



TABLE OF CONTENTS

FEATURE ARTICLE

Comparative Law
Front Page

BOARD OF DIRECTORS

**Message
from the Chair**
Page 2

Phoenix Summary
Front Page

EXAM NEWS

SSTI Report
Page 3

WORLD NEWS

**Meeting of the
"Mouthpieces"**
Page 7

UPCOMING
CONFERENCES

Northwest Regional
Page 5

ITEMS OF INTEREST

Page 8

LEGISLATIVE NEWS

Page 6

NAJIT BUSINESS

Page 13

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

Continued on page 8

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

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.)

Email your proposal to: headquarters@najit.org

Or mail to: NAJIT
2150 N. 107 St., Suite 205
Seattle, WA 98133-9009

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.

September 19-22, 2002, Slavonice, Czech Republic. Slavonice International Translators Conference 2002. Information: 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 or 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.

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

Continued on page 10

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."

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

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

Oregon Judicial Department
(Circuit Courts of Oregon)

INTERPRETER II INTERPRETER I INTERPRETER II/TRANSLATOR

Recruitment currently open,
closing date of September 1, 2002.

Call 503.986.5930

To receive an employment
application

and formal recruitment
announcement(s), or to access
these on line, go to:

<http://www.ojd.state.or.us/jobs>.

Positions have full state medical, dental,
and retirement benefits in addition
to the salary.