

First Encounters: Knowledge Interpretation on the Front-Lines of Cross-Cultural Encounters

Robert F. Barsky

Vanderbilt University, United States

Abstract:

The hypothesis that guides this work is that although it may be valuable to lobby for competent translators to help vulnerable foreigners in cross-cultural settings, such as the Canadian Convention refugee determination hearings or criminal trials, it is nevertheless too late to make much of a difference at that point, because most of the incriminating damage is done in the initial encounter between claimant/defendant and authority. Approaching a discussion about the relative merits of translation versus interpretation from this perspective, that emphasizes the time at which the conversation occurs, would suggest that linguistic accuracy is much more important in formal hearings, while interpretation is crucial during the initial encounter, because it is during this period of negotiation that a sensitive and qualified interpreter can keep a claimant from incriminating herself or miscommunicating the situation to authority.

Keywords: Borders; Communication; Immigrants; Refugees; Translation

Résumé:

Bien qu'il puisse être valable de militer pour que des traducteurs compétents aident les étrangers vulnérables dans des contextes interculturels, tel que les auditions de la Convention canadienne sur le statut des réfugiés ou des tribunaux criminels, l'hypothèse qui oriente ce travail est qu'il est néanmoins trop tard pour marquer une différence, car la plupart des dommages incriminants ont déjà eu lieu dans les rencontres initiales entre le demandant/défendeur et les autorités. Entamer une discussion sur les mérites relatifs de la traduction par opposition à l'interprétation selon cette perspective, laquelle met l'emphase sur le temps où cette conversation se produit, suggérerait que l'acuité linguistique est plus importante dans les audiences formelles, alors que l'interprétation est déterminante durant les rencontres initiales, puisque c'est durant cette période de négociation qu'un interprète sensible et qualifié peut faire en sorte qu'un demandant ne s'incrimine pas ou qu'il n'y ait pas de malentendu sur sa situation avec l'autorité compétente.

Mots-clés: Communication; Frontières; Immigrants; Réfugiés; Traduction

Introduction

In regards to either interpreting on behalf of or offering perspicacious legal representation to vulnerable non-native populations, I suggest a controversial point of departure that would take into account three principles that in my opinion underwrite the treatment of all at-risk populations, especially foreigners.

- First, the single most important moment for vulnerable persons, notably asylum seekers or undocumented migrants, occurs in the initial interactions with authority, which tend to take the form of conversations with employers, civil servants, border guards, or enforcers of traffic laws. At this point, it is essential to have sympathetic and culturally-sensitive interpreters, rather than strict translators, to help negotiate meaning beyond pure semantics.
- Second, it is in these initial verbal interactions that the so-called laws that govern relations with such categories of individuals as undocumented persons, Convention refugees, asylum seekers or immigrants, can be shown to be almost entirely arbitrary in conception and application, particularly if the dialogue occurs between a native and a non-native speaker of the national language. Therefore, this is a moment when useful negotiation can occur between the two parties in the form of interpretation.
- And third, vulnerable populations experience the world as a nearly-constant violent conflict between themselves and the host population that manifests itself in conflictual cross-cultural interactions. These interactions, particularly with empowered authorities like police officers, are often so stridently

conflictual and potentially explosive in their consequences, that vulnerable populations should be considered as victims of an on-going conflict that is sustained by the host country, often for financial gain. To help prevent this conflict, we need to distinguish between moments when interpretation or translation is most suitable, and provide assistance accordingly. This idea of “assistance” needs to come in the form of “knowledge interpretation” and “knowledge translation” that harnesses the interpreter’s knowledge as a means of improving the conditions of illegal immigrants or refugees’ interaction with authorities.

These statements apply to virtually all vulnerable populations, including those who live under the duress of poverty, homelessness, statelessness or even personal uncertainty brought on by strained domestic relations. But for the “foreigners” in these groups, the obstacles to justice and the concomitant strain brought upon them as a consequence is unfathomable, and needs to be considered if we are to offer some kind of sustainable assistance for the long-term.

My objective in naming these three obstacles to justice is to emphasize an area of interaction that is seldom addressed in the literature about either translation (focusing upon the “exact” rendition of a source language into a target language without subjective mediation) and interpretation (that allows the subjective element to enter into the equation as a means of ensuring that the intention of the speaker is properly rendered for the target audience): the course of the initial encounter between (say) immigrant and authority. Our advocacy, our legal work, and our desire for adequate interpretation on behalf of immigrant or refugee others will only impact a tiny proportion of the vulnerable population if we do not consider ways of intervening at the most intimate levels of interactions between home and foreign populations.

Since questions of translator/interpreter and home/foreign populations/interpreters will keep coming up, it is useful at this point to insist that a more subjective “interpretation” of what the individual means to say is probably best at that early point, during the initial encounter. This applies in most cases, because this is where there is the most amount of leeway, in part because laws dealing with foreigners are so nebulous and misunderstood, particularly by (say) arresting officers. And so it is at this point that the “knowledge interpretation/translation” is most keenly required, since it is here that the interpreter can work to apply her or his knowledge to the speech situation to ensure that the message passes to the figure of authority, rather than just translating the actual words being uttered in the source language.

Once the claimants has entered the formalized institutional system of (say) Convention refugee determination, that is, once the initial refugee claim has been made, or the defendant has been arrested, it is better to work towards adequate translation with a minimal amount of interpretation, to protect from cross-cultural misunderstandings and to ensure a proper documentation of proceedings. We can assume, or should work to make it such, that once in the system claimants have access to lawyers and to official information that can help guide their claims, unlike when they are in the initial encounters, when their intentions may be more important than what they actually articulate. There are limits to how much can and should be read into statements by vulnerable populations in initial encounters, when claimants are scared and vulnerable, so it’s at this point that sensitive cross-cultural interpretation could be most valuable if it’s done in good faith, that is, when the interpreters knowledge can be harnessed to improve the conditions of interaction between claimant and authorities.

It is certainly the case that bad faith in any translation or interpretation setting can contribute significantly to the harm, so selection of interpreters needs to include some assessment of their ability to engage in “knowledge interpretation/translation”, which I would suggest requires that they be clearly competent in the technical requirements of translation, knowledgeable about the contexts of both the host and home countries, and sympathetic to the vulnerable population, rather than adversarial (gate-keepers are obviously not well-suited to a task like this one). The adjective “sympathetic”, part of the sympathetic interpreter or translator idea to which I refer here variously, is a crucial notion that requires explanation. It is clear that certain types of individuals who profile and discriminate against “undocumented” workers, as Sherriff Joe Arpaio has been accused of in Arizona, are not sympathetic; but the term I am using has quite specific meanings beyond that for which Sherriff Arpaio is on trial in federal court. My usage includes the general definition of the term, capturing the idea that the interpreter should feel, express, and act on the basis of sympathy for the person for whom the translation or interpretation is being done. It also embodies the idea that the interpreter or translator should be favourably inclined towards the person for whom s/he is doing the translation, that is, not be of the belief that, say, undocumented people do not have the right to be in the country. It suggests that the interpreter or translator should be congenial and work towards creating a sympathetic surrounding or context for the translation or interpretation to occur. In the context of intercultural translation or interpretation, sympathy can be described quite concretely, despite the subjectivity of what I am suggesting here, because it also includes the idea that interpreters and translators need to be sympathetic to the fact that the people for whom they are doing their work are in a distinct disadvantage in the host society, not only linguistically, but also in terms of cultural norms, and in terms of the expectations that are placed upon them by host country adjudicators and administrators. This does not mean that sympathetic interpreters or translators need to necessarily take the person’s side against authority, but they do need to be aware of, and act upon, the incredibly difficult situation of (say) undocumented people who are caught by officers of the law. This does not just apply to those who act like officers of Sherriff Arpaio police department, but any officer who is demanding information or a particular kind of behaviour from someone who was not raised in the cultural, legal, historical, and social setting of the host country. Sympathetic, therefore, implies that the interpreter or translator needs to acknowledge the complexity of the situation facing the undocumented person and to work to overcome, rather than exacerbate, the intercultural miscommunication that can so easily occur in those kinds of settings. Finally, they should also be able to distinguish between moments when interpretation versus translation is most appropriate; one is a useful distinction that can help in making this distinction comes from Serghei G. Nikolayev:

Whoever is somewhat familiar with the professional practice of translating from one language into another, one being his native and the other a foreign language, knows this simple, yet helpful truth: it is always preferable to translate from foreign into native, while interpretation work is simpler when done the other way around. This rule is based on the strict necessity to thoroughly comprehend the original (source) message. When you hear an oral utterance in the foreign language, you have neither dictionaries at hand, nor time to consult them about a word or phrase which might be unknown; all this becomes possible and is easily done when translating. At the same time, an utterance in your mother tongue is at any rate almost always sure to be clearly understood.

(Nikolayev, 2001)

So the interpreter, working from native to foreign languages, can help to negotiate on behalf of the claimant by conveying information that will either prevent the individual from entering the system (as in, for example, intervening to thwart a potential arrest), or from making crucial mistakes in articulating the claim (when, for example, the claimant fills-out initial forms at the airport, required for a Convention refugee claim). I might add that an incompetent interpretation of initial events, if done in the spirit of negotiation and discussion, is probably less detrimental to an eventual case than an incompetent translation, because the latter would be less debatable in the formal court setting than an effort at cross-cultural interpretation. There is significant work that has been done on the translation and interpretation issues pertaining to the situations I describe in this paper (Inghilleri, 2007; Inghilleri, 2008b; Jacquemet, 2009; Katrijn, 2006; Pöllabauer, 2004; Tipton, 2008; Wadensjö, 1998), but an approach that emphasizes the first encounter as the appropriate space for interpretation helps contribute to the field, and may help clarify where limited resources can be best allocated in cases of extreme conflict—as in, for example, the relations between host populations and “illegals”.

Translating versus Interpreting the Illegal Immigrant

My early work pertaining to interpreting and translating was on the Canadian Convention refugee determination system published in *Constructing a Productive Other: Discourse Theory and the Convention Refugee Hearing* and *Arguing and Justifying: Assessing the Convention Refugee Choice of Moment, Motive and Host Country* (1994b); some examples in this paper are taken from the field work for those studies because the refugee determination process is largely played out in the relationship between first encounter (usually at a border crossing) and the determination hearing because of the tension between what appears in the Personal Information Form (filled out at the point of entry into the host country usually without representation or proper translation) and the oral proceedings of the full hearing. A far more important issue today, particularly in the United States (and, increasingly, in Canada), pertains to “undocumented” immigrants who dramatically outnumber Convention refugee claimants. As such, I’ll draw from a more recent research project involving interviews with undocumented migrants, translators, public defenders, lawyers, law enforcement officials, medical personnel, and advocates from non-governmental organizations, recorded from 2003-2009, that was focused on the massive and growing problem of immigrant incarceration, particularly amongst the “illegal” or undocumented population in the United States.¹

While the recommendations that emerged for submission to the Tennessee Department of Corrections and the State Senate were concrete and practical (Barsky, 2009a), their particularities were rooted in the kinds of theoretical insights that can be derived from a range of studies on the vicissitudes of human interaction. Most important among them include work on dialogic relations by Mikhail Bakhtin (1990) as well as the overall theory that can be derived from them (Holquist, 2002); symbolic power that has been outlined in the works of Pierre Bourdieu (1994); and the general description of the workings of social discourse dynamics in the work of Marc Angenot (Barsky, 2004). In the realm of translation and interpretation theory, Mona Baker’s work on how translators and interpreters “reframe aspects of political conflicts”, and thereby “participate in the construction of social and political reality” (2009: 115) is a powerful application of the narrative insights required to understand the process of interpretation. Pascale

Casanova (2009) provides a strong sense of the impact that Bourdieu (1994a) can have upon the study of translation in the literary realm.

In addition to these general assessments and particular applications relating to the origin and target language, there is an important place for considering the specific context in question, including the physical place in which the translation/interpretation is occurring, and to what ends. Thankfully, in most cases the encounters between the domestic population and, for example, undocumented immigrants, are benign, and lead to both parties meeting up, negotiating a favourable outcome, and then continuing along their paths, possibly illuminated by insights gleaned from interaction with people who experience our society from completely different standpoints (including cross-cultural). But the system in the United States often does not work like this, in part because the labour market accepts undocumented people because they usually offer valuable services at below-market cost. As a result, the host country employer often exploits undocumented workers, knowing that there is usually no possible redress because the undocumented person, no matter what the situation, is always “illegal”. I am therefore suggesting that we need to consider that the undocumented person is vulnerable, and if we truly care about vulnerable populations, to find ways of intervening at initial stages of their encounters with the domestic population, and of taking away the incentives for nefarious encounters. I then offer a host of suggestions of how interpreters and translators can work in both the short and long-terms to harness their knowledge for productive purposes in the existing paradigm. I conclude by suggesting that a model of interaction that focuses upon first encounters could be usefully applied to all situations dealing with suffering or vulnerable populations by focusing specifically upon translation and interpretation from a position of knowledge, sympathy and empathy.

The Interpreter and the Initial Encounters

The logic of legal remedies such as Convention refugee status, or permanent residency, or exoneration from false charges, is that wrongs can be righted in the second instance by authorities who have been provided with pertinent facts for the case at hand, communicated via highly-trained translators to lawyers and sensitive judges. Such an apparently obvious assertion is in fact erected upon fallacious assumptions, because much of what happens in the eventual hearings depends upon information provided during the initial encounter, and this information is often incomplete, inaccurate or misrepresented because a knowledgeable interpreter was not there to adequately convey the claimant’s utterances or provide some sense of what the claimant is trying to say. “Knowledgeable” interpreters would therefore be those who can “fill-in” missing details in the face of (say) nervous undocumented workers in high-stress situations, like traffic-stops.

Given how many communication issues arise in that first encounter, due to linguistic or cultural divides, it would make sense for judges to discount information gleaned during the initial interactions. First encounters almost always occur under duress and without satisfactory linguistic or legal representation, and they should therefore be at least reinterpreted by the court or tribunal in a way that adequately accounts for the inadequacies of the communicative setting that led up to the later hearings. That information obtained during the initial encounter former could be discounted would challenge the way that law enforcement works, so it’s very unlikely. And ‘reinterpretation’ only occurs in rare cases in which the court corrects errors made by (say) the arresting officer due to faulty interpretation of what the immigrant said, or of the law that justified the arrest. For instance, a qualified translator can review the tapes of the initial interview

and find that the official misunderstood crucial answers provided by the interviewee, and acted on the basis of this misunderstanding. But in a system as draconian as the American one, in which excuses are regularly made for officers' missteps in the course of (say) a search ("he did not have consent to search the car, but he was acting on a hunch based on his experience, so it should be allowed"), the defense cannot count on re-interpretations.

Most initial encounters between host country officials and outsiders is the interactions occur in the course of normal interactions between Americans and the twelve or so million "illegal immigrants" that work or live alongside or near them (Passel & Cohn, 2009). These normal encounters occur in, for example, on construction or landscaping sites, in particular, but also in large factories, sprawling retailers including Wal-Mart, huge commercial farms such as those owned by Green Giant, agribusiness slaughter houses such as Tyson Foods, and amongst domestic workers in hotels and private homes. The American citizen or resident can often recognize the undocumented individual because it is a visible population, by skin color, language and locale, and, depending upon the region of the country, it's a population that Americans interact with directly and indirectly, through intimate relations or through the consumption of goods. The reality of this blended population is that it is often conflictual, particularly over the long term, because no matter how much the host population relies upon illegal immigrants to fulfill specific parts of the labour market, it nevertheless remains resistant to integrating foreigners into the political and social fabric of the country. The very nomenclature of the illegal makes undocumented persons eligible for search, arrest, imprisonment and deportation at virtually every moment of their existence. Indeed, this is not only a possibility, it's a regular occurrence, in part because there are incentives for officials to entrap, coerce and trick people, particularly vulnerable people like illegals, for monetary gain. A lawyer explains the process:²

In this county, both the county and the city policemen, almost all have video, and with the homeland security crap they are getting digital. They have diddle[-squat] going on, but they can record and then download each evening each stop on the computer. If you are lucky enough to be on such a stop, the cops might say: "Here's your warning citation, I'm going to give you a warning citation because I'm a nice guy, when I could have given you a ticket. Here's your citation. Oh, by the way, you don't have any contraband in the car, do you?" "No". "Mind if we take a look?" The blue lights are still flashing, the cop is still wearing a gun, he still has his hat on, and his nightstick, and if you say no, and that's on that tape, now you've got some bargaining power.

Most vulnerable people will not say no, of course, because they fear the repercussions. But even if they do, says the lawyer, the police still have an incentive to continue the search, which they can do by bringing in the k-9 [canine] unit:

These dogs are full of shit. They are going to circle your car, and how many times have you seen in the last six months a story of a guy who buys a car at a government auction and the fuel tank ain't right, so he has the tank taken out and they find three kilos floating around in there, which are cutting the gas off, and then floating back. The bumper is full of pot. And nobody has never found it. Now with those damned dogs, they use it as an excuse . . . and the dog doesn't

alert off of the presence of narcotics, it works off of the scent of narcotics. The scent? Yah right. And so it alerts, well that's a pretty damn nebulous term too.

A refreshingly irreverent lawyer like this one could help protect people from the dangers of that initial interaction if he were present on each stop; and he also provides a clear sense of why the cards are so stacked towards abuse, particularly if the person pulled over does not speak English, or does not know his rights. These are linguistic matters, and interpreters available on the front lines, in this case riding in the car with law enforcement officers, could act as valuable advocates in these crucial first encounters, when terrified and ill-informed foreigners are likely to do anything to avoid the threat of punishment, including saying "yes":

[T]he word is always, no. No. And you ain't going to pat me down. Is there some reason why you're afraid of me officer? Because you ain't going to pat me down. There has to be some kind of articulable fear, and to search your car he has to have an articulable suspicion. They can also confiscate your car if they find something. And they can search the navigator too. It's a racket.

This is a "racket" because it is not just racism, or xenophobia, or even law enforcement: it is profit for the local police department, and perhaps the police themselves:

They are investigating corruption? They ought to be investigating the cops. And they do multi-million dollar seizures lately around here, and whichever organization was participating in the bust will get a piece of that. And all of that money is controllable by the sheriff himself, not the county commissioner. We have four helicopters here in Knox county. That's more than Davidson, Shelby and Hamilton counties combined. [The police chief] there is spending like a drunken Japanese sailor.

For those who do land up getting trapped in these stops, the legal apparatus that could be brought to bear is a vicious and uncompromising system of mandatory prison sentences preceding mandatory deportation imposing mandatory felony charges for persons who return subsequent to deportation. The presence on the scene of the initial encounter of a knowledgeable cultural interpreter, who could ensure that the law is properly applied, and that the foreigner is properly represented, would prevent a huge amount of abuse, and suffering. A lawyer describes how draconian the system can be, with reference to a case involving drugs and deportation:

He came into the States years ago, and he did some kind of drug or drug trafficking thing, got convicted, and then got sent back to Mexico. Then he came back, led an exemplary life, got married, had kids, and this life went on for 10 years. One day he is walking down the street and because a car had been stolen nearby that day, the police pick him up and they notice by his driver's license that he is illegal. He didn't do a damn thing wrong, but now he is in jail, in federal jail because he illegally re-entered after an aggravated felony conviction. He stands to go away for upwards of eight or more years... and all the attorney would have to prove is that he is here illegally.

So no matter how competent the translator is in the courtroom, how solidly the lawyer prepared the case, how sensitive the judge is, the defendant is still going down because the system generally does not allow for much leeway *once it has gone beyond the initial encounter*. There is no remedy once the foreigner is in the system because there are draconian mechanisms, including mandatory sentencing. Therefore, interpreters need to help provide information to prevent people like him from entering the system in the first place.

From a discursive perspective, everyday interactions between citizens are fraught with the kinds of Bourdieu-esque symbolic power relations that are always potentially lethal, reminiscent in form and consequence of Tom Robinson's story in Harper Lee's *To Kill a Mockingbird* (1995), a particularly apt reference when we consider an earlier American population who has suffered from this othering process.³ And this everyday interaction is as fickle as Mayella Ewell's accusation, a concrete manifestation in language of barely concealed xenophobia, racism, classism, and resentment that simmers beneath the veneer of America's melting pot. The flames of xenophobia are fanned by ranting talk shows like the O'Reilly Factor, in addition to the constant imposition of new codes, decrees, proposals and laws, handed down by municipalities, counties, states, and federal instances charged with "homeland security" in the face of vague and constant threats to the American nation.

It may seem surprising that the American legal apparatus, always touting its Bill of Rights and its Constitution, can be so unforgiving in its institutions. And in fact, in many small towns, where locals brush up against a foreign population that picks crops and weeds gardens, the situation is relatively civil, and the kind of interpretation I'm promoting here happens by the goodwill of both parties to conversations. But when foreigners enter the formal systems, like Immigration and Customs Enforcement (I.C.E.) and Homeland Security, they are treated with "enforcement" designed to "secure" the "homeland". The implicit link that is made by these organizations publicly, between illegal mostly rural poor Mexican workers and possible terrorism, has made it such that the very worst prosecutor is federal, and indeed the higher one moves up the line from the traffic stop to the federal appeals court, the worse it gets. A lawyer describes this surprising progression as follows:

If a guy is here illegally and he is charged in federal court for drugs or guns, then he's screwed; he is going to get a sentence, he is going to serve the sentence, and then he is going to get deported. If on the rare occasion you have someone with a green card, or resident alien, or some legal status, then yes, there may be ways to work out a case that doesn't affect his immigration status, but in the federal system they don't tend to do that. In the state system I can do that all the time, I say "look, this is a crime of moral turpitude", so in immigration court, if they find him six months from now because of a driver's license issue and they find his conviction, then he gets deported. So we make a deal where the state gets what they want, and he gets what he wants. You don't get that kind of thing in the state system, and the federal system is out for blood, and they ain't interested in working things down.

For people who have worked in, say, the refugee determination domain, this is an anomaly, because usually one is better off dealing with federally-certified translators and codified legal apparatuses that exist beyond the fields and freeways of backwoods Tennessee: but not here. It is better to work unofficially when assisting undocumented people because deals can be made

before people enter the system, with the help of qualified interpreters. If an arrest is made, from that point on it would be safer to implement a requirement that all subsequent discussions with the authorities occur in the face of a federally-certified translator.

Federally-Certified Translators

Indeed, all levels of lawyers, law-enforcement officers and judges with whom I conducted interviews agreed that if translators working in police offices, courts and prisons were better-trained, preferably federally-certified, there would be some real progress.⁴ And yet, surprisingly, there is very little demand for federal certification in Tennessee, a state that has very few officially highly-qualified interpreters. One reason for this might be suggested in the work of David Katan (2009). On the basis of a survey of 1,000 translators/interpreters, worldwide, Katan concludes that

The T/I perception of their own world in this survey is clearly that of the satisfied professional, at times deeply attached to the text. Their voluntary servitude does seem to be a prominent part of their world. At the same time, when asked to focus on the wider reality they become acutely aware that they lack societal recognition, and that translators, in particular, lack status. They are also concerned about deprofessionalization from the cowboys but not (yet) from IT. Yet, there is not really much mention or apparent awareness regarding wider professional autonomy or many of the key traits deemed necessary for the transformation of an occupation into a profession. In fact, control of output and its use in wider society is hardly mentioned, nor is the need for a recognized body of T/I knowledge (rather than practice) or professional certification/qualifications. It would appear that the T/I group surveyed are focused on their local realities, their immediate, and very individual, developmental paths, and focused very much on the text. There is little sign of the mediator or activist, or of the HAP consultant living in the same world as their client. Hence, academic theory is out of sync with this reality, and for the moment we still have an occupation rather than a fully-fledged profession.

(Katan, 2009: 207)

This is a very interesting point, because if translators/interpreters were considered professionals, and they were respected in the way that (say) lawyers or doctors are, then they could be called upon to challenge prevailing assumptions about the foreigners, particularly those who don't speak English. It is the ill-informed who support the barrage of "English-Only legislation"⁵ minutemen, and the like, and there's no professional group of translators who can stand up against them in the way that there's a Medical Association that can challenge hokey health cures. In fact, the illegal immigrant living in the United States is most at risk from the normally benign population of civil servants, small time employers, or ranting call-in radio show xenophobes, because they can, and are indeed encouraged by Homeland Security and I.C.E., to report and denounce abuse, setting into motion a process that is invariably draconian. They are also encouraged by seemingly marginal but in fact discursively effective propaganda exercises aimed at criminalizing foreigners. Even when such efforts fail, they still instil within the most

dangerous segments of population the idea that the “foreign language”, like the foreigner who speaks it, are going to undo the American way unless he is stopped (Rafael, 2009).

Interpreters Preventing Arrest and Deportation

If interpreters are most-suited for initial encounters, then they are likely as well helpful for preventative measures as well, and this would be another good use of trained, sympathetic cultural interpreters. Many incidents that involve law enforcement can be easily prevented, if the message is spread within the foreign-born community that certain actions are likely to lead to arrest and deportation. For example, the largest community of foreign born in Tennessee, and the South, comes from rural Mexico, where guns are shot off at parties, people often drive drunk in cars that are old and poorly-maintained, and law enforcement officers are open to entertaining bribes. Each of these examples can be grounds for felony convictions in the United States. Interpreters could help out by reaching out to the community before trouble starts. In an interview, one lawyer noted that “there is a much greater percentage of the illegals who are here who never have contact with the legal system than amongst the domestic population”, which implies not only lower criminality but an active avoidance of officials. Nevertheless, he said, “you can take any population and there’ll be a certain number of them who drink too much, who use drugs, and who will be stupid, no matter what you do”. When immigrants “act stupid”, the risks are monumental that they will get caught, “but it depends upon who is working in the jail as to whether, when you are looked up on the computer, there’s a little line on the computer that says ‘hold for I.C.E.’ When that happens, you are screwed”, because any infraction involving a firearm is a felony in the U.S., returning to the U.S. after deportation is a felony, all charges involving drugs are felonies, and felonies mean hard time in federal penitentiaries with mandatory sentencing and subsequent deportation.

It is for these reasons that our dealings with illegals are akin to our dealings with a population that considers itself to be living through a constant conflict, an invisible but nevertheless pervasive war between citizens and residents vs. undocumented people. The stakes in this war are high, and include the proverbial midnight knock on the door, the arbitrary arrest, the unprovoked attack, the sanctified arrest, the stripping of rights, the confiscation of property, and, in more unofficial combat, sexual abuse, rape as an instrument of punishment or coercion, and the possibility of other unchecked and un-reportable violence. Not even the most accurate or sensitive of translations can help in most of those cases once the claimant is in the system, but interpretation can, because it can negotiate through the fictional law that underwrites many of the arrests that occur.

Interpreting Fictional Law

We, as interpreters, translators, immigration or refugee lawyers and public defenders can justify our professions by arguing that we have committed our lives to defending vulnerable populations such as illegals or asylum seekers precisely against the violations committed in the course of first encounters. This would only be true if there existed a set of codified laws that would right the wrongs thereof and in fact the inverse is true (Barsky, 2006). For illustrations of how fictional law works, its valuable to begin with fiction itself; for example, the danger that Joseph K faces throughout his ordeal in Franz Kafka’s (1995) book *The Trial* is that the true workings of justice will never be brought to bear upon his case, that he will forever wallow in the corridors, hallways

and in-between spaces that law seems to have abandoned or overlooked. Things are different for the illegal. We might like to believe that properly-translated codified black letter law might offer solace in the face of false accusations, but the laws that apply to illegals emanate from a range of local, regional state and federal offices, and as such the rules change constantly, and the penalties for any violation are usually worse than what could be negotiated during the course of the first encounter. As such, when the illegal is pulled over, accosted, asked for identification, or put upon to put out, she is facing a hazy and indefinable threat from someone who uses the vagueness of the legal apparatus to his advantage. It is made worse by the fact that he has nothing to prove, no evidence to produce, and no specific code to cite; the individual in his control is an “illegal”, guilty by virtue of her existence, and therefore fundamentally and constantly vulnerable.

This vulnerability is not limited to intercultural miscommunications, false accusations, racial profiling or extortion. It is exacerbated in ordinary conversations when, for example, prison guards demand driver’s licenses of those visiting loved ones who have been incarcerated. This is an act of aggression in itself because undocumented people are often not allowed to have regular driver’s licenses, and yet they are deemed the only admissible identification in most cases such as bars, prison visitations, and travel. And even those people who stay away from authority are also at risk because Homeland Security can perform random inquisitions of everyone in post offices or social security centers or shopping malls in order to ascertain status. The most egregious actions occur on the shoulders of interstate highways, where conversations bring out the vast linguistic and cultural divide between illegals and authorities:

Officers cite drivers for minor traffic violations as a way of questioning the driver about her status, and this is where it all happens. You get pulled over for speeding, and you have no license. So the officer says “Oh, well now we have to arrest you and we have to search your car. Ah look, you have half a joint, so now you have that charge too. And a pack of rolling papers, that’s a paraphernalia charge”, and they just pile that stuff on.

In some ways this risk applies to all vulnerable people in the United States, including everyone who is poor, if only because an old car is likely to be in violation of some highway code or another just as being out past 11 pm in public parks is. But because the homeland security or immigration or refugee laws according to which foreigners are held are in such constant flux, most officials, including police officers-turned-immigration officers, cannot keep track. As a result, the ‘law’, or any parts thereof, are unevenly applied, as a lawyer indicated in a crucial passage, worth citing at length:

The problem is, you can take 15 illegal immigrants out in this parking lot, put them in a van, and start calling the police on them, one after another over a twenty-four hour period. Some of them will be taken out, booked, make bond, and they’re gone. Others will be taken out, get booked, and be picked up by INS [Immigration Naturalization Services], and it’s only because Bubba came out on the midnight shift, and Bubba, who is making \$15/hour to be a jailer, and the only reason you’d take that job is because you want to fuck with people, why would you want \$15/hour in a dungeon? You are indoors, you ain’t seeing the sunshine, and you’re dealing with unhappy miserable people who don’t want to be where

they are. Bubba don't like the fact that these damned Mexicans are walking around here anyway, so Bubba, if they don't speak good English, is calling INS. And there's no rhyme or reason. You get one guy on aggravated assault who gets a bond and goes home, you get another for driving with no license and he gets an INS hold.⁶

A lawyer like this one is not only combating racism or xenophobia or those who think that all Americans ought to speak good English, he is also fighting the clock, and is intent upon keeping his client away from law enforcement at all costs. "If it doesn't say 'hold for I.C.E.' then we're going to work something out to get him the hell out of here now". As a result, the infraction is not the real issue, it is the set of fictional laws that can allow anyone to denounce a foreigner at any time. In fact, they do not even need laws, and those who try to uphold them, or properly represent vulnerable people before them, do not stand a chance. In other words, the idea that law and interpretation are two distinct realms is in this domain false, because the law itself is interpreted by arresting officers all the time, because it is virtually fictional, and because they do not understand the foreigner with whom they are communicating. This lawyer is in fact acting as an interpreter, in the case described above, but he is an exceptional person, whereas an interpreter charged with doing that kind of work could be relied upon to be there when needed.

Experiencing Migration as Conflict

The consequences of the aforementioned risks to undocumented people are vast, and combine to give the illegal population the impression that they must avoid civic society at all costs. They would be well-advised as well to not buy a car, not visit institutions requiring identification, and not be out late at night. The problem is that most illegals live in inexpensive and transient neighbourhoods or rural areas that are seldom well-served, if served at all, by public transportation, and they tend to work long and unusual hours. Those most aware of the consequences of these actions are employers and law enforcement officers, who variously clamour for a softening of United States laws regarding undocumented peoples. For the police, which counts upon community participation for law enforcement, the situation has become so strained that chiefs of police, including in Nashville, Tennessee, have openly condemned the government's involving the force in immigration issues and have specifically asked that officers not enforce I.C.E. regulations to the letter by, for example, allowing officers' discretion on whether or not they demand a driver's permit at a traffic stop.

This sounds great, and it is, but there is a system of federal incentives for denunciation, tied to the "war on drugs" that in its reach is one of the most effective methods for controlling the population. For immigrants, this is a particularly nefarious pathway of entrapment, as a lawyer describes:

Other than the driving while Mexican there's another sinister deal. Everywhere there's an interstate highway there is a grant to the local police to monitor that interstate highway for drugs. Easy enough to do that: "Stop everyone who is brown. If we stop 'em all, we're bound to get someone soon!" I get these cases for speeding and no driving license . . . and on the affidavit, there are 8 police officers listed for a speeding with no driving license. . . . So I know what happened without even talking with him. They pulled him over, they got consent to search

his car, the K-9 unit showed up, four other units showed up, and damn! This time they didn't find a thing, so they have to cut the poor bastard loose, for only driving with no license and speeding. I know immediately when I see this that when I look at all these cops. . . . All they're doing is cruising around in unmarked cars, and they see [foreigners] and say 'This looks like a hit'. They call in the traffic unit, a marked car, and they say "follow him until he, say, changes lanes without turning on his turn signals. Bang, we got you!"

For companies and individuals who hire illegals, knowingly or not, there is the financial strain caused by workers who disappear overnight, because they have been arrested and set up for deportation, or have been injured and, fearing denunciation, refuse treatment.

The consequence for those interested in the dynamics of the interaction between illegals and host country officials, including interpreters and translators, is that undocumented people learn to become the worst kinds of clients. They are cagey, inconsistent, unreachable, and they tend to provide grounds for failure at later stages in the process. A lawyer commented that illegals tend to be nervous, and worse:

A lot of them are hiding things. They are very careful about what they are saying and they frequently change their stories. Some of them have speech impediments, some of them are missing teeth, some of them are so shy and nervous that they just will not speak up. More generally, there is there is a cultural barrier, for instance with Guatemalans, who tend to be very deferential, so they do not want to answer any question directly. Many of their answers begin with: "Thank God that . . .", and then just continue along beginning at a point that is 2 years before anything happened. For a translator it's very difficult, because they want to just go all over the place, and the answer has nothing to do with the question.

That the answer is unrelated to the question may or may not be an issue in terms of information conveyed, but in a situation involving illegal immigrants, it is deemed negative because it suggests that these people, already criminalized, are trying to hide something. But even in this depiction it is clear that a translator would be of little value. Indeed, because in the face of authority undocumented immigrants act like prisoners of this war against illegals, and because local enforcers sometimes view denunciation as part of a valiant and patriotic war against terrorism, the undocumented immigrants who are not assisted by a sympathetic interpreter are likely in their first encounters to provide fodder for their eventual deportation. Coming from backgrounds in poor Latin American communities, otherwise they wouldn't have come in as illegals, they seldom understand the consequences of their early actions, which are likely to include efforts at bribery or the signing of confessions or the absolution of rights. Their instinct is to just get away from the situation as expeditiously as possible or to try to convince the authority figure that they are linguistically competent and therefore worthy of a place in America. One lawyer noted:

I have represented Spanish speaking men, and they will tell me that they understand English. They might understand it on a very basic level, enough to get through a day but certainly not enough to convey the details of their case. I do not know if this is due to shame or if they just are sitting there and say do you

understand and they say ‘yes’. I think that there might be too embarrassed to say that they do not understand what you are saying. It is kind of, an “I can take care of myself thing. I do not need an interpreter. I understand, speak English”. I want to make sure that before someone signs something which could be a significant amount of time and waiving some very serious rights.

The lawyer wants to ensure that rights are not waived, but generally speaking the illegals have already spent ample time in the early stages with people who have offered clemency or release if they just sign affidavits. Each of these missteps proves the prosecutor’s case further down the institutional line. Even those judges who would like to provide clemency or to act with leniency do not have the legal right to do so. As a result, what began as a minor infraction grows, with each passing moment, to disaster.

Remedies for this Conflict

I have argued and continue to believe that a key informant to an ameliorated system could be the interpreter in the first instance, a person who is linguistically and institutionally well-placed to mediate between an abusive system and its designated victims. I am also suggesting that people who are in the system should be assigned translators who are held to proper legal and translation standards (cited in Berk-Seligson, 1990). The federal translator category itself has very high standards, and is recognized as such by the courts, and translators in formal situations, like courtrooms, are trained to resist interpretation, favouring instead neutrality. The very nature of the translator in the United States system holds translators back from becoming interpreters, for reasons made evident by a federally-certified translator:

The goals of a professional interpreter are lofty; you have to be principled to be a good interpreter, so for example when you are waiting for a court procedure to begin, your conversation with that defendant has to be really minimal, or nonexistent. For the purposes of the court, you are basically there as a transcriber of sound, while for the claimants or defendants, you are someone with whom they can communicate directly. As such, they may reach out because they know you speak their language, and they imagine that you feel empathy. Professionally, though, you have to curtail your relationship; you are there to be an objective and completely accurate conveyor of information from one language to another. The work is also highly technical, so you have to have legal terminology down, you have to have knowledge of phrasings in the court, the way things are transmitted and conveyed in a hearing, and you have to be very quick to pick up dialects and different regional differences.

Interestingly, though, this interpreter, after having insisted upon the “objective” and “accurate” conveyance of information also invoked categories of symbolic interaction reminiscent of Pierre Bourdieu (1990). She said that:

Over and above the professional competencies, I am also aware of linguistic and cultural issues, and I can certainly read the socioeconomic variables that go into the court room, different personal and interpersonal relationships including how

certain people like to be treated, or need to be treated, in terms of being respected, and so forth.

And even though she distinguishes translator from interpreter, she does not do so from a legal standpoint (e.g., Morris, 1999; 2000; 2002). Rather, she helps clarify the idea of the “knowledge translator” and “knowledge interpreter” by providing a sense of the subjective sides of translation and interpretation.

Highly-trained translators often invoke a more nebulous area when discussing cross-cultural translating. For example, one federally-trained translator suggested that she needs:

A good grasp of, I don’t know how to say this, like an intuitive grasp of meaning, beyond just the words, but without going too far, as well as stamina, sufficient stamina, which implies knowledge of your own limitations and a willingness to be open about those.

This “meaning beyond words”, these “socioeconomic variables”, these “relationships” are often related to cultural sensitivity, as described by another federally-trained translator who suggested that:

If a Latino or native American person does not make eye contact but looks down, it is probably more a sign of respect than it is of guilt, whereas we would assume that not making eye contact creates suspicions. . . . Cultural differences can have an ill-effect on the situation of the immigrant in terms of their relationship with law enforcement or even with court personnel.

The problem, however, is not only that these highly-trained and culturally-sensitive translators and interpreters are few and far between, but also that their profession demands neutrality:

I know these things, but I myself am not involved in the process of assessing the person’s credibility, I am just interpreting. So if someone asks me whether I think they are credible or not, I would simply say I am sorry, that is not really an interpreter’s role to make that kind of evaluation.

There are ways of providing input from interpreters or other cultural brokers such as investigators or even representatives from NGOs or embassies, and they are employed by some lawyers and public defenders, but this could be made an enforced standard of expectation for translation. The problem is that translators are being called upon to be accurate, rigorous and professional, on the one hand, but also commentators and interpreters of what has been said to somehow convey what the claimant meant to say, on the other.

There are three points that flow from the argument presented thus far. First, if the initial interactions between immigrants and home country officials were conducted through the mediation of knowledgeable translators and interpreters who are sensitive to the kinds of points raised by the interpreters I interviewed, then the eventual problems at later levels would be mitigated. Second, if the courts and tribunals would account for the stresses of initial encounters, for vulnerable populations such as Convention refugees and illegal immigrants, then professional translators could act more like translators in the formal hearings and not have to worry as much

about mistakes that occurred early on in the process. Finally, even if an interpreter like the one cited above sticks to her professional neutrality, she could be interviewed by the court, to offer her reading of what was said from a cultural standpoint. But we need to intervene earlier on, to thwart the deposition or the arrest before it happens. As one lawyer indicated, there is lots of incentive for the interaction to go badly: “The cop is supposed to have to tell the person that he can refuse to have his car searched. But if you pull some guy over that doesn’t speak any English, how the hell do you explain it to him, that he doesn’t have to consent?” A lawyer-advocate noted that in addition: “I think that clients understand that when something formal happens, and the translator shows up for, say, the deposition, the entire experience shifts and becomes more formal”; but the damage, by then, is usually done.

Logistically, we need to work at thwarting formal proceedings before they start, but we cannot hope to avert the disaster of Homeland Security or I.C.E. intervention until we hire an army of sympathetic interpreters to work on the front lines, and the penury thereof in the current juncture provides a sense of how far we are from that point. In frontline situations such as assisting during a large-scale Homeland Security or ICE operation, said the lawyer-advocate, interpreters have to be qualified and in tune with local dialects and speech genres: “We have serious problems with the interpreters, who often have no experience with the vocabulary that our clients use. For instance, agricultural slang is not something that they test on the interpreters. As a result, we try generally to use only federally certified interpreters, which is the highest level of training that one can have, but in the state of Arkansas there is only one, and in Tennessee I am sure there are less than ten”. And there really is no substitute for good interpreters because “poor interpreting is sometimes worse than not interpreting at all”.

Conclusions

Short-term Remedies

What I have been calling “knowledge interpreters”, those with solid backgrounds in home and host countries, with sensitivity to the complexity of front-line translation, and those with a degree of sympathy for the plight of suffering, marginalized peoples lie undocumented immigrants, should be hired by front-line agencies including law enforcement, border control and public offices, in order to ensure that proper communication occurs in situations of cultural or linguistic sensitivity. There are lots of unemployed or underemployed immigrants in the United States who could be offered extensive training in translation and what I have called interpretation, and this would certainly be a more promising avenue of well-paid work than house cleaning or painting.

In the short term, we can acknowledge the penury of good interpreters for the initial encounter and set up a web-based information center to help locate cultural brokers, investigators, interpreters and lawyers who work in this domain, throughout the country. This way when a particular case comes up, there would be someone to contact, as a lawyer indicated:

Even at a national level the list serve for immigration attorneys is almost ad hoc. And if you are trying to find qualified cultural experts around the country in different cultures, it’s even harder; so there needs to be some kind of national list service set up in terms of, hopefully a web based system where anybody who goes on, types in your country, and boom, you get the expert in that area. You could either call or email, that would be fantastic. That would also increase the winning

percentage of cases because now you know, you know we use, for psychological reports there is a company which does psychological evaluations; however, and that's very important in cases in terms of establishing psychologically that the immigrant, that the U.S. citizen will be impacted by the immigrant being deported. Unfortunately, the nearest is in Dalton, Georgia or New York City, so there also needs to be an effort to train psychologists in all the major cities to do these kinds of reports. The hard part for the immigration practitioners is how do you find them. How do you know where to look? And how much time do you have to look for this?

In light of the real issues facing millions of illegals, though, the work has to begin even earlier, even before that encounter on the side of the interstate, because it is not reasonable to expect that we can get cultural mediators to each scene of potential bloodshed on the linguistic battlefield. This could be made popular through the incentive of fresh local and state employment as interpreters.

On the side of the immigrant, the state could fund "investigators" who are specialists in immigration, by their language or experience, since these are individuals who can both work with lawyers or public defenders, or go into the community to meet with representatives of cultural groups or individuals to help them with the issues of integration and immigration. As one investigator described:

When I worked for the Metro Public Defender, I would go into the community and bring a book, and I'd tell them this is how it works, this is what you do if you get arrested. If you don't have any money, you go to the Metro Public Defender, you apply for a lawyer. This is what you do if you get stopped by a police officer. I just gave them information on what to do if they get a citation, here is what you need to do and these are the places where you can get help for this or for that. And then doing that, you have to get to make all kinds of connections in the community.

Some of this community outreach work is going on now, but aside from the occasional do-gooder, it is generally performed by fellow immigrants, which has its own set of associated drawbacks. For instance, there is a very serious problem of keeping sensitive information private, and allowing for the diffusions of useful information to the right sources. One interpreter noted that this applies throughout the system, including health care in the prisons and jails:

They do not have enough access to language people. They cannot, the prisons have very few people who speak any Spanish. The infirmaries, in particular, are not staffed with anyone who can speak Spanish. They only use interpreters anywhere where they are required to by law. Nobody wants to use an interpreter where they are not going to be sued because they didn't. That's the way it works for the most part. So I feel that is a real problem in prisons, lack of language access. So they end up helping each other. The guys, who, not even one of the things they like about prison is that they learn some English, they have English classes. And a lot of them do like that. And some of them learn very quickly. And they end up helping each other. But that is not good. That's not the way to do it,

because there is no privacy there. Issues are shared and there is no trust, and a lot of time there is misrepresentation that goes on, intentional misrepresentation, because of ill will. There is a real problem with just using a buddy, or the person who speaks may not even be your friend.

When community outreach is effected by lawyers or public defenders, it is usually too late, which is why this work needs to be systematized. One lawyer who actively counsels community members talked about the driving issue:

You need to try to educate people with the facts. You need to say: “Look, you can buy that \$200 car. And you can drive it without a license, and you might make it for a couple of weeks until somebody stops you for driving while Mexican”. But I also ask them: “How are you used to driving while in Mexico?” “I didn’t drive in Mexico”, they say. “And how long have you been driving here?” I’ll ask. “Six or eight weeks”. So I say: “You can have a wreck, and I’m saying that because you don’t know how to drive, and it’s not just you, nobody with that little experience knows how to drive. And you are going to be unlucky enough to hit a BMW. So tomorrow, you are going to start sending money to the insurance company, every month, or else they are going to come and get you. Is that what you came here for?”.

The religious communities in the Southern United States wield tremendous power. Interpreters could go into Churches and community groups to offer advice and assistance, on the front-lines.

Long-term Remedies

By way of more sustainable resolutions, a longer term investment needs to be made, starting with what could only be deemed a revolution in North American education, for which a federally-trained translator provided a template:

We need to value bilingualism. We need to do a better job in high schools for English speakers and grade schools. We have a new Spanish emergence school at the elementary level in Nashville. We need to support that. Give it money, just in terms of a principled point of view, value bilingualism.

This would be of linguistic benefit and, “by extension, this would value the diversity that immigrants bring culturally to our city, to our nation”.

We also need to recognize, acknowledge, post, and disseminate the importance of quality interpreting and translation and what that means. You do get what you pay for with interpreting and translation, and there is not sufficient appreciation for the skills required. Reputable training programs and university degrees will help the coming generations avoid the kind of mindless and expensive incarceration that is the result of this brutal system.

Finally, in this debate nobody speaks of the obvious, of opening up the borders from North to Central to South America, perhaps on the European system. Labour flow would meet needs, needless border enforcement would be eliminated, capital would follow workers, and norms including safety in the workplace can be elevated for places of egregious violation and

concomitant suffering. But we are not even close to that discussion. We are just trying to put them away, out of sight, the moment we do not need them to clean up our filth or feed our families.

Notes

- 1 The methodology followed for this project was strictly regulated by the Vanderbilt Internal Review Board. I have published the entire outline (2009b).
 - 2 Citations of interviews are all taken from transcriptions recorded in the course of that research and, as per Institutional Review Board guidelines, no other data about interviewees can be provided. Some of the interviews have undergone mild grammatical corrections to improve readability.
 - 3 Robinson is a Black man in the segregationist South who is accused of raping a White girl, Mayella Ewell. Her father was witness to the tail-end of their encounter, instigated by Mayella, and even though it is he who has been sexually abusing her, he lands up being a witness in the successful prosecution, and death sentence, of this innocent man.
 - 4 For distinctions between the different types of translators, see http://www.uscourts.gov/interpretprog/interp_prog.html.
 - 5 For a recent proposal, on English in the workplace, see <http://www.timesnews.net/article.php?id=9021065>.
 - 6 This is a “hold” placed upon the prisoner by the Internal Naturalization Service, so that when s/he is released from prison, she quite literally walks into the arms of an arresting INS officer who will then charge him or her with immigration violations that usually lead to new time to serve, and eventual deportation.
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About the Author

Robert F. Barsky is the Alexander Heard Distinguished Service Professor at Vanderbilt University, Tennessee, United States. An expert in refugee studies, border research, American radicalism, language theory, and literature of the 19th and 20th centuries, he is the author of six books and the founding editor of the on-line journal *AmeriQuests*. He has published a trilogy of books on the milieus of Zellig Harris and Noam Chomsky. His most recent title is *Zellig Harris: From American Linguistics to Socialist Zionism* (2011); the earlier books on Chomsky are: *Noam Chomsky: A Life of Dissent* (1997; 1998) and *The Chomsky Effect: A Radical Works Beyond the Ivory Tower* (2007; 2009).

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