

## Cultural Brokerage and the Code of Ethics

### *I'm Only Here to Interpret vs. If You Only Knew What I Know*

Bethany Korp-Edwards

It is a common maxim among interpreters that you cannot interpret what you do not understand. And we would all probably agree that cultural literacy in one's working languages is paramount to understanding: it is this that enables us to convey a smooth, natural-sounding target language rendition.

Of course, every interlocutor -- even one who has lived in a single geographic location his or her whole life -- belongs to multiple cultures simultaneously, because culture springs not only from country of origin, but embraces a host of other factors. Some of these factors are readily apparent to all parties in the interaction: gender, race, ethnicity, age, language spoken, style of dress, socio-economic position.

Other cultural aspects -- modesty, courtesy, cleanliness, status and respect -- are not so obvious to those unfamiliar with the cultural norms. Not only may someone from another culture have a completely different understanding of the judicial process and the roles of the players, but the very concept of "justice" in another culture may differ greatly from how judicial officers in the United States understand it.

Interpreters' cultural knowledge, while essential to our work, leads us often to find ourselves in the uncomfortable and ethically difficult position of being the only person in a dialogue who holds a key piece of information without which the other participants cannot effectively communicate. And therein lies the conflict between "I'm only here to interpret" and "If you only knew what I know" How many times have we seen a total breakdown of communication centered around a simple, key piece of knowledge which, when missing, can cause one party to completely misperceive the speaker's intent? How many times have we thought, "I know what's going on here! If only I could tell him/her ... but is it really my place as an interpreter? Doesn't my code of ethics prevent me from doing so?"

In the sociological literature, this act of sharing one's knowledge about a culture is called "cultural brokerage." **Jezewski and Sotnik** define cultural brokerage as "the act of bridging, linking or mediating between groups or persons of differing cultural backgrounds for the purpose of reducing conflict or producing change." In a scenario involving interpreters, the conflict one would hope to reduce would be the misunderstanding each party has of the other party's message due to missing cultural information. And while the interpreter's responsibility is never to *make* the listener understand, it *is* our responsibility to accurately and completely convey the speaker's message.

Every day, interpreters manage to render myriad examples of culture's influence on language: sports, **religion**, politeness markers, sayings, allusions to cultural phenomena, such as "Do I look like one of **Dionne Warwick's psychic friends**?" ... the list goes on and on. On a regular basis we ask ourselves questions such as "If I interpret 'touchdown' as *gol* [goal], is it a cultural equivalent or an impermissible change in meaning?" and "Can I come up with an equivalent expression in three seconds, or do I try to just translate the meaning? What if I have doubts about the meaning?"

Because culture informs all linguistic utterances, interpreters by necessity do a bit of cultural brokerage as we interpret. We may interpret the judge's exclamation about Ms. Warwick as "Do I look like a psychic?" (and do the same when a witness exclaims, *¿Y quién soy yo, Wálter Mercado?* [Who am I, **Walter Mercado**?]). Or we may choose instead to interpret more literally and let the listener ask for clarification if necessary. Each of these options has linguistic and ethical merit.

Interpreters also incorporate cultural knowledge in far more subtle ways than the examples above. A colleague who interprets Arabic maintains that because the word "sir" is so crucial a part of addressing a stranger in Arabic, he adds it to in his Arabic rendition to any utterance where the English speaker is not being intentionally rude. (M. Ali, personal communication, December 6, 2008.)

So, what does our code of ethics say about cultural brokerage? Different authorities have different codes of ethics, but all of them share the same basic principles. Since all NAJIT members are bound to adhere to the association's **code of ethics**, so it is that code we will examine here. The words "cultural brokerage" do not appear in NAJIT's code of ethics, but reference or allusion to it are found in several canons.

First and foremost is **Canon 1, Accuracy:**

Source-language speech should be faithfully rendered into the target language by conserving *all the elements of the original message* while accommodating the syntactic and semantic patterns of the target language. The rendition should sound natural in the target language, and there should be *no distortion of the original message through addition or omission*, explanation or paraphrasing. All hedges, false starts and repetitions should be conveyed; also, English words mixed into the other language should be retained, as should *culturally-bound terms which have no direct equivalent in English, or which may have more than one meaning* [emphasis added].

In the very first sentence, we recognize the need to conserve all elements of the original meaning; in the next, we vow not to add or omit anything. “Adding or omitting” does not refer to words, but to units of meaning. If a judge asks politely and formally, “Do you understand your rights?” doesn’t his tone of voice and demeanor intend to convey politeness, which in Arabic would be expressed verbally rather than non-verbally? And therefore, in a language that requires politeness markers to be verbalized, wouldn’t translating the judge’s “bare” words lead to a loss of a meaningful element of the original message?

Canon 1 comes closest to addressing cultural brokerage directly, and recommends leaving culturally-bound terms in the source language. One that comes to mind in the Mexican culture I commonly deal with is *ejido* [a particular form of cooperative land ownership and land use in Mexico, historically for farming only]. Suppose you are a staff Spanish interpreter in a particular courthouse, and one day you run into a probation officer in the elevator. The probation officer says, “Hey, I did a pre-sentence interview yesterday where the guy said he worked on an *ejido*... what is that?” Assuming you know the answer because it is a question you have researched as part of your acquisition of cultural knowledge, would you answer? Of course, you are under no obligation to do so, but I suspect few interpreters would believe answering this question to be prohibited by the code of ethics.

The canons most frequently cited in support of an interpreter confining herself to a speaker’s actual words are canons 2 and 4.

### **Canon 2. Impartiality and Conflicts of Interest**

Court interpreters and translators ... shall abstain from comment on matters in which they serve....

### **Canon 4. Limitations of Practice**

Court interpreters and translators shall limit their participation in those matters in which they serve to interpreting and translating, *and shall not give advice to the parties or otherwise engage in activities that can be construed as the practice of law* [emphasis added].

Here, we are required to refrain from comment on the “matters in which [we] serve.” Judicial matters are within the purview of judges, attorneys, parties and court personnel, and not ours. However, language itself and the speaker’s message are squarely within the interpreter’s purview; language is the tool of our trade and the message is the raw material we work with. Not only can we comment on those aspects under certain circumstances, but we may be requested or required to do so by the Court (as in the case of a challenge to the interpretation). The code actually requires us to speak up if we realize there has been a material error in interpretation.. However, what we must be careful not to do is to speculate regarding the speaker’s intent.

Canon 4 requires that we confine ourselves to translating and interpreting: hence the oft-heard self-definition by interpreters, “I’m only here to interpret” (This is a perfectly valid, correct, and relevant statement under nearly all circumstances). But consider the following view: “All interpreters do is hear words in one language and say exactly the same words in the other.” Ludicrous, isn’t it? Translation and interpretation require far more than mere one-to-one transference: we all know we must hear the speaker’s message, process its full meaning and context, contemplate how best to convey every element of the meaning and context in the target language, and then utter the resulting words in an unstilted way.

In the middle steps lie the cultural elements: if the speaker says “we’re in the home stretch,” what is he alluding to? How would he have expressed that sentiment if he were speaking the target language? Of course, many cultures have races, so the concept of “home stretch” translates directly into many languages; not necessarily so with allusions to American football, military battles, or television personalities. Sometimes the best possible translation is the most literal one that fits into the norms of the target language; but sometimes, a near-literal translation will turn a perfectly transparent message in one language into a giant stumbling block in the other.

The key to remaining within the bounds of our code of ethics lies in the last section of canon 4: we must not give advice or do anything that can be construed as the practice of law -- including telling judges, attorneys, or court personnel how to do their jobs. I would argue, however, that what we may do, when necessary and usually at our own discretion, is provide the interlocutor with information he or she is lacking, and let him or her decide what to do with that information.

As interpreters, each of us is responsible for his or her own adherence to the code of ethics. Each of us decides what we feel we need to clarify, find equivalents for, explicate, or translate verbatim. As Robyn Dean, American Sign Language interpreter and professor at the University of Rochester Medical Center says in her work on **Demand-Control Schema**, there is always a range of controls (possible actions) available to interpreters in the face of any given demand (issue or impediment) and those controls range from conservative (favoring no action) to liberal (favoring the most radical action). As interpreters, we must recognize that as unethical as the most liberal control may be (“Judge, here’s what you need to know about Mr. Méndez-Colón...”) so, too, can the most conservative control be (e.g. the case of a male Urdu interpreter who suspects that the fact that he is male may be impeding explicit testimony by a female victim of a sex crime, yet does not alert the Court).

In other words, there is no one-size-fits-all approach to the cultural dilemmas inherent in conveying messages from one language to another. We can only rely on our training, experience, and ethical grounding to assess the situation and make the best decision at the time. Between the extremes of anthropological lecturing and slavish literalism, there are a host of valid options for interpreting a message as clearly and completely as possible with all its nuances (cultural and otherwise) intact. Even in a judiciary setting, the most ethical course of action for an interpreter usually lies at neither extreme, but somewhere in the middle.

In closing, I would ask the reader to consider the following statements about cultural brokerage. Decide for yourself whether you would share cultural knowledge related to a linguistic message under all circumstances, never, or in certain situations, but not others. If you knew a cultural reference in the non-English language was outside common knowledge by the average English-speaking person -- would you share it?

- Court interpreters may teach classes for attorneys and court staff on cultural competence and issues common to non-English-speaking parties, such as names.
- In extrajudicial settings, an interpreter may answer questions from attorneys, judges, probation officers, etc. on cultural knowledge.
- In extrajudicial settings, at the interpreter's discretion, an interpreter may share knowledge about cultural issues.
- In settings such as attorney-client conferences or probation interviews, an interpreter may share *knowledge on culture relevant to the current situation* at the interpreter's discretion.
- In the courtroom ...?

I suspect that as the list develops, most interpreters become increasingly disinclined to volunteer cultural knowledge, and that is as it should be. The more obtrusive we become, the more we step out of our role as “just the interpreter,” and the more dire the need should be before we consider intervening.

We must always bear in mind the context in which we are working -- not just that we are court interpreters, but what type of hearing or interview is it? Who are the players? What is the goal of that narrower context within the wider goal of the justice system? Is there anyone else present (for example, the defendant’s attorney) who is aware of the missing information? Is the information general knowledge in the speaker’s culture, not specific to the case? Is it information that would be widely understood in one culture but not at all in the other? What are the consequences to the ultimate goal of justice if the information remains unknown -- and what are the consequences to our ability to fulfill our function if it is revealed? Is it something that we, ourselves, caused by translating incompletely in the first place?

According to NAJIT’s code of ethics, court interpreters’ “function ... is to remove the language barrier to the extent possible, so that such persons’ access to justice is the same as that of similarly-situated English speakers for whom no such barrier exists.” Thus, we must always keep in mind the language barrier we strive to remove, and also other barriers to understanding -- educational background, socioeconomic status, lack of familiarity with the judicial system, and so forth -- unrelated to language and therefore not within our power and not our place to remove.

So to my mind, here is the most important question to ask ourselves in deciding whether to offer cultural knowledge: is this issue truly one caused by the way culture is bound up with language, or is it actually related to another type of barrier outside my domain?

Since either choice can have drastic consequences, one needs to consider very carefully (yet quickly) whether speaking up is the best course of action. I would say that in the vast majority of cases, the cultural issue is not so grave as to warrant any interference. But in those very rare cases where we make the decision to speak up, it should be with the full confidence that doing so is firmly grounded in awareness of the situation, our role in it, our cultural knowledge, *and* our code of ethics.

#### **Suggested Reading for Increasing Cultural Literacy:**

- ***The New Dictionary of Cultural Literacy: What Every American Needs to Know***. E.D. Hirsch, Joseph F. Kett, and James Trefil. ISBN 978-0618226474.
- ***Culture Shock! A Survival Guide to Customs and Etiquette: [Country]***. Various authors. Many countries available (including the USA).

**References**

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Jezewski, M.A., & Sotnik, P. (2001). *The rehabilitation service provider as culture broker: Providing culturally competent services to foreign born persons*. Buffalo, NY: Center for International Rehabilitation Research Information and Exchange. <http://cirrie.buffalo.edu/monographs/cb.php>

National Association of Judiciary Interpreters and Translators. (n/d). Code of ethics and professional responsibilities. Retrieved from <http://najit.org/membership/NAJITCodeofEthicsFINAL.pdf>

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## In Memoriam

### *A Tribute to Chief Judge John M. Roll*

Roseann Dueñas Gonzalez

The mass shooting of nineteen people in Tucson on January 8, 2011 at a local supermarket during a neighborhood meet-and-greet with Congresswoman Gabrielle Giffords, Democrat representing Arizona's 8th district, was a tragedy of devastating proportions. In addition to the critical wounding of Representative Giffords and the death of six innocent people participating in the everyday activities of democratic government, the life of Chief Judge John M. Roll of the United States District Court of Arizona was taken from his family, friends, and the federal judiciary.



On his way home from morning mass, Chief Judge Roll stopped by the public event to thank Congresswoman Giffords for her support on a matter related to the Arizona federal judicial district. At first, it was not clear if Chief Judge Roll had been a political target along with Congresswoman Giffords. However, a few days after the attack, a supermarket security video was found which not only answered that question, but also captured an extraordinary act of heroism by the chief judge.

The accused gunman, Jared Lee Loughner, shot Representative Giffords at close range, then began shooting indiscriminately into the crowd. The video showed that when the shooting started, Chief Judge Roll shielded the man directly next to him with his own body, pushing him to the ground. That man was Ron Barber, Representative Giffords' district director. The video then shows the shooter aiming at Chief Judge Roll's exposed back and pulling the trigger. Both men fell to the ground. Ron Barber was wounded in the arm but survived, while Chief Judge Roll lost his life.

This heroic act of protecting the person next to him was in keeping with Chief Judge Roll's life and character. He was committed to his family, his faith, and his judicial responsibilities. He was truly admired by everyone, his dedication to fairness universally recognized.

Faculty and staff here at the University of Arizona National Center for Interpretation especially grieve the loss of the Honorable Chief Judge John M. Roll. As a jurist, he was fair, insightful, and compassionate. For example, in 2005, Richard Martinez, a Tucson attorney specializing in civil rights litigation, brought before Chief Judge Roll a high profile suit filed by Mexican immigrants claiming that their civil rights had been violated by Arizona ranchers who had detained them at gunpoint after they had crossed the border. In 2009, Chief Judge Roll denied the ranchers' motion to dismiss the case, a ruling that provoked ire among some groups and death threats against the judge.

In recent years, Chief Judge Roll untiringly lobbied legislators for increased resources to enable the Arizona federal judiciary to attend equitably to an increasing number of drug and immigration cases. These efforts gained him bi-partisan support and renewed respect among members of the bar and bench.

During his tenure on the federal bench, many members of the Agnese Haury Institute faculty had the opportunity to know and work with Chief Judge Roll. Everyone was impressed not only by his affable character but by his high regard for the court family.

Chief Judge Roll acknowledged the demanding nature of interpretation and treated interpreters with dignity as officers of the court. He appreciated the significance of quality interpreter services for non-English speaking witnesses and litigants. He also recognized the need for additional assistance and advocated for interpreter services at the national level. He assisted the Agnese Haury Institute for many years. Those who attended the University of Arizona Agnese Haury Institute for Interpretation may remember how he opened his court to our students, addressed them from the bench, and praised the work of federal certified interpreters, both staff and contract, with whom he had worked over the years, including Laura Murphy, Joyce Garcia, Yvette Citizen, Donna Whitman (and many others), all of whom are long time Tucson interpreters and faculty members of the Agnese Haury Institute for Interpretation.

Cognizant of the pivotal role that interpreters play in cases involving limited and non-English speaking persons, Chief Judge Roll, simply put, was an interpreter's best friend, and a proponent of their needs in the courtroom. He became a zealous advocate for interpreters, the need for quality interpreter services, and the centrality of training and education as a means to achieving the proficiency required to serve the needs of the court.

A graduate of the University of Arizona College of Law in 1972, Chief Judge John M. Roll received his LLM from the University of Virginia School of Law in 1990. Early in his career, he served as a deputy Pima County attorney in Tucson and an assistant United States attorney in the criminal and civil divisions in Tucson. From 1987 to 1991, he served as a judge on the Arizona Court of Appeals, Division Two. He was appointed to the district court in 1991 by President George H.W. Bush. He became chief judge of the U.S. District Court for the District of Arizona on May 1, 2006.

We are unspeakably proud that for twenty years, a judge of the caliber of Chief Judge Roll selflessly participated in our educational enterprise by taking time from his overfilled docket to attend the closing day of our institute, providing inspirational remarks to students from 30 states. In his annual address, he reminded students to keep uppermost in mind the heavy burden they carry as human cultural and linguistic bridges to provide meaningful access for traditionally excluded populations. Most importantly, he commended them for their efforts to improve their skills by attending the institute. Despite his onerous administrative responsibilities as chief judge, he rarely missed an opportunity to congratulate our students, motivate them to continue the lifelong learning required, and commend them for committing to such critical work.

We are outraged by this tragic death and monumental loss. In the name of former and future students, all of us here at the University of Arizona Agnese Haury Institute for Interpretation wish to express how much we will sorely miss the esteemed Chief Judge John M. Roll.

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*[The author is director of the Agnese Haury Institute of Interpretation at the University of Arizona.]*

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## Message from the Chair

Welcome to winter and to the first electronic issue of *Proteus*! We are very excited about our new “green” format, because it not only dramatically reduces our carbon footprint, but it gets *Proteus* to you immediately upon publication. No more waiting weeks for your often-mangled paper copy to arrive by post. Our new format allows you to print specific articles right from your computer without having to twist and turn your original on the photocopier, getting bits and pieces of other articles and wasting paper, just to get those last two lines of the article you want. And if you download an article, you can email it directly to that judge, attorney or administrator with whom you’d like to share it.

You can “talk back” electronically, adding comments and observations about article content, engendering a lively (but always civil) discussion. I know that some of you are dyed-in-the-wool paperholics. I enjoy holding a book or magazine in my hands as much as you do. But even I, Queen of the Electronic Luddites, am convinced that this change is good, both for NAJIT and the environment. I hope that you’ll be won over as we go forward and become as enthusiastic about this change as the board and *Proteus* staff are.

By now, I hope you’ve had an opportunity to work with our updated website as well. Robin and Zalina have performed yeoman’s service, converting and cataloging hundreds of documents and other information and making sure that all the links work. It’s an ongoing process in which glitches sometimes occur – so if you find something that needs correction, please let them know and they will do their best to fix it as quickly as possible.

Members will soon be receiving ballots and information about how to vote online, both for board members and any proposed amendments to the by-laws. Any active member who has provided headquarters with an email address will receive an electronic ballot, and periodic reminders of the voting deadline. The handful of members without an email address will receive paper ballots. This system was implemented last year, and was quite successful. Not only does it save time at the annual meeting, it has saved, and will continue to save NAJIT thousands of dollars, which can be better used to further our mission.

**Registration is now officially open for our 32nd annual conference in Long Beach, California, from May 13-15, 2011.** We are pleased to offer you outstanding presenters and a wide variety of topics to choose from. If you didn’t have a chance to sign up for the “Training the Trainers” seminar in California in February, you’ll have the opportunity to participate in a one-day version of this program as part of our pre-conference offerings on Friday, May 13th. And don’t forget the opportunity to take some down time in sunny California, before or after the conference. (An enticing thought for me, as I look out on my ice-covered driveway and yet another impending snowstorm!)

I wish you all a happy, healthy and prosperous 2011, and look forward to seeing you in May.

**Rosemary Dann, Esq.**

**Chair, NAJIT Board of Directors**

## Access Guidance

"Questions and Answers Regarding the August 16, 2010 Title VI Language Access Guidance Letter to State Courts was posted on 1/8/11 in two locations. See:

- [http://www.lep.gov/whats\\_new/whatsnew.html](http://www.lep.gov/whats_new/whatsnew.html)
- <http://www.justice.gov/crt/about/cor/>

From the blog of the Brennan Center for Justice: Progress on Language Access in Utah, by Laura Klein Abel – *01/19/11*

- [http://www.brennancenter.org/blog/archives/progress\\_on\\_language\\_access\\_in\\_utah/#When:16:12:35Z](http://www.brennancenter.org/blog/archives/progress_on_language_access_in_utah/#When:16:12:35Z)
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## Items of Interest

### ***Framer Confirmed to State Justice Institute***

On December 22, 2010, the Senate confirmed 3 new members to the State Justice Institute board of directors, among them, Isabel Framer. Her term as public member of the SJI board will be for two years with the potential for reappointment for three additional terms. Congratulations to Isabel for this honorary appointment.

For FY 2011, SJI requested \$6,273,000 to enhance its efforts to improve the quality of justice in state courts. State Justice Institute, at [www.sji.gov](http://www.sji.gov), provides information on available grants for state courts. Potential applicants are strongly encouraged to submit their grant applications as soon as possible, since SJI works on a first-come, first-served, basis for grant applications that merit funding. Deadlines for 2011 are: 3rd quarter, May 1, 2011; 4th quarter, August 1, 2011.

## ***Books of Interest***

*Through the Language Glass: Why the World Looks Different in Other Languages.* Guy Deutscher., Metropolitan Books, 2010.

## ***Ohio Certification Becomes a Reality***

- o [http://www.supremecourt.ohio.gov/PIO/news/2011/interpretercert\\_020111.asp](http://www.supremecourt.ohio.gov/PIO/news/2011/interpretercert_020111.asp)

Twenty-three Spanish interpreters were certified by the Supreme Court of Ohio and welcomed by Chief Justice Maureen O'Connor, who pledged to continue improving language access in the Ohio courts.

## ***Humor***

### **Cat ordered to appear for jury service**

- o <http://www.telegraph.co.uk/news/newstoppers/howaboutthat/8264782/Cat-ordered-to-do-jury-service.html>

In response to the above news story, NAJIT members lit up the listserve with witticisms. Some even offered punning poetry:

*A jury of your purrs  
Stop, or at least paws for a while!  
12 feline jurors... a total cat-astrophe  
Whimsical minds frisk and frolic in witty kitty concatenation  
I think we need to catnip these jokes in the bud*

## ***Translators in the News***

Afghan translator wins European court case <http://euobserver.com/9/31681>

## ***Websites of Interest***

- o The Correctional Officers' Guide to Prison Slang  
[http://afscmelocal3963.tripod.com/f\\_y\\_i\\_.htm](http://afscmelocal3963.tripod.com/f_y_i_.htm)
- o [www.americareadsspanish.org](http://www.americareadsspanish.org) -- An electronic newsletter, librarians' picks in Spanish titles, author features, and a campaign to donate books to neighborhood libraries.
- o [www.traduceme.org](http://www.traduceme.org) -- Sitio dedicado a la teoría y práctica de la traducción

**Library Resources**

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- [www.findingdulcinea.com](http://www.findingdulcinea.com) -- Librarian of the Internet, with a stated mission: to bring users the best information on the Web for any topic, employing human insight and methodical review.
  - [www.doaj.com](http://www.doaj.com) -- Directory of Open Access Journals
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## Conference Report

### **ATA Annual Conference, Denver 2010**

Georgianne Weller

This year's ATA conference followed the usual format: pre-conference seminars, ATA social affairs (welcome reception, continental breakfasts, coffee breaks, and final dance) and business meetings (opening session, presentation of candidates, elections, and annual meeting for members), as well as separate social events sponsored by the divisions, all of which were well attended and orchestrated with care.



The hotel in Denver was easy to navigate, with good signage and non-freezing conditions in the meeting rooms. Most IT equipment worked well, with on-site technicians, a big plus. However, we -- not our waists -- missed the cookies and brownies at the afternoon breaks!

The exhibition hall, including free Internet access and marvelous relaxing massages, was almost always packed and full of action. The motto "learn, enjoy and connect" was apropos.

The never-ending whirl of extracurricular events, such as the Town Hall meeting, Trados training, speed networking, tool tutorials, yoga, a book splash, an after-hours café, and the job marketplace received many rounds of applause from the attendees.

The academic sessions were a mixed bag, with a little bit of everything. Evaluations should be in the mail for the presenters, which will serve as feedback for them and the conference organizers. Hallway remarks frequently heard were that there were few offerings for advanced attendees, with sessions inclined toward beginner translators and interpreters. Yet it is also true that this distribution reflects those in attendance and a lack of abstracts submitted on more substantial topics.

Sessions on the ATA certification exam always draw attention. Complaints continue that scoring is unfair and travel expenses are discriminatory, impeding full participation by those who cannot afford to travel. The fact that laptops are still not permitted does not reflect present-day translators' reality. However, conference attendance enhanced by the possibility of taking the certification exam on the same trip is a motivating factor that cannot be denied. A morning and afternoon sitting were available and exam prep sessions were on the schedule as well.

Recent goodies: a division Open House to mingle and learn more about the 18 divisions in ATA; an audiotape, synchronized with supporting slides and handouts for a multimedia online experience was available for \$99 for ATA conference attendees who pre-ordered, with an option to receive the DVD-ROM for an additional \$30. A hardback copy of the proceedings continues to be available at \$50 each, including back issues.

The 52nd ATA annual conference will take place in Boston from October 26-20, 2011 and the XIX World Congress of the **International Federation of Translators (FIT)** will take place in San Francisco from August 1 - 4 of this year.

For additional information, please consult the ATA website at [www.atanet.org](http://www.atanet.org). Best wishes for a fruitful 2011!

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*[The author, a conference and federally certified Spanish interpreter, is director of language policy for **INALI**, National Institute for Indigenous Languages, Mexico City.]*

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## Getting Down to Business

### *The Global Positioning of Translation and Interpretation*

María Cristina de la Vega

I have been writing about the professional events attended over this past year, and am happy to report feeling galvanized by the ATA conference in November, rounding out the year which included the NAJIT Conference in Orlando and the InterpretAmerica Forum in D.C. Being skeptical by nature, I was surprised that all these events were exemplary in content, networking and overall advancement of the profession. I would normally have picked only one event to go to per year, but I was so favorably impressed by each of these conferences successively that I continued to risk the odds that the subsequent ones would not stand up to the first one. Luckily, it was a winning streak.

It is not surprising that I saw several of the same professionals at each meeting, as 90% of interpreters are also doing translation work. Nonetheless, I also connected with colleagues I had not met before. I believe that our profession is really coming into its own. If we, its constituents, make an effort to stay abreast of developments and see our goals to fruition, we will create a critical mass and be able to leapfrog some of the developmental steps in the evolutionary curve for a profession, despite the fragmentation of our industry.

To give you some background figures from Ben Sargent of Common Sense Advisory (CSA), mentioned in one of the ATA sessions: the global market expenditure for language services in 2010 is estimated at 26 billion, more than double previous estimates. The U.S. accounts for a 48.5% share of the business. Worldwide, there are about 23,380 language service providers (LSPs). These figures were reached by defining the companies analyzed as firms with more than 2 employees that offer services and/or technology related to the transfer of information from one language to another.

The market is estimated to be growing at 15%. CSA research shows that the key impediments to growth are ignorance of the need for services, lack of respect for the profession and broad competition, which lowers price. I think prices will increase proportionately when the other two issues are addressed and the wheat is separated from the chaff.

On a positive note, I think our professional associations are tackling these stumbling blocks by working to give the industry higher visibility. We are speaking out when there are egregious moves against our segment and the public we serve, such as in the recent flare-up in Utah where local officials stated they would not provide interpreting services free of charge as directed by the Justice Department. NAJIT wrote to highlight the needs we meet, how these have been recognized by our legal institutions, and why those guidelines must be adhered to. Associations are also striving to improve respect by furthering education so that we will notably raise the level of proficiency across the board among our ranks.

According to U.S. News and World Report in December, translation and interpretation are among the top 50 best careers for 2011. It is projected that employment in this category will increase 22% between 2008 and 2018, much faster than the average for all occupations, according to the Labor Department. This demand is driven by an increasingly global economy, as well as a growing population of non-English speakers in the U.S.

In addition to the ever-present Spanish, other languages in demand are Asian languages such as Chinese, Korean and Japanese as well as Arabic, Farsi and indigenous African languages -- in addition to the classic European languages of French, Italian and German. The article points out that those who specialize in healthcare and law are apt to have more business, and that the top 10% earned more than \$74,150 while the bottom 10% earned less than \$22,810. The good news is that once the latter gain enough experience by taking advantage of the resources offered by our associations, among others, they can transition to more difficult or prestigious assignments that will increase their pay scale.

But as I said in a previous article about setting goals, we cannot rest on our laurels. We need to put some "skin" in the game and resolutely do whatever needs to be done to ratchet up the advancements that we envision.

One way to do this is by adding passion to our center of focus, as described by Steven Covey in his bestseller "First Things First." He states that this center contains the things we are concerned about, that we have an ability to influence, that are aligned with our mission and are timely. If we work in this center steadily, over time we will find positive ways to influence more people and circumstances. This means staying in touch with colleagues, discussing current events and issues that affect us, and doing our utmost to promote and participate in the best collective solutions.

One of the easiest ways to jump into the fray is to attend industry meetings and become involved, get to know your peers. When you increase the people in your network, it becomes much more likely that you will continue to collaborate with them, if only over the Internet, to tackle projects that will move us all forward.

An excellent example of such an undertaking was recently led by Rob Cruz, a NAJIT director, in collaboration with Sabine Michael, a NAJIT board member from Arizona. Together with a team of volunteers, they created a presentation as a primer for attorneys and judges on how to work with court interpreters. The presentation will be posted on the NAJIT website, complete with talking points and sources. This is an invaluable resource that any of us can access to promote NAJIT's goal of improving working conditions and recognition for interpreters. None of the team members ever met physically; they were in different states and worked online. The result has been phenomenal and was accomplished in the relatively short span of a few weeks.

The research conducted by Don Tapscott and Anthony D. Williams for their business bestseller "Wikinomics" illustrates this same concept. According to them, mass collaboration is changing everything. The Net Generation or N-Gen "will inject the culture of openness, participation and interactivity into workplaces, markets and communities". When that is combined with an increasingly competitive global economy, it creates an opportunity which will leave those who don't participate by the wayside wondering what happened and how they got left behind.

The bottom line is, if you love your work and want to make a difference that we can all benefit from, become involved. Make a New Year's resolution to help shape the future of our business. One step towards that goal could be to plan to come to **Long Beach, CA for the NAJIT Conference in May**. See you there!



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*[This is a regular column for Proteus. The author is a federally certified Spanish interpreter, conference interpreter, and co-owner of ProTranslation in Miami. Author links: [www.protranslating.com](http://www.protranslating.com); LinkedIn profile at [www.linkedin.com/pub/maria-cristina-de-la-vega/a/25a/728](http://www.linkedin.com/pub/maria-cristina-de-la-vega/a/25a/728).]*

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## Book Review

### *Doing Justice to Court Interpreting*

Reviewed by Dagoberto Orrantia



Miriam Shlesinger and Franz Pöchhacker (Eds.)

2010. John Benjamins.

ISBN 978 90 272 2256 5; 246 pages.

\$135.00 (Hardcover); also available as an e-book

The publisher's claim that "this volume provides a panoramic view of the complex and uniquely constrained practice of court interpreting" brings to mind Saul Steinberg's memorable cover for *The New Yorker* magazine, *The World as Seen from New York's 9th Avenue*, in which the artist drew three blocks of the Big Apple larger than the entire rest of the world. In this volume, Denmark takes the place of New York. Eight articles and three reviews previously published in the bi-annual journal *Interpreting* make up this book: three reports from Denmark, two from Israel and one each from Australia, Ecuador and Japan -- hardly a panoramic view of court interpreting.

Shlesinger and Pöchhacker are the editors of *Interpreting*; they share as well a long history of important research and publication in the field of translation and interpretation (the most accessible perhaps being their edition of *The Interpreting Studies Reader*), and they have done a good job of selecting serious academic research for their journal and book: the painstaking and earnest work of scholars stating a problem, reviewing the literature, proposing solutions and describing what remains to be done -- admirable ardor that nevertheless makes for slow reading, even for specialists.

From the first article to the last, whether the setting under study is an international war tribunal or a local court, each author's aim appears to be to show the clash between the system's desire and the interpreter's reality. The first four articles focus on the socio-political aspects of the organizations in which interpreters work, seen historically or at the time the study was conducted, and the last four center on specific aspects of the interpreters' work.

Susan Berk-Seligson describes two judicial systems in contact (and largely in conflict): mestizo/blanco state justice in Ecuador and Quichua communal justice. Her tireless (although largely justified) iteration of court interpreters as untrained, intrusive or inept is here once again. Politics, race and power relations are also factors that Kayoko Takeda explores in a study of the Tokyo War Crimes Tribunal, the Japanese counterpart of the Nuremberg trials. Between 1946 and 1948, Japanese war criminals were tried, with Japanese nationals working as interpreters, Japanese-Americans monitoring their performance, and Caucasian military officers settling their linguistic differences: an arrangement that hardly guaranteed accuracy of interpretation.

We get another look at military court interpreting in Shira L. Lipkin's account of the "simultaneous translation" and other duties performed by Hebrew<math>\leftrightarrow</math>Arabic servicemen working as interpreters at the Yehuda Military Court near Jerusalem. Inadequate training, a fuzzy understanding of the ethics of interpretation and poor definition of their duties militate against true and accurate interpretation. Lipkin quotes one soldier:

*We don't only interpret, we are also in charge of the courtroom, for example this courtroom, I am in charge of it, I prepare it, I call the detainees, the escort, the cops, the defense counsel, the prosecutor, the families if they're here, the military cops... I don't just...we don't just interpret, we also work, prepare, run around, in the winter it's the hardest, you get all wet. (p. 90)*

Ruth Morris, Lipkin's advisor, has often written about the dilemmas and predicaments in court interpreting. With her usual thoroughness, Morris here lays out the disrelation in Canada and Israel -- countries with two official languages -- between what judges and interpreters understand as interpretation, and case law, legal provisions or their implementation, particularly during police "interviews" of defendants accused of terrorism.

The dissonance between translational norms and interpreter behavior is studied in greater detail in the articles which follow. "The cooperative courtroom: A case study of interpreting gone wrong," by Bodil Martinsen and Friedel Dubsloff, examines the trial of a French-speaking defendant conducted in a Danish district court where blatant errors by the state-authorized interpreter caused the witness, the judge, and even the audience, to object to faulty renditions. But Tina Paulsen Christensen shows that Danish judges and lawyers often disregard the guidelines recommending the use of direct speech in the courtroom.

Direct versus indirect reported speech among Korean-speaking witnesses in an Australian courtroom and its effect on interpretation accuracy is considered by Jieun Lee, who finds that Koreans' general preference for indirect reported speech poses a dilemma for a court interpreter, constantly enjoined to interpret in the first person.

Finally, the power differential among participants in a court proceeding is explored by Bente Jacobsen in a detailed analysis of face-saving strategies deployed by a prosecutor, a defendant and an interpreter during questioning by the former at a trial.

Journals and conferences disseminate current research -- periodicals and conference proceedings have a short half-life -- and book reviews are even more ephemeral, so aside from their historical interest there is little to recommend the three book reviews tacked on at the end of *Doing Justice*. One review is of a volume of selected conference papers on interpreting in legal, health and social service settings from a 2004 event. Another review is of a mono-thematic issue in 2006 of the translation journal *Linguistica Antverpiensia*. *Proteus* readers are probably familiar with accounts of the Nuremberg trials; two German language books under review take us back to that defining moment in the history of court interpreting. One, however, offers something new: material depicting interpreter and translator working conditions at Nuremberg as filmed and photographed by Ray D'Addario. (View, for example, <http://www.youtube.com/watch?v=IA2-t8uokKY>.)

A collection of eight articles and three book reviews cannot aspire to give the reader a panoramic view of any subject, let alone one as wide-ranging as court interpreting. But the authors' emphasis on the need to close the gap between the aspirations of a profession and its present-day reality is recommendation enough to read this book.

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[The author is a conference and federal court certified interpreter. ]

## A Lexicographer's Lair

### *The Limits of Interpretation: Who Broke the Glass?*

Dennis McKenna

Perhaps the best pun about the problems presented by translation was devised in Italian: *Traduttore traditore* (translator, traitor) is their short answer on the subject. I suppose the Italian opinion on court interpreting would make our heads spin. Translators, after all, have time to carefully consider their renditions, while interpreters are expected to come up with the right term or turn of phrase at the drop of a hat.

And yet, in spite of the old Italian saying, court interpreters still manage to perform their duties day in and day out, with only an occasional glitch that can be chalked up to either fatigue or momentary carelessness. Are these “seamless” interpretations of ours really that good, or should we engage in more soul-searching to question just how much of our work is treacherous?

To help answer this question, I need to tell a little story. In 1940 a chemical engineer working as a fire prevention expert for the Hartford Fire Insurance Company suddenly burst onto the scene of language studies with an article that shocked academia and quickly became all the rage among the general public. Nothing about Benjamin Lee Whorf's background appeared to prepare him for his role of linguistic stardom. One popular version of how he developed his interest in language tells of how he noticed that a liquid marked “**flammable**” was widely understood to easily catch on fire, while when it was marked “inflammable,” it was not. Because the prefix “in” (or “im” or “em”) commonly means “not,” as in *indecent* or *immature*, but also can mean “to put in a state of,” as in *imperl* or *inflamm*, Whorf concluded that many people might mistakenly assume that the “in” in inflammable must mean “not flammable” and not its true meaning of “flammable.” This confusion could result in people leaving cans of turpentine close to sources of heat. Whorf, according to this story, advocated for warning labels in the U.S. to advise that liquids were “Flammable,” instead of “Inflammable,” a change he did help bring about when he was working for the Hartford Fire Insurance Company.

This story about Whorf's role in changing warning labels in the U.S. from “inflammable” to “flammable” (**Whorf**) may or may not be true. However, Whorf's interest in language led to his studies of the Hopi language, which in turn led him to his great “discovery.” According to his investigations, Native American languages so conditioned American Indians' grasp of reality that their thoughts were remarkably different from our own. An example of this, according to Whorf, was that Hopi had two words for water, one for when it is in a container, and the other for when it is in the ocean, a pond, or a waterfall or fountain. For Whorf, the Hopi's lexicon is a true reflection of their worldview, just as our own vocabulary is highly suited to our highly developed environment [Whorf, 1956, p. 210].

This career insurance man also believed that variations in grammar “forced” us to think differently, depending on our language's syntactical habits. He went so far as to declare that he had discovered a “new principle of relativity” in which language determined our understanding of the world. In using this terminology, Whorf was attempting to imbue the relatively staid field of linguistics with the excitement of Einstein's advances in physics. In its most extreme form, Whorf's hypothesis states that there are no constants across languages. Speakers of different languages, like inhabitants of worlds traveling at different speeds relative to the speed of light, have different ways of organizing information, leading to different ways of perceiving the world.

Whorf divided languages between those that were similar to English (which he called Standard Average European or “SAE”) and those that were not. The more different from SAE, the more difficult it would be for speakers of that language to relate to our reality.

Whorf's hypothesis is now generally referred to as the principle of **linguistic relativity**. The public latched on to it right away, and even his detractors had to acknowledge that it was an attractive concept. Whorf himself greatly advanced his cause by lecturing widely, as well as publishing both highly technical articles in academic journals and more accessible pieces in popular magazines. His hypothesis had the added advantage that it could be easily applied to any number of subjects.

If, for example, we were to apply linguistic relativity to the field of translation and interpretation, a truly “precise” translation or interpretation, the kind of work that we are supposed to be doing in court, would be near impossible to achieve. This would be the case even if we were always faithfully translating the speaker's exact words, because we would never be able to fully convey another language speaker's unique reality in a different language.

According to this extension of Whorfian theory, the more different the language, the less accurate the translation. Perhaps the margin of error when interpreting between two Romance languages would be relatively small, but English and Swahili would be too disparate in grammar, word order, and lexicon for an interpreter ever fully to bridge the gap.



Fortunately for us, it has now become clear that this version of linguistic relativity posited by Whorf in its most extreme form was patently absurd. Just because you speak a particular African language with no words to describe many of the weather conditions experienced in the northern latitudes in winter, doesn't mean that an African is incapable of understanding the concept of snow. We are, after all, the dominant species on the planet and over time have proved ourselves quite capable of learning and of leaps of the imagination. The suggestion that our native language somehow impedes us from understanding unfamiliar concepts is now widely dismissed by both linguists and psychologists.

In Whorf's original exposition of his theory, much was made of certain grammatical anomalies, e.g. where a particular language lacks a future tense. But did this really mean that those who speak an American Indian language that lacks a future tense are incapable of making plans for tomorrow? Obviously, no. The speakers of such a language are naturally able to connect the dots, given the overall context of a particular utterance. In English we may say, "I'm going home," as we finish our sandwich at the corner deli, and everyone at the table understands that we are describing an event in the immediate future, even though those same words out of context would not necessarily convey that.

By the 1960s opposition was growing to Whorf's theorem of linguistic relativity. In the end, Whorf never really rose above being an amateur linguist. When linguists tried to confirm his findings with Native American languages, they were often unable to do so. Another development that boded ill for Whorf and his theory was the work of **Noam Chomsky**, which became all the rage of university linguistic departments beginning in the 1970s. According to Chomsky, there is a common "**universal grammar**" that applies to all human languages. Differences among languages, according to this view, are not significant factors affecting human thought. These developments led not only to the end of the little research related to linguistic relativity, but also to an almost universal repudiation of anything that smacked of relativism in language studies and anthropology (Lera Boroditsky). For many years thereafter, linguists avoided any discussion of or research in a wide range of subjects related to linguistic relativity. For academics, it was a case of once bitten, twice shy. Once Chomsky was firmly in the saddle, Whorf and his followers were banished from the halls of academia.

But catchy ideas, like catchy tunes, have a way of popping back into mind, even when they may seem to be utterly incongruous or out of step with current trends. In the last few years, a new way of thinking has emerged on the subject of linguistic relativity. This new line of thought holds that not all aspects of linguistic relativism are necessarily flawed. Even though linguistic relativity was widely discussed in the 1940s and 1950s, relatively few empirical studies were ever carried out to test its validity. Today this lack of research makes linguistic relativity a highly attractive area in which to perform further study.

In comparison to Whorf and his contemporaries, the new relativists are a much more serious lot, with a deeper scientific and empirical bent. They have become the Detective Fridays of linguistics: "Just the facts, ma'am, nothing but the facts." The nature and scope of their claims have been scaled back dramatically, keeping them out of popular consciousness, a fact that is of no concern to them.

These modern researchers acknowledge that, contrary to Whorfian theory, our language in no way coerces or constrains our thoughts. What they are instead addressing is how various languages encourage us to encode (or *to specify*) one kind of information over another. In English, for example, we say, "She took the dog out for a walk," while in Spanish we say either, "*Ella salió a pasear al perro*," or, "*Ella salió a pasear a la perra*."

You may think, "What difference does it make what is specified or what isn't in a given language?" But modern thinking on this subject is that when a language forces you to provide certain kinds of information (and not to specify others), the result is that you become especially attentive to some details and inattentive to others. Thus, if the word for "dog" in your language is normally coded for gender, you will naturally pay more attention to it because you need to know this information in order to compose a grammatically correct sentence. Later on, you will also be more likely to recall if the dog was a male or a female. The same is true for the words "neighbor," "salesperson," or "operator."

Some of the most exciting new research in this area has been performed and written about by Stanford professor **Lera Boroditsky**. She and her research colleagues focused on the many languages that assign a specific gender to nouns. The word "**bridge**," for example, is feminine in German, *die brücke*, and masculine in Spanish, *el puente*. The Stanford team devised a test to determine if this assignment of genders to various nouns influenced in any way a person's thinking. The test was carefully designed to avoid giving any linguistic cues to test subjects. Native German and Spanish speakers were shown the picture of a bridge with no verbal prompts. When asked to describe it, Germans chose words that described it as "beautiful," "elegant," "fragile," "peaceful" and "slender," while the Spanish speakers spoke of it as "big," "dangerous," "long," "strong," "sturdy," and "towering." Is a bridge inherently different to a German than it is to a Spanish speaker? Apparently so, at least to the extent that gender markers show a tendency to imprint minds with masculine or feminine associations for each noun.

But, you say, couldn't this be a matter of chance? The same study tested 24 objects in all, each of which had a different gender in the two languages. ("For example, when asked to describe a 'key' – a word that is masculine in German and feminine in Spanish – German speakers were more likely to use words like 'hard,' 'heavy,' 'jagged,' 'metal,' 'serrated,' and 'useful,' whereas Spanish speakers were more likely to say 'golden,' 'intricate,' 'little,' 'lovely,' 'shiny,' and 'tiny.'") In every case, the objects of masculine gender in a given language were associated with "masculine" adjectives. How, you may ask, did the researchers determine which adjectives were considered masculine or feminine? A group of individuals not associated with the study were asked to rate adjectives as either masculine or feminine. An example of a masculine adjective in English would be the word "handsome." Correspondingly, "pretty" is would be called a feminine adjective.

We have seen how language gender designations can impact our ability to speak about and recall certain information (e.g. was the dog male or female?). But surprisingly, this is also true for remembering and identifying colors. As it turns out, one can more readily identify a particular color if one's native language has a special word for that particular shade. Therefore, if you speak Russian, which has no one word to describe the part of the color spectrum that English speakers call "**blue**," you will more easily identify an object as being light blue (*goluboy*) and not dark blue (*siniy*). English speakers are not as fast to distinguish between these two different shades of blue. Different languages divide the color spectrum differently. Just as Russian has two words for what English speakers call blue (light and dark), other languages have one term to describe what we call blue and **green** in English.

Another fascinating difference among languages is what I like to call their level of denial. By use of reflexive verbs, Spanish and Japanese often do not assign blame for mishaps (think "*se rompió el vaso*"). Does this mean that the speakers of these languages may not remember the specific agency involved in such events? When a Spanish speaker says, "*Se rompió el vaso*," there is no emphasis on who broke the glass.

According to research, when a witness is asked afterwards about such an event, he is less likely to remember who did it than the speakers of English (or any other language) who must specify agency from the start (Boroditsky, 2010). According to **a study at Stanford**, "...speakers of English, Spanish and Japanese watched videos of two people popping balloons, breaking eggs and spilling drinks either intentionally or accidentally." When they were questioned afterwards, "Spanish and Japanese speakers did not remember the agents of accidental events as well as did English speakers (Boroditsky, 2010)." In these instances, when the language does not require us to encode certain information, we end up paying less attention to it and are less likely to remember it (Boroditsky, 2010).

English grammar focuses on the agent, making it a "whodunit" language. Similarly, our **justice system** emphasizes finding the perpetrator of wrong and meting out punishment, even when that person did not necessarily intend to cause a given outcome. Thus we have the area of torts in civil law and the crime of involuntary manslaughter in criminal law. Victims' rights, on the other hand, have not been as high a priority in AngloAmerican culture as they are in some other cultures. Did our language form the basis for our sense of justice, or did our sense of justice help to form our language? When we expand on this thought, we see that justice is an aspect of our culture. Did language shape culture, or was it culture that shaped language? All of this is fertile ground for future study.

We needn't carry out exhaustive studies, however, to confirm some of the more surprising findings suggested by this line of investigation. Just pay a visit to your local museum and take note of how German and Russian artists tend to depict death. German artists generally depict it as a man (*der Tod*) and Russian artists as a woman (*smert'*). According to Lera Boroditsky, over 85% of the time the image of death, either masculine or feminine, corresponds with the grammatical gender of the painter's native language.

When we interpret, we are constantly moving between two sets of grammar, word order, gender designation, and lexicon. Until recently, it was widely assumed that these differences were of little consequence. But we now know that these multiple differences among languages really do count. When one language either does or does not require that certain information be encoded (or specified) in a question, it potentially affects a witness's ability to provide a responsive answer, accounting for at least some attorney frustration with nonresponsive answers. For this same reason, the interpreter's task of conserving the form, content, meaning and register of the original utterance is greatly complicated by the different encoding requirements of the two languages.

Lera Boroditsky's work at Stanford suggests that there are many subtle ways in which language impacts our ability to understand and process information (e.g., colors), helps to shape our attitudes (e.g. was the bridge peaceful and slender or strong and towering?), and accounts for our system of justice (e.g., who broke the glass?).

When we interpret, it is in our best interest to think not only about what is literally conveyed by the words we use, but also about what is implied or omitted as well. We certainly don't want anyone in the jury box or the gallery to jump up and cry out, *L'interprete ha assassinato la nostra lingua!* The interpreter has massacred our language!

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[ *This lexicographer's day job is as a state and federally certified Spanish interpreter in California. This is a regular column for Proteus.* ]

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## Legal Terms

**admit subject to connection:** judge may allow evidence in if it will later be shown, via other evidence, that it is relevant

**boilerplate language:** standard language used commonly in documents, having a definite meaning in the same context without variation

**chain of custody:** the party who introduces evidence must account for its custody from moment it was received for safekeeping until it is introduced into evidence

**cognizable:** subject to a court's jurisdiction

**come in:** as in "I'll let the statement come in on the theory that..." To admit, allow into evidence, or to allow a certain topic to be mentioned. (Sometimes abbreviated to "**I'll let it in on the theory that...**")

**conflict of interest:** arises when an attorney or government employee's personal or financial interest interferes or appears to conflict with his official responsibility

**discoverable material:** material that must be turned over to the defense in accordance with the discovery rule: includes statement of defendant, defendant's prior record, documents and other tangible objects, reports of examinations and tests

**dispositive (facts or decision):** jural, pertaining to doctrines of rights and obligations, covered by rules of positive law

**doctrine of completeness (or completeness rule):** rule of evidence which permits further use of a document to explain portion of a document already in evidence

**excited utterance:** a statement made while declarant was under stress of excitement caused by the event; is an exception to the **hearsay rule**

**excludable time:** time that may be excluded, or discounted, from the 70-day period in which a case must be brought to trial after an indictment is filed

**factual findings (or findings of fact)** the decision, opinion or observation arrived at by a judge or jury on the issues related to the facts that are submitted for a decision by the court. The finding of facts ultimately influence the final judgment.

**four corners:** the face or text of a document (as in "I move to dismiss on the four corners of this complaint... There is no showing that my client did any affirmative act...")

**four corners rule:** holds that a document as a whole and not isolated parts is to be evaluated

**go to:** as in "This goes to the weight of the evidence and not to its admissibility."

**harmless error** an error by a judge in the conduct of a trial which an appellate court finds is not sufficient for it to reverse or modify the lower court's judgment at trial.

**jurisdiction:** in most common use, power and authority of a court to hear and determine a judicial proceeding; and power to render particular judgment in question. Also refers to the geographic area in which a court has power or the types of cases it has power to hear.

**lay a foundation:** to prove the authenticity of a document before introducing it into evidence

**limiting instruction:** judge instructs jury as to the use it may make of certain testimony or evidence

**make out :** fulfill the requirements of, as in "This complaint does not make out probable cause."

**material evidence:** evidence is "material" if there is reasonable probability that but for the failure to produce such evidence, the outcome of a case would have been different

**Mens Rea** (from Latin): a criminal intent, guilty knowledge and wilfulness; an element of criminal responsibility

**Motion in limine:** a pretrial motion requesting an advance ruling on evidence's admissibility, usually asking to exclude certain evidence

**"not offered for the truth of the matter"** -- evidence offered of a statement, usually hearsay, which would not ordinarily be admissible; however, testimony may be offered into evidence not for the jury to determine whether it is true or false, but to show the state of mind of the person to whom a certain statement was made. For example, if testimony is: "Paul said there was a contract out on Peter" the statement could come in to show the fear it might have caused in the mind of Peter.  
(prueba que se ofrece no porque sea cierto, sino para mostrar motivación)

**offer of proof:** atty. states for the record at sidebar what a witness would testify to and why this testimony is important

**Plain View Doctrine:** limited inspection by the authorities is permitted without a search warrant if items are in "plain view"

**privileged statement:** statement that was made in a confidential setting (as those between spouses, attorney-client, priest-penitent) that the law protects from forced disclosure on the witness stand

**probative value:** evidence has "probative value" if it tends to prove an issue

**probative evidence:** having the effect of proof, that which furnishes, establishes or contributes toward proof

**RICO laws:** prohibit racketeering activities in interstate or foreign commerce, including conducting or participating in affairs of an enterprise through pattern of racketeering.

**"shock the conscience" consideration:** synonym of "unconscionable," against the moral rule which requires probity, justice and honest dealing between people

**spillover effect:** indirect prejudicial effect on second defendant of evidence pertaining to a first defendant

**standards of proof** There are 3 standards of proof in criminal cases. The most commonly referred to is "proof beyond a reasonable doubt," as the standard of proof that applies in criminal trials. Other standards are "clear and convincing" and "a preponderance of the evidence." The latter two standards are used in legal arguments of various types.

**stare decisis** Lat. "to stand by that which is decided." The principal that the precedent decisions are to be followed by the courts.

**stake in the venture:** an interest in the outcome of a conspiracy

**state of mind:** the reasons and motives a person has for acting. Used in connection with evidence. (intención, intencionalidad, motivación)  
\* Declarations regarding state of mind are generally admissible, not excluded by hearsay rule.

**running of statute of limitations:** time limits during which action can be brought or rights enforced. Once time period has run, no legal action can be brought.

**threshold showing:** the minimum amount of evidence needed to qualify for a certain rule of evidence to be applied

**voluntariness:** the quality of being voluntary or free, as opposed to being forced or under duress. Used most often when discussing the **voluntariness of a confession** (or statement), that is, whether the confession was given of a defendant's own free will and not as a result of coercion or physical threats.

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