

6 The code of ethics

This chapter will address the critical issue of ethics for court interpreters. We will enumerate some general principles and tie them to the tenets of specific codes of ethics (also known as codes of conduct or codes of professional responsibility), and then explore some aspects of the role of the interpreter that are based on ethical principles but are not yet widely accepted. The chapter will conclude with some practical guidelines for conduct in the courtroom.

Every profession has a code of ethics to guide its practitioners, and interpreting is no exception. Regardless of what type of setting they work in, professional interpreters must uphold certain standards, including accurate and faithful interpretation, confidentiality, and impartiality. In the legal environment, given the high stakes involved (personal liberty and property, public security) and the potential for misunderstandings and miscarriages of justice, ethical standards are especially important. Indeed, the *Code of Professional Ethics for Court Interpreters* of the International Federation of Translators (FIT) begins with a preamble that notes the court interpreter has a crucial role in ensuring a fair trial, basic human rights, and equality before the law. In this chapter, we will review the tenets of the ethical codes that govern court interpreters in various jurisdictions. The specific codes referred to are listed at the end of the chapter. Because each case is unique, and court interpreters are constantly called upon to make instantaneous decisions about appropriate behavior, we will also present some practical guidelines for applying ethical principles in real-life situations.

Canons of the code of ethics

Professional associations of court interpreters usually adopt standards that their members agree to uphold. In addition, many jurisdictions have regulations, statutes, or rules of court that set forth the ethical obligations of interpreters. Although specific practices vary from one court to another, there are certain universal features that characterize all codes of ethics. Those features are identified and discussed below:

1 *Fidelity*

The interpreter has a moral and professional – not to mention legal – obligation to convey the complete meaning of the speaker’s message. According to the

European Legal Interpreters and Translators Association (EULITA) *Code of Professional Ethics*,

The source-language message shall be faithfully rendered in the target language by conserving all elements of the original message while accommodating the syntactic and semantic patterns of the target language. The register, style and tone of the source language shall be conserved.
(p. 2)

The *Standards for Performance and Professional Responsibility for Contract Court Interpreters in the [U.S.] Federal Courts* also provide: “The obligation to preserve accuracy includes the interpreter’s duty to correct any error of interpretation discovered by the interpreter during the proceeding” (Canon 1).

In some European countries, as well as in Australia, Canada, and the United States, verbatim records are made of court proceedings; but even where witness statements are summarized by the judge, it is important for the judge to first hear a complete interpretation in the first person (not “He says that he saw” but “I saw”) to gain an accurate perception of the speaker’s intent so that it can be reflected in the summary. In other words, any editing that takes place should be done by the judge, not the interpreter. The same holds true for interpreting in police interrogations or interviews by attorneys (see Chapter 5 on interpreting for law enforcement).

It is particularly important to refrain from simplifying complex or technical language for the “benefit” of an unsophisticated defendant or witness. Although your natural inclination may be to make sure the listener fully understands the message, in the courtroom setting such well-intentioned editing distorts the legal process, particularly in an adversarial system. The *Model Code of Professional Responsibility for Interpreters in the Judiciary*, which is intended to guide interpreters throughout the United States, asserts in its preamble that linguistic barriers to communication faced by non-English-speaking litigants should be removed “as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier,” and it further clarifies in a footnote, “A non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence.” This cautionary note is intended to underline the fact that many laypersons who appear in court are baffled by the language and behavior of court personnel, and the litigant who happens to need an interpreter should not be at an advantage compared to one who speaks the language of the court.

The question of what constitutes an accurate interpretation is, of course, a complex one. Translation theorists have been debating the issue for centuries, and this is not the place to further that discussion. Suffice it to say that meaning is contained in both linguistic elements (e.g., words, phrases, grammatical structures) and non-linguistic elements (e.g., tone of voice, pauses, facial expressions, gestures) of a message, and you must account for all elements of

meaning in your renditions in the target language. The reproduction of witness gestures is a delicate matter. It can be argued that everyone in the courtroom can see the witness and there is no need for the court interpreter to repeat any movements or facial expressions made by the witness. Certain gestures are culture-specific, however, and might be misunderstood without some explanation. As a court interpreter, you must therefore exercise a great deal of discretion in deciding whether intervention is required to convey the full meaning of the witness's testimony.

The interpreter is also obliged to inform the parties of any impediment to a faithful interpretation, such as the inability to hear or understand a speaker, excessively lengthy statements that overtax the memory, rapid speech, or fatigue from long spells of interpreting without a break. If at any point you become aware of an error in your interpretation, you must inform the parties immediately (this may happen even after you have completed an interpreting assignment). Whereas in other settings it may be acceptable for interpreters to gloss over minor gaps in understanding or to generalize when they do not know a specific term, in legal interpreting you must always state clearly when you do not understand something or cannot recall a detail.

If you are interpreting in a situation where a verbatim record is being made, you should always clearly distinguish between statements you are interpreting and statements you are making yourself in your capacity as interpreter. In the United States, the standard practice is for interpreters to refer to themselves in the third person ("By the interpreter: Could the question be repeated please?" or "The interpreter would like to make a correction").

2 Confidentiality

According to Article 3 of the FIT *Code of Professional Ethics for Court Interpreters*, "The court interpreter shall not reveal to any person confidential information that he/she has obtained in the performance of his/her assignment." Furthermore, the EULITA *Code of Professional Ethics* provides: "Legal interpreters and legal translators shall refrain from deriving any personal or financial benefit from information they have acquired in the course of an interpreting or translation assignment for judicial purposes, or its preparation" (p. 3).

It is a recognized principle of law that anything discussed between an attorney and client is "privileged," meaning that neither party can be forced to reveal what they said. An interpreter who mediates that conversation falls under the attorney–client privilege. There are certain exceptions to this rule, however. The *Code of Conduct* of the Australian Institute of Interpreters and Translators (AUSIT) notes in Section 2.4 that "Disclosure of information may be permissible with clients' agreement or when disclosure is mandated by law." If there is imminent danger, for example, or if a crime is about to be committed, in many countries the privilege becomes invalid. In addition, interpreters may be considered "mandated reporters" where the law requires certain professionals to disclose information about abuse of children or other

vulnerable individuals. Another situation in which information about a case may be revealed by an interpreter is when other interpreters coming in to work on the case need to be briefed.

Interpreters are generally cautioned not to make any public comment about cases they are assigned to interpret. Sometimes trials become the subject of public controversy, and news reporters may approach the interpreter for “inside information.” It is important to resist the temptation to express opinions or even talk about how the trial is going in general terms, because such statements could be construed as showing bias on the interpreter’s part and could become grounds for appeal. On the other hand, interpreters do need to consult with colleagues and other experts about technical terms or ethical dilemmas that arise in their work. It is perfectly acceptable for you to discuss aspects of a case as part of your research and professional development, as long as you do not reveal names or other sensitive information that might compromise confidentiality.

3 Impartiality

Interpreters in all settings are expected to remain impartial, whether they are working at a conference, a seminar, a business meeting, or a press conference. This is especially true in litigation, since the parties are by definition in conflict with each other, and they want to make sure the interpreter does not distort language in a way that favors the other side. According to Article 5 of the *FIT Code of Professional Ethics for Court Interpreters*, “The court interpreter shall at all times be neutral and impartial. He/she shall not allow his/her personal attitudes or opinions to impinge upon the performance of his/her assignment.”

Gile (2009, p. 34) prefers the term “rotating side-taking” to describe the interpreter’s obligation to her clients. Interpreters generally use the first person, which implies that they are the “alter ego” of the speaker whose message they are interpreting at the moment, unless they explicitly state that they are speaking on their own behalf by referring to themselves in the third person. He notes that in some public service settings, including court interpreting, clients and parties may mistakenly expect single-sided loyalty from the interpreter. In his research on court interpreters in Hong Kong, Cheung (2014) found that interpreters who used the third person were perceived as aligned with the party they were interpreting for – whether the legal professional or the limited language proficient (LLP) individual, depending on the perspective – rather than remaining neutral. This is why it is so critical for both interpreters and all the parties they work with to understand the ethical principles that govern their conduct.

Although the parties’ differing interests may be more apparent in an adversarial legal system, the neutrality of the interpreter is always essential in any legal setting. Consequently, if the interpreter has close ties with one of the parties (kinship or a business relationship, for example), or has a personal or financial interest in the outcome of the case, there is a conflict of interest, and

the interpreter should be disqualified. The *Standards for Performance and Professional Responsibility for Contract Court Interpreters in the Federal Courts* state in Canon 3: "Interpreters shall disclose any real or perceived conflict of interest, including any prior involvement with the case, parties, witnesses or attorneys, and shall not serve in any matter in which they have a conflict of interest." Several codes further caution interpreters against referring clients to law firms or other businesses even if they do not have a financial interest in the business, because of the appearance of bias that would be created.

Merely being acquainted with a party does not create a conflict of interest, but in some situations it is obviously impossible to remain impartial, as when the interpreter is a close relative of the defendant or the victim. Other conflicts of interest are more subtle. Suppose an interpreter in a rape case has been a rape victim herself. It is highly unlikely that she would be able to interpret testimony in an unbiased manner. Another example is an interpreter who is also a police officer. Even if the individual has not acted in a law-enforcement capacity in the case at hand, i.e., did not arrest the suspect and has not participated in the investigation of the facts, there is still an inherent bias in the interpreter's approach to the case. If you have any doubts about whether you have a conflict of interest, it is best to confer with a judge or other neutral authority who can assess the situation properly. It is also a good idea to disclose to all parties any relationship that might create a potential or apparent conflict of interest, while assuring them of your ability to remain objective. While you may be tempted to take an assignment because you need the income and the experience, tarnishing your reputation by engaging in possibly unethical behavior could harm you in the long run.

Another aspect of impartiality that interpreters need to consider is the acceptance of payment. By definition, professional interpreters are paid for their services, but this does not mean that they owe loyalty to the person paying them. Interpreters serve justice and the judicial system in general, and they owe their loyalty to the interpreting profession. Whether you are paid by the court, a law enforcement agency, the law office that has requested your services, or the individual litigant for whom you are interpreting, you have an obligation to interpret accurately to the best of your ability, regardless of the impact that may have on the parties' cases. Under no circumstances should you ever accept payment in addition to the fee you normally charge for services or agree to any fee contingent on the outcome of the case. A grateful litigant may wish to reward you after winning his case, but such gratuities should be politely declined. Accepting additional payment might give the impression that your performance could be altered with inducements.

There is a natural tendency for LLPs to view the interpreter as an ally, a lifeline, especially if they are in a desperate situation. They may ask the interpreter for advice about what they should do or what is going to happen to them. It is tempting to answer such questions by reassuring the person or explaining how the system works. You may sympathize with him, or you may

be disdainful of him because he broke the law. Remember, though, that your real client is the court and the justice system, not an individual for whom you may be interpreting at the moment, and you must keep your own emotions in check and remain impartial. This neutral attitude is often described as “professional detachment” (Colin and Morris, 1996).

There is one exception to the prohibition of explanations by interpreters, applicable only in some countries. Kadric (2001, as cited in Kalina, 2015, p. 74) reports that in many European countries (Austria is mentioned as a typical case), the court interpreter is regarded as an expert and is expected to provide explanations “when the cultural knowledge of one party is not sufficient to understand the other party.” However, you should make sure the particular code of practice that applies to you allows you to intervene in this manner before volunteering such explanations. Moreover, when it is the LLP individual who is unfamiliar with a cultural concept, especially in the asymmetrical environment of the legal system, which is characterized by powerful judges and attorneys and often powerless laypersons, Kalina (2015, p. 80) recommends that “the representatives of the powerful side should admit that concepts which are unknown in the culture of a client must be explained to that client.” She goes on to say, “To be able to act in full awareness of these challenges, an interpreter must be properly trained, highly qualified and rely on codes which offer guidelines for their informed decisions.”

Sometimes there is an appearance of partiality, when in fact the interpreter is quite objective. Unfortunately, just belonging to the same ethnic group as the defendant may give some people the impression that the interpreter is “on his side.” While there is nothing you can do about other people’s prejudices, you can prevent the appearance of bias by avoiding extraneous conversations with any of the parties. Above all, you should not have any independent conversation with a person for whom you are interpreting, because it will look like you are giving them advice or interfering with their testimony. You should also refrain from expressing any personal opinions or emotional reactions to what you are interpreting. All codes of ethics for court interpreters prohibit them from giving legal advice. It is important that everyone in the courtroom views you as unbiased so that they will trust in the accuracy of your interpretation.

Parties who must rely on an interpreter are forced to relinquish control over the communication, and they are naturally distrustful. Until they are assured that everything is being interpreted accurately, they will worry that the interpreter may betray them or distort what is being said. How can you reassure your clients if they don’t understand what you are saying? In addition to refraining from extraneous conversations, you can gain the confidence of all parties by observing professional conduct.

Transparency is another important part of impartiality: all parties should be apprised of what is being said at all times. When you address the court to request a repetition, clarification or any other accommodation, you should do so in the third person, as mentioned earlier, and then provide at least a summary

of what was said, if not a complete interpretation, for the LLP defendant or witness. Note that in the case of witnesses, there may be objections to your addressing the witness directly, and if your explanation of the transparency principle does not allay the concerns, defer to the judge. Under no circumstances should you initiate a conversation with a witness without requesting the court's permission first. In the case of defendants, they have a right to hear everything that is said in their case so objections are less likely. Alternatively, if you need to address a query to the witness to clarify a term (after obtaining the court's permission), afterwards you should provide for the court record a summary of what was said.

4 Professional conduct

Canon 4 of the *Model Code of Professional Responsibility for Interpreters in the Judiciary* provides that "Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible." In other words, you should not call undue attention to yourself when interpreting testimony, so that everyone in the courtroom can focus on the witness; and you should not disrupt the proceedings by interpreting too loudly or obstructing sight lines. You should be sure to observe the protocol of the court where you are working, which includes using the proper forms of address for courtroom personnel ("Your Honor," "My Lord," "Counsel," etc.), and bowing or standing and sitting at the appropriate times. Several of the codes cited here also mention punctuality and courtesy.

Professional conduct also refers to relations with colleagues. For example, the EULITA *Code of Professional Ethics* provides, "Legal interpreters and legal translators shall act in a spirit of respect, cooperation and solidarity towards their colleagues" (p. 3). This collegiality is essential for maintaining the dignity of the profession and earning the respect of other legal professionals. Moreover, collaborating with other interpreters, particularly when you are working on a team, contributes to accuracy and completeness. When engaging in team interpreting, you should monitor your colleague when you are not interpreting and be ready to support her by researching terms and looking out for her well-being, which she will do for you in turn. Interpreters should not air differences of opinion on terminology in open court, but rather should ask the court's permission to confer in private to resolve the issue. In case of any dispute or complaint lodged against an interpreter, whether by a colleague or a client, it should be resolved by means of whatever mechanism the court or the professional association has in place for handling disciplinary matters.

Another important aspect of professional conduct is honesty and integrity. Most of the codes of ethics contain provisions asserting that interpreters should not accept assignments for which they are not qualified. A typical provision is that which can be found in the FIT *Code of Professional Ethics for Court Interpreters*, Article 6: "The court interpreter shall only accept assignments for which he/she possesses the requisite knowledge and skill. The

court interpreter shall be responsible for the correctness of his/her interpretation and shall correct any mistakes that he/she makes.”

If at any point you become aware of a problem in rendering competent interpreting services, you must notify the client. In the words of the *Model Code of Professional Responsibility for Interpreters in the Judiciary*, Canon 8, “Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.” For example, if you are asked to interpret for a witness and you discover upon arrival at the court that she speaks a dialect you are not familiar with, you should withdraw from the case. Similarly, if the testimony turns to a technical subject matter you did not anticipate and you do not know the correct terminology, you should inform the court and request a recess to research the terms, or request that an interpreter more conversant with the subject matter at hand be assigned to the case. You must also report impediments to your performance, such as inaudibility or fatigue.

Professional development is another key element of professionalism for court interpreters. For this reason, many credentialing programs require interpreters to show proof of a certain number of hours of continuing education as a condition of maintaining their credential. A typical statement of this obligation is this provision of the EULITA *Code of Professional Ethics*: “Legal interpreters and legal translators shall strive to maintain and improve their interpreting and translation skills and knowledge” (p. 2). As González et al. (2012, p. 1142) note,

Because human language is dynamic and ever changing, it is extremely important for court interpreters to keep abreast of the latest changes in usage, both by the public at large and by the specialized groups for whom they interpret (the legal community, court personnel, immigrant communities, gangs, and so on). Moreover, interpreting skills themselves require constant honing. For this reason, continuing education is a vital part of the interpreters’ professional activities.

Revisiting the role of the interpreter

The principles outlined so far in this chapter are intended to provide general guidance for court interpreters as they navigate the waters of the legal system in which they work. However, often interpreters are faced with dilemmas that do not fit in the black and white categories of a code of ethics. Furthermore, as Morris (2010, p. 23) points out, “Interpreters do not ‘check their humanity’ at the door of the courtroom.” It would be a good idea for our profession to develop formal standards of practice to accompany our codes of ethics, much as healthcare interpreters have done in the United States. The National Council on Interpreting in Health Care (NCIHC) defines the important

distinction between these two concepts: “Standards of practice are concerned with the ‘hows’ of performance as compared with codes of ethics that focus on the ‘shoulds’” (National Council on Interpreting in Health Care, 2005, p. 1).

First, it is worth noting that research has shown that interpreters are not really invisible non-participants in the interactions they mediate (Angelelli, 2003; Metzger, 1999; Wadensjö, 1998). Leung and Gibbons (2008) surveyed court interpreters who worked in sexual assault cases and found that, though in principle interpreters should attempt to be neutral, they are not machines. When confronted with ideological and moral issues they feel strongly about, it is not always possible for interpreters to remain impartial.

Several authors have lamented the fact that interpreters are given few guideposts to help them resolve the ethical dilemmas that inevitably arise in the legal sector. An example of such a situation is the widely publicized position taken by Erik Camayd-Freixas in the Postville case. In that incident he was asked to participate as an interpreter in proceedings that he considered unethical on the grounds that the defendants’ due process rights were violated. He went ahead and interpreted in the matter, but afterwards he expressed his opinion on it in a national publication. The response of the interpreting profession was quite strong, with some criticizing him for breaching confidentiality or remaining on a case that posed a conflict of interest for him, and others lauding his courage (Camayd-Freixas, 2008; González et al., 2012; Morris, 2010).

A number of scholars have discussed the fact that those who stray from the rigid roles defined by ethical codes feel guilty and stressed, and are reluctant to admit that there are times when they have shed the cloak of invisibility they think they are supposed to wear at all times (Dean and Pollard, 2011; Mikkelsen, 1998, 2008; Moeketsi and Wallmach, 2005; Morris, 1995, 1999 and 2010; Witter-Merithew, 1999). These writers urge more training in resolving difficult ethical issues so that interpreters can develop the professional judgment they need to deal with conflicting demands. Some “handrails for the slippery slope” can be found in Mikkelsen (2008). Below are some suggestions of what you might do in specific situations.

Practical guidelines

Codes of ethics are intended to guide court interpreters, but learning and internalizing basic ethical principles such as confidentiality and impartiality may not be enough to help them make the split-second, high-stakes decisions that come up so frequently in court. Moreover, the other players in the courtroom (including, unfortunately, judges and lawyers) are not familiar with the interpreter’s code of ethics, and may inadvertently ask the interpreter to violate it. As Hale and Luzardo (1997, p. 10) point out,

Even though a number of complementary codes of ethics exist ..., these are unknown to the interpreters’ “clients”. We often find therefore, that either the service provider or, more likely, the non English speaker, will expect

the interpreter to act in a way contrary to what is recommended by the Code of Ethics. This may be due to plain ignorance of the role of the interpreter or to the fact that for a number of reasons, non English speakers have at one stage or another been aided by a friend, child or other relative, or a non professional interpreter, who has not adhered to the Code of Ethics, resulting in confusion for the client about what is to be expected from the interpreter.

For example, any court interpreter who has gone through even the most rudimentary training program can regurgitate the tenet “Interpreters shall not give legal advice”; but sometimes a request for legal advice is not so easy to recognize. Suppose that during a break in the proceedings the defendant says to the interpreter, “They’re accusing me of ‘conspiracy.’ What does that mean?” A well-meaning interpreter might try to be helpful by answering that question, but in fact it requires legal expertise to answer accurately, and the interpreter will find herself on the proverbial slippery slope leading to practicing law without a license. Even if she recognizes that it is unethical to answer the question, she is hard-pressed to find a way to decline without appearing to be rude or ignorant. Alternatively, if a judge tells an interpreter not to interpret a statement he makes on the bench in open court, the interpreter may be aware that she has an obligation to interpret everything, but is too intimidated by the judge to speak up.

Because similar dilemmas arise constantly in the interpreter’s day-to-day work, and because a code of ethics is not designed to provide an answer for every specific problem, it is helpful to learn how to respond to real-life situations in a safe environment by engaging in role-playing exercises. Rehearsing effective responses will make it easier to say the right thing under pressure in the courtroom. Below are some practical guidelines, presented in the form of answers to typical questions from novice interpreters, followed by some scenarios for role-playing to help you develop your own responses to ethical dilemmas.

What should I do when I go to court for the first time?

First impressions are extremely important. It is a good idea to go to the court where you will be working the day before your interpreting assignment to learn the layout of the courthouse and observe the behavior and dress of court personnel. On the day of your assignment, wear appropriate attire and arrive early at the courthouse. Report to the clerk’s office (or whatever office is responsible for hiring interpreters), introduce yourself, and find out what courtroom(s) you will be working in. This is also an appropriate time to discuss payment and billing procedures. As soon as you arrive in the courtroom, introduce yourself to the relevant court personnel and identify the parties who will require your services. Then introduce yourself to the parties and explain your role, as indicated below. When you have completed your interpreting assignment, before leaving check with the clerk to make sure you are not needed for another witness or in another courtroom. Such common courtesies

are important for maintaining professional relationships and will ensure that you are called again to interpret in that court.

How can I prepare myself for interpreting assignments?

When you are given an interpreting assignment, find out what kind of case(s) you will be interpreting for (criminal or civil, nature of the charges or complaints, whether you will be interpreting for witnesses or the defendant) and how long the proceeding is likely to last. In jurisdictions where it is allowed, request permission to view the case file before the proceedings start so that you can familiarize yourself with the facts and begin researching terms. Some countries prohibit such access, but even where it is allowed court personnel may be reluctant to provide you with this information, especially if they are not accustomed to working with professional interpreters. If you explain to them that this is a normal part of preparation for an interpreting assignment that will enable you to do an adequate job, they are more likely to cooperate. Ask for the names of the attorneys involved so that you can contact them and find out more about the nature of the case. When you determine what the case is about, consult relevant websites and avail yourself of the appropriate dictionaries, glossaries, and other references.

Is it all right if I consult dictionaries or online resources in court? Won't people doubt my competence if they see me looking up terms?

Dictionaries and glossaries are indispensable working tools for the interpreter. Lawyers and judges frequently consult legal references during the course of their work, and interpreters are no different. Of course, you should be proficient enough in your working languages that you do not have to look up terms that one could normally expect to encounter in a court proceeding; but there is always the possibility that an unfamiliar term will arise, and you should be prepared to deal with it. (Note, however, that many courts prohibit any connections to the Internet during court proceedings and may require cell phones to be turned off.) If you exhibit the professional demeanor discussed previously in this chapter, your clients will have confidence in your abilities.

What should I say when I introduce myself?

When you introduce yourself to court personnel, state your name and hand them a business card, if you have one, and tell them the language you interpret and the case you have been assigned to. In the case of the judge and the lawyers, you should also ascertain whether they have worked with interpreters before and are familiar with your role. If you feel it is appropriate, remind them that you will interpret everything that is said in court, and that you are not allowed to give legal advice or perform any tasks beyond interpreting, such as explaining documents or procedures. State that you would like to meet with the witness or client and briefly explain your role. When you introduce yourself to the defendant or witness you will be interpreting for, you may also want to say something like this:

Have you ever worked with an interpreter before? Please bear in mind that I will interpret everything you say, and everything everyone else says in the courtroom, as if they were my own words. Please don't say anything you do not want to have interpreted. I'm not allowed to explain or clarify anything, so if you have any questions, please direct them to the judge or to your lawyer, and I will interpret for you. When you are testifying, if you are going to give a long answer, please pause occasionally to allow me to interpret phrase by phrase so that I can interpret as accurately as possible. Do you have any trouble understanding me? Do you have any questions?

Note that in this brief interview with the client, there is no discussion of the facts in the case, so there is no danger of your being prejudiced or influencing the testimony in any way. When the person answers your questions, you will have an opportunity to become accustomed to his or her accent, speaking style, and vocabulary. If your reading of the case file has led you to believe there may be problems with the translation of a critical term, you may ask the client what term he or she uses for that concept or object.

What if a witness or lawyer uses a term I don't know?

Under no circumstances should you guess at an unknown term or omit it from your interpretation. Inform the court that you are unable to interpret it and ask permission either to consult a dictionary or colleague, or to request clarification from the person who used the term. To maintain full transparency, make sure you avoid having any conversation with any of the parties without first informing the court of the situation, so as not to raise suspicions among those who do not understand the language you are speaking. For example, you might say, "Your Honor, the witness has used a term the interpreter is not familiar with. May the interpreter inquire?" It is advisable to refer to yourself in the third person to make it clear to everyone that you are not interpreting the witness's words, but are speaking as the interpreter.

A related problem is vague or ambiguous statements, which are sometimes difficult to interpret with the same degree of ambiguity in the target language. The pronoun "you" in English can be either singular or plural, for example, and you may need to clarify what is meant before you can interpret it accurately. On the other hand, some questions and answers may be deliberately vague, and attempts by the interpreter to clarify them could interfere with the examination of the witness (this is particularly true in adversarial proceedings). Therefore, you should be very cautious about intervening to request clarification.

What if I realize I made a mistake in my interpretation of earlier testimony?

Inform the court of the error and correct the mistake as soon as you become aware of it. You might say something like, "The interpreter would like to correct the record. Previously when I said 'red' I should have said 'purple.'" It

is never too late to correct an error; even if you have completed your assignment and gone home, you should still contact the court and report the error.

What if the speaker makes an obvious mistake?

Simply interpret the erroneous statement. Even if it is a slip of the tongue, such as addressing the witness by the wrong name or misquoting a date, it should be interpreted as is. Always remember that if there were no interpreter present, the error would still be made and it would go uncorrected.

What if I forget part of a statement that I'm interpreting consecutively?

Inform the court that you need to have the statement repeated. You should develop your memory and note-taking skills to the point that requests for repetitions are rare occurrences, but all interpreters need them now and then (see Chapter 7 for more detailed information on interpreting strategies). If you use the proper protocol and don't ask for repetitions too frequently, no one will doubt your competence as an interpreter.

What if the parties address me directly instead of each other?

Often lawyers who are not accustomed to working with interpreters will preface a question with "Ask him if he saw..." rather than "Did you see ...?" A gentle reminder is usually sufficient to break this habit. You might ask the court, "Could counsel be instructed to address the witness directly rather than in the third person?" If this practice persists, simply interpret the question as it is asked. The witness may very well respond with "Whom do you want me to ask?", which will serve as another reminder. If the witness addresses you directly ("Tell him that..."), follow the same procedure. Sometimes a witness will refer to the interpreter in testimony, saying something like "Well, he was about as far away as you are from me." In that case, you may inform the court that the witness was referring to you, the interpreter.

What if one of the parties uses inappropriate language or says something I know will not be understood correctly?

Courtroom testimony, especially in criminal cases, sometimes involves obscene language or graphic descriptions of sex or violence. Although it may embarrass you to interpret such language, you have an obligation to interpret faithfully, without omitting any content or altering the tone. It may help you to bear in mind that judges and lawyers have heard this kind of testimony many times before, and they know you are performing your duty by interpreting these words. Remember that the witness's credibility is being judged and the facts determined on the basis of this testimony, and it should not be distorted for the sake of decorum.

Another common problem is that the highly sophisticated language used by judges and lawyers may not be understood by laypersons with little or no formal education. It may be tempting to simplify a question posed in very formal language, such as, "Prior to the incident in question, had you ever

visited the residence of the decedent?” when you know that the witness is not likely to understand it. Suppose you rendered the question as “Before the killing, had you been to the victim’s house?” If the witness gave a straightforward answer, everyone in the courtroom would assume he understood the original question, and they would misperceive his level of sophistication. If you interpreted the question at the high register of the original, the witness would probably respond with a blank look, a non-responsive answer, or a request for clarification, and the problem would become apparent to all. Then the lawyer could rephrase the question however he saw fit, and you would not be taking the responsibility of making the question understandable.

Yet another typical problem is references to cultural notions that do not exist in the target language. Kinship terms, for example, vary tremendously from one language to another. Sometimes determining the exact relationship between two people is critical, and an explanation may be required. On the other hand, sometimes the term is just a passing reference to someone and can be rendered more generically (e.g., “He is my cousin,” rather than “He is the youngest son of my mother’s eldest brother”). If an explanation is required, it is best to simply inform the court that there is a cultural issue, without offering the explanation yourself, and suggest that the witness be asked to clarify in his own words. As the court interpreter, you are a language expert, and you are not necessarily qualified to give testimony about cultural practices. An example of a cultural difference that requires a more comprehensive solution is the concept of guilt. González et al. (2012) and Moeketsi (1999) point out that some cultures have no such concept, so this essential element of criminal law cannot be translated. If you are aware of such a problem in your language combination, you can alert the judge and attorneys to it ahead of time so that they can plan extra time for explanations and possibly even call in expert witnesses.

What if I realize in the middle of an interpreting assignment that I am not able to do an adequate job?

If the problem is that the proceedings become complicated and technical and you are not prepared to deal with the terminology, you may ask for a recess to obtain the appropriate resources and conduct research, or you may recommend a colleague who is more qualified to handle the case. You may discover that a witness or defendant speaks a dialect that you have trouble understanding, in which case you should immediately inform the court so that another interpreter can be found. If you find that you are overwhelmed by the pace of the proceedings or the emotional atmosphere, you may request a break. In short, whenever any problem arises that interferes with your ability to interpret properly, such as rapid speech, inaudibility, technical complexity, or fatigue, you should inform the court so that appropriate steps can be taken. To prevent fatigue and the resultant errors, lengthy proceedings should be interpreted by pairs of interpreters who spell each other at intervals of 30 to 45 minutes, following the practice of conference interpreters.

Should I mimic the witness's testimony exactly, with the same tone of voice, facial expressions, and gestures?

All of these elements are part of the message and should be accounted for in the interpretation. If the witness is uncertain and speaks hesitantly, your interpretation should reflect all of the hedges, self-corrections, and fragmented ideas of the original. On the other hand, there is a fine line between interpreting precisely and making a mockery of the proceedings. If you were to burst into tears or pound on the table exactly as the witness did, you would turn the testimony into a comedy routine, and the people in the courtroom would end up paying more attention to the spectacle than to the content of the witness's testimony. Therefore, you should retain the emphasis of the original while slightly attenuating your tone of voice. Actions such as crying and grimacing can be seen by everyone in the courtroom and do not need to be reproduced unless there is a potential for misunderstanding due to cultural differences. If the witness points to a place in the courtroom or a part of his body, or indicates a measurement or motion with his hands, you should just interpret the words accompanying the gesture ("He hit me here," "It was about this long," etc.). In proceedings where a verbatim record is being made, the judge or the examining counsel can describe the witness's actions for the record.

Note that while it is appropriate to reflect the emotions of the witness in your interpretation, it is not appropriate to display your own emotions. Sometimes testimony in court cases can be rather shocking, and exhibits such as graphic photographs of the crime scene or bloody clothing may be introduced into evidence. On other occasions, parties may make humorous remarks, wittingly or unwittingly. In all these cases it is important for you to suppress your own reactions and remain impartial and detached.

How do I respond when a judge or lawyer tells me to do something I know is unethical?

Fending off requests to violate the code of ethics is a delicate task, especially when dealing with someone with the authority of a judge. Suppose a judge tells you to make sure the accused understands his rights. You could say, "Your Honor, my code of ethics prohibits me from explaining things, as that would amount to giving legal advice, but I will gladly interpret anything you or his counsel wishes to explain to him." This is a polite and respectful way of declining to perform the task while suggesting an alternative. On the other hand, you may be asked by defense attorneys, prosecutors, investigators, or police officers to perform tasks that are unethical, such as revealing information you have acquired during the course of your interpreting, or taking a statement or otherwise obtaining information from the client or witness. These may be people with whom you work on a daily basis, and you want to maintain good relations with them. In this case, though you will still decline to perform the task, you may want to use an informal and humorous tone: "Oh, come on, you know I can't do that. Let's agree that I stick to interpreting and you stick to practicing law."

As Hale and Luzardo (1997) have remarked, the laypersons for whom we interpret often misunderstand our role as well. For example, it is common for defendants to ask their interpreter, whom they regard as an ally, what they should do, how the trial is going, or whether their lawyer is any good. Although interpreters know they should not answer such questions, it is hard to decline without appearing to be discourteous, and they do want to maintain a relationship of trust with the client. It is best to avoid being in a situation that encourages such questions in the first place. In other words, you should not sit with the accused while waiting for the case to be called or during a break in the proceedings. Distancing yourself from the defendant in this way not only saves you from dealing with inappropriate questions, but also helps you avoid the appearance of bias created by conversing with the defendant, and gives you a much-needed rest from talking. If somehow you do find yourself being asked questions by a defendant or witness, you can politely decline to answer and point out that, much as you would like to oblige, you might get in trouble or lose your job for violating the code of ethics. This response is also helpful when clients try to offer gifts or payment in gratitude for your services, something which is very hard to refuse in many cultures but is a clear breach of the interpreter's code of ethics.

Should I disqualify myself from a court case if I interpreted during the police investigation?

As a professional interpreter, there is no inherent conflict of interest if you interpret for law enforcement agencies as well as the defense; you should be able to remain impartial regardless of who has hired you to interpret. On the other hand, there may be a perception of bias in the defendant's eyes if, for example, you interpreted the police interrogation when he was arrested and then you show up to interpret in the consultation with his lawyer. He may feel that you are prejudiced against him, or will reveal information to the prosecution. In this case, full disclosure is the answer. You can inform all parties of your prior involvement in the case and allow them to decide whether they wish to continue using your services.

The judges and lawyers usually know nothing about my people. How can I educate them to avoid cultural misunderstandings while remaining impartial and unobtrusive?

While it is not appropriate for you to intervene in the proceedings to provide extensive explanations or clarifications of a cultural nature, there are other opportunities to educate legal professionals. On a personal level, you can contact the defense attorney or the prosecutor before going to court and warn them of any potential problems, or request permission to speak with the judge before the case begins. You can recommend some books or articles for them to read, or some cultural experts who might be consulted. Be careful not to provide information to one party that the other does not have access to, however, as you would lose your impartiality. An example of information that

could legitimately be provided to one side only, most likely during preparation for testimony, would be the fact that nodding the head does not signify understanding in the defendant's or witness's culture. An example of information that should be shared with both defense and prosecution would be the identity of a professor of cultural anthropology who could provide information about marital customs in the defendant's or victim's culture.

Another way to educate legal professionals that protects the impartiality of individual interpreters is for an interpreters' association or an ethnic advocacy group to present workshops for judges and lawyers to promote cross-cultural understanding. The judges and lawyers, in turn, could be invited to address community groups to educate them about the justice system.

Conclusion

Developing and enforcing a code of professional conduct is a very complex process. Although court interpreting has been practiced for centuries, only recently have legislators, jurists, and practitioners begun to examine the role of the interpreter in the courtroom and codify standards of performance. This effort is more advanced in some countries than in others, and even in jurisdictions where interpreters and legal professionals are well trained in proper procedure, solutions to ethical problems are not always clear-cut. There are still many courts throughout the world where very little thought has been given to the consequences of inappropriate behavior in interpreted cases. Therefore, individual interpreters who attempt to adhere to strict standards may encounter resistance from legal professionals or colleagues who are reluctant to change their ways. The ethical principles presented here are ideal norms that all interpreters should strive to uphold, but the realities of day-to-day life in the justice system cannot be ignored.

For example, Moeketsi (1999) indicates that interpreters operate under very difficult circumstances in systems where the asymmetry or imbalance of power between court personnel and defendants is particularly acute. In South Africa, she reports, interpreters often feel compelled to take action that would be considered unethical in another context. She cites the case of an interpreter who renders the magistrate's simple question "Do you have a lawyer?" as "Do you have a legal representative? This court allows you to seek your own lawyer. If you do not have money, you can use the lawyers paid for by the state." Her analysis:

Here, the court interpreter added information to the magistrate's question. ... [H]is experience tells him that defendants are skeptic[al] of State Legal Aid because they find it hard to reconcile the fact that the state wants to prosecute them on the one hand and provides them with defence attorneys on the other. The court interpreter knows that the magistrate's neglect to communicate that vital information is an irregularity that could lead to miscarriage of justice. Is he therefore expected to behave like a so-called

conduit and transfer only the source message to the listener in the target language, or should he rather take it upon himself to rectify the obviously unacceptable situation and supply the crucial information and thereby save the magistrate from dereliction of duty, protect the accused from an unfair trial and ensure that criminal proceedings are conducted accordingly?

(p. 14)

This chapter thus ends with a question, a reflection of the uncertainties that still prevail in the theory and practice of court interpreting.

Role-play scenarios

Directions: Act out the following scenarios with your fellow students and explore different solutions to the problems posed.

- (A) You are interpreting in an interview between a defense attorney and his client, an elderly gentleman. The attorney calls the man by his first name and generally treats him in a casual, familiar way that is considered unacceptable in the defendant's culture. The defendant says to you, "I don't like this lawyer's attitude. Don't you think I should get another lawyer?"
- (B) You are interpreting at a sentencing, and it is clear to you that the defendant is intoxicated: he has a strong odor of alcohol on his breath, and he has trouble maintaining his balance. The judge asks the defendant a series of questions to determine whether he is ready to proceed. In response to the question "Are you taking medication or under the influence of any substance that would impair your judgment?" the defendant answers no. The defense attorney says nothing.
- (C) At a sentencing hearing, the judge imposes a stiff sentence on the defendant and declares the court in recess. As everyone is leaving the courtroom, the defendant whispers to you that he is going to take his revenge on the judge.
- (D) During your pre-testimony briefing of a prosecution witness, she confides to you that a member of the defendant's family has contacted her and threatened that if she doesn't change her testimony, she will suffer grave consequences.
- (E) You are interpreting in a criminal case for a defendant for whom you have previously interpreted in a mental hospital. You know from your earlier assignment that he has been diagnosed with schizophrenia and must take medication daily. He is being held in custody and has not been taking the medication. The defense counsel is not aware of his medical history.
- (F) You are interpreting on the witness stand for an eye witness to a gang-related assault. From the witness stand, you and the witness can see two members of the audience making threatening gestures and gang signs to the witness, who begins to retract his earlier statements to the police. No one else in the courtroom seems to be aware of the situation.

- (G) You have been asked to interpret for a defendant in a case in which both he and his wife have been accused of drug crimes. The wife has her own attorney. At a joint meeting to discuss a possible settlement of the case, the spouses begin arguing. Both attorneys ask you to interpret simultaneously for them what the husband and wife are saying.

Additional study activities

- 1 How would you answer the question posed by Rosemary Moeketsi in the citation at the end of this chapter? Give the reasons for your position.
- 2 Read Erik Camayd-Freixas's personal account of the Postville case at <http://graphics8.nytimes.com/images/2008/07/14/opinion/14ed-camayd.pdf> and discuss it with your classmates. Do you think the interpreter acted properly? Why or why not?
- 3 Write a code of ethics that incorporates the particular characteristics of the language combination and the court system in which you will be working. Translate it into your working languages and discuss the ethical and linguistic problems that arise.
- 4 Think of a cultural issue that might arise in the course of your work, and explain how you would deal with it in a manner consistent with the ethical principles discussed in this chapter.
- 5 Discuss ways in which court interpreters in your country might educate legal professionals about cultural issues that are of importance to court proceedings.

Suggestions for further reading

In addition to the references cited in this chapter, the following books and articles contain interesting discussions of ethical issues:

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Codes of ethics

The NAJIT *Code of Ethics and Professional Responsibilities* appears in Appendix A of this volume. Many codes of conduct can be found online. A partial list follows:

- EULITA *Code of Professional Ethics*: <http://www.eulita.eu/sites/default/files/EULITA-code-London-e.pdf>.
- International Federation of Translators (FIT) *Code of Professional Ethics for Court Interpreters*: <http://www.fit-europe.org/vault/EthSuomi.html>
- The FIT also provides links to the codes of many European interpreters' associations at <http://www.fit-europe.org/en/what-we-do/completed-projects/codes-ethics>.
- AUSIT *Code of Ethics and Code of Conduct*: http://ausit.org/ausit/documents/code_of_ethics_full.pdf.
- Registry of Interpreters for the Deaf (RID) *Code of Professional Conduct*: <http://rid.org/ethics/code-of-professional-conduct/>.
- Administrative Office of the U.S. Courts *Standards for Performance and Professional Responsibility for Contract Court Interpreters in the Federal Courts*: <http://www.scd.uscourts.gov/interpreter/StandardforPerformanceandProfessionalResponsibility.pdf>
- National Center for State Courts *Model Code of Professional Responsibility for Interpreters in the Judiciary*: <http://ncsc.contentdm.oclc.org/cdm/ref/col/lection/accessfair/id/118>

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