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Court Interpreting as Emotional Work: A Pilot Study in Swedish Law Courts

Gunilla Carstensen* and Leif Dahlberg**

1. Introduction

This article is about legal interpreting—i.e. orally translating between languages in public law courts—and is based on 29 semi-structured interviews with Swedish interpreters, judges, and lawyers, as well as field studies in Swedish courts and a literature study.¹ The interviews were mainly conducted in 2015 at three different law courts in the metropolitan Stockholm region and concerned conditions for interpreting, methods for validation of interpreting, the importance of the interpreter as cultural broker and how interpreting in courts can be improved.² Our interview study shows that the working situation for interpreters is demanding, that interpreter-users such as judges and lawyers often have little or no knowledge of

* Gunilla Carstensen is Senior lecturer in Sociology, Dalarna University, Sweden.

** Leif Dahlberg is Professor in Communication, The Royal Institute of Technology, Stockholm, Sweden.

1 To avoid confusion between the act of interpreting between languages and the interpretation of texts—and drawing upon a distinction made by Ruth Morris in a seminal article on legal interpreting from 1995—in this article we refer to the act of oral translation from one language to another as ‘interpreting’, and the act of making sense of signs and texts as ‘interpretation’ (Morris 1995, 25). It should be noted, however—as Morris also argues in her article—that this distinction is a legal fiction, i.e. that the act of interpreting is always also an act of interpretation.

2 The study is based on semi-structured interviews with 29 respondents (17 interpreters, 8 judges, 4 legal counsellors) from three District courts in Sweden during 2015–2016. The judges were recruited through the head judge of the District court to whom we had sent an e-mail with information of the study. The interpreters were contacted through an official register at the Swedish Legal, Financial and Administrative Services Agency (Kammarkollegiet). The legal counsellors were found through informal contacts. The interviews lasted for 1-1 ½ hours and were tape-recorded, transcribed and analysed according to a hermeneutic approach often used in qualitative research. The interview questions covered the conditions of interpreting in relation to the court with four main themes: the respondent’s general perceptions of the interpreting process, the respondent’s general perceptions of the ideal interpreter, the respondent’s general perception of methods to verify the quality of the interpreting, and the respondent’s general perception on necessary improvements for interpreting in court.

interpreting and that courts differ widely regarding how aware they are about the importance of creating good working conditions for interpreters. In the interviews, an issue emerged that we had not anticipated, the importance of the emotional work performed by the interpreter. The first part of this article presents an overview over interpreting as a field of research and as institutionalised practice. The second part describes and analyses interpreting in Swedish law courts. Finally, the third part of the article discusses emotional work in court interpreting. It should be noted that the article is explorative rather than conclusive.

According to Swedish law, the legal procedure in Sweden should be conducted in the Swedish language (*Språklag* 2009, 600). This implies that if there is a court case where a party or a witness does not speak Swedish, or does not master it sufficiently to manage an interrogation, an interpreter is needed. It is the obligation of the court to provide a competent interpreter.³ In connection with a law change in 2013, the requirements of the quality of interpreting were increased, and it is now mandatory to provide an authorised interpreter (Fioretos et al. 2014, 28f). However, although there now are higher requirements on legal interpreting in Sweden, there is at the same time a shortage of authorised interpreters, which means that courts have difficulty finding not only authorised but even qualified interpreters. There are today a little more than 900 authorised interpreters in Sweden, of which 226 are authorised legal interpreters (Kammarkollegiet 2017).⁴ According to a study from 2010 there are 150 languages spoken in Sweden (Parkvall 2000), yet it is only possible to become authorised interpreter in 39 of these languages. Not using a highly skilled interpreter in court implies a serious risk for legal certainty. If the interpreter is not well versed in the subject or has limited knowledge of legal terminology, there is a great danger that the interpretation will be both faulty and misleading.

A 2015 study by the Swedish Agency for Public Management (Statskontoret) on ways to improve interpretation in Swedish law courts showed that interpreters are used in between 2000 and 3000 court cases every month, but also that the percentage of authorised interpreters is quite low—a third of the time non-authorised interpreters were used (Ibid). It should also be noted that Swedish courts do not keep records over the use of interpreters, and for this reason it is difficult to produce reliable statistics. In the study by the Swedish Agency for Public Management, it is also emphasised that the distribution of authorised interpreters is very uneven in the country, which has as consequence that ‘not every court case is given equal conditions’ (Ibid, 7). If the situation is precarious today, the need for interpreters in public institutions such as law courts and health care will in all likelihood increase in the future, due to the increased mobility of people both inside and outside EU, as well as other forms of migration. At the same time, due to strenuous working conditions and relatively low remuneration, it is difficult to recruit new interpreters to the profession.

In the next part of the article we describe interpreting as a form of interaction, the norms governing interpreting in public institutions as well as actual interpreting

3 *Rättegångsbalken* [Swedish Trial Code], Chap. 5 § 6; and *The European Convention on Human Rights*, Article 6.3.

4 For a study on the Swedish system of authorising interpreters, see Idh 2007.

practices as they have emerged in the conducted interviews.

2. Perspectives on interpreting

Interpreting is an area of research that has been studied in particular within the fields of language study and linguistics, focusing either on verbal communication and whether the interpretation is ‘correct’—that is, if the verbal translation corresponds to the source (often labelled ‘source text’)—or on pragmatic dimensions of interpreting. In determining the ‘correctness’ of interpreting, the model used has often been that of translating texts, and frequently has used quite simplistic models of what counts as verbal or textual correspondence between two languages, let alone what would count as a ‘correct’ translation. Such models fail to take into account factors such as the intention of the speaker, his or her relation to the listener, the situation and social context, and possible cultural differences. However, in the past three decades, research on interpreting has increasingly focused on pragmatic dimensions (for an early example, see Hatim & Mason 1990). There has also been a series of studies on interpreting in the legal context that challenge the text-based conception of interpreting (e.g. Berk-Seligson 2002; Hale 2004; Hale 2007; Jacobsen 2009; Jacobsen 2012). In several of these studies, focus has also been on the role and the significance of the interpreter in the legal process (cf. e.g. Hale 2008).

Further, many studies show that the interpreter typically renders incoherent, paratactic discourse in a more structured and coherent way than in the source text, and also that different interpreters perform differently when it comes to back-channelling and paying attention to pragmatic dimensions such as politeness and respect (Morris 1990; Berk-Seligson 2002; Hale 2004). For instance, some languages and cultures marked by high power distance demand the use of honorary titles, whereas other cultures show a preference for more familiar or egalitarian language. Hence, when translating from English or German into Swedish, the interpreter needs to elide many words indicating power distance in order not to sound ridiculous; and inversely, when translating from Swedish to English or German, the interpreter will need to insert polite expressions and honorific titles in order not to seem uncivil or rude.

The text model for understanding and conceptualising oral interpreting has also been challenged by a model of communication based on interaction and dialogue (Wadensjö 1998). That is, from having been perceived as primarily a question of transmitting information from one language to another, interpreting in the dialogic paradigm is understood as a form of interaction that happens between people and in specific situations—i.e. it is understood relationally and contextually—and it is also seen as surrounded by norms and institutional rules that determine the conditions for interpreting (Wadensjö 1998). This dialogic perspective implies that the act of interpreting is a collaborative process—i.e. not only the work of the interpreter—and that the result depends on the competence of all participants, not only the interpreter. In other words, the meaning of the message does not exist in a pure form to be translated by the interpreter, but is constructed—or co-constructed—by the

participants in the interaction (Wadensjö 1995, 114). In this perspective, interpreting is a complex relational process that puts high demands on all participants, and in particular on the interpreter who must relate to the situation on several levels. The interpreter must not only understand, assess and interpret what is said, but also evaluate and interpret what is said implicitly and between the lines (Ibid, 112), as well as transpose the prosody of the source language to the prosody of the target language.

Thus, a recurrent theme in research on interpreting is the role of the interpreter in the interpreting situation. How should the interpreter act? How should the interpreter interpret? Should the interpreter explain cultural differences that are of importance for what is being said or should the interpreter act as an ‘interpreting machine’, executing a word-for-word translation? The answer to these questions depends on the situation and the position of the interpreter in the situation. Sandra Beatrice Hale has identified five different roles prescribed or adopted by the interpreter: advocate for minority language speaker, including cultural brokerage or mediation; advocate for the institution or the service provider; gatekeeper (i.e. filtering and editing information); facilitator of communication; and faithful renderer of others’ utterances (2008, 102-119). In the legal context, the ideal is that the role of the interpreter should be the last one; but it is not always clear to what extent this also excludes any of the other roles.

Legal institutions, manuals and professional codes for legal interpreting maintain that the interpreter should appear face-less in interpreting and not interrupt and explain cultural differences—a view also held by many interpreters. There are, however, many professional interpreters and researchers who argue that the interpreter, consciously or not, also engages in translating cultural differences. This is not very different from when the interpreter gives a definition of a legal term to the client or paraphrases a saying or an idiomatic expression. A related question is how the interpreter should convey emotions, which not only may differ in content and meaning between cultures but also are expressed in different ways (Barrett 2017, 42-55). To the extent that the task of translating and explaining cultural difference becomes central to interpreting, the interpreter also becomes a ‘cultural broker’. However, this conception of the interpreter is neither generally accepted within the profession nor by the institutional codes that regulate praxis (Norström et al. 2011; Fioretos et al. 2014, 44f). But it is not only institutions, regulatory bodies and the profession that have normative perceptions of what (good) interpreting is. The research on interpreting is inherently normative (Wadensjö 1998).

Another theme in research on interpreting is to analyse interpreting from the perspective of power. Inspired by Michel Foucault’s work, Ian Mason and Wen Ren distinguish different forms of power that are realised in the context of interpreting: institutional power on the one hand and interactional or micro-power on the other (Mason & Ren 2014). The power of the law court is institutional, which the judge executes by conducting the trial, managing turn-taking and making decisions and rulings. The interpreter has a looser connection to the law court—he/she is not

employed but contracted. However, since the interpreter is usually the only person who understands both languages, he/she has a unique position and possesses an interactional power which, according to Mason and Ren, is manifested in that the interpreter can affect and interrupt the process in the courtroom—through gestures and other expressions (both verbal and non-verbal)—in ways that are not permitted for other actors.⁵

3. Interpreting work

In Sweden, the role and duties of the professional interpreter in institutional contexts are governed in a document from the Swedish Legal, Financial and Administrative Services Agency (Kammarkollegiet 2016).⁶ According to this document, the authorised interpreter shall transmit ‘information as exactly as possible’; he/she shall not express his/her opinions or values in any way and these should not affect the interpreting; he/she should be neutral in relation to the two parties between which he/she interprets; and he/she may not engage in other activities other than interpreting (i.e. the interpreter should not comment on or explain what is said); and, finally, the interpreter may not use the information that he/she has gained during the interpreting for him/herself or convey it to a third person. Implied in this code is that the interpreter should neither add information in order to make statements intelligible nor subtract information that appear meaningless (this was explicitly stated in the previous version of the interpreter code, Kammarkollegiet 2010). It is further stated that the interpreter should not tone down emotional expressions or vulgar language. This rule implies that emotions are universal both in form and meaning (which is not the case); and it also begs the question how to translate im/politeness from one language/culture to another. Standard praxis is that the parties talk to each other and not to the interpreter, and that the interpreter speaks in the first person when he/she translates. These principles or rules constitute a normative ideal for how the interpreter should comport him/herself (Fioretos et al. 2014, 46f).

There exists both sign-language interpreting (for deaf) and oral interpreting (between languages). It is the latter that is treated in this study. The most common form of interpreting is when the interpreter is physically present in the courtroom. Another form of interpreting is when the interpreter interprets via telephone or video-link, which is often done in detention hearings and also when it is difficult to find a qualified interpreter locally. Interpreting can be done either consecutively or simultaneously: consecutive interpreting means that the interpreter first listens

5 Mason & Ren 2014, 19f. See also Inghilleri, who speaks about socially constituted norms and local interactional practices (2003, 262) and argues that it is in the tension between these norms that changes the status quo.

6 Until very recently, December 31, 2016, the interpreting code was entitled *God tolksed* (Kammarkollegiet, 2010). On 1 January, 2017, this document was replaced by a new document called ‘Kammarkollegiets tolkföreskrifter’ (December 2016), paragraphs 17-23 (<http://www.kammarkollegiet.se/sites/default/files/Kammarkollegiets%20tolkf%C3%B6reskrifter%202017.pdf>). The latter is less detailed in the instructions, but does not change the rules.

to what the person says and then translates into the other language; simultaneous interpreting means that the interpreter interprets at the same time as a person is speaking. The latter form of interpreting is generally preferred by interpreter-users, since it is more efficient, but it requires highly skilled interpreters. In some parts of the legal process, such as questioning of a party or witness through interpreter, consecutive interpreting is normally used. It should be noted that the media technology for distance interpreting available today in Swedish courts—i.e. telephone or video-conference systems—does not permit simultaneous interpreting, and hence only consecutive interpreting is possible when the interpreter is not physically present in the court.

The positions or placements of the participants is also important for interpreting. The ideal situation for interpreting is that the participants sit in a triangle, so that all parties face each other and that the interpreter may see both parties. However, this is rarely the setup in Swedish law courts. As we will see, typically the interpreter sits just next to the person (party or witness) for whom he or she translates.

3.1. Interpreting in court

Already before the interpreter begins his/her work in the court, there are several steps that affect his/her ability to perform well, and this independently of his/her own competence as interpreter. When the judge who is assigned to a case sees that there is a need for an interpreter (for a party or witness), this is noted in the file. When the trial date for a case is decided, then it is time to book an interpreter. One can already here see the subordinate role that the interpreter has from the court's perspective. In view of the lack of qualified interpreters in Sweden, one could imagine that one made sure that there is a qualified (i.e. authorised) interpreter available before setting the trial date. This does not happen. Furthermore, the person responsible for the booking of interpreting services typically has limited knowledge about there being different kinds of interpreters (non-authorised, authorised and authorised legal interpreter), as well as the regulations that surround contracting interpreters. As with many other public institutions in Sweden, there are procurement contracts with interpreter agencies (i.e. companies that provide interpreting services) that the courts are required to use (Lundström 2004). However, if the interpreter agency cannot provide a qualified (i.e. authorised) interpreter, the court has the right to disregard the contract and contact an interpreter directly. The latter is obviously more demanding and also requires that the court clerk in charge of hiring interpreters has his/her own list of competent interpreters. According to our interview study and the report by the Swedish Agency for Public Management (Statskontoret 2015), there is often lacking competence in the courts to procure appropriate interpreting service, as well as routines for evaluating the quality of the interpreting service that was provided. However, a few courts now routinely assess the quality of procured interpreting services. Hopefully, this practice will become more common in the future.

In order for an interpreter to work efficiently in a courtroom he or she should

have the possibility to study the case beforehand—at least to the extent that it is available from the summons or detention files. This is especially important when the case concerns complex factual issues. However, according to the interviewed interpreters, it is far from obvious that the courts provide this material without the interpreter first having to request it, or that they pay the interpreter for studying the files. Yet there are again significant differences between how courts behave in this regard. In court, the interpreter should be provided with a copy of written documents, otherwise he or she will have to interpret orally when somebody is reading from a written document, which is more difficult than translating a written text.

When the interpreter arrives at the law court, he/she is treated as an outsider. In contrast to legal counsel, the interpreter is searched before being allowed into the court house building, and hence is not viewed as a trusted or reliable person. When the proceedings commence, the interpreter enters the courtroom at the same time as the parties and legal counsel. It is customary that the interpreter introduces him/herself to the person for whom he/she should interpret either just outside or inside the courtroom (i.e. there has usually been no prior contact between interpreter and client before the trial is about to begin). When the proceedings begin, the interpreter is presented to the court. The interpreter should take an oath in which he/she promises to perform his/her duties to the best of his/her abilities, although this oath has only to be sworn once at each court (*Rättegångsbalken*, chap. 5 § 7). Today, common practice is that the interpreter sits next to the person for whom he/she interprets. Although some interpreters clearly state that they prefer to sit at a certain distance from this person, it is usually not possible to arrange for this in the courtroom.

There should be a technical apparatus in the courtroom so that the interpreter can speak into a microphone connected to a headset. According to several interpreters we interviewed, the technology frequently does not work, so the interpreter must sit very close to his/her client and whisper to her/him. When the interpreter interprets for several people simultaneously the technology of course must function. The neglect of this technical apparatus is another symptom of the disregard for the task of interpreters in Swedish courts today.

Interpreting is very demanding work. There is a need for regular pauses, and it is important that the interpreter actually gets to rest in the breaks (and is not employed as interpreter between client and legal counsel). If the interpreter should work more than half a day, then more than one interpreter should be used. It is important that the person leading the proceedings, the judge, is aware of the interpreter's needs in order to perform his/her work well. It is imperative that the court understands whether one or two interpreters are needed. Beyond that, the competence of the users of interpreting is critical for the interpreter's ability to perform his/her tasks appropriately.

3.2. The ideal interpreter

In our interview study, most of the judges answer the question, 'what characterises a good interpreter' by saying that it is an interpreter that is neither seen nor noticed;

simultaneous interpreting is highly appreciated. The judges are anxious to see that the proceedings will not be affected and should proceed without being disturbed by the need for interpreting. A repeated comment made by judges is that proceedings with interpreting take considerably longer time—in other words, they are less efficient. There is thus an awareness among judges that the presence of an interpreter does affect the proceedings—but primarily as a negative, retarding factor.

The lawyers that we interviewed express similar opinions as the interviewed judges, but with the difference that the lawyers say that they can use the interpreter for their own purposes during the proceedings. For instance, several of the interviewed lawyers mention that the presence of an interpreter slows down the proceedings, which they say can be an advantage for their clients since they then get more time to think before answering questions. One of the interviewed lawyers says: 'And then I must admit that I can turn it around and use it [and] give suggestions to the client [and] that I can reflect on what I shall say myself. In a way, I can be one step ahead.' Another interviewed lawyer in our study emphasises that a good interpreter can create 'a relation of trust' and the interpreter's ability to 'infuse calm in the person who will be translated', which in turn has importance for the proceedings. This dimension of interpreting is connected to what we label emotional work, in that the presence and performance of the interpreter has an emotional impact on the parties and witnesses, and also on the judge and legal counsel. We will discuss this in the second part of the article. In contrast to the interviewed judges, then, the lawyers also identify certain advantages of the presence of an interpreter.

The interpreters we interviewed emphasise that a good interpreter should not be seen or noticed. For instance, in one interview an interpreter refers to another interpreter that she thinks is 'incredibly competent' since it is an interpreter who 'one doesn't even remember what he looks like'. Taken together, our study shows that the interviewed judges, lawyers, and interpreters in general are in agreement about how an interpreter should behave and perform. These ideals and norms conform quite well with the more formalised rules in the Swedish Legal, Financial and Administrative Services Agency's code for interpreters. One could say that they believe that the best interpreter is somebody whose presence is invisible, that the interpreter should be a person that does not take up place and should only be an instrument for the other actors in the courtroom.

Even if the interviewed individuals in our study appear to agree that a good interpreter should not draw attention to him- or herself, it is nevertheless clear that they think that the interpreter actually does play an active role during the proceedings, a role that is not explicitly formulated but is given significance more indirectly and informally.

3.3. To be but not to be seen

That the interpreter is expected to act impartially is part of the professional ethical principles for interpreting. At the same time, this norm has as consequence certain dilemmas both for the interpreter and for the user of the interpreter. In

the interviews that we conducted, there appeared to be a tension between being impartial—to stand outside, being objective, professional—and listening—being present, observant, empathic and understanding to what is not said explicitly. One interviewed interpreter speaks about ‘the square fence’ as a strategy to deal with a stressful work situation. What this implies is a way to keep a distance from the persons needing the interpreter’s services. As mentioned, some interpreters prefer to sit at a certain distance from the party they interpret for—for instance in the witness booth—while others prefer interpreting via telephone or video-link to avoid direct contact. Several interpreters describe how they have developed strategies to avoid contact once the proceedings are finished, for instance by leaving the courtroom last or quickly taking a pre-ordered taxi. These different statements by interpreters about their experiences in the courtroom indicate that they feel exposed and vulnerable in the situation, and that they need better support both from the court and from their employer (the interpretation agency).

Even though many interpreters agree that the ideal interpreter should be invisible, all the interviewed interpreters also emphasise that a ‘good interpreter’ needs to occupy a position in the room, dare to interrupt and ask questions in case of unclear statements and also be the one who demands breaks and point out malfunctioning media technology. One interpreter says that previously she was ‘very idealistic’, whereas today she has a more distanced attitude and thinks that ‘this is this and this is me’, separating herself as a private person from her role as interpreter. The same interpreter says that as interpreter you never get confirmation—meaning people do not say that you have done good work—as the interpreter is not considered important.

A reflection we make is that there are many demands on the interpreter, both by the interpreter and the user of the interpreter. It is expected that the interpreter should not be visible or be noticed, and that the interpreter should take a rather passive role. Yet, it is evident that the interpreter’s presence does influence the situation. The double role—to be present but not to be seen—is a strategy that both the interpreter and the court use. In general, it seems to be the responsibility of the individual interpreter to be the one who dares to ‘interrupt’ the verbal exchange during the proceedings. Based on our interviews it is not unusual that it is the interpreter who needs to demand breaks in the proceedings.

3.4. Quality of interpreting

One question we asked regarded how the quality of the interpreting can be assessed, i.e. how the users of interpreting—primarily judges and legal counsel—can validate the translation from one language to another. All the persons interviewed answer that today there are not any formal methods, but that there appears to be some signs that have importance for the assessment. This dimension of interpreting is complex. The judges say for instance that ‘it is difficult to know the quality’ and that ‘it is difficult for us to know how good is the interpreter since we do not know the language ourselves’. This makes it difficult to know ‘how it is interpreted and how

correct it is being interpreted'. Some of the judges in the study state that the only time that it is possible to assess the quality of the interpreting is when you know the language yourself, for instance English.

The interviewed judges say that sometimes it happens that either another interpreter in the room challenges the translation or that there are protests from the audience: 'I have experienced that the other interpreter has said that it was incorrectly translated. This way you can find out. Otherwise it's up to the interpreter to say that he or she is unable to perform the task, they take an oath so it should be on them or possibly the Swedish Legal, Financial and Administrative Services Agency, which oversees the profession' (Judge). There may be protests from the audience or when 'one understands that the parties are not content' (Judge). One of the interviewed lawyers says that he tests the interpreter's competence by using 'a Swedish saying and if the interpreter interprets it without paying attention then I have a suspicion that this is not a good interpreter who evidently skipped what I said, [but if] the interpreter stops a second and like wonders "what's this?"; then the interpreter pays attention' (Lawyer).

It is striking that today there exists no formalised methods for assessing the quality of interpreting in Swedish law courts. The sound recording that today is made in Swedish courts only records the judicial proceedings in Swedish. The interpreting passes below the radar of the media technological control mechanisms at place to ensure a fair trial. In Sweden, it is extremely rare that a trial is invalidated because of incorrect interpreting, which probably depends less on the actual quality of interpreting in Swedish law courts than that there are no ways to prove that the interpreting is not good enough (Diesen 2010). A simple media technological device that would improve legal certainty would be to record the interpreting on a separate sound track. Then it would be possible afterwards to control the quality of the interpreting.

In academic research on interpreting, one refers to the 'double roles' of the interpreter: On the one hand, the role as translator, and on the other, the role as cultural mediator, engaging in intercultural communication (Angelelli 2004). The latter can concern verbal idioms or specific cultural expressions or values. How do the judges, lawyers and interpreters that we have interviewed think about whether the interpreter should explain cultural differences and interpret bodily expressions or gestures? Here the interviewed persons have different opinions. Some interpreters as well as some judges believe that this should only be done exceptionally—as an emergency to avoid serious misunderstanding—which is connected to the established norm in the legal system that the interpreter should be distinct from the users of the interpreting, i.e. that the interpreter should not interpret what is being said—he/she should only translate what is said, not explain what was said. If situations occur that demand a linguistic or cultural explanation, it is—according to this view—up to the prosecutor or legal counsel to provide or demand an explanation, not the interpreter. As has been noted repeatedly in the research literature on interpreting, such an understanding of interpreting is based on a fundamental misconception both of how

interpreting is done and of how communication works (Berk-Seligson 1990; Morris 1990; Wadensjö 1998). This is an example of a more general phenomenon, when a discipline (in this case Law) and a professional field (the legal system) is immune to advances in knowledge that threaten the self-understanding of the discipline or profession. As Ruth Morris noted already in the 1990s, legal systems do not realise 'the delicacy' of the interpreter's role and do not understand that interpreting is not only about translation but also requires understanding of context; the interpreter is a 'mediator in the judicial process' (Morris 1995, 26-27). A similar example of a failure to understand how communication works can be found among computer scientists who believe that human communication is a question of coding and decoding signals (much in the same way computers send and receive 0s and 1s). Such misconceptions of how communication and interpreting work is, however, not only erroneous but dangerous, since it prohibits the interpreter from performing his/her task to his/her utmost ability and to correct possible misunderstandings—linguistic as well as cultural. Fortunately, most professional interpreters, to a greater or lesser degree, disregard such censorship, either consciously or unconsciously. That is, studies show not only that professional interpreters never interpret verbatim (word-for-word) what is said, but also that, as a rule, they improve the comprehensibility of the source discourse in the translated discourse (Berk-Seligson 1990; Morris 1995). However, there are of course many times when the interpreter will—and should—translate an incomprehensible sentence in the source language into an equally incomprehensible one in the target language, even if this may put their own competence on the line, since the users do not know what was said in the source language.⁷

There are, however, examples in our interview study where judges, legal counsel, and interpreters say that it is good if the interpreter explains cultural expressions and also conveys gestures and intonations. An example mentioned in an interview is the expression 'to cut the throat of somebody', which does not mean the same thing in Arabic as in Swedish. Translated into Swedish the expression becomes literal, which in Swedish legislation is a threat and therefore criminal, while in Arabic language, according to the interviewed interpreter, it means more that you are very angry with the person but not that you intend to kill. This needs to be explained since it may have importance for the judgement of the case. The judges and interpreters who believe that it is good if the interpreter also interprets gestures, intonations etc., argue that these expressions are an important element in what is communicated verbally. They argue that verbal and bodily communication are connected. One could say that on the one hand there are those— both interpreters and users of interpreters – who believe communication only is a question of verbal communication and that interpreting means a literal (word-for-word) translation, and on the other there are those that mean that communication also involves non-verbal communication, including knowledge of cultural phenomena, as well as differences between cultures.

In the context of the law court there are regularly situations where it is important

⁷ Morris (1995) takes up a number of such examples, including when an interpreter apparently consciously refuses to improve the comprehensibility of certain persons.

or necessary for the interpreter to explain cultural differences, and for this reason it is imperative that the interpreter also can explain these. In these situations, it is also important that the interpreter makes unambiguously clear that he or she speaks in his/her own voice—that the commentary is not mistaken as coming from the client. Typically, the interpreter signals this by speaking about her/himself in the third person ('the interpreter would like to explain...'). Such interventions would also probably slow down the proceedings even further—even if they prevent misunderstandings—which is another reason why judges do not welcome this kind of assistance.

4. Emotional work in the legal context

A sociological perspective on emotion acknowledges that emotions have a profound importance in social and professional contexts, and that what is understood as proper to experience and express emotionally is something that is successively learned through socialisation (Wettergren 2013). This means that in different ways we are always involved in emotional work, which also is surrounded by different emotional and expressive rules. The emotional perspective emphasises the emotional—and relational—work as a form of tacit knowledge about how certain tasks are expected to be performed or executed (Hochschild 1983). Arlie Hochschild draws on symbolic interactionism when she elaborates on emotional work, and develops Erving Goffman's idea of the importance of impression management in social interaction (Goffman 1990). Emotions are social, and we persistently try to make other people view us in the way we desire to be viewed. According to Hochschild, some professions and work tasks require emotional work from the person exercising the profession. It may be expected that both the professional/worker and the client/customer will produce and stage some particular emotional states. It may also be that the worker cannot control the emotions which are supposed to be delivered or how they should be expressed. According to Hochschild, there are two types of emotional work and they relate to the concept 'emotional dissonance', which concerns the distance between the true feelings of a person and what a person is expected to feel. What she calls 'surface acting' covers situations where a person displays emotions with no connection to the inner feelings of that person. 'Deep acting' means that a person adjusts his/her inner feeling in accordance to what is expected. Everyone is involved in emotional work—not just at work—and we follow norms regulating various situations.

The field of emotional work has developed and come to be understood in a more nuanced way. An example of this would be that the original assumption that emotional work leads to alienation and low self-esteem has been modified. Now it is recognized that emotional work may also have positive dimensions with respect to the individual worker. Working in professions concerned with tasks involving personal service, care and teaching may create feelings of fulfilment and genuine emotions (Payne 2009). Thus, although emotional work is explicitly or implicitly induced in the job (and need to be so from the perspective of the employer and those who benefit from it) and in this sense constitutes a working requirement and

a burden on the worker, it still may contribute to positive feelings and self-esteem of the individual worker.

One can distinguish between different kinds or forms of emotional work. One category contains expectations and ideals on how work tasks shall be performed, not limited to the exercises necessary to do the job in a strict sense. Apart from serving food to passengers, a flight attendant must smile in a friendly way, and a nurse must show concern. These are examples of emotional work being part of the job, implicitly and explicitly. A second category of emotional work includes the effects and consequences on the individual worker having to perform emotional work and adhere to the actual or assumed requirements for emotional work. It is obvious that it will affect a person, e.g. someone working as nurse caring for a dying person, psychologically and emotionally. The personal impact on the emotional work performed by the interpreter contains both negative and positive aspects; on the one hand vulnerability, low self-esteem and, on the other hand, development of emotional capacity.

The interest in studying emotions in professional contexts has increased in the past decade. This is also the case in law, although one traditionally would not think that they matter—or should matter—in this context (Dahlberg 2009; Wettergren & Bergman Blix 2016; Bergman Blix & Wettergren 2016). A trial is an institutional activity that is expected to be conducted according to neutral and objective principles, but research has shown that emotion and empathy play a role that challenges the assumption of pure rationality, both institutionally and for individual actors.⁸ Research on emotions in law courts includes several different disciplines, such as criminology, law, philosophy, sociology (Maroney 2016). A key point of departure is that emotions and law are shaped by each other, that ‘emotion shapes law and law shapes emotion.’⁹ There are several studies that have looked at the emotional work of judges, prosecutors and legal counsel,¹⁰ but there is no research focusing on the emotional work of the interpreter in court proceedings.

4.1. Interpreting as emotional work

According to the Swedish Legal, Financial and Administrative Services Agency’s guidelines for interpreting in institutional contexts, the interpreter is expected to act neutrally and impartially. The emotional work performed by the interpreter is not only a question of translating emotions (or not) from one language or culture to another, but furthermore the task involves to produce in the listener a proper emotional state. The interpreter has to deal with emotions one way or the other. It is important to recognize the importance of emotional work in court interpretation. In her article ‘Images of the Court Interpreter’ (2010), Ruth Morris submits that the fact

8 Bandes 2006; Bornstein & Wiener 2006; Dahlberg 2009.

9 Abrams & Keren 2010; Bandes & Blumenthal 2012; Maroney 2015.

10 Bandes 2006; Feigenson & Park 2006; Dahlberg 2009; Bandes & Blumenthal 2012; Maroney & Gross 2013; Wettergren & Bergman Blix 2016; Bergman Blix & Wettergren 2016.

that the interpreter is emotionally affected should not be understood to be contrary to the norms of neutrality and objectivity, in the sense that the interpreter must not interfere with the situation; interpreting requires not only that the interpreter understands what is explicitly said but also its underlying messages and the contexts. What Morris highlights is the importance of the interpreter to take the interpreted persons' roles and perspectives: 'the interpreter must identify with and "become" each speaker' (Ibid, 31). This kind of identification with the speaker obviously also has an emotional dimension.

According to the interviews that we have conducted, it is evident that the emotional work of the interpreter plays an important role in the proceedings. For instance, the lawyers say that interpreters have a calming effect on their clients. In the interviews with interpreters, they give several examples on emotional work. One interpreter says that 'a good interpreter knows how to spread calm in the court room and I have learned to use my voice to perform kindness and calm [...]. Because the situation in the courtroom can be very tense'. Thus, emotional work is used in the process of interpreting, both by the interpreter and the user, and for a wider purpose than just translation. This indicates that feelings and emotional expressions are attributed greater significance in interpreting practice when compared to the norm/ideal of legal interpreting.

We mentioned earlier a theme which we called 'to be but not to be seen' which also can be understood as a characteristic of emotional work, in that the interpreters tend to tone down emotions—either intentionally or unintentionally—although not elide them completely, and act according to the demands of the situation. The so-called 'square fence' which some of the interviewed interpreters apply as a strategy to fence themselves from stressful working conditions is another example of a strategy to handle negative emotional experiences that seem to be a part of the working conditions of interpreters. There are examples from our interviews, where the interpreters submit different strategies used in order to leave the court building when the trial is over without having to be left alone together with the person or persons for whom they have interpreted. This strategy can be described as an avoidance strategy.

Several of the interviewed interpreters mentioned that they have been on sick-leave, for longer or shorter periods, which they explain with reference to previous working experiences from legal interpretation and the psychological pressure which builds up when you have to interpret experiences of war, death and torture. When the interpreters refer to such experiences, it becomes apparent that sometimes it is not possible—or even desirable—for an interpreter to hold a distance to the situation, to assume a neutral and objective position and 'just interpret'. From the interviews, it is clear that there is no such thing as 'just interpreting', since the context of interpreting consists of an interactive and communicative dialogue based on processes to create meaning.

4.2. Politeness & impoliteness

Although from a juridical point of view, the central issue in interpreting is that of efficiency and correctness, the question of form and manner is also important. As has been noted above, the interpreter is neither supposed to filter out emotions nor omit vulgar expressions. However, an important part of communication in court is showing respect both towards the institution and the judge. Respect can be expressed in different ways, both verbally and non-verbally. An example of the latter is the general expectation from the judge that men should not wear a hat or cap when seated in court. However, among young men today it is quite common to wear cap also indoors. Thus, there regularly occur minor confrontations in court where the judge asks a party or member of the audience to take off his cap and the latter refuses. It is however quite unusual that the judge actually will discipline this kind of act, but it will likely affect the way the person is perceived by the court in a negative way.

When it comes to verbal behaviour, the show of respect consists in part in that a party or witness should only speak in response to questions from the judge, prosecutor or legal counsel (although a party of course can confer with his own legal counsel). Further, the responses should not only be truthful but also pertinent to the questions asked. A party or witness that has not been 'prepared' by legal counsel will typically either speak too much or too little, in both cases testing the patience of the court. A person who consistently responds to simple questions by excessive verbosity would appear to frustrate or even obstruct the court's search for the facts in the case. Whereas this would be clear enough if the person is speaking in Swedish, if the person speaks a foreign language it is only through the interpreter's translation that the court partakes in what he or she says. A frequent concern in the interviews with judges and legal counsel was that an interpreter either would translate an apparently long answer in a much shorter way, sometimes only with an affirmative 'yes' or negative 'no', or on other occasions the interpreter would seem to expand a seemingly succinct answer with extensive detail. Although it is of course possible that this could be an example of poor interpreting, it is more likely that the interpreter is not only verbally translating but also stylistically transposing the answer in a way that is appropriate for the court setting. This would be an example, then, of when the interpreter is engaged in adjusting what is considered an appropriate or polite way of speaking in one language or culture to that of another. Yet, from the outsider's perspective, such stylistic transposition is often viewed with suspicion, since one is unable to understand what is going on.

Another example of when the interpreter is confronted with questions of politeness includes translating aggressive, disrespectful or even insulting verbal behaviour. Although the verbal decorum in court demands both civil and polite behaviour, under the polished surface the going can get quite rough (Harris 2011). When the prosecutor or legal counsel questions a party or a witness, part of their verbal strategy is to unsettle their interlocutor. A common rhetorical device is to attack the credibility of the person (*ad hominem*). In these instances, it is not uncommon that the interpreter, in violation against praxis, avoids speaking in the

first person and instead says 'the prosecutor says', in this way distancing him/herself from the aggressive discourse he/she is translating. Some researchers have analysed this behaviour on the part of the interpreter as a face-saving device, that is, not to appear to be the aggressor (Jacobsen 2008; see also Pöllabauer 2004). This is another example of the avoidance strategy discussed earlier.

Another problem facing the interpreter is that aggressive communicative acts are not always verbal, but may be expressed through gestures, facial expressions and prosody. The latter strategy of impoliteness has been studied by Jonathan Culpeper (2005), taking as an example a television talk show where the host treats her guests in rude and offensive ways, but apparently to the amusement of the audience. Faced with the task of translating a discourse that is clearly sarcastic due to prosody and other non-verbal cues, the interpreter will have to find a way to convey the same tonality either through prosody or through words. In the latter case, it can be argued that the interpreter is doing more than 'just translating', yet anything else would be a mistranslation.

5. Conclusions

Our pilot study shows that there are significant knowledge deficits among users of interpreters that can affect the conditions for interpreting and also for legal certainty when an interpreter is present. The individual courts appear to have very different knowledge concerning legal interpreting, that is, varying competence as users of interpreting. Although interpreting in courts follow the rules for interpreting formulated by the Swedish Legal, Financial and Administrative Services Agency, in practice there is not one praxis regarding interpreting—for instance regarding how to deal with idioms and non-verbal language (gesture, facial expressions, body language) which resist direct translation, and the possibility for the interpreter to comment on culture specific phenomena, and how these factors weigh into the proceedings. Based on our pilot study we cannot judge how serious consequences this has in practice, but it seems to affect the possibility to give equal conditions to different cases, which challenges legal certainty. This should be studied in more detail. In the same way, it is evident that the shortage of both authorised and authorised legal interpreters is at odds with the requirement to use authorised interpreters. This also raises questions that have consequences for the quality of the proceedings and legal certainty. This is primarily a political question how to support the education and training of interpreters and also to give professional interpreters better working conditions, also economically. Other knowledge deficits that the study has revealed relate to the functionality of media technology in the court room, in particular limitations to the video conference systems in place. The interviewed interpreters tell about poor equipment that negatively affect their work. Taken together, our pilot study has revealed strenuous working conditions for interpreters, and several interpreters voice criticism against the way the system with contracted interpreting agencies works, in particular the courts' lack of procurement competence.

Our explorative study shows that emotional work is involved in the process of

interpreting – both by the interpreter and the user, and also for wider purposes than just translation, which indicates that feelings and emotional expressions are attributed greater significance in interpreting practice compared to the official codes/guidelines for interpreting. There are different kinds of emotional strategies, for instance to tone down emotions, using a calm appearance and voice and/or use avoidance as a strategy to cope with stressful working conditions. The interviewed interpreters also relate how they need to recuperate after stressful or even traumatic emotional experiences in court. The emotional work in the process of court interpreting needs to be explored further and from various perspectives, e.g. gender, age and different forms of judicial procedures.

In a broader perspective, our interview study of interpreting in courts raises a more general question of the relation between law and society, primarily as a socio-cultural phenomenon. Although Sweden in many respects always has been a multicultural society, there exists today a different perception of this than in the period of nation-building. The cultures that today meet in Sweden are also more disparate than in the past and more languages are spoken. If Sweden today is becoming a more multicultural and multilingual society, how does this come together with the principle that it is 'Swedish' values that are normative for the legal system and that it is Swedish that is spoken in Swedish courts? There appears to exist a contradiction between the ambition to build a multicultural society and the mono-culturalism prevalent in the Swedish legal system. One can ask if the legal system should not in a better way reflect the society of which it is a constituent part. One can for instance compare with American conditions. Some states accommodate multilingualism in society by allowing for bilingual court proceedings (Berk-Seligson 2002, 54-96). Is such a development possible—and desirable—in Sweden and in other Nordic countries? In the near future, more and more judges—both professional judges and lay judges—will have a mixed cultural background and speak other languages than Swedish, which raises the question of how they should make use of contextual interpretation, and to what extent they may make use of their own linguistic competence during a proceeding.

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