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# COMPARATIVE LAW AND LEGAL TRANSLATION

## A Perspective from Mexico

Javier F. Becerra

Faced with translating the legal terminology of two different countries, many otherwise excellent interpreters and translators get lost in a sea of concepts and ideas which they are not sure how to render. Unfamiliar with equivalent expressions in the target language, or possessing only a vague idea of a term's meaning in the source language, translators may opt for literal translations, to ill effect.

For example, they take the concept *responsabilidad extracontractual* in Spanish and translate it as "extra-contractual responsibility" in English. The recipients of the translation read such a phrase, which makes no sense in English, and become confused, though they may have understood everything up to that point. Further, because the phrase is so different from the words "tort liability" under United States law (the closest equivalent in Mexican law), they are not able to reconstruct

the author's intended message. A poor translation will frustrate the recipients and prejudice their attitude toward the author and the translation as a whole.

When such concepts are poorly rendered, what would have been a sound translation becomes spattered with nonsensical phrases that, at the least, obstruct and, at worst, break down communication between the author and recipient. When the communication process is thwarted, the translator has failed in his or her most fundamental obligation.

Moreover, because law by its very nature is a high-stakes discipline, any distortion may cause parties to believe they have been vested with rights that do not exist in the original foreign language version, or may cause them to believe they do not have an obligation that they indeed do have, potentially costing the party substantial sums of money. In law, the

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## Phoenix Conference Summary

The NAJIT Board of Directors held several meetings throughout the 23rd Annual Educational Conference & Business Meeting in Phoenix, May 16-20, 2002, one of them a joint meeting with the SSTI Board of Directors.

The SSTI reported that the

NAJIT Certification Exam has nearly completed the full cycle of development. The oral exam was given for the first time to several candidates on May 16-17, and the written exam for a second time on May 16. Even more candidates took the written exam this time than had

taken it in New York. All that remains to be done is the standard-setting for the oral exam. With the proceeds of the NAJIT Eastern Regional Conference and an additional \$10,000 from NAJIT (the latter to make up the full \$50,000 that NAJIT had originally

Continued on page 4

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*Proteus*

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## MESSAGE FROM THE CHAIR

This has been an interesting few months as the Board of Directors oversaw the transition from Arlene Stock of Dynamic Management to our new Executive Director, Ann G. Macfarlane. The Board was charged with studying in detail the tasks that our organization requires of an Executive Director, while at the same time considering costs. After extensive study, we chose someone with a relevant and substantial background for the task. As a Russian-to-English translator with a special interest in interpretation, Ann has been a member of NAJIT for years and also is a member of ATA's Interpretation Policy Advisory Committee (see bio sketch on page 6).

Ann enjoys conference preparation, having organized the ATA's very successful annual conferences in Hilton Head and St. Louis. She participated in the Annual Conference and met with our Board of Directors. She is already working closely with Maria Cristina Castro, organizer of the Northwest Regional Conference, planning for our event in Portland on September 21 (see program in this issue).

All of us on the Board of Directors were very pleased with the program and the turnout for Phoenix. Evaluations were very positive: people enjoyed sessions ranging from the particular (translating notarial documents, regional differences in English pronunciation) to the general (translation and interpretation in relation to U.S. language policy, legal conference interpreting at international trade negotiations). We had a great turnout from our colleagues in Arizona, whose assistance was vital. Finally, the range of language-neutral offerings was unprecedented. Everyone, no matter what their working language, felt welcome at the gala opening reception, the luncheon, and the sessions. My special thanks to all the presenters who so generously shared their expertise.

All the bylaw amendments were approved by the membership, and in this issue you will find the details about what that means for NAJIT. Thanks to the Bylaws Committee who worked so hard on the amendments.

Finally, I would like to say a heartfelt word of thanks to Arlene Stock. Arlene served as our Executive Director from 1993-2002. Her firm, Dynamic Management, brought NAJIT to a new level of professionalism and excellence. The Board is very grateful to her, in particular for all she did to help us establish the Society for the Study of Translation and Interpretation and the National Judiciary Interpreter and Translator Certification examination.

Cristina Helmerichs D.  
Chair, Board of Directors

## ERRATA [Spring 2002 issue]

Due to a printing error, the first sentence of Allan F. Amaya's article, "Legal Codes of Four Latin-American Nations on the Web" was inadvertently truncated. The sentence should have read, " Interpreters and translators often find ourselves wishing we had access to primary or secondary source material that would help us to see terms or expressions in context." Our apologies to the author.

## EXAM NEWS

## SSTI Report to the NAJIT Annual Membership Meeting

Mirta Vidal

PHOENIX, MAY 18, 2002

The decision to create a certification examination was made in 1998 in response to a survey in which NAJIT's membership expressed the desire to have certification by the profession. The Society for the Study of Translation and Interpretation (SSTI), NAJIT's tax-exempt arm, was charged with overseeing the creation of the certification exam. After researching different options, the SSTI board recommended that Measurement Incorporated (MI) be chosen for the task, and the NAJIT board adopted the recommendation.

Last year in Chicago we gave the pilot exam, a crucial step in the process, with members turning out in substantial numbers, enabling us to test the exam items for validity and reliability. A group of highly qualified NAJIT members later met in Durham, N.C. to score the pilot. After a week-long process, we had enough data to create three operational versions of the test.

Additional months were needed to prepare the operational forms of both written and oral exam portions. The first written exam was given in New York in February, 2002 in conjunction with the Eastern Regional Conference. Thirty-six candidates took it. In order to score these exams and set the standard, another group of expert NAJIT members met in Durham in early March. After a week of analysis, the cut score was reached; utilizing this cut-off, 19 of the 36 candidates passed. Expressed in other terms, 53% of those who took the written portion passed it. The operational oral portion has been given here this weekend for the first time and will also be offered in New York City on June 1. Once scored, the data will enable us to set the standard for the oral portion, and the exam development process, which contained some 39 steps, will be complete.

I think it may take some time for us to realize the significance of this accomplishment, which was only possible thanks to member participation and support. When we first embarked on the project of creating a certification exam, it was truly a daunting task. More than once we asked ourselves if it was not overly ambitious to seek to create the kind of benchmark exam that will define standards for our profession. But we realized that we had the ideal conditions to succeed: membership support, the expert guidance of Measurement Incorporated, and the enthusiastic cooperation of a large pool of talented and knowledgeable NAJIT members at every stage of

the process. About thirty colleagues were involved as item writers, item reviewers, scorers, and standard setters. Although there was some overlap, the various stages required different groups of people, so that our pool of experts had to be constantly expanded.

I hope that all of you will attend the presentation by Dr. Michael Bunch, Vice President of Measurement Incorporated and Donna Merritt, the MI Project Director. You'll find that while psychometrics may sound somewhat obscure, it's actually fascinating to learn how a scientifically sound exam is put together and discover that, psychometrically, the NAJIT/SSTI exam is one that we can all be truly proud of.

Over the past year, SSTI has been making the certification program known and ensuring its success. Even before its completion, the NAJIT exam has created interest among government agencies, exam development experts and interpreter organizations. We were invited to present a panel on our exam at the 42nd Annual Conference of the American Translators Association. It was well attended, including in the audience representatives from the California Judicial Council and the Los Angeles Superior Court. The ATA Chronicle is publishing a paper by Dagoberto Orrantia on the subject in the June 2002 issue.

Measurement Incorporated has also been publicizing the exam and informing the assessment community. In November of 2001 in New Orleans, Donna Merritt and Mike Bunch presented papers at the Annual Conference of the National Organization of Competency Assurance. We hope to obtain NOCA approval for the exam once it is completed. Donna Merritt also gave a paper on the exam project at the North Carolina Association for Research in Chapel Hill. Mike Bunch published an article on the exam in *Proteus*. MI continues to generate articles to explain the importance of the exam and build support for it.

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### SSTI has raised substantial amounts of money through several venues.

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In conjunction with exam development, SSTI has been raising funds to finance project costs. Initially, the NAJIT board appointed a joint NAJIT/SSTI committee for this purpose, but for various reasons the committee never got off the ground. However, SSTI has raised substantial amounts of money through several venues. Membership contributions have been a staple of the SSTI operating budget, amounting to several thousand dollars each year three years. A donation of nearly \$8,000 last year, thanks

to the efforts of our Treasurer Carmen Barros, came from the coffers of the former Association of Professional Legal Interpreters and Translators of New Jersey. Two events brought in additional income for the project. A series of classes in New York, to help candidates prepare for the written portion of the federal exam, netted several thousand dollars. And finally, SSTI co-sponsored the Eastern Regional Conference in New York on February 2, 2002. Thanks to Sandro Tomassi's organizational skills, Dagoberto Orrantia's unstinting efforts to gain the cooperation of John Jay College, and MI, which spent its own resources to publicize the ERC as well as the exam, SSTI was able to earn about \$14,000.

Most of these funds have been and will be allocated to MI for exam development costs. SSTI has kept expenses to a minimum over the past three years, due largely to the fact that we have a three member board and that MI has contributed generously to the project. Now that we are in the final stage of development, SSTI operating expenses have been reduced to a minimum.

NAJIT has made a lump sum contribution of \$50,000, for which we are thankful, but a balance of \$44,900 still needs to be paid. The SSTI board will be working with the NAJIT board to find creative ways of raising funds. Your contributions, as always, are very much needed and welcome.

Finally, once again I want to thank Mike Bunch and Donna Merritt of MI not just for their expertise but also for their infinite patience, support and generosity, and for their ever gracious southern hospitality every step of the way. Donna's endless optimism and good will, and the amount of time she has devoted, went well beyond what the project budget provided for.

I know there are some who don't understand why we have bothered to create an exam when there are other interpreter exams available. Those who raise this objection do not understand what being part of a serious profession means and what it implies. This exam is not defined by court administrations or by corporations who dictate what language specialist standards should be. Our profession has grown up and said: We are the ones who will determine the minimum qualifications interpreters must have in order to perform this highly complex and demanding task adequately. It is the accomplishment of this association and its members, and I am convinced that in time, all will come to see the exam as the historic event that it represents.

*[Mirta Vidal is President of SSTI. This is an edited version of her report.]*

## PHOENIX CONFERENCE SUMMARY

*Continued from page 1*

pledged), much of the debt to Measurement Incorporated will be paid off. The SSTI Board is confident that the balance of the debt can be paid soon, thanks to continuing donations from NAJIT members and proceeds from additional educational events.

The Annual Educational Conference was a great success. The pre-conference sessions were well-attended, and the conference itself drew a large audience, including last-minute registrants. The vendors were very pleased with the sales and contacts they made. Although the final figures have not yet been tallied, it appears that NAJIT will reap a surplus of several thousand dollars from the conference. Final results will be reported in the next issue of *Proteus*.

Plans are already underway for the 2003 Annual Educational Conference in Nashville, TN, tentatively scheduled for May 16-18. Judith Kenigson Kristy will visit hotels in the area and solicit proposals. Information about the dates, location, and program will be announced to the membership as it becomes available.

Cristina Castro reported on preparations for the NAJIT Northwest Regional Conference, to be held in Portland, OR on September 21. The NWRC will be held at Portland State University and is a joint undertaking of NAJIT and PSU. Information will be posted on the web site, *Proteus*, discussion lists, newsletters and other means available.

The Board was very saddened to receive a letter from Arlene Stock, NAJIT's Executive Director, indicating that her company, Dynamic Management, will not renew the contract to provide consulting and administrative services after June 30. The Board thanked Arlene for her hard work and untiring support of NAJIT over the years, and is actively seeking a new provider of executive and administrative services.

After the conclusion of the Annual Educational Conference, the Board received training in parliamentary procedure from former ATA President and NAJIT member Ann Macfarlane. The training session was extremely enjoyable and useful. The Board immediately incorporated many of Ann's pointers into our final meeting with great success.

**NAJIT Board of Directors**

**NEXT YEAR IN NASHVILLE**

**The National Association  
of Judiciary Interpreters and Translators  
and Portland State University  
present the  
NORTHWEST REGIONAL CONFERENCE  
Saturday, September 21, 2002  
8:00 a.m. – 6:30 p.m.**

**Portland State University  
1825 S.W. Broadway, Portland, Oregon  
Smith Memorial Center**

**PRESENTATIONS  
(LANGUAGE-NEUTRAL, SOME SMALL GROUP WORK)**

**Interpretation as Restoration of Cultural Context  
Marina Braun and Cristina Castro**

When words are taken "out of context," communication is disrupted. In intercultural contacts, communication breaks down regularly in the absence of shared background knowledge. This presentation will provide a draft blueprint that court interpreters may use to educate users on this key issue: restoring the cultural context.

**Why Do They Talk Like That? Peculiar Language Peculiar to the Courts  
Lois Feuerle**

This hands-on workshop will examine a sampling of the recurring stock phrases used by attorneys that initially may sound stilted, even awkward, to the non-lawyer's ear. The large group will discuss alternatives before breaking into language-specific small groups to work out appropriate solutions; everyone will then reconvene to discuss and share results.

**Idiomatic English Usage  
Aleé Robbins and Holly Mikkelson**

This workshop provides an opportunity for interpreters to refine their idiomatic usage in English. It will include examples of typical errors made by non-native speakers of English and commonly misused expressions, and will also address problems of source-language interference. Participants will receive a list of idioms, including common English prepositional phrases.

**Interpreting, not Regurgitating  
Johann Paoletti-Schelp**

Interpreters sometimes believe that they are interpreting, when actually, they are not. This workshop will clarify the difference between interpreting and regurgitating, and provide exercises interpreters can use to make their interpretation truly come alive.

**PRESENTERS**

**Marina Braun**, Ph.D., has authored numerous publications on issues of cross-cultural communication, translation and interpretation, and effective communication in a foreign language. She has taught at the University of Oklahoma, Reed College, and the Moscow Institute of Foreign Languages. She now provides language teaching and interpreter training through The Russian Center.

**Maria Cristina Castro** has taught at the University of Charleston, Portland State University, the Panama Canal Commission, the Colegio de Traductores Públicos de la Ciudad de Buenos Aires, and for numerous professional associations. She is certified in the state and federal courts and accredited English/Spanish/English by the ATA.

**Lois Feuerle** brings a distinguished background in law, teaching, translation, interpretation and interpreter administration to her current position as Manager of the Court Interpreter Certification Program for the Oregon Judicial Department. She was recently appointed to the Governor's Council on Health Care Interpreters, charged with developing standards and a certification program for medical interpreters.

**Holly Mikkelson** is Program Director at Language Services Associates and Associate Professor at the Monterey Institute of International Studies. She is a state and federally certified court interpreter, an ATA accredited translator, and a well-known author and consultant.

**Johann Paoletti-Schelp**, a professionally certified American Sign Language (ASL)/English interpreter, is known for his enlightening and challenging presentations that help interpreters think "outside the box." He has been an interpreter educator since 1976 and owns Sign Enhancers Inc., the largest producer of ASL-related materials in the world.

**Aleé Robbins** trains interpreters and users of judiciary interpreting services through the Oregon Judicial Department, and also for many private and governmental entities. She is a state and federally certified interpreter whose last assignment was as Chief Interpreter for the U.S. Attorney's Office for the Southern District of California.

**SCHEDULE (order of presentations to be determined)**

8:00 - 8:45 am	Registration with continental breakfast
8:45 - 9:00 am	Opening remarks
9:00 - 10:30 am	Presentation I
10:30 - 11:00 am	Refreshment break and exhibits
11:00 - 12:30 pm	Presentation II
12:30 - 2:00 pm	Lunch on your own
2:00 - 3:30 pm	Presentation III
3:30 - 4:00 pm	Refreshment break and exhibits
4:00 - 5:30 pm	Presentation IV
5:30 - 6:30 pm	Reception

**FEES:**

Member Earlybird (by September 1)	\$75
(Members of NAJIT, CIAO, NOTIS and WITS are eligible for this rate)	
Non-member earlybird (by September 1)	\$95
Member (September 2 to September 17)	\$95
Non-member (September 2 to September 17)	\$115

**REGISTRATION IS LIMITED AND CLOSSES  
AT 5 P.M. PDT TUESDAY, SEPTEMBER 17.**

SIGN UP NOW AT [www.najit.org](http://www.najit.org) or call 206-367-8704. Cancellations made by the deadline will receive a refund less a \$15 processing fee. No refunds given after the deadline, but substitutions permitted.

**CONTINUING EDUCATION CREDITS:**

Oregon approved, California and Washington applied for.

**VENUE AND TRANSPORTATION:**

Portland State University ([www.pdx.edu](http://www.pdx.edu)) is in the heart of downtown Portland, the "Rose City." Tri-Met's MAX Red Line Train serves the city from the Portland International Airport every fifteen minutes from 5 a.m. to 11:30 p.m. at a cost of \$1.55. A taxi into town may cost \$30-35. Public transportation in the downtown core is free. The weather is likely to be warm and pleasant, but rain is also possible.

**MAKE YOUR OWN RESERVATIONS FOR HOTELS:**

Good choices include the Days Inn City Center, almost next door to PSU at 1414 S.W. Sixth Ave., 503-221-1611 ([www.thedaysinn.com](http://www.thedaysinn.com)). The Mark Spencer at 409 SW 11th and Stark is one block from Powell's, the enormous bookstore ([www.powells.com](http://www.powells.com)) with a free trolley to PSU and easy Amtrak connections; now offering 15% discount for on-line reservations ([www.markspencer.com](http://www.markspencer.com)).

**NAJIT THANKS**

Portland State University, the Court Interpreters Association of Oregon, the Northwest Translators and Interpreters Society and the Washington State Court Interpreters and Translators Society for their support and assistance in organizing this conference.

# Welcome New Members

March 1-May 31, 2002

Affordable Professional Translation Services, Denver, CO  
 Alemán, Gladys, Arlington, VA  
 Ansari, Sakina, Jackson Heights, NY  
 Babcock, Maida, Jakarta, Indonesia  
 Benko, Ana, Los Angeles, CA  
 Berner, Ilya, Seattle, WA  
 Bonilla, Claire, Richmond, VA  
 Brantingham, Luisa, Chicago, IL  
 Braun, Marina, Portland, OR  
 Chang-Castillo, Pablo, Marina, CA  
 Coleman, Kathy, East Derry, NH  
 Costley, María, Austin, TX  
 Díaz, Guadalupe, Mount Pleasant, South Carolina  
 Dorame, Margie, Tuscon, AZ  
 Erickson, Andrew, Nevada City, CA  
 Farias, Maria, Roslindale, MA  
 Figueroa-Feher, Leonor, Jamaica Plain, MA  
 Harvin, Joseph, Marina, CA  
 Hoffman, Martin, San Francisco, CA  
 Hogg, Jennifer, Charlottesville, VA  
 Hughes, Harry, Seattle, WA  
 Kazios, Basil, Chicago, IL  
 Kim, YoYo Yong, Chicago, IL  
 Krstic, Dusanka, Phoenix, AZ  
 Lilley, Carrie, Manchester, MA  
 Lum, Anita, Edmonton, Alberta, Canada  
 Maggipinto, M. Teresa, St. James, NY  
 Martin, Lorenzo, Forest Hills, NY  
 Martinez, Frank, Lake City, FL  
 Matos, Tania, Cape Coral, FL  
 Medina, Gunilla, Fair Lawn, NJ  
 Mihaylo, Ana, Albany, OR  
 MN Supreme Court Interpreter Program, St. Paul, MN  
 Morales, Rosinda, Gonzales, LA  
 Morrissey, Steven, Flagstaff, AZ  
 Nichols, Wes, Greenville, SC  
 Olson, John, Willmar, MN  
 Palacio, Natalia, Weston, FL  
 Pina, Jose, Chicago, Illinois  
 Pou Soares, Helena, Miami, FL  
 Price, Cindy, Phoenix, AZ  
 Pyle, Carmen, San Diego, CA  
 Rankin, Alicia, Sylmar, CA  
 Reyes, Nilda, New London, CT  
 Rowe, Seung, Fairfax, VA  
 Ruppenner-Lind, Frieda, Leawood, KS  
 Samuel, Francesca, Tucson, AZ  
 Sandoval, H., Roswell, GA  
 Schenck, Sarah, Evansville, IN  
 Schoenberger, Dawn, Phoenix, AZ  
 Serebrennikov, Alexey, Brooklyn, NY  
 Sitter, Bryce, Spencer, IA  
 Tejada, Hilda, Guadalajara Jalisco, Mexico  
 Thevenin, Thomas, Corpus Christi, TX  
 Urgent Translation, LLC, Wausau, WI  
 Valera, Brimaya, Pendleton, OR  
 Velasco, Louis, Tempe, AZ  
 Win, Than-Tham, Seattle, WA  
 Worst, Romi, Arlington, VA  
 Yule, Meeri, Kansas City, MO  
 Ziada, Zonia, Kennewick, WA

## LEGISLATIVE NEWS

### TEXAS

Congratulations to Raquel de Roo, Sofia Leon, and Araceli Sullivan on their recent appointment to the nine-member advisory board on licensed court interpreters in Texas. All three interpreters on the advisory board are NAJIT Members. See:

[www.governor.state.tx.us/appointments/may2002/052302\\_court.htm](http://www.governor.state.tx.us/appointments/may2002/052302_court.htm)

### TENNESSEE

Tennessee courts recently adopted rules on interpreters. To see the rules, press release and other interpreter information and resources, visit the Tennessee AOC website at: [www.tsc.state.tn.us/](http://www.tsc.state.tn.us/)

Thanks to Judith Kenigson Kristy, Marvyn Bacigalupo, Janice Snow Rodriguez of TFLI, who spearheaded the program and researched and formulated the "skeleton" of the Rules, and Rebecca Montgomery, AOC Senior Staff Attorney and liaison with the Supreme Court, who shepherded the rules through the advisory committee meetings and then wrote and pushed the final version through to completion.

### MEET NAJIT's NEW EXECUTIVE DIRECTOR

Ann G. Macfarlane, the former Ann Griffin, graduated from University of California at Santa Cruz in 1969 with highest honors in literature. In 1971 she received a B.A./M.A. from Cambridge University in Russian and ancient Greek. From 1972-1979 she served as a foreign service officer, working as consular officer in Lahore, Pakistan, later returning to the State Department's Bureau of Near Eastern and South Asian Affairs, where she received the Department of State's Meritorious Honor award. In 1977-78 she received instruction in Soviet history, military studies, Russian language and culture at the United States Army Russian Institute in Germany. After marrying fellow foreign service officer Lewis R. Macfarlane in 1978, she worked as Executive Secretary to the Interagency Coordinating Committee on U.S.-Soviet Affairs in Washington, D.C., where responsibilities included cultural and scientific exchanges as well as commercial and refugee matters. In 1979 Macfarlane relinquished her own diplomatic career to raise three sons but continued to participate actively in her husband's overseas assignments, which included Zaire, Tanzania and Nepal. In addition to fluent Urdu and Russian, she learned French, Swahili and Nepali.

After leaving the Foreign Service in 1988, the Macfarlanes settled in Seattle. In 1993 she established her own business, Russian Resources International. Accredited by the American Translators Association for translation from Russian into English, Macfarlane twice served as President of the Northwest Translators and Interpreters Society and as President of the American Translators Association from 1999 to 2001. She assumed duties as Executive Director of NAJIT on July 1, 2002.

# A MEETING OF THE "MOUTHPIECES"

6th International Forum on Legal Translation and Court Interpreting

Paris (12-14 June 2002)

Ruth Morris

English newspapers reported on June 14, 2002 that Satpal Ram, convicted in 1985 of murdering a man in a Birmingham restaurant, was being released after 17 years in jail. In 1987 he had tried (unsuccessfully) to appeal his conviction. Among the issues raised on appeal was the fact that testimony by a Bengali-speaking witness had been "unintelligible" – so much so that it was impossible to cross-examine him. No interpreter was provided, nor did defense counsel request one. In what *The Guardian* described as a farcical trial, "at one point the judge told the jury he would translate, even though he did not speak Bengali" (*Guardian*, 30 January 2000).

Is this case peculiar or does it reflect the state of interpreting in judicial systems worldwide? The Sixth International Forum on Legal Translation and Court Interpreting, organized by the FIT (International Federation of Translators) Committee of the same name, brought together practitioners and academics from six of the world's seven continents to exchange research findings, experiences, and questions. The picture that emerged was varied but not outstandingly positive.

A highly qualified Spanish-French interpreter related frustrating attempts to offer his services to the French courts. Spain and France were cited as examples of diametrically opposed attitudes to recognizing other countries' interpreter credentials. An Italian informant reported on providing interpretation in a major terrorism trial for days on end without relief. Another Italian colleague observed that the judge often complains about the volume of the interpreter's voice. Interpreters in the English courts voiced concern at not being allowed to contact or approach a judge over anything, including issues relating to the proper performance of their duties.

In agreeable contrast, the Finnish Association of Translators and Interpreters recommends that an interpreter (of spoken or sign language) work from a convenient position. That such a recommendation is respected by Finnish courts elicited a deeply felt reaction from a Polish colleague, who reported that court interpreters in Poland are required to stand.

In Austrian courtrooms, the interpreter sits with the judges, hence has no opportunity to provide a complete rendition of the proceedings to a non-German speaking defendant. Interpreters render only what the judges ask to hear, consecutively. As a result, through no fault of their own, Austrian court interpreters are not providing true linguistic access to non-German speakers.

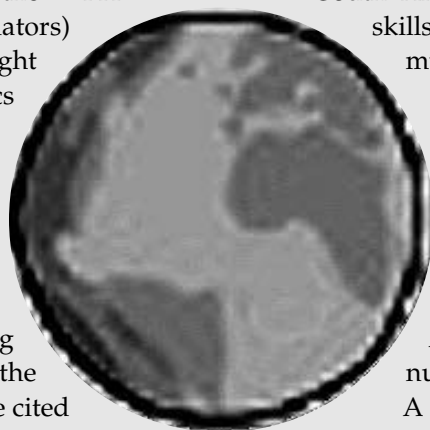
In South Africa, court interpreters are permanently assigned to the same judge, for whom they become something of a factotum. Working alone at trial, the interpreter may have to provide interpretation between English and up to five African languages. Nearly all South African court interpreters are full-time court employees. A recently introduced distance-learning BA in court interpreting at the University of South Africa aims to improve court interpreters' skills and enhance awareness of their vital communicative activity.

Bologna city court judges frequently consider interpreters as "judge's aides" to be treated high-handedly. Nor do they follow the principle of equal access to communication for non-Italian-speaking defendants. This similarity in attitudes between Bologna judges and their South African counterparts struck a chord with a number of Forum participants.

A researcher from Finland discussed the linguistic, cultural and sociological framework of police interrogations, an important area not widely researched in other countries. In the area of police interpreting, reports were that practice varies widely, with some countries routinely using their own in-house personnel, some of them well-trained (Japan), while other countries (UK) use freelance interpreters. London's well-organized and quality-conscious Metropolitan Police recently changed its financial arrangements for interpreters, reducing the minimum number of hours per assignment so that interpreters now receive less for the same amount of work.

Interpreters in the legal system normally fall into two categories: those who care about the quality of justice, and those who do not. It may safely be asserted that those attending the Paris Forum fell into the first category. Yet at the same time, interpreters do not wish

Continued on page 12



# CALL FOR PAPERS

NAJIT'S 24th Annual Meeting  
and Educational Conference

**May, 2003 in Nashville, Tennessee**

NAJIT invites proposals for one-hour presentations and three-hour or six-hour interactive pre-conference workshops on any topic related to court interpretation and legal translation, including:

- Interpreter training
- Specialized terminology
- Interpreting techniques in languages other than Spanish
- Computer technology for interpreters
- Tape transcription and translation
- Interpretation and translation theory
- Cross-cultural issues
- Professional concerns (ethics, working conditions, financial planning, etc.)

In submitting a proposal for the 2003 Conference, please include the following information:

1. Title of Presentation
2. Abstract in paragraph form (not to exceed 150 words)
3. Duration of presentation
4. Language of presentation
5. Your name, title, mailing and email address, telephone and fax numbers
6. A bio sketch in paragraph format (not to exceed 150 words, together with c.v.)

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**Deadline for submission of abstracts: November 1, 2002**

## ITEMS OF INTEREST

**September 14, 2002, San Francisco, CA.** ATA Professional Seminar: Court Translating and Interpreting. Information: [ata-hq@atanet.org](mailto:ata-hq@atanet.org).

**September 19-22, 2002, Slavonice, Czech Republic.** Slavonice International Translators Conference 2002. Information: [www.scholadus.cz](http://www.scholadus.cz).

**October 25-26, 2002, Cambridge, MA.** 6th Annual Massachusetts Medical Interpreters Association Conference "Unheard Voices" Cambridge College. Information: (617) 656-8133 or (617) 636-5212; e-mail: [joy.connell@dmh.state.ma.us](mailto:joy.connell@dmh.state.ma.us) or [jdnickrosz@aol.com](mailto:jdnickrosz@aol.com).

**November 6-9, 2002, Atlanta, GA.** 43rd Annual Conference of the American Translators Association. Hyatt Regency Hotel. Information: fax (703) 683-6122 or email: [conference@atanet.org](mailto:conference@atanet.org).

## COMPARATIVE LAW AND LEGAL TRANSLATION

Continued from page 1

wording is everything, and the changing of one word can completely alter the rights and obligations of a party.

### Customs and traditions, not easy to tame, often seep into the framework of the newer legal system.

The more common and costly errors occur when the translator attempts to translate highly technical terminology from one language to another. An imprecise translation can be forgiven in many other contexts, but not for legal documents: the translator must know what he or she is doing.

Given the need for good legal translators, we have the challenge of educating them to master the intricacies of complex concepts and terminology. By necessity legal translation must be intimately linked to the study of comparative law. Translators and interpreters cannot translate a legal term without first knowing what the term means, nor can they translate the term if they do not know the corresponding term in the target language, or at least how to succinctly define it. Through comparative legal studies, the translator must first draw parallels between the source and target legal systems, and then find the different labels that attach to the parallels.

#### *Legal Translation: A Unique Discipline*

Without a doubt the art of legal translation is its own field of knowledge, separate from other areas of translation, and arguably more difficult to master than translation in other fields. Other translation areas almost always have a common point of reference, or at least identifiable points of reference. In medicine, for instance, a "Cesarean section procedure" in English is an *operación cesárea* in Spanish, and both involve an alternative way of giving birth. However, this is often not the case with legal translations where separate systems may not have shared a common past, or if they did, later evolved new doctrines with no equivalent in the other systems.

Thus, the uniquely Mexican legal concept of *amparo*, an extensive, separate body of Mexican law that affords a person an action against the government for the violation of that person's constitutional rights, may not have an equivalent in the target legal system. Likewise, the United States concept of "consideration," which is essential for the execution of a contract and means broadly that each party must give up something, does not exist as a legal requirement under Mexican law.



The law is a strange animal that does not fit the traditional schemes of most human knowledge. While an invention (for instance, a chemical compound) or a philosophical theory has universal value and a recognizable objective, law is simply a set of rules governing the behavior of society. Each country (and in some cases, each state or region) has developed over time its own concepts and procedures of law and justice. These systems may be broadly classified as belonging to one of the classical legal systems, such as Roman law, civil law, or common law, or may be based on some other system.

### *The Evolution of Legal Systems*

Historically, the invasion of one country by another brought the imposition of the conqueror's legal system on the vanquished. Usually the new legal system did not entirely displace the local system, but intermingled while adopting parts of the existing system. Customs and traditions, not easy to tame, often seeped into the framework of the newer legal system.

Thus, when the Roman Empire invaded what is today France and Spain, Roman law became the rule of the land. In the Middle Ages, Spain was invaded by the Arabs and Islamic law blended with Spanish law. Later, Spain discovered the American continent and Spanish law became the dominant legal system in the Americas, but intertwined with elements of local law and custom. When the Latin American countries individually proclaimed independence from Spain, they retained the core structures of Spanish law but also studied other legal systems in order to personalize and construct a system to reflect their reality. In the case of Mexico, the new leaders upon independence borrowed heavily from the American and French Revolution principles of democracy and individual liberties.

As an individual legal system evolves, words and phrases are taken from common parlance and given specific technical meanings over time by legislators, judges, law professors and lawyers. Whole bodies of law and doctrine can sprout from these technical meanings. The system also develops its own legal concepts, institutions and procedures, creating new terminology or adapting common language to describe them. These words, and the concepts they embody, may have equivalents in other legal systems, or may be novel and unique, born from the new system's cultural history and circumstance.

### *Legal Translation in Modern Times*

Throughout the centuries, differences among legal systems did not affect the functioning of each set of rules so long as the societies remained independent from each other. The application of each set of rules was circumscribed by territorial boundaries.

In modern times, however, with enormous advances in transportation and communication technologies, communities are no longer isolated by vast oceans, high mountains or great distances. With these technologies, international trade is booming, forcing previously independent and alien legal systems to interact. The North American Free Trade Agreement and the European Union are two examples of the movement to interconnect disparate legal systems. Nevertheless, differences among legal systems are far more pronounced than their commonalities, and it ultimately falls on the legal translator to account for these differences. The translator who bridges two or more legal systems is not only confronting different languages and their expressive capacities, but whole new worlds of complexity—as complex as each legal system. For these reasons, legal translators need not only language proficiency, but also a high level of familiarity with the legal systems of the countries originating and receiving the translated messages. Very few other translated disciplines involve this same complexity.

### *Three Categories of Translated Concepts*

The translation of a legal concept will fit into one of three categories. The concept can have a nearly identical equivalent in the target language (whether or not the words in the two languages are similar to one another), such as these Mexican legal words along with their United States equivalents: *homicidio* / homicide, murder; *robo* / theft; *contrato* / contract, agreement; *quiebra* / bankruptcy; *matrimonio* / matrimony, marriage; *divorcio* / divorce; *sociedad anónima* / corporation; and *mecanismo peligroso* / dangerous instrumentality.

In the second category, the legal concept may have no easily identifiable equivalent, but with research, a roughly similar concept can be found, such as *daños y perjuicios* / compensatory damages and loss of anticipated profits; *daños morales* / non-pecuniary damages; *responsabilidad objetiva* / strict liability, liability without fault; *subordinación* / control (by an employer over an employee) and *sociedad en nombre colectivo* / partnership.

The third category are legal concepts with no near or rough equivalent in the target legal system. For example, the Mexican legal concepts of *amparo* and *ejido* have no equivalent under the United States legal system and would have to be explained to the degree necessary to the particular context.

Words of the second and third categories require the translator to be especially careful when choosing terms in order to avoid misleading the reader or distorting the message. The judgment that the translator exercises in word choice is much akin to the legal judgment exercised by a lawyer. The translator must ensure that the recipient of the message understands the concept in the source

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## COMPARATIVE LAW AND LEGAL TRANSLATION

Continued from page 9

language to the extent pertinent to the context.

For example, if the translation pertains to a contract for the sale of *ejido* land, it might not be sufficient to refer to the land as "cooperative-farm" land, but to clarify that it is land held communally which normally cannot be encumbered, transferred or sold. Reading this latter translation of the term may cause the recipient to wonder how he or she is able to buy land normally nontransferable. After a concise description of the unique legal term has been given, it would then be sufficient to refer to *ejido* land as cooperative-farm land.

### *Dangers of False Cognates*

A common error by translators unschooled in legal texts is to fall into the ever-present trap of false cognates, as for example, when the Mexican word *liquidación* is translated literally as "liquidation" in reference to an employee. Images of a summary execution may be momentarily conjured up, instead of the idea of "final severance payment for an employee fired without cause," which is what the Mexican word denotes.

Another example is the word *adjudicación*, which does not mean "adjudication" or court ruling or judgment, but rather "court-ordered transfer of secured property to a creditor upon the debtor's default in payment."

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## Mistranslations can cost time and money if the meaning of a provision is litigated.

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Or the error can be graver, as when the English word "material" is translated literally into Spanish in the phrase "a material breach of this agreement will cause the breaching party to pay liquidated damages in the amount of US\$1,000,000.00." Although under United States law the word material is a well-known legal concept meaning "important" or "substantial," the Spanish word *material* means only something related to matter. Therefore, if incorrectly translated into Spanish, "material breach" might come across as "bodily breach." In this example, the false cognate could cost significant time and money should the client have to litigate the meaning of the provision.

Finally, there are words which convey a different or unintended message due to culture. For example, the word "dispute," a staple of United States legal jargon, when translated as *disputa* in Mexico evokes visions not of a legal conflict but of a nasty family quarrel.

### *Teaching Legal Translation: Prerequisites*

The starting point for any translation course is a basic proficiency in the working languages. Obviously, before progressing to a specialization such as legal translation, the student must already have an advanced command of the languages involved. From this fundamental prerequisite, any exposure to legal training or legal concepts is helpful. Law students and lawyers doing international work are likely to benefit from the class and would be able to contribute insight and experience. A student with some knowledge of the legal system in his or her native language can build on this knowledge while learning to search for identical and similar concepts in the legal system of the target language.

The ideal legal translator has studied law and become a lawyer in all of the countries that he or she is translating to and from. While this may not be a realistic goal for most translators, legal translation is an extraordinarily complex discipline, and requires that a translator spend a lifetime learning and honing the craft.

### *Course Structure*

Assuming these two minimum criteria— general proficiency in the languages and exposure to legal concepts in general, the most effective approach for a course is to combine broad-based instruction about the legal systems involved with a hands-on workshop where large numbers of typical legal documents are translated. If students are interested in only certain areas of the law, the course can be fine-tuned to expose them to the terminology and legal concepts of those areas, rather than to such diverse areas as criminal law, environmental law, employment law, intellectual property law, constitutional law, rules of procedure, etc. In the absence of a specialized study program, students will be primarily interested in corporate law and international business transactions, which for professional translators and lawyers is where the majority of work comes from and is often the hub connecting most other legal specialties. The essence of corporate law is to achieve a client's goals in accordance with the law (commercial law, environmental law, employment law, etc.) while trying to avoid litigation.

Ultimately, a legal translation course can be narrowed only so far. There is no escaping the law's diversity, which is what makes it more difficult to translate than, for example, electrical engineering or pediatric medicine. A legal translator will encounter electrical engineering terms in a contract between an airplane manufacturer hiring the services of an instruments manufacturer, but an electrical engineer will probably never have to explain the details of eminent domain or adverse possession to a foreign colleague.

### Teaching Approach

A legal translation course must provide (1) general comparative legal training, and (2) extensive experience in translating legal documents and terminology. One approach is to divide the course based on types of legal documents that translators are likely to see in practice. If the course is to focus on corporate law, a series of corporate documents, such as articles of incorporation, bylaws, a power of attorney, a lease agreement, an employment agreement, a stock purchase agreement, and others could be provided to the class.

A legal translation course should not endeavor to study more than two legal systems at a time, since with each added language and legal system, the complexity and difficulty of the class would expand geometrically. The art of legal translation, like the practice of law, does not lend itself to superficiality.

Since one of the most effective tools of learning is trial and error, allowing the translator to attempt the legal translation first, especially when the translator believes he or she has a mastery over the languages, and then revealing its errors, will both humble the translator and teach that legal translations require a high level of care. We also tend to remember better those things which we thought were right but were later shown to be wrong.

Before students do a translation, a brief introduction explaining some of the overall legal concepts in the two systems as they relate to the document should be given. Then, after the translations are complete, the class as a whole should go through the document. The instructor can call on students to share their versions of individual paragraphs of the document. As legal concept after legal concept is reached in the document, class discussion can focus on the concepts that are most problematical.

The course should not just provide translation experience from the foreign language into the student's native language, but should also include some translations from the native language to the foreign language, a task which is substantially more difficult. This exercise is often very revealing, since students suddenly see how imprecise their work is in the foreign language as compared to a native writer.

The combination of classroom and workshop has the advantage of teaching the core substantive concepts that underlie the translations while also exposing the translator to the way sentences are constructed and the terminology employed in both language/legal systems. Composing sentences and using terminology correctly is very difficult to teach and usually acquired only by experience. The heavy doses of actual translation work in this course model are intended to speed the student along in acquiring such experience.

In working with common legal documents, the students are likely to be able to put into immediate practice what they have learned. Realizing a tangible benefit, students will be motivated to complete class assignments. Finally, lively classroom discussion will allow students and the instructor to share experience and knowledge, keeping everyone on their toes, and providing alternative ways of composing translations.

[Javier F. Becerra is Professor at the Escuela Libre de Derecho, Mexico City, and authored the Dictionary of Mexican Legal Terminology (Spanish-English). He is a senior partner at the Mexico City law firm of Basham, Ringe and Correa.]

## EMPLOYMENT OPPORTUNITIES

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## A MEETING OF THE "MOUTHPIECES"

Continued from page 6

to provide their services as a charity, which some courts seem to expect. There was much discussion of "adequate remuneration," of considerable concern to all Forum participants. In Belgium, for example, which has a sliding scale of fees depending on language combination, the most commonly required language combination (French-Flemish) pays so poorly that an interpreter who works 40 hours a week, every week, will take home less than the minimum wage. If it is impossible to make a living wage from full-time activities in court, how can the legal system expect to attract and retain quality interpreters?

In Ireland, now being swamped by asylum seekers, judges reportedly consider interpreters an "unnecessary evil" since consecutive interpretation slows the proceedings down excessively. As a result, judges may stop everything from being interpreted. Ireland's Ministry of Justice generally contacts agencies, whose interpreters receive very low rates, although some conference interpreters are willing to accept court work. In the absence of court interpreter training in Ireland, many go to the UK to train and then, attracted by higher rates, do not return to Ireland.

One example of best practice was provided by two British Sign Language (BSL) interpreters who work out-of-court, in child protection cases. They explained how they developed a protocol, "Seven Steps to Heaven," including a code of conduct, confidentiality agreement, supervisory support, and briefing/debriefing sessions, which has immeasurably improved working practice for the benefit of all. In out-of-court settings, interpreters' use of "annotation" enables an interpreter to draw attention to culturally inappropriate references and avoid miscommunication. Other cultural and ethical issues abound for Hmong interpreters in Milwaukee who work in domestic violence cases. Through a well-orchestrated training program, they learn to give voice to people who cannot speak for themselves.

A shining example of judicial authorities who aim to achieve justice across linguistic and cultural barriers was seen in the practice at the International Criminal Tribunal for the Former Yugoslavia (ICTY), which has learned from and built on the lessons of the Nuremberg Tribunals. There, judges and lawyers alike make allowances for differences in witnesses' backgrounds, for example by sometimes modifying traditional forms of questioning. Considerable financial and technological resources have been allocated to all aspects of the ICTY's work. Interpreting services are treated not as Cinderella but as a crucial element in the administration of justice. [See ICTY's website, [www.icty.org](http://www.icty.org).]

Participants in the Paris Forum had the opportunity in

both formal and informal settings to report on a whole panoply of issues, linguistic and other, which arise in cross-cultural encounters in judicial settings. In many countries, interpreters have insufficient knowledge of legal procedures, or are not sufficiently prepared and hence cannot interpret effectively. Then again, interpreters may not be adequately remunerated by local judicial authorities for hard-earned skills and experience. Many legal professionals have little or no awareness of the issues involved in the provision of language service.

Participants came away knowing there is a groundswell of like-minded individuals in many diverse areas of the world. However, the overall future for court interpreting is mixed. In some places (Finland), major progress has been made and further improvements are planned; in others (Belgium), basic legislation is being introduced to address fundamental interpreting issues. In some places (such as the U.S.), legislation exists and can be effective in regulating practice (the federal courts) for some languages (especially Spanish), but elsewhere, practice and quality is extremely variable (state court systems); in other countries (Japan), though much has been achieved in recent years, much remains to be done in interpreter training, planning and management.

In some supranational settings, such as the European Union, there is growing awareness of the need for "procedural safeguards" and proper protection for linguistically vulnerable groups. However, the extent to which national states are prepared to "put their money where their mouths are" – as the ICTY has done – is not clear. EU proposals (in the framework of the Grotius Programmes for equal access to justice across language and culture) tend to shy away from the financial aspects of engaging competent interpreters. Yet those used to dealing with court administrations cautioned that over-ambition is likely to result in "lip service" being paid to the concept of equal access.

All the countries represented at the Paris Forum have ratified either the European Convention on Human Rights or the International Covenant on Civil and Political Rights, both of which mandate "the free assistance of an interpreter" for individuals in criminal proceedings who cannot understand or speak the language used in court. The question is whether, against this background, in the brave new third millennium, where rights-based approaches are so often advocated, the world's countries will see fit to take action in order to effectively implement elementary linguistic norms in their domestic justice systems.

*[Ruth Morris has a PhD in Law and is a conference interpreter. She teaches at Bar-Ilan University's School of Translation and Interpretation. She authored, together with Joan Colin, "Interpreters and the Legal Process".]*

**NAJIT BUSINESS**

**REPORT OF THE BYLAWS VOTE COMMITTEE**

Total number of votes received by proxy	211
Total number of valid votes	190
Total number of invalid votes	21

Total number of votes received at annual meeting	51
Total number of valid votes	44
Total number of invalid votes	7

<b>Article 4</b>	Yes	159	No	42	Abstain	9
<b>Article 5</b>	Yes	186	No	7	Abstain	20
<b>Article 8</b>	Yes	174	No	17	Abstain	13

Joyce Y. García, Clerk of Bylaws Vote Committee  
Phoenix, AZ, May 18, 2002

**The bylaw amendments produce the following consequences:**

**Article 4:** The Board of Directors now may, at its discretion, increase the number of Directors to be elected to either seven or nine.

**Article 5:** NAJIT will now have an additional standing committee, the Conference Committee. The Nominating Committee will be a standing committee, but the Elections Committee will be ad hoc. (Standing committees are "permanent," that is, they continue from year to year, whereas ad hoc committees are appointed only for a specific purpose and period of time.)

**Article 8:** Directors will now be elected at the Annual Meeting, and will take office the month following their election. (In the past, Directors were elected in a mail ballot and took office on January 1. NAJIT members who cannot attend the Annual Meeting will still, of course, have the right to cast their vote.)

**CALIFORNIA JUDICIAL COUNCIL CREDITS FOR NAJIT ANNUAL CONFERENCE – PHOENIX 2002**

CIMCE #	Contact Hours	Course Title
1268	3 hours	English/Spanish Legal Translation (Cabanelas)
1269	3 hours	Workshop on Conceptual Legal Translation (Becerra)
1270	3 hours	Tape Transcription (Navarette)
1271	8.5 hours	NAJIT conference Sat/Sun

Attendees should submit a receipt as proof of attendance.

No certificates were issued this year.

Holly Mikkelsen, Secretary, NAJIT 6/28/02

**FINANCIAL REPORTS**

**NATIONAL ASSOCIATION OF JUDICIARY INTERPRETERS AND TRANSLATORS, INC.**

**Statement of Assets, Liabilities and Net Assets Arising From Cash Transactions - Year Ended December 31, 2001**

ASSETS	
Cash	\$ 35,925
Due from SSTI (Note C)	\$ 17,041
Total assets	<u>\$ 52,966</u>

NET ASSETS	
Net Assets - unrestricted (Exhibit B)	<u>\$ 52,966</u>

**NAJIT Statement of Revenues Collected, Expenses Paid and Changes in Net Assets - Year Ended December 31, 2001**

REVENUES COLLECTED

Dues from members	\$117,575
Conference	65,704
Advertising	735
Interest	247
Mailing list rental	150
Miscellaneous	5,870
Total revenues collected	<u>\$190,281</u>

EXPENSES PAID

Grant to SSTI	\$40,000
Management fee	38,059
Conference	80,479
Publications and printing	15,477
Telephone	4,607
Office supplies	427
Postage	5,152
Board meetings/conventions	12,316
Accounting fees	,000
Bank and credit card fees	3,160
Dues and subscriptions	465
Miscellaneous	861
Total expenses paid	<u>\$204,003</u>

Change in unrestricted net assets	(\$13,722)
Net assets - beginning of year	<u>\$66,688</u>
Net assets - end of year	<u>\$52,966</u>

**SOCIETY FOR THE STUDY OF TRANSLATION AND INTERPRETATION, INC.**

SSTI Statement of Assets, Liabilities and Net Assets Arising from Cash Transactions - Year ended December 31, 2001

ASSETS	
Cash	\$ 1,685

LIABILITIES AND NET ASSETS

Liabilities Due to NAJIT	17,041
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NET ASSETS

Net assets (deficit)-unrestricted	(15,356)
Total liabilities and net assets	<u>\$1,685</u>

**SSTI Statement of Revenues Collected, Expenses Paid and Changes in Net Assets - Year Ended December 31, 2001**

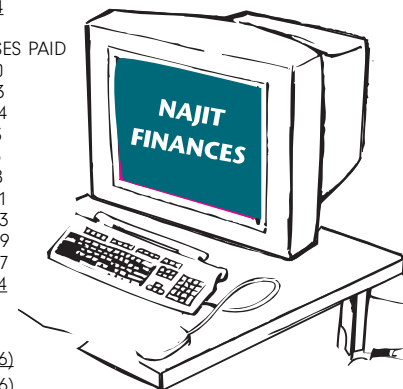
REVENUES COLLECTED

Grant from NAJIT	\$40,000
Contributions	20,542
Training fees	5,900
Interest	22
Total revenues collected	<u>\$66,464</u>

EXPENSES PAID

Examination development fee	\$50,600
Management fee	3,113
Printing	1,744
Postage	643
Bank fees	166
Meetings and conventions	4,428
Telephone	1,451
Supplies	203
Conference	3,069
Miscellaneous	1,937
Total expenses paid	<u>\$67,354</u>

Change in unrestricted net assets	(\$890)
Net assets (deficit) - beg of year	<u>(\$14,466)</u>
Net assets (deficit) - end of year	<u>(\$15,356)</u>





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