

## FROM THE EXPERIENCE OF AN ENGLISH COURT INTERPRETER

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The full title of my article should be: "Problems encountered by interpreters working between Polish and English for litigants, witnesses, suspects. Police Officers, lawyers and Courts in England". Because a Court is not the only or even the main place where a Court Interpreter works, although it is one of the more hostile of the environments with which we have to cope. I suppose between 5% and 10% of my work is done in Court, compared with over 60% in Police Stations.

But this title "From the experience of an English Court interpreter" is also appropriate because my objective is to present one or two practical examples of difficulties I have encountered myself and how I have either solved the problem, or avoided it, or how on reflection afterwards I reckon I ought to have tackled it. Because when you meet a new difficulty for the first time it is seldom that you have time to sit and think about what you should do. I am not concerned today with describing a system or developing a theory although I shall refer to both systems and theories. If someone makes a note of one of my examples, as a result of which sometime in the next century he or she can do a slightly better and more professional job, or defeat a personal attack from an advocate or Judge, then this talk will have been a success.

Some of the difficulties which are imposed on us look as though they could have been avoided, given thought early enough in the process. A couple of years ago I told another TEPIS audience how some of the Courtrooms in London appear to have been designed to make it impossible for justice to be heard to be done, and I expressed the hope that those of you who have friends in practice as architects, or faculties of architecture in universities, would impress upon them that a study of the acoustics is as important for a Court room as for a concert hall. Today I want to give you an example of a text that has been imposed upon us, and could have been expressed infinitely better if sufficient time and effort had been spent on it. Here you have the new caution introduced by the Criminal Justice and Public Order Act 1994 and the new PACE codes which came into force only a week or two ago.

**"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence."**

Those three sentences, with a few variants in special circumstances, must be put to a person at the moment of arresting him, at the beginning of an interview, when an interview is resumed after a break when the first set of tapes has run out, after reading the formal charge and there are other occasions. Look at that middle sentence. Remember that it has to be put to all sorts and conditions of people, not just those with university degrees. The Police have to deal with an above average proportion of those who are drunk, hung-over, mentally deficient or otherwise inadequate, and in shock. I have quoted this caution with two thoughts in mind. First, I hope that those of you who enjoy puzzles will work out an acceptable translation into Polish and let me have your solutions at the end of the lecture. Secondly, take it as an awful warning and use it to scare any of your friends who have the job of preparing a text that must be recited to members of the public.

Note that the purpose of the caution is good. It helps to avoid intimidation (zastraszenie). But with the old wording too many professional criminals were keeping silent in the Police interview, then coming out with a defence when it was too late for the Police to check the new alleged facts. A criminal can still do this but now the prosecuting lawyer can comment on the earlier silence.

Let us take for granted that our job is impossible. We have all heard two learned Counsel arguing about the meaning, what lawyers call the "construction" of a single sentence in their own language. So what chance has any interpreter? But that does not help anyone. Our work has definite, factual, consequences and these may take the form of years added or subtracted to the period that another human being must spend locked in prison. So without discussing the theory I ask you to accept, whether you agree with me or not, one principle. Namely, that in interpreting for this range of purposes, accuracy is of paramount importance. What is said by a witness, a suspect, an interviewer or anyone else in a legal context must be accurate first, last, and all the time.

Elegance is of no importance. If someone starts to speak, breaks off in mid sentence, continues in a way that makes no sense, uses bad grammar or offensive language, or makes a slip of the tongue, the interpreter must try to reproduce this as accurately as possible. Remember that those who are listening to evidence need not only to understand the information that is being conveyed, but also to evaluate its credibility.

There has been some agonizing over this in the professional press recently, for example in the article by R. Morris (1995), From Morris I learn that the subject is also addressed in a number of textbooks. She quotes J. White (1990) and mentions some quite surprisingly supine attitudes adopted by interpreters. It is perhaps easier for me personally to insist on doing my job properly because of my age. If a barrister asks how long I have been interpreting in Court I can answer "About a quarter of a century". I am probably older than anyone present except sometimes the Judge, and I think it also helps that my beard is roughly the colour of the wigs worn by barristers and judges.

Let me be honest and admit that it is a great help that I could survive financially with ease if Court work were to be denied me, and without hardship even if some trumped up charge of professional incompetence were to deny me work for the Police, which provides over 60% of my income. Financial independence is an extremely important factor for the preservation of professional integrity. A practitioner who has commitments to his land whose income is vulnerable is open to influence through threats to that income. This is why it should be difficult to dismiss a Judge, and easy to remove a politician after a given time in office.

However, this article is intended to be of assistance to practising interpreters. Therefore I must leave it to you to develop sufficient presence, perhaps with the assistance of a professor from a school of acting, or of Dr. Ewa Woydytło-Osiatyńska whom I have heard in this lecture room. I must also leave it to you to adapt my suggestions to the rather different cultural conditions in your country. I work in England, where only in Court does one encounter the sort of respect and deference accorded by every Polish student to every Polish professor, at least to his face. If you do not show respect to an English Judge in his own Court you may spend longer in the cells than the criminal whose case is being heard. It does happen. I am sure it is not without significance that this is one of the few contexts where the third person singular can be used, and in fact should be used, without sounding ridiculously affected. As Your Lordship pleases.

So, with no wish to boast but merely to reassure those at the beginning of their career that it can be done, I invite you to believe that I have drawn a spontaneous apology from a County Court Judge in open Court, purely by use of the appropriate tone of voice. He had rebuked me for holding a conversation

with the witness and I merely stated "Your Honour, I was not holding a conversation but asking for the repetition of a word which I had not caught." But I said it as though he had accused me of spitting in the soup. I really do find it helpful to have attended the Film School in Łódź with the classes in acting technique which Pani Billing-Wohl held for our intake of Directors.

Now let us take a hypothetical case, to illustrate how I might deal with a "difficult" barrister. All barristers learn how to make life hell for someone in the witness box, it is part of their job, and sometimes if they have a hopeless case the only way out for them is to attack the interpreter. Let us say that this specimen instructs me to provide a "verbatim" rather than "interpretive" interpretation. My remedy is to turn to the Judge and say: "My Lord [or Your Honour or Your Worship] I take very seriously my affirmation [to well and truly interpret all such matters as may be given in this case, to the best of my skill and ability] and I feel I should assure the Court that I shall disregard any suggestions from a barrack-room interpreter as to how I should accomplish this, unless I consider them likely to be helpful". "Barrack-room interpreter" is my own expression, which I freely offer to any colleague who feels he is being told how to do his job by someone who is not qualified to do so. The analogy is with the type of amateur known as a barrack-room lawyer, it is insulting, and I would not use this particular expression unless the barrister had really asked for it.

If a similar attack comes from the Judge I must be much more careful, because any appearance of discourtesy could get me locked up. But one way or another I must do my job professionally, and I must be the judge of this. If a tactful suggestion that the Judge is asking me to depart from my affirmation does not help, and it is not open to me to behave with integrity while pretending to comply with an unreasonable request, then I must withdraw my services. But before I got to this stage, which might render me liable to bear the wasted costs of the hearing up to that point, I think I would try asking to be released from that part of my affirmation running "to the best of my skill and ability." At least I would ask for clarification of what I am being asked to do beyond the content of my affirmation.

You may have noticed the part of the affirmation that runs "all such matters". In a criminal trial I must not allow myself to be cut short in the middle of interpreting a statement, or I must make up what was missed later on. In a civil matter I should be able to tolerate interruptions, although I must confess I find it difficult to do so. I have developed a special short term memory, something like these electronic typewriters which store a line of typing and print it all out when you get to the end, then start to store the next line. I regret to say that I have a tendency to get rather prima donna-ish if the process is disturbed, even if it is really the witness that is being interrupted through me.

I wonder whether the difference in the burden of proof (onus probandi) is the same in Poland as in England: for a criminal case the jury must be convinced "beyond all reasonable doubt" (poza wszelką zasadną wątpliwością), while a civil case is decided "on the balance of probability"

Some of the purely linguistic difficulties which we meet can be solved, or at least mitigated, if we can educate the lawyers in the case. This is best done before the hearing starts. I always try to explain that while "You" can be ambiguous in English, in Polish I have to be specific. "Where were you while your wife was paying at the check-out?" Pan. "What did you do next?" Pan or Państwo? The interpreter must be told.

And I mention the double negative. Some barristers have a terrible habit of starting questions "It is true, is it not, that ..." and rambling on until the witness cannot possibly understand, nor do I, and I am far from sure that the speaker understands himself. Sometimes I get the impression that really he is thinking aloud, and that he is quite grateful if I say "I am terribly sorry, but I did not understand." He then comes out with a concise question which translates without difficulty.

A linguistic problem which is difficult to mitigate though education of the persons in Court is the different ability of the two languages to convey meaning associated with the **tenses** of verbs, perfect and imperfect, and the presence or absence of volition. In one case I was interpreting for a woman whose head had been brought into contact with a door during a struggle. The defence barrister acting for the man accused of assaulting her asked "But you said that von hit your head on the door, didn't you?", the implication being that the bruise could not have been caused by the accused. I did not interpret the question but turned to the Judge and said "Your Honour, I wonder whether Counsel's line of questioning in this instance ought not perhaps to be directed to me as interpreter rather than to the witness. It was quite clear to me from the original answer in Polish that the witness's head came into contact with the door as a direct consequence of the action of the accused which she described. If my choice of words failed to bring this out, I hope the Court will accept my apology."

Never be afraid to apologise for a mistake or shortcoming. Only those who are unsure of themselves try to pre-tend that they are perfect.

It is not our job to stop barristers from bullying witnesses, that is a legitimate technique for them to use, and whether or not the interpreter finds it offensive, should be irrelevant. But we must resist being used to distort what has been said, and we should have sufficient self-confidence to take the initiative in correcting misunderstandings, deliberate or not. This willingness to acknowledge one's own imperfections can be a useful technique. The potential for conflict is obvious when you have an interpreter who wishes to inform the Court what precisely the witness said, and a barrister who wishes to **convince** the witness and jury that he said, or meant to say, something entirely different.

A witness's slip of the tongue, however, should be put into the target language without alteration. It may or may not be possible or desirable to convey doubt by body language or tone of voice. But we must not tamper with the evidence. Remember that, as I have already said, the jury must assess not only the content of what is said, but also its credibility.

Difficulties of a more purely linguistic nature can sometimes be met with the aid of a dictionary. I always carry a legal dictionary with me to Court, and sometimes delve into it while waiting to be called, to find an explanation of a concept which I do not understand in my own language. But thankfully I very seldom need it in the middle of a job. A marine dictionary is essential for cases involving ships, and whenever I am called to a Police Station I invariably ask whether any injuries or illnesses are involved. I will only carry my two-volume medical dictionary if I must, because it weighs 1.8 kg. But once I was called to what I thought would be a straightforward shoplifting case and the woman had a heart attack in the Police Station. With a dictionary I could have done a better job.

Some people **use words imprecisely**, and we must try to reproduce their sloppy expressions. A different problem is the **neologism**, of which I am encountering more and more these days. I learnt my Polish in the days of Gomulka, when if you went shopping you took your net shopping bag with you. So the first time a suspect said he was using a "reklamówka" I wondered how on earth you could carry a bottle of vodka in a small advertisement. Luckily in Police interviews it is usual to show the suspect the exhibits in the case, and this solved my problem. But I wish there were a periodical which published all new words coming into use, as an official gazette, Dziennik Ustaw, publishes new laws.

Finally I want to mention something which is not really a difficulty for us, but where we can avoid creating difficulties for others involved in the administration of justice. I don't know what the procedure is for Police interviews in Poland, I suspect it may be similar to the method known as "contemporaneous notes" which the Metropolitan Police used until a few years back. But all interviews at a Police Station in London are now recorded on tape, and they go three times faster. Now I always

used to try to keep the conversation moving, tell people to treat me as a telephone, efface myself as much as possible. Until the first time I heard the play-back of a tape of an interview where I had interpreted. I was appalled. This was an important case, involving counterfeiting of banknotes and documents to value of ten million pounds or more. The defence had called for transcripts of the tapes and were challenging some of my translations. I have the greatest admiration for the audio typist who made the transcript, and I am astonished that she caught as much as she did.

The point is that we all have two ears, so when we are sitting in an interview room we can filter out what we do not want to hear. The tape recorder has in effect one ear. So if two people speak at the same time, neither can be heard with any clarity. This suspect, who spoke no English behaved as though she did not hear anything in English and kept on speaking regardless. So far as interpreting was concerned I had managed to cope in spite of these continual interruptions. I had not – until I heard the play-back considered it my job to exercise control over the interview. That is the business of the officer asking the questions. But by allowing people to speak simultaneously we came close to rendering the tape useless as evidence. Ever since, I have endeavoured to exercise control when I considered that this was necessary. This goes beyond the duty of an interpreter. I know, but I explain the difficulty to the interviewing officer and request permission to put a brake on the interviewee. Most Policemen understand and are helpful. So are many suspects. Immigration Officers are more troublesome, perhaps because they seldom have to present evidence in Court.

To sum up, there will always be problems which will make it difficult to do our job. But then if my solutions will not work for you, I hope that by describing what can happen I will have left some of you better prepared for what you may encounter in the future.

## **REFERENCKS**

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