Non-standard court interpreting as risk management

Anthony Pym (Universitat Rovira i Virgili)
Judith Raigal-Aran (Universitat Rovira i Virgili)
Carmen Bestué Salinas (Universitat Autònoma de Barcelona)

Pre-print

Published as:
Pym, A., Raigal-Aran, J., and Bestué Salinas, C. (2023). Non-standard court interpreting as risk management. In C. Zwischenberger, K. Reithofer, and S. Rennert (2023). *Introducing new hypertexts on Interpreting (Studies)*, pp. 107-124. Amsterdam and Philadelphia: John Benjamins.

Abstract

Most codes of ethics stipulate that court interpreters should give verbatim renditions, should not have side conversations with the witness or the defendant, and should use the alien-I. However, when we find these maxims flouted by outsourced interpreters working in trials in Barcelona, the observed practices may be considered non-standard and yet constitute an expected and even accepted social practice. Here we attempt to understand why interpreters sometimes abandon all illusion of equivalence, why side-conversations occur in certain hearings, and why interpreters sometimes speak in their own voice, becoming direct participants in discursive exchanges. Risk analysis enables us to model ways in which these practices can ensure that cooperation is achieved and time is not wasted. In one case study, side conversations between the defendant and the interpreter serve to inform the defendant of the possible consequences of a plea. Such a practice nevertheless requires that the officers of the court trust interpreters to exceptionally high degrees. In a second case study, disagreements between the judge and the interpreter, technically over issues of translation equivalence, lead to distrust in the interpreter to the point where cooperation becomes impossible. In this instance, a non-standard practice that might be efficient elsewhere leads to communicative failure. It is thus found that non-standard interpreting can be efficient when the participants' risk-management strategies are aligned and trust is operative; on the other hand, it can also convert trivial differences into high-stakes disputes that throw risk-management strategies out of alignment.

Keywords: court interpreting, ethics of interpreting, risk management, trust, non-standard interpreting

Introduction

What constitutes quality in interpreting? Most scholars these days would hesitate before giving any lapidary answer, since quality very much depends on the kind of interpreting involved and the purposes for which it is being done. One of the long-term contributions that Franz Pöchhacker has made to Interpreting Studies is a consistently empirical and contextual approach to quality. From his early work applying Skopos theory to conference interpreting (1994), where the conference itself becomes a macrotext, through to his empirical studies on what interpreters themselves say and how others perceive interpreting (2000, 2001),

Pöchhacker consistently underscores the need to take into account "both the product and the service aspects of the activity of interpreting" (2001: 422-423). What remains to be determined is whether the considerations of service can effectively trump the norms of products.

Ortega Herráez (2013) usefully contrasts the contextual approach with the more product-based concept of quality proposed by Collados Aís and Gile (2002), who summarize previous research. Despite their ostensible openness to variable and context-dependent notions of quality, Collados Aís and Gile actually give pride of place to criteria that can indeed be assessed on the basis of product, including "la fidélité informationnelle" ("accuracy of information"), intonation, accent, fluidity, and then something called "le rôle de l'interprète dans l'interaction" (2002:8), which is easy to render as "the interpreter's role in the interaction" but is actually much harder to evaluate. That is the sticking point of interest. If one is going to prioritize accuracy on many levels, how much scope can be given to the interpreter's pragmatic role?

Collados Aís and Gile tellingly address this question by summarizing a previous study by Diriker (later published in 2004): "l'interprète perturbe parfois le déroulement de la conférence. Il arrive notamment qu'il fasse des commentaires, et parfois de manière telle que les auditeurs ne savent pas nécessairement s'il parle en son nom propre, ou au nom de l'orateur" (2002:8). To translate: "the interpreter sometimes upsets the flow of the conference by making comments in such a way that the audience might not know whether the interpreter is speaking on their own behalf or in the name of [the start-language] speaker". Here we will call this a problem of "voice", to be understood as a question of attributing opinions – a criterion for "authorship" in Goffman (1981:146) – independently of whether or not the interpreter uses the linguistic first person. The strange thing is that, if we go back to Diriker's actual study of two interpreters working at a conference on philosophy, we find her breaking open the illusions of what actually happens in interpreting, challenging the mythologized identification of speaker with interpreter, and referring instead to the "constant negotiation and re-negotiation of this situational relationship" (2004:147). And she does this in quite positive terms. Despite the apparent openness and ostensible empiricism on all sides of this discussion, the distributions of value descriptors conceal deep-seated ideological differences.

Here we are going to look at some radically non-standard interpreting practices found in video recordings of court proceedings in Barcelona – so non-standard, in fact, that Diriker's intervening interpreters look relatively anodyne. We have instances of interpreters speaking without any corresponding prior utterance in the other language (thus producing "non-renditions", cf. Cheung 2017; Vargas-Urpi 2019), interpreters not interpreting what has been said (where silence becomes a kind of non-rendition), interpreters engaging in prolonged two-way dialogues with the defendant, and much more. For any standard product-based concept of quality, these practices would be clearly non-professional and thus reprehensible. But are they really so negative in pragmatic terms? Can they possibly find some justification in terms of situation management?

If we go back and look closely at the reasons why Collados Aís and Gile (2002) do not condone interpreters speaking in their own voice, it is not simply because the shift is non-standard or norm-breaking. It is because the possible attribution of opinions to the interpreter could upset the flow of the discursive exchange and confuse the listener. That amounts to saying that such interventions are not good because they are unexpected in the particular *context* concerned. Yet what happens when such interventions occur with regularity in a particular context? What are we to say when they are not only expected but also appear to have an agreed-upon discursive function? Can interpreter interventions still be considered outcasts from the land of professional quality?

Can risk analysis help?

The application of risk analysis to translation and interpreting has its origins in the deconstruction of the equivalence paradigm (cf. Wilss 2005; Pym 2015). Once there are serious doubts about the unequivocal nature of what is to be rendered, one adopts a hermeneutic position, where everyone potentially has the right to their own rendition. This does not mean, however, that anything goes. The question of evaluation simply shifts to the target side, where one considers the extent to which the rendition facilitates cooperation between the various parties, including the interpreter. A particular rendition might thus be wrong not (just) because it is an inaccurate representation or non-standard language usage, but because the inaccuracy or language mistake has negative effects on the cooperative relationship between the parties. For example, we will see below an instance where the verb "to rob" is used incorrectly ("to rob a phone") but all the parties nevertheless understand what is meant and there could thus have been no impediment to cooperation.

This kind of analysis is of interest here because it means that some linguistic errors will be of little consequence ("low-stakes"), others may have more major effects on cooperation ("high-stakes"), and the difference between the two depends on the context, not on the start utterance as such. If we now posit that what is at stake is the risk of non-cooperation, it is easy to see how some renditions will be low-risk in that they make things clear and avoid extremes, while others may incur higher risks by taking chances with very specific terms or figurative language, for example. In general, one finds that translators and interpreters tend to be risk-averse, in keeping with the general tendencies formulated by Levý (1963/2011; cf. Shlesinger 1989), although they may also transfer risk to other parties, for example by referring to glossaries or consulting with clients (so the compilers of the glossary or the clients effectively take on the risk), or they may seek trade-offs between different kinds of risk (Pym and Matsushita 2018).

This general approach enables us to look at interpreters' performances and play the devil's advocate, as it were. If cooperation is achieved in context, then a risk-based assessment would tend to overlook or forgive many of the renditions and discursive practices that would be considered erroneous in the dictionaries and reprehensible according to the codes of ethics. Could it be that only a few mistakes really matter? What is actually lost? In some cases, this approach might also allow us to understand why interpreters sometimes do not interpret at all (Pym 2016).

In the analyses that follow we will not have occasion to go into many nuances of risk strategies. In fact, our main concern will be with the more basic risk that all translators and interpreters run, namely that of losing credibility (Pym 2015). When the various parties fail to trust the mediator, then all the other ways of managing risk tend to be to little avail. We thus run up against the ruse of trust (Pym 2004) in two flavours: practices that should otherwise have negative consequences may in fact not do so, simply because the interpreter is trusted, and alternatively, renditions that should involve low stakes and not incur any major risk can nevertheless trigger distrust, and all is lost.

The way these concepts fit together will be illustrated here through two examples. The first is a case of successful cooperation, the second is not.

Case 1: Get out of jail free?

The following transcripts are from a corpus gathered and transcribed by the research group Mediation, Interpreting and Research in Social Environment (MIRAS) based at the

Universitat Autònoma de Barcelona (https://pagines.uab.cat/tipp/en). The data are part of the research project *The quality in translation as an element to safeguard procedural guarantees in criminal proceedings: development of resources to help court interpreters of Spanish - Romanian, Arab, Chinese, French and English* (FFI2014-55029-R, 2015-17) financed by the Spanish Ministry of Economy and Competitiveness (cf. Bestué 2018; Orozco-Jutorán 2018; Arumí Ribas and Vargas-Urpí 2018). Within the scope of that project, the material serves as evidence of current practices, both good and bad, and has thus been used in the development of training materials in accordance with the accepted codes of ethics (Bestué 2019). The purpose of that kind of analysis, which steers students away from anything non-ethical, is thus superficially different from the approach adopted here, where we try to understand *why* certain non-standard practices occur. A selection of transcripts has been further analysed by Judith Raigal-Aran as part of her doctoral thesis at the Universitat Rovira i Virgili, specifically with a focus on the way trust and distrust are formed in the interactions. Here we seek to add risk analysis to those parallel treatments of the material.

The cases in question are criminal trials in which English-speaking defendants are charged with theft and are asked to plead innocent or guilty. Since the value of the stolen items – a wallet in the first case and a mobile phone in the second – is more than 400 euros, this is not considered a minor misdemeanour. The defendants have been offered a plea bargain where if they say they are guilty, their prison sentence will be suspended (because it will be less than two years) but they will be obliged to leave the country for at least seven years. On the other hand, if they plead innocent, the trial is held but the defendant risks receiving a more serious sentence. Thus, in what looks like a Catch-22 situation, if the defendants say they are guilty, they will be released from jail.

In a judicial system that is chronically overworked and suffers delays to the point that rights are sometimes difficult to guarantee fully, there might appear to be a pragmatic institutional interest in having the defendant plead guilty, walk out of prison and leave the country. This would be the sense of the plea bargain. But this at the same time introduces a certain complexity that the defendant has to grasp.

The situation is further complicated by the fact that the interpreting services have been outsourced to private companies, making it difficult to control the linguistic quality of the mediation and thus also making it difficult to assess how much the defendant has understood. The judge, however, has to ensure that there is a true plea: there can be no suggestion or suspicion that a defendant is pleading guilty simply to be released from prison or because the situation has been misrepresented by an interpreter. So there are actually two communication problems to be negotiated here: first, the defendant *must be seen to understand* the consequences of each plea, and second, the judge *must be reasonably sure that the defendant understands* those same consequences. Both those understandings require mediation by interpreters. If the interpreter's renditions do not facilitate those understandings, the exchange will be uncooperative and will fail.

Here is the first excerpt that interests us, with the key items in italics:

1. Judge:	Entonces *le pregunta* si reconoce los hechos y si acepta estas condenas que pide la acusación [So ask him if he agrees with what has been stated and accepts the charges made by the prosecutor.]
2. Interpreter:	So, you accept the charges?
3. Defendant:	*To say that I robbed a wallet?*
4. Interpreter:	*Yeah*
5. Defendant:	*They, they have to free me?*
6. Interpreter:	*Yep*.

7. Defendant: *...to... ye-- ...free me...?*
8. Interpreter: *Yep.*
9. Defendant: *So, I have said I robbed the wallet, they have to free me.* [Interpreter: *Yes*] *out.*
10. Interpreter: Sí, sí, sí, sí acepta, y tienen que dejarlo en libertad.
[Yes, yes, yes, he accepts, and he has to be set free.]
[…]
11. Judge: Sí, *dígale que esto no es un negocio, es decir, que no porque reconozca los hechos, se condiciona que se le deje en libertad*. Una cosa es que haya una conformidad, y que luego se resolverá su situación personal, que si reconoce los hechos es porque los ha cometido.
[Yes, tell him this is not a negotiation or deal. That is, he will not be set free just because he says he accepts the charges. Agreeing with the charges is one thing, and his personal situation will then be sorted out later. If he accepts the charges, it has to be because he has actually committed them.]
12. Interpreter: If you say that you did that, it means that you accept the charges, and you accept that you did this crime. Okay? It doesn't mean that, because you accept that, you will be free. It doesn't mean that. *But, what your lawyer told you before, this is a negotiation what she had, with the lawyer, with the prosecutor, okay?*
13. Defendant: Okay.

[EN4:88-123]

The first point of interest here is that, from 2 to 10, there is a dialogue between the interpreter and the defendant, in what might roughly be called a "side conversation" (one might also call it a "monolingual dialogue"). This practice is generally not condoned by the various codes of ethics (here we refer to APTIC 2016 as the most applicable code), for several reasons: interpreters should not do the work of lawyers; their exchanges should be transparent to the court (here only the *outcome* is rendered into Spanish, in 10); and they should not appear to be giving special help to a party with whom they have at least linguistic affinity. The whole side conversation might thus be considered non-standard on at least those counts (cf. Vargas-Urpi 2019). We note, however, that the footing adopted by the judge from the beginning is in the form of imperatives addressed to the interpreter ("Ask him…", "Tell him…"), referring to the defendant in the third person. This might be seen as instructing the interpreter to complete an action rather than to convey direct speech. True, the footing adopted by the interpreter is then that of direct speech: there is nothing like "The judge says…". At the same time, the judge's explanation in 11 ("Tell him this is not a negotiation or deal…") seems to describe a communicative aim rather than pronounce an utterance to be rendered literally. That is, the judge might be seen to be accepting precisely the kind of side conversation that happens from 2 to 10, and in fact does accept it without comment. Further, in 11, the judge would appear to be inviting yet another side conversation with a view to achieving the second communicative aim: she needs a guarantee that understanding has been achieved.

If we then look at how the interpreter responds to the implicit invitation, we find that there is a summary of the judge's position (in 12) but then a completely new reference to "what your lawyer told you before", which here comes from the interpreter, not from the judge or the defence counsel. We infer that the defendant has had a previous discussion with his counsel about this. The interpreter's addition could thus be a well-intentioned reminder in a potentially confusing situation. That said, the interpreter then adds that "this is a negotiation that she [the defence counsel?] had" (12), a statement that would appear to contradict the

judge's initial instruction: "esto no es un negocio" (11), this is *not* a negotiation or deal. So perhaps not all the complexity is reduced.

As well-intentioned as the interpreter's intervention may be on this occasion, it runs up against at least one point of principle. The defendant's preparatory discussions with the defence counsel do not oblige him to plead the same way once in court – he is free to change his mind. The interpreter's reference to the previous discussion risks compromising that freedom, effectively imposing the personal opinion that there has been no change of mind, and thus making it harder for the judge to determine the judicial validity of the defendant's plea.

The crossed wires in this last section are such that the defendant has quite possibly not entirely grasped the logic of the plea, at least not beyond the equation of a confession of guilt with being set free. Be that as it may, the judge has visibly taken steps to spell out the logic; she therefore accepts that the necessary understanding has been achieved. In terms of interpersonal cooperation, the exchange might be deemed successful. There may not be deep understanding or assurance on all points, but pragmatic *understandings* have certainly been reached.

So what is happening with risk management here? To enter that kind of analysis, it helps to view the interaction from the perspective of each participant in turn and to ask what communicative failure might be for them. This means applying a few theoretical concepts to develop a falsely rationalist decision model that can account for the exchange. It does not, however, constitute any truth of what the parties were actually thinking, since we have no access to their inner minds and no guarantee that they are operating as rational egoists. The exercise might be instructive nevertheless:

For the judge, the major negative result would be for an innocent defendant to enter a guilty plea simply in order to be set free and for this to become known. She deals with this risk by explicitly spelling out the logic (in this she is risk averse) and then instructing the interpreter to convey that logic (she uses risk transfer). If the plea has not been understood, then that is due to whatever happened between the interpreter and the defendant. For that reason, it could be in the judge's strategic interests to accept and even seek the side conversation, without delving into its intricacies. What interests the judge is that the interpreter extracts the information required for the trial to continue.

For the defendant, it might be assumed that the major negative result would be serving a prison sentence. Here we do not know whether he is innocent of the charge, so we construct two abstract positions (several others are also possible). First, if he is guilty and has no evidence that might conceivably win his case in court, it is in his immediate interest to plead guilty, accept the suspended sentence, and be set free – he would at least avoid the risk of a heavier sentence. That would be a risk-averse decision. On the other hand, if he is innocent and does have some evidence, he might plead innocent and hope that the evidence presented will favour him. That would be a risk-taking strategy. But since he does *not* choose that path, he may be in a third position: if he is innocent but has no strong evidence in his favour, then he could once again plead guilty in order not to risk the trial and to gain freedom (albeit with a conditional sentence and an obligation to leave the country). That is, independently of whether he is innocent or guilty, the odds suggest he should take the deal (even when it is not presented as a deal). That would be a rational trade-off: the certainty of getting out of jail has probably more weight than does the chance he might be found innocent in the full trial; the guilty plea is thus the lesser of two evils. In all, whether innocent or guilty, one suspects the defendant has few rational interests in digging deeper into the legal niceties of the plea.

For the interpreter, failure would be for the judge and the defendant not to concur on the validity and viability of the plea, whatever it may be. The strategy is thus partly risk-averse here, intervening in a side conversation to ensure a plea that will suit the interests of both parties, but also risk-transferring, since the exact logic behind the plea is supposed to have been made clear by the defence counsel, to whom the interpreter refers. From the perspective of ensuring the defendant's rights, one might add that the interpreter is running the extreme risk of compromising justice by referring to the previous conversation. The interpreter nevertheless seems oblivious to this risk, perhaps because her intervention is in a language to which the judge and the defence counsel are technically not privy. In fact, her risk-taking only becomes fully visible when we have access to the recording, in another place and time.

Seen in these terms, and without knowing whether the defendant is really innocent or guilty, we can model how the interaction might manage the major risks involved.

We note in passing that connecting cogs of the risk-management model can only work if they are greased by several instances of trust. First, most obviously, the judge implicitly trusts the interpreter to carry out the side conversations in English, in a way that is not fully disclosed to the whole court. Second, the interpreter similarly trusts – perhaps more precariously – that the judge will allow the added exchanges to take place, including the final reference to the deal with the defence counsel. And third, the defendant has to trust that, in the case of a guilty plea, the offer of conditional release will indeed be carried out, or in the case of a plea of innocence, that the full trial will be based on evidence and not power relations. Without at least these three instances of trust, the mutual risk management could not be achieved. Of course, we might also consider an instance of potential distrust: if the defendant is innocent and there is some substantial evidence in his favour, he may still distrust the legal system in which his claims would have to be made. It seems unlikely that the interpreter's mediation here has done much to reduce this defendant's potential incredulity in how the system works.

As for the legitimacy of the side conversations, we note that the code of ethics adopted by the Associació Professional de Traductors i Intèrprets de Catalunya (APTIC 2016) states the following:

> Professionals must respect the original contents and the specific purpose of the task requested by the client and should not take sides in the exchange of utterances or documents, *except in cases where mediation is necessary*. (APTIC 2016: article 4: Faithfulness and impartiality; italics and translation ours)

This sets up a rule-based expectation or norm (which we have regarded as "standard") and then allows for exceptions (which we have called "non-standard"). The same structure is used in a further explanation of the same point:

> In the course of the assignment, professionals shall not voice or write their opinions on any question or person, *except in cases where this is expressly requested of them*. (APTIC 2016: article 4; italics and translation ours)

So are we in the realm of justified exceptions here? Although it is not overwhelmingly clear that the interpreter has expressed any personal opinion, one might nevertheless argue that, in this particular case, the judge has indeed implicitly *requested* these extra-translational utterances ("mediation" is a good term for them) and that they could be justified as being both necessary and efficient. We should not rush to condemn them out of hand when it comes

to pragmatic situation management. And there is nothing here to suggest that justice has been compromised.

Yet not all non-standard practices achieve outcomes that seem as cooperative as the one we have just seen.

Case 2: Who speaks English?

In the above transcript, we saw the defendant formulate the idea that he had "robbed a wallet". The utterance was in no way an impediment to cooperation. Not so, however, in the following exchange from a different trial. Once again, the points of interest are in italics:

1. Prosecutor:	Bien, eh, pregúntele si es cierto que el 13 de junio de 2014, estaba en Las Ramblas con otras mujeres, y abordaron a dos, a dos chicos, y les *sustrajeron* los móviles. [Well, ah, ask her if it is true that on 13 June 2014 she was in Las Ramblas with other women and they approached two, two boys and took away their mobile phones.]
2. Interpreter:	Is this true, in the June, in eh, thir – eh, thirt(...) of June of 2014, you've been eh, walking the street in The Rambla, and you tried to, hmm, eh, *rob* a... eh... a mobile from a –
3. Defendant:	No. No.
4. Judge:	((to herself)) *Robar*. ((to the interpreter)) *Steal*.
5. Interpreter:	((to the judge)) *Not*.
6. Judge:	*No se dice – ¿cómo le ha dicho? Rob?* [It is not, how did you say it? Rob?]
7. Interpreter:	*No*.
8. Judge:	*Es que le ha da-- daduc-- ya, ya ha dicho "steal". ¿Qué es robar?* [It's that you said, yes, you said "steal". How do you say "robar"?
9. Interpreter:	*Rob*. […]
10. Judge:	*No, usted no le has – no le ha dicho la palabra "robar".* [No, you didn't – you didn't say the word "robar" to her.]
11. Interpreter:	Ahh. If you have *steal* a mobile from a man.
12. Defendant:	No, the police accuse me, they didn't seen, phone, nothing on me.

[EN5.1:260-285]

What is going on here? The prosecutor in 1 refers to the act of "taking away" (*sustraer*) someone's phone, using a non-technical verb that is unrelated to any specific crime or misdemeanour; the interpreter renders this as "rob" (2); the judge then questions the verb "rob" and insists on "steal" instead (4); the interpreter subsequently reformulates the accusation as "steal" (11). That would all seem fairly banal alignment if the terms were not occurring in some rather peculiar language spaces. We pause to consider what kinds of languages are in play here.

First, it is clear that the interpreter has non-standard English: "not" instead of "No" (5), "walking the street" (unintentionally suggesting prostitution?) instead of "walking in the street" (2), for example. The defendant is also using non-standard English: "they didn't seen, phone" (12). So English is ostensibly operating as a lingua franca between the two. That said, there is nothing here to suggest any problem of comprehension between them. When the

defendant says “no, no” (2), she is presumably declaring her innocence, not complaining about the verb “rob”.

The judge is also operating within the space of this defective lingua franca, although she visibly believes her English is better than the interpreter’s and the defendant’s. Hence her insistence that “rob” is wrong and “steal” is correct. She is technically right (you “rob” a place or a person; you “steal” an object), but the difference between the two verbs seems very unlikely to have much bearing on the proceedings here. Spanish law certainly has its codified terms, in Spanish, but the robust English being used between the interpreter and the defendant is not part of that language and has no need to be. What is at stake is not the meaning of the verbs as such but the risk posed to the credibility of the interpreter.

Once the seed of distrust is planted, it can quickly outgrow all else. A little later in the same trial, distrust underlies the following items in italics:

1. Prosecutor: Pregúntele si es cierto que hay – que dos chicos le *retuvieron* a ella hasta que llegó la policía.
   [Ask her if it is true that there is – that two boys stopped her from moving until the police arrived.]
2. Interpreter: Is true that yo – two men tried to hmm, eh... *detain* you [Judge ((to herself)): Detain?] before the police come?
3. Judge: ((to herself)) *It’s wrong*
4. Interpreter: Two men... eh, [Prosecutor: Hm-hmm] when this factor happened, or [Prosecutor: Hm-hmm] I don’t know happened, before the police came [Accusation: Yes], two men tried to *detain* you.
5. Judge: Es que “detained” tampoco existe. Señora intérprete, yo no sé su nivel de inglés, pero “detained”.
   [“Detained” doesn’t exist either. Señora interpreter, *I don’t know what your level of English is, but “detained”*.]

[EN5.1:328-352]

Once again, the judge seeks to correct the interpreter, this time with somewhat less justification. The Spanish verb “retener” (giving “retuvieron” in 1) is not a term codified in any law and might be rendered as “held” or “stop from moving” (as we have done above), which are also non-technical. A synonym in English could be “detain”, which is what the interpreter opts for, although one of the meanings of that verb is indeed technical: the police can detain you for questioning, without taking you into custody (which would be “arrest”). The judge appears mentally to translate “detain” back into the Spanish “detener”, which corresponds to the “police” meaning of “detain” in English. She thus sees fit to claim, incorrectly, that “detained” does not exist in English. In the interpreter’s defence here, we might repeat the basic claims made with respect to “rob” above: 1) the English verb “to detain” does exist and has other, non-technical meanings as well, 2) there is no indication that the defendant has misunderstood what is meant, and 3) any verb tied to a narrow legal sense in this particular court must be the one in Spanish here, not the one in English. None of these considerations surfaces, however: the judge has decided that “detained” is wrong and somehow inexistent. Even though the issue has no consequence at all for the exchanges between the interpreter and the defendant, it does clearly affect the judge’s trust in the interpreter.

In the rest of the hearing, these exchanges continue to the point where the judge openly questions not only the interpreter’s competence but also the business practices of the company that has sent the interpreter:

Judge: Lo que no puede ser es que a una persona que se le están pidiendo penas de prisión, haya aquí una persona que no sepa traducir bien. Y usted lo que tiene que hacer es si le encargan un trabajo que usted no está capacitada para hacer, pues decirlo y no hacerlo.
[What is unacceptable it that in the case of a person who is facing charges that involve a prison sentence, there is a person who does not know how to translate correctly. You have to make sure that if you are offered a job that you are not able to do, then say so and do not accept that job.]

[EN5.1:425-427]

At which point the judge orders that the recording be stopped.

This is a case where non-cooperation prevails because there is a complete breakdown of trust between the judge and the interpreter. That is by no means a frequent outcome: in Judith Raigal-Aran's analysis of 1,116 minutes of hearings (with English, French and Romanian as additional languages), only ten clear indications of distrust have been identified, and in only two cases has the status of the interpreter been modified as a result.

To avoid such outcomes, one might insist that court interpreters should at least know the basics of legal discourse, if not have entirely standard English. The risk analysis here might nevertheless tell a slightly different story:

For the judge, the major negative outcome would be that the defendant does not understand the charges sufficiently to make a valid plea. The more defective the interpreter's English, the greater this risk. So in questioning the interpreter here, the judge is in fact exploring the degree to which the trial is exposed to the risk of failure. Once her perception of that risk reaches a tipping point, distrust sets in as an extreme case of risk aversion.

For the defendant, who in this case claims to be innocent, failure would ensue if her arguments were not understood by the judge. Since she can take no independent action in this regard, she has no risk strategy as such. She would, however, have an interest in questioning or otherwise interacting with the interpreter if there were high-stakes communication problems.

For the interpreter, and for interpreters in general, maximum communicative failure is when credibility is lost. The interpreter thus seeks to maintain credibility by adopting the judge's corrections, as a risk-transfer strategy (if the verb is still wrong, it is the judge's fault). To do otherwise, perhaps to raise some of the justifications that we have formulated here and to insist that her competence was adequate for the task, would have been a high-risk strategy that would probably have led to an even more acrimonious loss of credibility. In the space of the courtroom, correct English is whatever the judge says it is – we have no example of a judge's linguistic competence being questioned in court.

These strategies meet in such a way that cooperation becomes unattainable, and the interaction fails. We can trace not only the cataclysmic effects of distrust, but also why it became almost inevitable.

We thus find that, even though the actual exchanges in which the interpreter is involved appear to be perfectly fine with respect to at least the linguistic considerations, the risk of losing credibility here trumps all other types of risk. Such is the ruse of trust.

For the record, the Catalan code of ethics does clearly state:

> Professionals shall only accept assignments for which they are competent and in the languages in which they are qualified or have been trained professionally. (APTIC 2016: article 3; our translation)

In this case, the interpreter goes on to indicate that she has studied English, although she does not refer to any actual qualifications. We also note in passing that there seems to be no applicable code of ethics that requires judges to work only in languages in which they are competent and qualified. The judge needs no qualifications in order to intervene in decisions about English.

Reconsider quality?

We have seen two instances where interpreters' renditions lead to radically different outcomes. In the first case, the side-conversation could be considered an efficient risk-management solution, even if legally tenuous. In the second, some non-standard linguistic choices lead to a highly inefficient set of exchanges that fail because of the high risks perceived. Underlying these examples, there are some general principles that bring us back to our initial concern with quality.

The first point to make is that the side conversations gain a certain functionality because they are implicitly invited and reach results that are in some way expected. The non-standard verbs, however, contradict what the judge *expects* to hear, which gives rise to distrust. The difference between the two cases can thus be attributed to two different norms for assessing quality. As Collados Aís and Gile (2002) correctly assume, all goes well for as long as expectations (or indeed risk strategies) are met. Yet one cannot assume that interpreter interventions are universally unexpected. In the second case, the two kinds of expectations are radically different and therefore clearly contextual.

Second, as we noted above, these two cases involve language spaces that overlap considerably, contradicting simple models where languages are supposed to be entirely separate and the normal speaker of one language has no idea of what is happening in the other – the foreign language is considered "opaque". In the world of mass migration and lingua francas, that kind of model rarely obtains. One might expect that trials in Spain involving Chinese and Arabic, for example, might be somewhat freer from the prying eyes of judges, but exchanges in English and French cannot be considered generally opaque. In fact, in many cases one finds that the defendants and witnesses know some Spanish and are not entirely reliant on mediation by the interpreter. In one trial, for example, we find the judge assessing risks in such a way that a French-speaking witness is invited to respond directly in Spanish, with the interpreter then remaining on call for cases of doubt. As a general model, we might suppose that almost everyone is able to peer through or over the supposed language barrier, at least to some extent.

This non-opacity of languages has a major effect on communicative risk management and thereby on perceptions of quality. The success of an ostensibly dialogic exchange no longer depends on the two people involved but must also ensue from the additional risks posed by third-party eavesdroppers – judge, defendant, or counsel – who also seek to have their expectations met. This extension of the communication act increases the complexity of the risk calculations, thus reducing the occasions for justified risk-taking and thereby inducing interpreters to renditions that are risk-averse or risk-transferring in various ways. Interpreters are forced to play it safe, going for the lowest common denominators instead of the highest common multiples, to risk a loose metaphor. And the results derived from these

particular contexts are then judged to have a generally positive quality in themselves, even though the reasons for that judgement ensue from each specific context.

Conclusion: What role for research?

We have seen how a risk-management model can provide a rough contextual account of non-standard practices and certain assessments of quality. It is able not only to help describe what happens, but also to model *why* certain decisions are made. Along the way, though, we might appear to be legitimating practices that many in our professional community would find totally unacceptable. Indeed, seen in this light, our work could be judged unethical itself. How should we respond to such charges?

The first point to make here is that we are not entirely external to the interactions we have analysed, nor can we be neutral. To pick up an apparently trivial aspect, when the judge and the interpreter disagree on the nature of correct English, we have no hesitation in assuming more authority than the judge and correcting her corrections. Of course, we could be wrong, but we do have academic qualifications that sometimes encourage others (our students, for example) to trust our opinions: we speak from within an education system. Consider, for a moment, the ways in which a small chain of trust has connected our system to the judicial and executive systems with respect to the data we have just looked at: a government ministry funded a university research project; courts in Barcelona cooperated with the data gathering for that project; training materials have been developed on the basis of those materials; students follow those materials; future interpreters may learn from them and thereby be of benefit to the judicial system. In that entire interaction between systems, there is no question of justifying non-standard practices. Quite the contrary: the training materials seek to explain and reinforce the current codes of ethics. It is in our interests to do so, since that position enhances our own perceived trustworthiness within the inter-systemic exchange.

So why engage in the kind of risk analysis offered here? If we accept that some non-standard practices can create high risks for the achieving of justice, then the aim must surely be to change those practices. In order to bring about behaviour change on a long-term basis, though, it is not enough to assume superior knowledge, flaunt authority, and impose your rule or your definition of quality. As soon as your back is turned (or indeed once a different judge is presiding or a different company sends its interpreters), the practice may well return. If there are non-standard practices that have negative consequences for criminal defence rights and cooperative interactions, then a first constructive step towards changing them is to understand *why* they happen. Hence the interest of modelling the risks in the way we have done here. Only after doing that can one use the same models to envisage what kinds of risk conditions would result in more ethical practices.

In the two cases we have looked at here, change would have to come by modifying the factors involved in the participants' risk calculations.

For example, side conversations between the interpreter and the defendant would lose much of their function if one could reduce the risk of misunderstanding by ensuring adequate communication with the defendant prior to the trial. They should also cease to be a communicative option once the judge and the interpreter understand that the defendant's right to a free decision may be compromised. And more generally, their apparent efficiency should become a secondary consideration if and when judges see interpreters as a way to ensure justice and not just a means to extract required information (Bestué 2018).

Even more obviously, to reduce the risk of distrust due to different terminological choices, one could certainly increase the pay for interpreters (thus attracting more highly

qualified professionals), stop outsourcing to private companies, otherwise insist on appropriate training in legal discourse, and, if outsourcing is to continue, increase the penalties for service providers who send interpreters who are not sufficiently trained. One of the reasons why this kind of problem arises is that the Catalan ministry of justice has effectively transferred the risk of poor interpreter performance by outsourcing to private service providers since 1998 (Emmermann 2007:38). For as long as those companies do not face major economic consequences, they will continue to take the calculated risk of sending interpreters who are not entirely trustworthy. That is, as a general consequence of risk analysis, one must make sure that it is in each participant's own interest to adopt the sought behaviour change.

When we consider such measures, we are not armchair philosophers. As noted, the MIRAS research group has used these transcripts as a basis for developing training materials designed to improve interpreters' performances. We also incorporate research data into our own teaching activities, helping to raise awareness of the difficulties faced by professionals and the need to discuss ethical issues in contextual terms. Further steps must nevertheless be taken to clarify the expectations of all parties who work with interpreters in court – without predictable behaviour, risk calculations are hard to make and trust is difficult to establish. To this end, we have coordinated the translation into Spanish of the Australian Judicial Council in Cultural Diversity's *Recommended National Standards for Working with Interpreters in Courts and Tribunals* (2017/2019), in the hope that one country's attempts to standardize performance expectations might assist in similar discussions in another.

In all, in addition to assuming and insisting on an abstract concept of quality, engaged research should be able recognize the intricacies of context and, where possible, intervene in various ways in order to help solve problems.

References

APTIC (Associació professional de traductors i intèrprets de Catalunya). 2016. *Codi deontològic i de bones pràctiques de l'APTIC*. https://guiesbibtic.upf.edu/ld.php?content_id=32224927

Arumí Ribas, Marta, and Mireia Vargas-Urpí. 2018. "Annotation of Interpreters' Conversation Management Problems and Strategies in a Corpus of Criminal Trials in Spain: The Case of Non-renditions." *Translation and Interpreting Studies* 13 (3): 421-441.

Bestué, Carmen. 2018. "Aproximación empírica a la labor del intérprete en los tribunales de justicia." In *Traducción, Interpretación e Información para la Tutela Judicial Efectiva en el Proceso Penal*, edited by María Jesús Ariza Colmenarejo, 139-157. Valencia: Tirant lo Blanch.

Bestué, Carmen. 2019. "From the Trial to the Transcription: Listening Problems Related to Thematic Knowledge. Some Implications for the Didactics of Court Interpreting Studies." *Fachsprache. Journal of Professional and Scientific Communication* 41 (3–4): 159–181.

Cheung, Andrew K. F. 2017. "Non-Renditions in Court Interpreting. A Corpus-Based Study." *Babel* 63 (2): 174-199.

Collados Aís, Ángela, and Daniel Gile. 2002. "La qualité de l'interprétation de conférence: une synthèse des travaux empiriques." In *Recent Research into Interpreting: New Methods, Concepts and Trends (in Chinese),* edited by ShiaoHong Cai, 312-326. Hong Kong: Quaille.

Diriker, Ebru. 2004. *De-/Re-Contextualizing Conference Interpreting*. Amsterdam: Benjamins.
Emmermann, Annette. 2007. "La traducció i la interpretació de llengües estrangeres als jutjats i tribunals amb seu a Catalunya." In *XIV Seminari sobre la Traducció a Catalunya. La presència quotidiana de les traduccions*, 25-40. Barcelona: Associació d'Escriptors en Llengua Catalana.
Goffman, Erving. 1981. *Forms of Talk*. Philadelphia: University of Pennsylvania Press.
Judicial Council in Cultural Diversity. 2017/2019. *Recommended National Standards for Working with Interpreters in Courts and Tribunals.* Translated into Spanish as *Normas recomendadas para trabajar con intérpretes judiciales*. Tarragona: Intercultural Studies Group. https://www.researchgate.net/publication/343280046_Normas_recomendadas_para_trabajar_con_interpretes_judiciales
Levý, Jiří. 1963/2011. *Umění překladu*. Translated by Patrick John Corness as *The Art of Translation*. Amsterdam: Benjamins.
Orozco-Jutorán, Mariana. 2018. "The TIPp Project: Developing Technological Resources Based on the Exploitation of Oral Corpora to Improve Court Interpreting." *Intralinea* 20, unpaginated. http://www.intralinea.org/specials/article/2316
Ortega Herráez, J. M. 2013. "La intérprete no sólo tradujo lo que le vino en gana, sino que respondió ella a las preguntas que los abogados le realizaban al testigo": requisitos de calidad en la subcontratación de servicios de interpretación judicial y policial en España. *Sendebar* 24: 9-42.
Pöchhacker, Franz. 1994. *Simultandolmetschen als komplexes Handeln*. Tübingen: Narr.
Pöchhacker, Franz. 2000. "The Community Interpreter's Task: Self-Perception and Provider Views." In *The Critical Link 2: Interpreters in the Community*, edited by Roda P. Roberts, Silvana E. Carr, Diana Abraham, and Aideen Dufor, 49-66. Amsterdam: Benjamins.
Pöchhacker, Franz. 2001. "Quality Assessment in Conference and Community Interpreting." *Meta* 46 (2): 410-425.
Pym, Anthony. 2004. "Propositions on Cross-Cultural Communication and Translation." *Target* 16 (1): 1-28.
Pym, Anthony. 2015. Translating as Risk Management. *Journal of Pragmatics* 85: 67-80. DOI: 10.1016/j.pragma.2015.06.010.
Pym, Anthony. 2016. "Risk Analysis as a Heuristic Tool in the Historiography of Interpreters. For an Understanding of Worst Practices." In *New Insights in the History of Interpreting*, edited by Jesús Baigorri-Jalón and Kayoko Takeda, 247-268. Amsterdam: Benjamins.
Pym, Anthony, and Kayo Matsushita. 2018. "Risk Mitigation in Translator Decisions." *Across Languages and Cultures* 19 (1): 1–18.
Shlesinger, Miriam. 1989. "Simultaneous Interpretation as a Factor in Effecting Shifts in the Position of Texts on the Oral-Literate Continuum." MA thesis, Tel Aviv University. DOI: 10.13140/RG.2.2.31471.69285.
Vargas-Urpi, Mireia. 2019. "When Non-Renditions are not the Exception. A Corpus-Based Study of Court Interpreting." *Babel* 65 (4): 478-500. DOI: 10.1075/babel.00103.var
Wilss, Wolfram. 2005. "Übersetzen als Sonderform des Risikomanagements." *Meta* 50 (2): 656–664. https://doi.org/10.7202/011009ar