COMPREHENSION OF LEGAL DISCOURSE IN INTERPRETED PROCEEDINGS

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Summary

In California, the law provides that non-English speakers be assisted by a language interpreter in order to afford them the same legal rights as English speakers. Implied in these guidelines is the premise that the presence of the interpreter will guarantee them the same rights, which assumes that the only difference between English speakers and Spanish speakers is the language, and that this difference can be overcome with an interpreter. However, Hispanic immigrants in US courts face a quadruple challenge: (1) a foreign language and cultural values that may prevent them from speaking up when they don’t understand or from simply asserting rights that they may or may not know they have; (2) a radically different and unknown legal system; (3) an intricate legal jargon with referents outside their sociocultural context; and (4) a significantly different level of education than their English-speaking counterparts. All of these may hinder communication and comprehension. This situation is exacerbated by an official mandate for interpreters to preserve the high formal register of legal language. This research aims to find and define a more realistic role for the court interpreter that will be compatible with intercultural encounters of speakers in such opposite realities, with such opposite goals and speech styles.

This research will involve an examination of the problem in terms of demographics, legislation and legal requirements for interpreters, the language of the law, and the characteristics of future interpreters. We will then conduct a conceptual analysis of register and issues of communication and comprehension using functional theory as the theoretical framework of analysis. We will then apply this conceptual analysis to the judicial interpreting setting and review the different roles of participants, issues of ethics and loyalty, intratextual coherence, and the potential conflicts of purposes. Finally, we will collect empirical data through tests to assess English speakers’ and Spanish speakers’ comprehension of the language of the law and through interviews with attorneys and certified interpreters.

Keywords

Judicial proceeding, judicial interpreting, certified court interpreter, registered interpreter, register, speech community, communicative event, restricted languages, grounding, functional comprehensibility, heritage language speakers, accommodation,
Research Problem

The preamble of the National Center for State Courts’ Model Code of Professional Responsibility for Interpreters in the Judiciary states: “A non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence” (NCSC undated). Implied in these guidelines is the premise that the presence of the interpreter will guarantee the non-English speaker the same rights as the English speaker. This assumes that language is the sole difference between English speakers and Spanish speakers, and that this difference can be overcome with the provision of an interpreter. However, there are considerable differences between these two interactants, with regard to sociocultural background, education, and contact with the US legal system. This situation involves a dilemma created by several conflicting factors: (1) an interpreter who must be faithful only to the source language, (2) a language accessible mostly to members of the judiciary discourse community, (3) a fundamental cultural difference between interlocutors that may not be accounted for, and (4) a code of ethics interpreters must follow and comply with at the risk of being decertified.

This code of ethics includes a mandate to maintain the register of the language of the law. This mandate may lead to difficulties in communication, but is supported by all parties involved, leaving the fate of the non-English speakers to be decided in a language and culture that is not their own. However, the Judicial Council recently revised all civil and criminal jury instructions to facilitate English-speaking jurors’ comprehension. In keeping with the ‘cultural turn’ that has dawned on Interpreting Studies, this research seeks to bring the social, cultural, and educational constraints of the target-language receiver into the equation of modern-day judicial interpreting in California, which is still guided by principles of formal equivalence and source orientedness. This research aims is to find and define a more effective role for the court interpreter that will accommodate the intercultural encounters of speakers in such opposite realities, with such opposite goals and speech styles.
Functionalist translation theory (skopos theory) seems an appropriate theoretical framework to analyze this complex intercultural communication scenario because it gives priority precisely to the sociocultural and situational constraints of the target-culture interlocutor. This study explores the option of giving the court interpreter greater license to improve the comprehension in Spanish-speaking interactants, as implied by the functionalist theory of translation and interpreting known as skopos theory.

In skopos theory, the translator/interpreter is the expert in charge of making strategic decisions, taking into account the sociocultural constraints of the receiver. Adjusting the register in order to facilitate—and achieve the purpose of—communication may be one of said strategic decisions. We will argue for this theory-based solution as a means of addressing the risk of miscommunication. We aim to test its effectiveness by collecting empirical data on whether the adjustment of register by the interpreter can improve comprehension (and communication) during judicial proceedings with Hispanic immigrants.

**Literature Review**

The main conceptual framework of this research involves Spanish speakers’ comprehension of the language of the law. The difficulties in comprehension may be related to a legal requirement that interpreters preserve the source-language register in the target language, when this target language is addressed to Spanish speakers who don’t have the necessary sociocultural background to access or communicate using the high formal register of legal language. It is therefore imperative to conduct a conceptual analysis of register and its components. The analysis will draw on Halliday (1964, 1978); Halliday et al. (1964); Biber and Finegan (1994); Hymes (1984, 1974); and Ferguson (1981, 1982). In order to apply this conceptual analysis to the language of the law, we will examine its features by drawing on Melinkoff (1963, 1982), O’Barr (1981), Shuy (2005), and Alcaraz Varó (1994).

The next conceptual analysis will involve the concepts of communication and comprehension, in order to identify all the necessary conditions for effective understanding and the consequences of contextual, sociocultural, personal, and situational constraints that may be at play in intercultural communicative events. For this analysis, we will review literature related to communication, intercultural

Of particular relevance to the judicial setting are issues of comprehension of legal language in interpreted judicial proceedings. There have been studies on the comprehension of legal language among English speakers, such as those conducted by Charrow and Charrow (1979), Benson (1984/85), Gunnarson (1984), and Dueñas González (1991), but there have not been studies to test the comprehension of Spanish legal language among Hispanic immigrants in California, or how this comprehension is affected by a change of register. Other aspects of judicial interpreting include issues of roles, ethics, loyalty, and power, which will be analyzed drawing from research conducted by Hale (1993, 2001, 2004), Berk-Seligson (1988, 1990, 1999), and works by Moeketsi (1999), Moore (1999), Morris (1993, 1995, 1998, 1999), Dueñas González et al (1991), and Mikkelson (2000, undated), among others.

The results of the pilot study already show that in certain settings interpreters do change the register. This register change will also be correlated with the laws of translation proposed by Toury (1995), Chesterman (1997), the concept of assumed translations (Toury 1995), accommodation theory (Giles et al 2005), linguistic simplification (Bruthiaux 1994), relevance theory (Sperber and Wilson 1995), and Bourdieu’s concepts of habitus and capital (1993).

Functionalist theory (skopos theory) will serve as the theoretical framework for analysis of the research problem. This seems an appropriate framework for examination of this intercultural communicative situation because it gives priority precisely to the sociocultural and situational constraints of the target receiver. This framework will be based on works by Vermeer (1989), Nord (1997, 1998, 2003, 2006), and Pöchhacker (1992, 1995), and it will provide elements that will allow us to delve into issues of roles, intratextual coherence, ethics, and loyalty. These will also be analyzed following Chesterman (2001, 1997), and Clifford (2004).

**Hypotheses**

According to William and Chesterman’s classification of hypotheses (2002: 75), these hypotheses are predictive. The study will attempt to predict that

1. English speakers and Spanish speakers show a different level of comprehension of a text presented with the same high register of legal language;
2. When the register is standardized, the comprehension level in Spanish speakers will increase.

Research Methodology

This study involves three areas of empirical research: one with interpreters, one with lawyers, and one with lay English speakers and Spanish speakers.

I. The study with interpreters will be twofold:

1. Semi-structured qualitative interviews to gather information regarding interpreters’ knowledge of and views on (a) register, (b) register training, and (c) register change. Said interviews will also gather information of the comprehension level that interpreters find in deponents in their everyday work and possible differences in practice across settings.

2. A written register choice test where interpreters will be provided with five sentences in legal English, each with three possible translations reflecting three different registers. Interpreters will be asked to select the one(s) they believe would be acceptable in judicial proceedings. Below each choice box there will be a section for the participant to briefly state only the criteria used for rejecting choices.

II. The study with attorneys will involve semi-structured qualitative interviews to gather information regarding their views regarding (a) interpreters’ interventions concerning possible misunderstandings, and (b) attorneys’ discourse practice while working with non-English speakers.

III. For English speakers and Spanish Speakers, the experiment will involve a legal language comprehension test. In this test, participants will hear five sentences in legal language, each followed by a question to assess comprehension. The five sentences selected will be the same as those used in the interpreters’ test. This experiment will involve three groups: one of English speakers, and two of Spanish speakers assigned randomly to each group. Comprehension will be measured according to correct/incorrect responses to questions.

Research Materials

This research will involve the following materials:
1. Interview guides for interpreter participants.

2. A written register choice test for interpreters. Three of the five sentences for this experiment will be taken directly from the old versions of the jury instructions. The three translation choices provided to the interpreters will consist of (a) a verbatim translation of the old version of an instruction with conservation of register; (b) a second translation with a medium-high register; and (c) a translation of the new version of the same instruction with standard register. The other two sentences will be taken from a sample oral state exam provided by Prometric on their website (undated). The three translation choices provided to the interpreters will consist of (a) the verbatim translation provided and recommended by Prometric in the same exam, with conservation of register; (b) another translation with medium register; and (c) a third translation with standard register.

3. Three different recordings for the legal language comprehension tests, one for each group. Each recording will consist of five sentences as follows: the group of English speakers will hear the same English sentences used in the interpreters’ test, the first group of Spanish speakers will hear the first translations used in the interpreters’ test (with high register), and the third group of Spanish speakers will hear the third choice used in the interpreters’ test (with standard register).

4. Interview guides for attorney participants.

Participants will include certified court interpreters, attorneys, and lay English speakers and Spanish speakers. The criteria for selecting participants are as follows:

1. Interpreter participants must have at least five years of experience in judicial interpreting in California and a state-issued certificate for court interpreting.

2. Attorney participants must have at least five years of practice with interpreters in California.

3. Lay English-speaking participants must have an average education attainment according to information provided by the US census, which reports that the average education level of English speakers in California is 13.1 years of schooling. Participants will have no court experience.

4. The criteria for selecting lay Spanish-speaking participants will be based on their level of education. According to the literature reviewed, the average Spanish speaker has less than eight years of education. Participants will have no court experience, and little or no knowledge of English.
**Expected Results**

Research results will show and compare (a) English speakers’ level of comprehension of the high register of legal language, (b) Spanish speakers’ level of comprehension of the high register of legal language, and (c) Spanish speakers’ comprehension of a standard register of legal language. These data will help shed light on the implied equal comprehension premise in the interpreters’ code of ethics. Results will also show how interpreters view register change, their practice, and their awareness of register and register change standards. Lastly, results will show attorneys’ acceptance or rejection of interpreters’ interventions during judicial proceedings.

**Expected benefits**

California faces a very difficult and unique challenge due to the exceptional frequency with which different cultures and languages meet in this state. In this study, we will attempt to evaluate the situation from several different angles. It is our hope that results will (1) invite judicial authorities to take a closer look at the role interpreters should play in California judicial proceeding; (2) cause program directors to advance and revise the training for court interpreters to include the fundamental aspects of theory, intercultural communication, and professional role; and (3) encourage fellow court interpreters to reflect and consider viewing the profession they have chosen under a different light. Ultimately, we hope to improve the work of court interpreters in furtherance of the profession and of intercultural communication during judicial proceedings.

**Transfer of results**

We expect to publish the results of this research in relevant journals and books and to present them at the ATA, NAJIT, and CCIA conferences, among others.

**Financial needs and resources**

This research will be self-financed.
Work Schedule

Year 1 – Completed by June 15, 2008
- Preliminary literature review
- Pilot study and data analysis
- Minor Dissertation

Year 2 – To be completed by December 2009 or earlier
- Revision of instruments
- Approval of final consent form by IRB
- Completion of literature review
- Interviews, tests, and observations
- Data analysis
- Final draft

References


