

# The Role of the Court Interpreter in the Spanish Legal System. Where we are and where we should be

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The topic of court interpreting is gaining in importance throughout Europe. The creation and development of the European Union have brought about a very real multilingualism in all of the Member States. There is no doubt that there will be a growing number of both civil and criminal cases throughout Europe in the next several years that involve individuals with different linguistic backgrounds. Indeed we need go no further than Spain to find a similar situation on a smaller scale. In Spain, the active promotion of the regional languages that co-exist with Spanish creates a situation in which members of those language communities may very well wish to address a court of law in the language they consider to be their first or strongest one and that might be Catalán, Bable, Gallego or Euskera. As the Minister of Foreign Affairs stated last year on the occasion of the 150th Anniversary of the Royal Order which created the figure of the sworn interpreter in Spain, today's reality creates a situation in which *constantemente se requieran los servicios profesionales de traductores e intérpretes para todo tipo de actuaciones judiciales, notariales, administrativas y académicas*.<sup>1</sup>

There is no question that protecting and guaranteeing the constitutional and legal rights of all the people is a sign of a modern and progressive nation. One of these rights in Spain and in most Western countries, is the right to due process during legal proceedings. Due process entails an individual actively participating in his/her own defense. When an individual does not possess sufficient knowledge of the language of the court to do this, a language interpreter must be provided. Moreover, that interpreter should be able to carry out accurately and completely the very important task that he is assigned to in the judicial system. In Spain today, there is no uniform process for identifying who is entitled to or could benefit from the services of a court interpreter, and there is no certification or testing procedure in place which

truly guarantees that the person called upon to serve as an interpreter in a legal setting has the proper qualifications, knowledge and skills to serve as what in Spain is considered to be an expert —*a perito*— in a court of law.

This paper has a three-fold purpose. First of all, to give an overview of the current situation in Spain today as we have been able to discern it including the legal foundations for interpreting services in the court system in Spain, how interpreters are currently chosen for work in the courts or in other legal situations and who is really doing the bulk of the interpreting in Spanish courtrooms today?

The second part of the paper will address to the linguistic and performance aspects of effective and adequate court interpretation. A description of the language of the court including topics related to register, para-linguistic elements and specialized terminology will be offered. Examples of context-specific interpretation problems will be presented and discussed including the effect of hedges, hesitations and gross mis-interpretations on the outcome of a trial. The implications of the institution of a jury system in Spain will be discussed and performance issues related to types of oral interpreting used in legal settings will be included.

The third topic of this presentation is the current status of the certification process for *traductores/intérpretes jurados* in Spain. How well does the exam for this certification predict an individual's ability to perform effectively in a court of law or in other legal situations? As many of you know, the current instrument is the object of much criticism and many professional translators and interpreters are calling for a serious reform of the process. Certainly, as regards certification of court interpreters, the fact that the current exam has no oral component makes it highly suspect from the start.

Before we begin with the three sections I have mentioned, I would like to take a moment to discuss the term *traductor* or *intérprete jurado*. I want to make it clear that my comments today will center on the functions of a “sworn interpreter” in the courtroom. It is my belief that a clear distinction should be made between individuals who are qualified to carry out written translations of legally binding documents that can be considered evidence in a court of law, and the person who acts as a language mediator during the oral proceedings of a court case or in other situations in which the task undertaken by the interpreter is basically oral such as depositions, arbitration hearings, arraignments, police interrogations, etc. Of course, one is no more important than the other. I simply wish to point out the obvious, and that is that the ability to translate a written document with the aid of the translator's tools—dictionaries, glossaries, equivalent documents, colleague's expertise when requested, and most importantly, time to investigate, revise and polish a translation— is quite different from the task required of an oral interpreter who must not only have a very complete knowledge of the language of the

court in both of the languages being used in the proceeding, but must also be highly proficient at simultaneous, consecutive and sight interpreting. A good court interpreter must be able to transmit the tone and intention of the individual giving testimony and maintain the register and style of the original utterance. Even minor variations can affect the outcome of a trial. So, as I mentioned above, it is important to understand exactly what aspects of the overall translating and interpreting task I am referring to in this presentation and the settings which are covered.

Our first task then is to try to describe the situation as it exists in Spain today. The legal basis for the use of interpreters in the courtroom can be found indirectly in art. 10 of the Constitution of 1978. It reads:

La dignidad de la persona, los derechos inviolables que le son inherentes, el libre desarrollo de la personalidad, el respeto a la ley y a los derechos de los demás son fundamento del orden político y de la paz social.

However, there is a more direct reference to the right to the use of an interpreter in the *Ley de Enjuiciamiento Criminal*. Section 2 of art. 520 of that code states that:

Toda persona detenida o presa será informada, de modo que le sea comprensible, y de forma inmediata, de los hechos que se le imputan y las razones motivadoras de su privación de libertad, así como de los derechos que le asisten y especialmente de los siguientes: (...) E) Derecho a ser asistido gratuitamente por un intérprete, cuando se trate de extranjero que no comprenda o no hable el castellano.

A judgment handed down by the Constitutional Court of Spain on the 25th of May, 1987, clarified the right to an interpreter applied to Spanish citizens as well. The decision ruled that the law was only constitutional if it included Spanish citizens as well.<sup>2</sup>

In articles 440 and 441 of the *Ley*, the provision of an interpreter to a language handicapped individual is once again guaranteed and those who can serve as interpreters are defined:

Si el testigo no entendiere o no hablare el idioma español, se nombrará un intérprete, que prestará a su presencia juramento de conducirse bien y fielmente en el desempeño de su cargo.

Por este medio se harán al testigo las preguntas y se recibirán sus contestaciones, que este podrá dictar por su conducto.

En este caso, la declaración deberá consignarse en el proceso en el idioma empleado por el testigo y traducido a continuación al español.(art. 440)

(art. 441) El intérprete será elegido entre los que tengan títulos de tales, si los hubiere en el pueblo. En su defecto, será nombrado un maestro del correspondiente idioma, y si tampoco lo hubiere, cualquier persona que lo sepa.

Si ni aun de esta manera pudiera obtenerse la traducción, y las relevaciones que se esperasen del testigo fueran importantes, se redactará el pliego de preguntas que hayan de dirigírsele y se remitirá a la oficina de Interpretación de Lenguas del Ministerio del Estado, para que con preferencia a todo otro trabajo, sean traducidas al idioma que hable el testigo.

El interrogatorio ya traducido se entregará al testigo para que, a presencia del Juez, se entere de su contenido y redacte por escrito en su idioma, las oportunas contestaciones, las cuales se remitirán del mismo modo que las preguntas a la Interpretación de Lenguas.

Estas diligencias las practicarán los Jueces con la mayor actividad.

It is clear to see that the legislators were trying to cover all possible circumstances in their specifications and that they considered this of high priority.

In Title III, Chapter 1, art. 231, sections 4 and 5 of the *Ley Orgánica del Poder Judicial* we find yet another reference to legal translating and interpreting, this time with a more specific mention of the linguistic diversity within Spain. These sections state:

Las actuaciones judiciales realizadas y los documentos presentados en el idioma oficial de una Comunidad Autónoma tendrán, sin necesidad de traducir al castellano, plena validez y eficacia. De oficio se procederá a su traducción cuando deben surtir efectos fuera de la jurisdicción de los órganos judiciales sitos en la Comunidad Autónoma, salvo, en este último caso, si se trata de CCAA con lengua oficial propia coincidente, o por mandato del juez o a instancia de parte que alegue indefensión.

5. En las actuaciones orales, el Juez o Tribunal podrá habilitar como intérprete a cualquier persona conocedora de la lengua empleada, previo juramento o promesa de aquélla.

Unfortunately, there is nothing specific in the *Ley de Enjuiciamiento Civil* and this is a serious omission. It is easy to imagine that in the next few years there will be many civil cases that will arise as a result of the new measures of commercial and civil integration of the members of the European Union. Many cases involving foreign individuals and corporations will be heard in Spanish courts. A good example is the locating of the European Agency for Trademarks and Industrial Designs in Alicante. It is believed that cases that arise from disputes in this area will be heard by Spanish courts. Therefore, it is quite likely that interpreters will indeed be needed in civil courts as well as in criminal proceedings.

Once it has been determined that an interpreter is needed in a legal proceeding, steps must be taken to locate a qualified individual. If the process used in Alicante to find court interpreters is an indicator of the type of practices being used today in Spain, the current system of ascertaining the expertise of

interpreters to work in the courts is quite suspect. It is often claimed that the Spanish legal tradition depends more heavily on the written aspects of a case than on the oral testimony and that's why written legal translations are more important than the oral interpretation that takes place during the course of a trial. There are two considerations to keep in mind as regards this point. The first is that the written record on which first instance decisions and appeal judgments are made often include a written summary of the oral testimony taken during a trial. When an individual appears before a judge, a series of questions are posed the answers to which are then summarized by the judge or clerk in written form. The witness is then read the transcript of the summary and asked to sign it as proof that it is a true reflection of his testimony. When an interpreter is used, his or her role is double. First of all, the interpreter must carry out a consecutive interpretation of the questions posed and answers given during the oral hearing. Then the interpreter must render a sight translation of the summarized version of his or her own interpretation to the witness, who must confirm the version by signing the document on which the summary is written. The witness may at this point make any correction to the written version he or she feels is necessary, which entails yet another interpretation at the oral level with the subsequent correction made to the written record and reinterpretation in the sight interpretation mode of the corrected version. Clearly this can get quite complicated and each new version lends another opportunity for imprecision or interpreter error.

The second issue as regards oral interpretation in the courts here in Spain has to do with the important fact that the jury system is being gradually implanted into the system. As most of you probably know, the Spanish constitution mandates jury trials, although there are several reasons why the jury system has not been implemented in Spain up to now. This new element in the judicial system will make the oral portions of a court case increasingly more important, and many of the elements involved in oral testimony which have prior to now supposedly not had an effect on the outcome of a trial—the decision of which was assumed to be based on written documents—will definitely play a larger part in the future. This will be discussed later in the paper.

Returning to the current system for selecting interpreters in Spain, there seems to be no uniform system in place. Here in Barcelona, your *Associació d'Intèrprets Jurats de Catalunya* has struggled since its inception with what they call *intrusismo* and *intrusos* or those who take on the responsibility of carrying out tasks that should be done strictly by qualified individuals. The problem is that the law itself does not limit those who can work as interpreter in the courts to individuals who have somehow proved that they are qualified to do so. As we saw earlier, the law allows for *cualquier persona conocedora de la lengua* to serve as interpreter in the courts. Now, this is undoubtedly due

to the fact that the law was trying to foresee situations in which a sworn interpreter was not available. However, what this lack of precision has produced is simply a system in which just about anyone can interpret in a court of law. I would like to use Alicante as perhaps an example of the worst case scenario. I am sure that there are areas in Spain where quality control is better but, at the same time, I am sure there are many other places in Spain where the situation is quite similar to Alicante. As part of my research, I went to the courthouse in Alicante to find out the procedures used to identify and retain interpreters for court proceedings. Both the court officials and the lawyers with whom I spoke told me that individuals interested in interpreting can leave in the court a business card which is then placed on a bulletin board. When the services of a court interpreter are needed, someone from the board is called. The method used to ascertain the level of proficiency of the prospective interpreter is simply to have a conversation in Spanish with the individual if he is not a native speaker of Spanish. If the individual converses well in Spanish, he is considered acceptable based on the assumption that he can speak his native language correctly. For native speakers of Spanish nothing at all is done to ascertain if the individual speaks the second language and it is impossible to know if that individual can carry out his duties adequately or not until the hearing begins, and then only the judge, lawyer or person testifying can clearly see that the interpreter cannot fulfill his obligation. This might be evident if the interpreter has to ask to have things repeated several times, if the person testifying asks for several repetitions or gives an answer that obviously doesn't respond to the original question posed, or if the person testifying makes it known through some type of gesturing that he or she cannot understand the interpreter. However, this would only happen in a case where the interpreting was so severely deficient as to render it unintelligible. In many cases, individuals who themselves are not highly bilingual would not be able to discern a faulty interpretation by a poorly qualified interpreter. Some examples of this will be given later.

Other methods used to locate interpreters are calls to the university, other institutions or individuals requesting assistance if finding an interpreter, or even using friends or relatives of one of the parties to the litigation. In no case is any type of documentation required and no formal test of any kind—written or oral—is administered.

It seems quite clear to me that there is a definite breach of ethics in a case in which the attorney for one or the other part to the litigation can provide the interpreter, and even worse yet would be having a relative or friend of one of the parts to a civil suit or of the defendant in a criminal case serve as an officer of the court. This would be in clear contradiction to the principle of impartiality that all interpreters should respect and that courts should guarantee.

So, it is quite obvious that there are serious problems with the system as it works today in many cities and in many courthouses around the country. Those courtrooms in larger cities that have a more structured and sensible approach to selecting court interpreters should serve as a model to the others, but, as we will see in the third section of this paper, even those courts that depend strictly on *intérpretes jurados* cannot be assured of the ability of those interpreters because the testing instrument used to certify them does not test for many of the abilities and skills needed to carry out the function of a courtroom interpreter.

The language of the court has been studied extensively by the legal profession itself and by linguists.<sup>3</sup> In countries such as the United States, the oral portion of trials is decisive in the outcomes, and the jury's perception of the credibility of the parties to a suit and their witnesses is based on both linguistic and paralinguistic elements that form the overall communication process that takes place in the courtroom. As we mentioned earlier, the impending introduction of the jury system in Spain will bring about the same kinds of concerns and issues that have been found to exist in the U.S.<sup>4</sup> It is clear to see then that when an interpreter is involved in a hearing or trial, he plays a key role.

In addition to the obvious complexity of the lexicon of legal English, we must add the extreme complexity of the structure and syntax found in what is known popularly as *legalese* and the great diversity present in virtually every courtroom during the different stages of a trial, especially when dealing with criminal cases. Several scholars have undertaken the task of classifying or categorizing types of language, often called registers or styles.

Joos<sup>5</sup> defined five different registers or styles in his study of English and addressed two modes: the written and the spoken. The five registers which he identified are frozen, formal, consultative, casual and intimate. Each register is characterized by a certain lexicon and set of structural and syntactic elements. Each of these registers can be found in the language of the court.

Frozen language would be the type of formulaic language used to give court rules and instructions that form part of every court proceedings such as stating the purpose of a particular session, swearing in witnesses, presenting motions and so on. This register is characterized by complex syntax and grammatical structure, and specialized and sometimes archaic lexical features.

The formal register is used in a court of law to inform. Examples might be when a judge gives instructions to a jury or informs a defendant of his rights. This register is also characterized by complex sentences with no grammatical omissions. The consultative style is described as the type of communication that takes place between strangers, i.e. between the judge

and the attorneys in a court of law or between the attorneys and witnesses. Joos states the two defining features of consultative style as:

*1) The speaker supplies background information —he does not assume that he will be understood without it..., and 2) the addressee participates continuously.*<sup>6</sup>

This speech is unplanned and contains more hedges, contractions, fillers and so on.

The casual style is used among friends and acquaintances. In a courtroom, a lawyer might intentionally use a more consultative style with a hostile witness and a casual style with a friendly witness to make the first more uncomfortable while putting the second at ease. This register is characterized by more ellipsis, slang and colloquialism.

The final style is labeled intimate. It is highly elliptic and depends on a high level of mutual inference of the complete meaning of an utterance based on shared knowledge or perceptions. The intimate register, while used in the courtroom on occasion, is the least frequent of all of the styles.

O'Barr and his colleagues have done the most extensive work on legal English per se.<sup>7</sup> In a study he did in 1985, he came up with some similar conclusions about legal language in particular and he made the following categorization of spoken legal language:

1. Formal Legal Language, which is most like written language and similar to Joos' frozen language in that it is complex syntactically and has a high level of technical or professional jargon,
2. Standard English, used by attorneys and expert witnesses in their exchanges with the court. It is usually grammatically correct and complete and has a somewhat more formal lexicon than everyday speech. This type corresponds to Joos' formal and perhaps consultative registers,
3. Colloquial English is closer to everyday usage and is employed by many witnesses. It corresponds roughly to Joos' casual style, and finally
4. Subcultural varieties which O'Barr calls the type of English spoken by segments of society with significantly different idiolects or speech patterns from those of the larger or majority segment.

Dr. Roseann Gonzalez in her well-known study called *The Register of Courtroom English* examined three dimensions which she called field, manner and mode of discourse and took a more pragmatic approach in her description. She also cites complex studies carried out by Charrow and Charrow, Gustafsson, Shuy and Sales, et. al.<sup>8</sup>

Legal English, or the language of the court, has all of the characteristics of written legal English and a few that are not usually found in the written mode. In addition to the categories or registers discussed above, other elements that come into play in oral testimony which would have to be interpreted



in a court of law are culturally bound terms, idiomatic expressions, metaphors and metaphorical expressions, regional variations, code-switching, slang and so on. All of this proves that the repertory of a court interpreter must be extremely broad and all-inclusive. He must be able to faithfully render the very formal and ritualistic language used by the judge and other officers of the court and also the basest street language that might be used by a witness. If a police officer testifies in formal English that the police station was informed of a crime in progress and then a police informant testifies that he tipped off the cops that something was going down, the interpreted version cannot be the same for the two although they are both referring to exactly the same situation.

Another important aspect in oral interpretation are some of the paralinguistic elements involved in the communication process. In oral testimony, false starts, hedges, hesitation and fillers affect the judge's or jury's perception of the credibility of the testimony being given. Consider the following exchange:

Attorney: Mr. Jones, can you tell the Court where you were at the established time of the crime on the night of January 4?

Mr. Jones: Well, uh..., I think I was at... no, sorry, I am sure I was at my mother's house.

If the interpreter renders *En casa de mi madre*, it is quite clear to see that while the version in Spanish does indeed answer the question —where were you?— it does not reflect the uncertainty that the false start and hedges indicate in the original response, and this is a potentially important indicator of the honesty or credibility of the witness and of his testimony.

Of course, simply incorrect or gross mis-interpretations do happen as well. In one important criminal case in Arizona the word *taza* in the phrase *me encadenaron a una taza* was rendered as cup —*they chained me to a cup*— when quite clearly the reference was to being chained to a toilet bowl.<sup>9</sup>

Another example involved a man being charged with sexual abuse based on a literal translation of the mother's complaint to the police. She said *Está molestando a mi hija*.<sup>10</sup>

If we add to the list of difficulties involved in interpreting in courtroom settings the added dimension of non-verbal communication, gestures and facial expressions and such, and perhaps some prosodic elements such as intonation and stress features which lend meaning, we find that the task of rendering the language of the court sounds almost overwhelming. As González correctly states after discussing many of these elements in her book:

All of these aspects of courtroom discourse must be taken into consideration by the court interpreter, who has a duty to conserve not only the precise meaning of the SL message, but also the exact register, style, and tone. Thus, the interpreter faces a

formidable task, first in deciphering the meaning of sometimes obscure, convoluted, or deliberately vague language, and secondly in conveying that message in exactly the same manner as it was spoken.<sup>11</sup>

This brings us to the next important topic involved in guaranteeing adequate interpreting services in the courts. Assuming an individual has sufficient mastery of the two languages he or she will be using in a court setting to meet all of the aforementioned criteria of knowledge, there is still the issue of the performance of the oral interpreting task. In a court of law, an interpreter may be called upon to perform all three types of oral language transference. The most obvious is perhaps the consecutive mode of interpreting which would be used to mediate between the court and someone who is testifying in a question-answer session typical of court appearances. During this testimony, an interpreter might very well be called upon to render a sight translation of a written document being presented as evidence so that a witness or one of the parties to a suit can be asked questions regarding that document. As was stated earlier, in many Spanish court proceedings, a written summary of testimony is drawn up on the spot which must then be rendered to the person offering the testimony for his approval and signature. Simultaneous translation is somewhat less common in Spanish courtrooms although it is already widely used in American courts. There is some discussion about just what services should be provided by the court and paid for by the judicial system. The question centers around whether an interpreter is made available for the court or for the defendant or party to a lawsuit who is not proficient in the language of the court. If the assumption is made that the interpreter is there to facilitate the court's functioning, the interpreter is often required simply to provide information to the court that the court does not understand. This does not include interpreting for a defendant all of the proceedings that are going on during the trial. On the other hand, when the assumption is made that in order to guarantee full due process to a defendant he/she should have access to the entire trial and everything that is being said, the interpreter would then be charged with simultaneously interpreting everything that transpires in the courtroom to the defendant. The manner in which this would actually be carried out depends upon the equipment available in a given courtroom. If advanced sound equipment is available, the interpreter can be seated in any part of the courtroom and quietly render her interpretation into a microphone and the defendant would have an earpiece through which he would hear the interpretation. If that type of equipment is not available, the interpreter usually sits to one side of the defendant and whispers the proceedings that are taking place to him or her. For these reasons, a court interpreter must be proficient in all three modes of oral interpretation in addition to being well versed on the language of the court in both languages in use.

This brings us to the third and final topic to be discussed in this presentation, that of how to identify individuals who are capable of correctly carrying out these complex and taxing tasks. Many countries are studying this issue right now. Germany is currently revising its certification procedures and trying to define the necessary credentials for court interpreters. Australia is working on a certification instrument for its judicial system. Canada, with a long tradition of bilingualism, continues to explore regionally how to insure high quality interpreting not only in its courts but also in many of its government offices and agencies that serve the public. And of course, in Spain, we all know that there is a procedure in place for certifying legal or sworn translators and interpreters, the exam for the title of *traductor/intérprete jurado*. It is about this exam in particular that we would like to make several comments.

First of all there seems to be some confusion as regards exactly which label should be used for those individuals who pass the exam. Does the exam certify translators, interpreters or both? No one seems to know and the two terms are often used together with a slash or a hyphen (as I did above) or are considered to be interchangeable. However, at some levels there seems to be an awareness of the need to differentiate them and even some of the officials involved in administering the test realize that some clarity is needed. One of my colleagues at the University of Alicante took this year's exam in German and when she asked why there was only a written exercise if the exam was for sworn interpreter, the examiner told her that the test was for sworn translator, not for sworn interpreter. We do not know with what authority he made that statement during an exam session. Perhaps he was simply giving a personal opinion, but the question and the answer indicate the confusion that reigns today in this regards.

From our perspective, it is quite difficult to see how the exam, as it stands today, could possibly be considered a tool for qualifying someone to do oral interpreting. The reasons are quite obvious. The exam is completely written. It consists of two selections which must be translated from another language into Spanish; in other words, it requires only a passive knowledge of the *foreign* language as candidates are not even required to render a written text into that language. There is no evidence that there are any specific and identifiable criteria developed prior to the selection of the texts or the elaboration of the exam to guide the exam preparers in their task. This can be evidenced by the fact that the length of the exam varies from year to year and from language to language although the time limitations do not. This lack of criteria also seems to exist in terms of evaluating the exams. When asked about these criteria, an official from the Ministry of Foreign Affairs said, and I quote:

No hay nada. La traducción debe estar bien hecha en cuanto a la terminología, a la ortografía, etc. Hay un amplio criterio...<sup>12</sup>

The exam, as it currently stands, is completely inadequate as a tool for measuring the oral interpreting skills needed to be a good court interpreter. This is not to say that many of the individuals who have passed the exam are not capable of being fine court interpreters; it simply is not true, however, that the current format of the exam can guarantee that to be so.

A reliable exam must be criterion and performance referenced. This means that the test model should reflect the real activity it is modeled on as closely as possible in order to ascertain both the knowledge and the skills of the candidate. The work of an oral interpreter is extremely complex. One author defines it in the following manner:

The interpreter's output is a multidimensional speech phenomenon which, unlike the other types of translation, depends on a much larger number and variety of linguistic, paralinguistic and extralinguistic factors.

As regards evaluating this function, she continues:

Therefore, in order to capture the larger number of variables and attain a higher rigor of analysis, it is necessary to elaborate a hierarchical system of sets of parameters which will take care of the multifarious dimensions of the input and output in simultaneous interpretation.<sup>13</sup>

Criteria in terms of language ability must be defined prior to the elaboration of the exam. If there are not clearly defined areas of competence available to the instrument designers from the outset, they will not be able to design an appropriate tool by which to measure specific knowledge. This is known as criterion-referencing. In his article entitled *A pragmatic approach to criterion-referenced foreign language testing*, Arthur Hughes writes:

A criterion-referenced test is one that is deliberately constructed to yield measurements that are directly interpretable in terms of specified performance standards.

...this means that performance standards must be established prior to test construction and that the purpose of testing is to assess an individual's status with respect to these standards.<sup>14</sup>

These standards must be taken into account when deciding exactly what format the exam will have and in determining before administering the exam how it will be marked, what the range of acceptable responses will be, and what a passing score will be. While exams of this type are not completely objective, they should not be completely subjective either, and the criteria used for marking them should not be simply a *good translation*.

For oral exams, there is the aspect of performance of oral interpreting tasks as well. Therefore there must be performance-referencing in addition to criterion referencing. In his book *Language Testing: A Critical Survey and Practical Guide*, David Baker, Testing Coordinator for the University

of Bahrain English Language Unit, defines performance-referencing in the following way:

A direct performance-referenced test involves near-simulation of some future or potential activity and results of the test can be used to predict the candidate's ability to perform that or similar tasks in the future.<sup>15</sup>

These are concepts that should be adopted for the sworn translator's or interpreter's exam, and especially for any exam that is going to certify individuals to work in a court of law. A study of the language of the courts must be carried out to identify a set of representative lexical and structural items that could serve as a source of material for an exam. A study should also be done as to the most frequently occurring types of cases in which interpreters are used in Spain so that items related to those areas can also be included. This research can also be used to design university programs or special courses for the preparation and training of court interpreters.

I would like to conclude by quoting Dr. Joshua Fishman. He wrote a very personal account of his early childhood experiences in New York interpreting for his grandmother who spoke only Yiddish. Through his early experiences he became aware of the unique responsibility of the oral interpreter. His words are quite pertinent to our topic and should be heeded. He says:

...translating and interpreting are not at all identical processes and that the latter is fraught with many more dangers of third party influence (less euphemistically put, interpreter influence) than is the former. The professionalization, regulation and certification of the interpreter role constitutes a modern bureaucratic effort to overcome the potential abuses of the interpreter role of which I had already become dimly aware at the tender age of three or four. The abuses of which I speak are societally patterned, of course, and have to do with the inherent exploitability of the societally weak by the societally strong. As a result, they are all the more in need of societal supervision and correction. (...) ...ultimately we are judged —as individuals, as societies and as nations— for the help we give to those that cannot help themselves.<sup>16</sup>

## NOTES

1. SOLAGA MADARIAGA, J. (1993) «Mensaje del Ministro de Asuntos Exteriores con Ocasión del 150 Aniversario de los Intérpretes Jurados», A: Boletín Informativo de la APETI.
2. Decision #74/1987, 25 May, of the full Constitutional Court ruling on appeal #194/1984 which claimed the article was unconstitutional, stated that this section was indeed constitutional if it is *interpretado en el sentido de que no priva del derecho a ser asistido*

- por intérprete a los ciudadanos españoles que no comprendan y no hablen el castellano.* (Supplement to the BOE #137, 9 June 1987.)
3. For English see the work done by Charrow and colleagues including «Linguistic theory and the study of legal and bureaucratic language». A: OBLER, L; MENN, L. (1982) *Exceptional language and linguistics*. New York: Academic Press, p. 81-101; *Legal language: What is it and what can we do about it?* Unpublished manuscript, American Institutes for Research and Center for Applied Linguistics, Arlington, VA, USA; and «Characteristics and functions of legal language». A: KITTREDGE, R.; LEHRBERGER, J. *Sublanguage: Studies of language in restricted semantic domains*, p. 175-190; see also LIND, CONLEY, ERICKSON; O'BARR (1978) «Social attributions and conversation style in trial testimony» en *Journal of Personality and Social Psychology*, 36 (12), p. 1558-1567; VALDES, G. (1986) «Analyzing the demands that courtroom interaction makes upon speakers of ordinary English: Toward the development of a coherent descriptive framework». A: *Discourse Processes*, 9 (3), p. 269-303.
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