combination of factors. First, respondents indicated that they understood these three terms better than the others since they had seen and heard them mentioned many times on television and in movies. Moreover, these terms are "universal" across all legal systems, and therefore the respondents would be more likely to have grown up in their native countries knowing and understanding these terms. In contrast, terms such as *prosecutor, plaintiff,* or *defendant* are examples of legalese and not generally understandable to immigrants with a limited English proficiency unless they have had direct exposure to these terms, or they made a concentrated effort to learn them.

The results of the study indicate how important it is for the judges and court personnel to recognize that although some parties or witnesses in legal proceedings before them may superficially appear sufficiently conversant in everyday English, this does not imply that they also understand legal English well enough to participate adequately in legal proceedings, and therefore, does not justify refusing to provide them with a court interpreter. If the judge only bases his perception of a speaker's proficiency on a small-talk-type conversational exchange with the witness or criminal defendant, he is not getting a clear understanding of whether the individual standing before him will actually understand the legal proceedings at hand. I argue that every judge faced with a defendant or witness for whom English is not the first language should engage in a comprehensive *voir dire* to determine the actual linguistic proficiency of that individual in both conversational and legal English. Only when the judge is satisfied that the defendant or witness is adequately fluent in both is it appropriate not to appoint a court interpreter. Finally, when in doubt, it is always safer to appoint a court interpreter.

4 Solutions for improving the current court interpreting system

In response to the results of the empirical study, following are several solutions likely to streamline the court interpreting process in the

United States significantly and make it much more understandable and efficient for all parties involved. The involvement of all stakeholders is necessary – the court interpreter; the judge and the court personnel; the counsel; and finally, the non-native English speaker himself.

4.1 A "non-native English speaker-friendly" courtroom

More often than not, judges are not accustomed to working with interpreters, and are therefore unsure how to incorporate the interpreter into the legal proceedings. For that matter, the party in need of an interpreter does not have a clear idea of the interpreter's duties either. Moore (1999) reports that a large percentage of non-native English speakers misperceive the role of the interpreter. Unqualified interpreters are known to give legal advice, explain the proceedings to the non-English-speaking party, and act as "cultural ambassadors" (Moore, 1999, p. 37). To educate the non-native English speaker about the role the interpreter is to play, Hewitt (1995) suggests that the judge should advise such an individual that the interpreter works for the judge; that the interpreter's job is to interpret everything the party says into English and everything else said in court into the party's language; that the interpreter cannot give any explanations or legal advice; and that if the party does not understand the interpreter the party should inform the judge (see Moore, 1999, p. 37, n.21).

Judges can follow simple guidelines to streamline the proceedings that require the use of an interpreter to ensure that quality interpretation occurs. As Moore (1999) suggests, the judge should frequently check whether the interpreter is constantly talking, using simultaneous interpreting to convey the entire proceedings to the non-English-speaking party and consecutive interpreting for witnesses. Since only one voice can be interpreted at a time, the judge must ensure that speakers do not overlap. Interpreters should be allowed regular breaks, in any case no later than every two hours.[25]

Finally, perhaps the most significant adjustment should be for the judge to show empathy to the handicap of the non-native English speaker before him. While judicial efficiency and economy are valid

[25] The Handbook for Ohio Judges suggests that, "after interpreting for two consecutive hours, an interpreter must be relieved by another interpreter" (Romero, 2008(1), p. 60).

interests of the court system, the potential for delay of the proceedings or slight inconvenience to the other participants is greatly outweighed by the importance of adequately addressing the needs of LEP individuals. A judge who takes responsibility for properly incorporating the court interpreter into the legal proceedings creates the expectation that the non-English-speaking party and her legal rights will be respected, and encourages others in the courtroom to follow suit.

4.2 Educating non-native English speakers and the legal community about working with court interpreters

Educational outreach regarding court interpreting is necessary for two distinct groups. First, the non-native English speakers must be educated about their rights to have a court interpreter appointed. Second, the legal community in general, including attorneys, judges, court personnel, and law students, must learn new ways of enforcing this right to an interpreter. As mentioned earlier, due to a lack of information on the subject, the legal community is relatively unaware of how to work with court interpreters. A legal right to a court interpreter is of little use to non-native English speakers if they do not know that the right exists. Even for recent immigrants who have attained higher levels of education and are well versed in their rights in other areas of life, many are at a loss when it comes to specific legal rights. Some states report that non-English-speakers hire and provide their own interpreters for legal proceedings because they are not aware of that a court-appointed interpreter is available (Olson, 2009, p. 24). It is therefore imperative that attorneys representing non-English-speaking parties (or, for criminal cases and indigent clients, the court-appointed attorneys) inform their clients that the court system will provide them with an interpreter. Ideally, once a member of the court personnel determines that an individual will likely need an interpreter, the clerk or other personnel should immediately advise that person of his or her right to have one appointed. This practice would be particularly helpful to individuals speaking unusual languages, because identifying the need for a court interpreter would trigger the search for a qualified interpreter in that language, a process that may take some time since outside sources may have to be employed in the search.

In some jurisdictions, efforts have been made to educate non-native English speakers of their right to a court interpreter. For example, trial courts in Connecticut use Language Line, a commercial service providing instantaneous access to telephone interpreting in over 170 languages. When a limited-English-proficiency person arrives at a Connecticut courthouse, and a staff member at the Clerk's Office determines that the individual has trouble communicating in English, he is shown a card saying, "Point to your language. An interpreter will be called. The interpreter is provided at no cost to you," in 20 different languages.[26] When the individual selects his language, the staff member calls Language Line which provides immediate interpreting services over the telephone. Several other states use "you have a right" poster,[27] or use "I speak" cards which provide the monolingual court personnel with the opportunity to inform non-English speaking individuals arriving at the courthouse of their rights.

While these efforts are laudable, they are still insufficient to address the needs of all non-native English speakers who enter the American legal system. The cards and/or telephone interpreting services are available only for a limited number of languages, so even with these mechanisms in place there will still be a certain number of individuals who will not be informed of their rights and will not be provided adequate assistance. In addition, even if these services are purportedly available, no mechanisms exist to determine whether the court personnel at each courthouse are actually using them consistently. An "I speak" card is of little practical use if a staff member at the Clerk's Office does not show it to the person at the counter seeking assistance.

A second issue is that the legal community at large knows very little about the difficulties associated with working with interpreters. I

[26] The languages available are: Arabic, Armenian, Cantonese, French, German, Hindi, Hmong, Italian, Japanese, Khmer (Cambodian), Korean, Laotian, Mandarin, Polish, Portuguese, Russian, Spanish, Tagalog, Thai, and Vietnamese (copy of card on file with author).

[25] Interpreting Services, http://www.masslegalservices.org/system/files/5948_You_have_a_right_to_an_interpreter_poster_20060130.pdf (last accessed June 12, 2012).

suggest that, in addition to incorporating training modules on how to work with interpreters into continuing education classes for practicing attorneys, law school curricula nationwide should be revised to educate law students on how to work with court interpreters. It is only through dedicated and comprehensive educational efforts across all levels of the legal community in the United States that the issue of obstructed access to justice for individuals with limited English proficiency due to inadequate court interpreting can be resolved.

5 Conclusion

Limited-English-proficiency individuals, particularly first-generation immigrants, face serious obstacles in equal access to justice in American courts due to their inability, or limited ability, to participate meaningfully in legal proceedings. The current system of providing court interpreters for these individuals, both in federal and in state courts, is flawed at best, and individuals speaking unusual languages are particularly susceptible to receiving unequal treatment because only poorly trained or unqualified interpreters are available to assist them. The problem can be remedied by a variety of solutions that fall into two broad categories. First, it is important to ensure that judges appoint interpreters for all individuals who might need one. This requires the creation and implementation of a comprehensive and thorough *voir dire* process that judges would employ whenever a non-native English speaker enters the legal system. Second, judges, attorneys, and court personnel must acquire an improved understanding of the peculiarities of working with an interpreter to ensure that the rights of the limited-English-proficiency party to the legal proceedings are protected, and that errors and inaccuracies in the interpreting process can be detected and remedied.

As a follow-up to the pilot study of first-generation immigrants conducted in 2011, a large-scale study of a fully representative sample of LEP individuals in Connecticut is contemplated. This study will significantly expand the questionnaire put forth to the respondents, and data will be collected to test two propositions: first, that LEP individuals do not possess enough understanding of the legal system as such, and are therefore unable to meaningfully participate in the legal

proceedings in American courts without prior educational outreach, or, at the very least, without assistance of cross-culturally competent counsel and a competent and highly qualified court interpreter. Second, I intend to show that legal English, as opposed to conversational English proficiency, should be the measuring stick for courts and judges to determine whether a court interpreter should or should not be appointed. Additionally, my modest initial inquiry into this heretofore unexplored issue will serve as a stepping stone for research by other authors, both lawyers and linguists, in furthering the understanding of steps necessary to protect equal access to justice for linguistic minorities.

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Appendix A – Sample Questionnaire

1. What country were you born in?
2. What is your first language?
3. What is your nationality?
4. How old are you?
5. What is your occupation?
6. How long have you lived in the United States?
7. Where did you learn to speak English? (in your home country or in the U.S.?)
8. What if your highest level of education? (in your home country and/or in the U.S.)
9. Where do you speak English and where do you speak your native language? (e.g., at home vs. at work)

10. Do you *read* and *write* in English?
11. What was the last book/magazine/newspaper you read in English?
12. Have you ever been to any court in the United States for any reason?

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Towards a Creativity-based Framework for Defining and Describing Court Interpreting: Based on the true story of court interpreting in Greece

Stefanos Vlachopoulos

The purpose of the paper is to tell the story of court interpreting in Greece. Drawing on a questionnaire-based survey among legal professionals, the general picture of the role, the performance and appreciation of the court interpreter in Greece is established. In the second part of the paper a definition and a descriptive approach to the interpreting process in courts is put forward that allows both non-language professionals to understand what is at stake in court interpreting and at the same time to promote professionalization. I will make a case for the examination of the actual process of (court) interpreting by applying the notion of creativity, which is considered to be a very promising tool for describing and examining problem-solving procedures in general.

Keywords: Court interpreting, creative problem-solving, definition of interpreting, description of interpreting, professionalization, Greek courts

1 Introduction

Despite the fact that in the last decade courts in Greece have been facing a growing number of non-Greek speaking individuals coming from a growing number of countries speaking an even larger number of languages and dialects, nobody seems to be really concerned about the lack of professional interpreting services and the fair administration of justice to these individuals. Apart from scattered newspaper articles with anecdotal accounts of incidents with ill-performing interpreters at

Greek courts that range from funny to tragic, there has been no other examination of court interpreting in Greece.

Both the scrutiny of legislation and a survey conducted with fifty two legal professionals in Greece concerning their experience with court interpreters tells the true story of the administration of justice to non Greek-speaking individuals. On the one hand, the inconsistent use of the term *translator* and *interpreter* in legislation, the lack of any profile for a suitably equipped court interpreter and the data from the questionnaire-based survey, on the other hand, show that the dilemma of the court interpreter as either ghost or intruder turns out to be a situation actually in favor of the court interpreter as a ghost deprived of the right even to rattle with its chains.

In the first part of this paper I will draw a map of the uncharted waters of court interpreting in Greece through the analysis of the responses to the questionnaires that had been distributed to fifty two legal professionals; the analysis is expected to unveil poor interpreting services that are due to a poor appreciation of the complexity of the interpreting process by lawyers and judges. As my research has shown, in their eyes interpreting is nothing more than a simplistic mechanical reproduction of source language material in a target language. According to Gerver, what most legal professionals seem to disregard, is that interpreting is "a form of complex human information processing involving the perception, storage, retrieval, transformation, and transmission of verbal information" (1975, p. 119).

Therefore, in the second part I will put forward the position that court interpreting should be defined and described by applying a conceptual framework understandable not solely by experts in interpreting but also by legal professionals, who are major players in the procedure of court interpreting and usually do not have any language training or any other relevant knowledge: The interpreter – at best - is the only party in the procedure of court interpreting with a background in interpreting theory and the principles of intercultural communication; therefore, we believe strongly in the need for a theoretical backdrop that can explain (court) interpreting to lay persons. Such a framework would cater for an enhanced understanding of court interpreting, an appreciation of its importance and its complexity by lawyers and judges – stakeholders in the actual process of interpreting.

It is the objective of the second part of the paper to propose a definition and a descriptive approach to the interpreting process in courts that allows even non-language professionals to understand what is at stake in court interpreting. I will make a case for the examination both of the actual process of (court) interpreting and its teaching and assessment by applying the notion of creativity, which is considered to be a very promising tool for describing problem-solving procedures in general.

2 Background

What fuelled my interest in interpreting at court authorities in Greece was a personal experience: Some years ago I was asked to act as an interpreter in an alleged rape case of a young foreign woman by a fellow countryman of hers. The presence of an interpreter in cases where foreigners are involved is laid down in the law[1]. I was not assessed in any why; upon my arrival I was asked to provide identification and to declare that I "knew" English. I realized that anybody claiming to know a foreign language could be used as an interpreter. Researching into the legal provisions on interpreting at court I further realized that there are no minimum standards for the interpreters and that there is nor any training available for interpreters in the public sector nor any certification[2].

In accordance with article 233 paragraph 2 of the Greek Criminal Code the interpreter is chosen from a list which is composed by the court authorities after the recommendation of the district attorney in early September each year. This list is composed of individuals (if possible by civil servants) living or working in the area of the court's jurisdiction. After being approved by the attorney of the court of appeals the list is made official and is valid for one year. According to

1 See further the Greek Code of Criminal Procedure; in particular article 233 paragraph states that when the defendant or a witness does not know the Greek language satisfactorily an interpreter has to be appointed.

2 An extreme case recorded in Greece has been the appointment by the court of Thessaloniki of an interpreter who has been used for more than ten years. She had been registered with the court for the languages Bulgarian, Serbian, the Yugoslav language (sic) and she declared to have a poor knowledge of Albanian and Turkish. The interpreter in question had been used repeatedly by the courts and she contributed to a considerable number of hearings also in Albanian – a language she declared to have a poor knowledge of.

the same law, in urgent cases and if an individual from the list is not available, another person can be appointed to function as an interpreter. The interpreter swears on the holy bible before the appointing authority (court or prosecutor) t*o "*translate with exactness and faithfulness everything that will be said*"*[3]. Another issue that arose, was that the legislator shows signs of insecurity as to the differences between translation and interpreting and uses the verb *to translate* even when there is exclusive and indisputable mention of interpreting.

The impact of the procedures concerning the selection of the court interpreter on the fair administration of justice could be severe. On the one hand, the foreigner who does not know or has limited knowledge of the native language is affected. Communication between the foreigner and the authorities might not come into being or misunderstandings might evolve. It is obvious that the poor quality of communication with the foreigners in settings like police stations, public prosecutors and before court, etc., where major personal interests are at stake could bear great inequality. Talking to judges and prosecutors revealed their perspective: The lack of trained personnel is not only a problem for the non-native individual in conflict with the judiciary in Greece. It is also the Greek court system that suffers from the lack of qualitative interpreting services since authorities are forced to locate under time pressure an amateur linguist to assume the role of the interpreter, whose presence is a prerequisite for the procedures involving non-Greek speakers.

3 The discourse of proceedings

In this chapter I will go into the research I conducted with legal professionals in order to map the unchartered waters of court interpreting in Greece. At the outset I will provide the necessary definitions, go into methodological issues and finally I will present the results and an analysis of the findings.

3 See further article 236 of the Greek Criminal Code.

3.1 What is court interpreting?

For Hermann (1956/2002) interpreting is the activity of enabling or facilitating communication between speakers of different languages and it is a millennial practice, with earliest records dating back some five-thousand years. According to Selescovitch (1978, p. 2) the interpreter anticipates in a dialogue, his words are aimed at a listener whom he addresses directly and in whom he seeks to elicit a reaction. The interpreter has to deal with messages uttered in two languages by at least two different actors in their respective social, cultural and psychological frames, the complexity of the communication increases tremendously (Gonzalez 1991: 296). Pöchhacker (2005, p. 695) wrote:

> In a discussion of various models of interpreting (with a strong bias toward the (inter)action-theoretical framework advanced by German translation scholars in the 1980s), I have tried to show that adopting a broader notion of 'process' – as a progressive course or event in time – can help achieve a more holistic, 'real-life' understanding of the phenomenon. This comes at the cost of using the term 'process' very liberally, for anything from memory storage to mediation; but it comes with the benefit of approaching interpreting in a coherent conceptual framework, reconciling situated (inter)action and mental operations in a socio-cognitive perspective. but it comes with the benefit of approaching interpreting in a coherent conceptual framework, reconciling situated (inter)action and mental operations in a socio-cognitive perspective.

Any concentration on the cognitive aspects of interpreting would neglect the fact that communication is in fact a social phenomenon and would blend out the crucial facets of how cognitive processing in interpreting adjusts to both verbal and non-verbal input.

Gonzalez' and Pöchacker's holistic approaches allow us to consider the interpreting process as an integrated process where the cognitive processing operations and situatedness interact; disregarding the instance of social interaction and focusing on the cognitive processing operations would deprive any examination of the interpreting process of what feeds the interpreter's cognition with valuable data and keeps the interpreter going. Selescovitch's words of eliciting a reaction

suggest the existence of a problem-solving situation on how the purposeful reaction can be brought about. The social interaction in Pöchhacker's terminology is what feeds the cognitive operations of the interpreting process; it is expected to trigger a constant problem-solving procedure of how to get the message across languages and cultures. Elaborating the words of the researchers quoted above, for the purposes of our project court interpreting will be defined as the activity of enabling or facilitating communication between speakers of different languages in legal settings aimed at eliciting a purposeful reaction on the basis of verbal and non-verbal input that simulates constant problem-solving operations.

Accordingly, our attempt to draw a picture of court interpreting in Greece takes into consideration that interpreting is a process, fed not solely by linguistic data and world knowledge, but that it should have also an input from the examination of the situational factors by the interpreter.

3.2 Research methodology

In the years from 2008 to 2010 a questionnaire-based survey on interpreting services offered in courts in Greece was conducted. Randomly selected legal professionals, fifty lawyers and two judges were asked to respond to a questionnaire. The twenty questions of the questionnaire were expected to yield insight into the qualifications, performance of the individual called upon to act as an interpreter and into how the legal world in Greece views interpreting. It was my aim to confirm the anecdotal evidence collected through talking to legal professionals, to individuals having acted as interpreters in Greek courts, from newspaper articles and from personal experience as a court interpreter. The survey was conducted in the areas Ioannina, Arta, Preveza of the Region of Epirus and on the Island of Corfu.

3.3 The survey: Charting the uncharted waters of court interpreting in Greece

The questions were divided into three categories: The first set of questions aimed at revealing the present status of the interpreter in the court room, the second set was aimed at the issue of quality in the interpreting process, whereas the last set of questions were asked in

order to establish, what kind of an interpreter the legal professionals in Greece wanted to have.

a. The state and status of the interpreter in the court room

The first set of questions was aimed at establishing the status of the interpreter in the court room; it was my purpose to establish if he was considered an equal partner in the court procedure. The results showed that not all of the legal professionals questioned had worked with foreigners; twelve of the interviewees had answered the questionnaires on the basis of what they observed in courts, whereas the majority had relevant experience. The overall impression concerning the quality of the services delivered was that the performance ranged from satisfactory (thirty two out of fifty two) to unsatisfactory (eighteen). Only two legal professionals considered the interpreting services to have been good on a scale consisting of the qualities *good, satisfactory and unsatisfactory*.

The answers provided gave us the impression that the interpreter as an individual and a services provider was more or less simply tolerated. The legal professionals displayed a marginal interest in the interpreter's qualification: Eight of the legal professionals declared they knew the qualifications of the interpreters who attended, eighteen declared they knew only in a few cases what kind of qualifications the interpreter had and twenty six did not know anything about the interpreter.

b. Does quality matter?

Quality should play a major role in the provision of court interpreting services. We concentrated on the availability of multiple interpreters for multiple witnessed, the availability of resources to the interpreters as well as the degree of actual reliance on the interpreter's performance in court.

The questions focusing on the comprehension of the source text utterance as experienced by the legal professionals yielded the following results: Many of the interviewees believe that there were cases in court when the interpreter did not (fully) understand what the foreigners were saying: In detail, two had witnessed a case where the interpreter seemed not to understand anything of what was said by the foreigner; twenty participants in the survey stated that the interpreter did not understand everything, whereas thirty did not witness such a case.

As to the production of the target utterance, eight interviewees declared that the interpreter did not render fully in Greek what was said. Forty two had the impression that the interpreter did not render accurately what was said by the foreigner, whereas two were sure that interpreters did not render accurately the source utterance.

As to the rendition of Greek language utterances into the foreign language, ten interviewees said that there were cases where the interpreter did not interpret to the foreigner any communication in Greek between the lawyers and judges. Thirty eight stated that this happens often and four that this is the norm. This result explains that forty eight legal professionals consider it impossible for the alien to have a picture of the entire procedure in court.

The interpreter and the foreigner were addressed in the majority of the cases inconsistently by the legal professionals, twelve witnessed cases where the interpreter was addressed while in sixteen cases the alien was addressed. Six lawyers witnessed that the interpreters used the first person singular when rendering the source utterances, thirty used reported speech while eight interviewees reported inconsistency.

Only twelve out of the pool of fifty two legal professionals remembered cases, where the interpreter took notes; only four cases were reported, where the interpreted asked for a dictionary or another aid.

In most cases (forty four) the same interpreter was used for all parties involved; only eight legal professionals witnessed cases, where different interpreters where employed. Only six of the interviewees remembered cases where the interpreter was asked if he was tired, whereas the rest answered that the interpreter's physical state was never an issue.

c. What kind of court interpreter does the Greek legal professional want?

When asked if the interpreter in legal settings should act also as a specialist in cultural and linguistic issues, thirty six of the answered positively; forty answered that the interpreter should reproduce the source utterance, only six believe in a functional interpretation of the source text wording. Generally the remuneration of the interpreter was considered poor. Only one of the lawyers and judges questioned

believed that the remuneration is satisfactory[4]. All participants in the survey answered that there is a need for a court interpreter training in Greece and that the quality of court interpreting is not satisfactory in general. As to the system of appointment of court interpreters in Greece, the interviewees responded unanimously, that the system was considered unsatisfactory.

3.4 Evaluation of the findings

The findings are telling the true story of court interpreting in Greece: It seems that the legal system merely tolerates court interpreters and it does not seem to rely on them.

The fact that the rendition of Greek language utterances into the foreign language where not transferred effectively, the fact that the foreigner was isolated since in most cases the interpreter did not render any communication between lawyer, public prosecutor and judge and the fact that forty eight of the legal professionals considered it impossible for the alien to have a picture of the entire procedure in court is evidence enough that interpreting in court settings is not at all contributing to the fair administration of justice. Moreover, the interpreter is viewed as a machine expected to limit his services to the linear reproduction of the source utterance in the target text; only for six of the legal professionals interviewed functionality of the interpreting process seemed to be in the focus.

The lack of interest in the qualifications or working conditions of the interpreters that could limit their performance, the minimal interest in their actual performance in the court room, the lack of any protocol on court interpreting or the ignorance of how interpreting in court should function are evidence of a poor appreciation of court interpreting in Greece.

Unfortunately, the picture drawn by the answers confirm the anecdotes about the court interpreting process in general. What is even more a source of concern is that there have been no indications of protest against the poor quality of legal interpreting: The legal professionals having witnessed this unfair administration of justice seem to tolerate this.

4 This could be seen as an indication of the prestige court interpreting has in Greece.

What was encouraging is that all participants in the survey answered that there is a need for a court interpreter training in Greece and that the quality of court interpreting is not satisfactory in general.

4 A creativity-based description and definition of court interpreting: Steps towards the professionalization of court interpreting in Greece

Practically, in Greek courts the interpreter seems to play solely a marginal role; the previous chapter has shown that legal professionals show only a minor interest in the court interpreter both as an individual and as a professional. They put up with low quality interpreting services. The tolerance of such conditions in the administration of justice is a sign of a poor appreciation of the complexity of interlingual and intercultural communication. How can this be changed? What is it that will make the legal professionals show an increased interest in court interpreting?

4.1. How do we make them understand?

I think that the key issue is to make legal professionals understand what court interpreting is about and what it takes for the interpreter to succeed in an assignment. The key issue is to make legal professionals understand what court interpreting is about and what it takes for the interpreter to succeed in an assignment.

As already said, in the following lines we will put forward the position that court interpreting should be defined and described by applying a conceptual framework understandable not exclusively for experts in interpreting but also for legal professionals who are major players in the procedure of court interpreting and usually do not have any language training or any relevant knowledge. The interpreter – if trained - is at best the only party in the procedure of court interpreting with a background in interpreting theory and the principles of intercultural communication; therefore, we strongly believe in the need for a conceptualization that can make (court) interpreting understandable to lay persons. Such a framework would cater for an enhanced understanding of court interpreting by lawyers and judges –

parties, whose involvement in the process of interpreting determines largely the success of any interpreting project.

The present state of affairs as far as court interpreting is concerned, associates the court interpreter in Greece more with a ghost in the whole procedure and - to be more precise – with a ghost that is not even allowed to rattle with its chains. But what kind of ghost do we need? Do we need a silent ghost? I think that everybody who is familiar with court interpreting knows that an interpreter cannot be a silent ghost. He should be a ghost in terms of discretion, but in terms of performance he should become an intruder – for the sake of fair administration of justice.

It is the objective of the lines that follow to propose a descriptive approach to the interpreting process in courts that allows even non-language professionals to understand what is at stake in court interpreting and to provide a conceptual framework for training and assessing court interpreters. A better understanding of the principles of court interpreting and the difficulties a court interpreter has to face increase the court systems demand for quality interpreting services.

4.2 Describing and defining court interpreting as creative problem-solving.

The interested reader might turn to Pöchhacker (2005, pp. 683-685) and to Gonzalez (1991, pp. 315-358) who provide a basic overview of approaches adopted to describe the interpreting process. All these theories have in common that they employ notions to conceptualize the interpreting process which are difficult to grasp by non-specialists: Ranging from Seleskovitch's work in the early 1960's up to functionally-oriented information processing theories of the last fifteen years (e.g. Pöchhacker, 2004) all models have been devised for specialists. But what about settings where the contribution of the interpreter is not considered to be the norm? How can the usual stakeholders in such a setting be convinced about the necessity to draw upon professional interpreting services? This can be made feasible only by conceptualizing interpreting by means of a terminology accessible by non-specialists.

A description and a definition of the (court) interpreting process based on creativity, which as a concept is more accessible, would shed

another light on court interpreting and make legal professionals understand what court interpreting is about.

Horvath (2010) has proven that interpreting is an act of creativity and that on the basis of the psychological literature, creativity can be identified as an intrinsic element of interpreting on the three levels of the interpreting: The level of the interpreting product, the level of the mental processes underlying cognitive strategies, and the level of the interpreter's professional behavior in a given communicational situation (2010, p. 157). Furthermore, he writes (2010, p. 156) that beyond the interpreting process as such, creativity plays a vital role also in the way an interpreter engages with the overall communicative situation. Even if a great number of cognitive processes may become automatic in the course of the professional interpreter's career, the situational characteristics change with every assignment and call for creative problem-solving.

Creativity researchers converge on the notion that creative thinking[5] is a complex process that may include problem definition and redefinition, divergent thinking, synthesis, reorganization, analysis, and evaluation, which is inherent to human nature and becomes visible through the individual's interaction with the environment.

In psychology creativity has been defined by Urban (1990, pp. 104-105) as

> a. the ability to create a new, unusual and surprising product as a solution to an insightfully perceived problem or a given problem whose implications have been insightfully perceived,
> b. and by means of an insightful and broad perception of existing and open data and information purposively looked for,
> c. and by analysis, by solution-oriented but highly flexible processing, by unusual associations and new combinations of data and information and with the help of data from experience or with imaginative elements,
> d. these data, elements and structures into a new solution-gestalt (whereby the processes 3 and 4 may partially run simultaneously on different processing and consciousness levels),

5See Sternberg and Lubart 1996, Lubart 2000, Sternberg 2006.

e. to arrive at a solution-gestalt, which as a product or in a product, in whichever form, becomes elaborated,
f. and, finally, through communication can be grasped via the senses and experienced by others as meaningful and significant.

The above definition of creativity depicts a process of managing existing data after an intelligent prompt in order to come to a needed product. It reminds us of what an interpreter actually should be doing: he should constantly be managing the data he receives on every level, the level of the interpreting product, the level of the mental processes underlying cognitive strategies, and the level of the interpreter's professional behaviour in a given communicational setting.

Building up on the definition of creativity given, one can produce the following coherent creativity-based definition of interpreting. Interpreting could be defined as
a. an interpreter's response to a prompt to interpret a given source utterance,
b. which deploys on data from source utterance and initiator
c. involving elaboration of the data
d. in order to produce a target utterance,
e. which is perceived as useful and appropriate by the receiver.

In psychology creativity has been described as a four stage process[6]. The four stages are the following:
a. *Preparation* (preparatory work on a problem that focuses the individual's mind on the problem and explores the problem's dimensions), this is the research phase: Collect information or data.
b. I*ncubation* and *intimation* (where the problem is internalized into the unconscious mind and nothing appears externally to be happening and the creative person gets a 'feeling' that a solution is on its way).
c. Illumination or *insight* (where the creative idea bursts forth from its preconscious processing into conscious awareness).

6 In 1926 Graham Wallas presented in his work *Art of Thought* one of the first but still widely cited process descriptions of creativity. For further details see Armbruster (1986).

d. *Verification* (where the idea is consciously verified, elaborated and finally applied).

The scheme used in creativity research to describe the actual sequential nature of the creative problem-solving process could very well describe what happens at any of the three levels of problem-solving in interpreting, the level of the interpreting product, the level of the mental processes underlying cognitive strategies, and the level of the interpreter's professional behaviour in a given communicational situation. Every phase of the creativity process corresponds to a phase on the appropriate level. In the first phase (preparation), the initiator provides the relevant information, while the translator looks for as much information as possible. In the incubation phase the translator starts constructing a unique cognitive decision-making process, which leads gradually to the product. In the last stage, the verification phase, the solution is tested as to its appropriateness and effectiveness.

Describing and defining interpreting as a creative problem-solving procedure could enhance its appreciation among laypersons: Employing a notion like creativity, which is on the one hand familiar and associated with a superior set of procedures by the layperson, and on the other hand a psychological term denoting complex cognitive processes that are purpose-oriented could give the legal professional the chance to view court interpreting as a process and as a product and the interpreter's performance in a different light.

5 Conclusion

The purpose of our paper has been to tell the story of court interpreting in Greece for the first time. Through a questionnaire-based survey, a general picture of the role, the performance and appreciation of the court interpreter in Greece could be established. Court interpreting in Greece is far from being even satisfactory; what has been recorded through the questionnaire-based survey is a total lack of professionalization. The worst thing seems to be the tolerance of this situation by the major stakeholders in the administration of justice, lawyers and judges. It seems that the lack of interest in interpreting and the interpreter as well as the tolerance of poor interpreting services can

only be changed if the legal professionals understand what interpreting (in court) is about and what it requires from the interpreter. Therefore, in the last part of the paper a definition and a description of (court) interpreting as a creative problem-solving procedure was put forward; using a terminology much more accessible than the one used in the definitions and descriptions by specialists in the field of interpreting studies, would allow the lawyers and judges to see the complexity of the interpreting process and appreciate the value of high-quality services.

Further research might go into two different directions: First of all, it should investigate whether the legal professionals would indeed respond to a creativity-based definition and description of court interpreting and secondly, it should be researched to what extent a description and a definition of interpreting as a creative problem-solving procedure can carry the weight of not only fostering an increased understanding of interpreting, but also the training and assessment of interpreters[7].

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