

Legal translators and legal translation: a personal view

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Since I am a lawyer, let me start with a disclaimer: nothing I shall say is intended to reflect the views of my employers past or present or any professional association to which I may belong. And please don't write any letters — unless they are addressed to me. The reason I start in this fashion is that some years ago, when I had just become a notary, I gave an interview to a charming lady from a careers magazine for schools and somehow allowed her to obtain the impression that all notaries in the United Kingdom earned vast amounts of money. Notaries in, for example, Italy, may earn fortunes but that is not usually the case in the UK. The result was that all the firms of notaries in London (London being the only place in the UK where firms of notaries as such are to be found) were flooded with letters from schoolboys (and their daddies) seeking to become articled clerks. And, by way of punishment, I was given the task of answering them all.

I am a notary. I now work at the Court of Justice of the European Communities in Luxembourg as a translator and reviser — or, to use the description used by the Court, a lawyer-linguist. I believe that in the early days the term used was 'jurist-linguist', being a translation of the French *juriste-linguiste*, but the word 'jurist' sounds pompous when used otherwise than to describe an eminent lawyer with many years' experience and great renown, so the term 'lawyer-linguist' was adopted. There are legal translators of course in the United Nations, and more particularly at the International Court of Justice at The Hague (where they are known as 'legal secretaries' because they are actually involved in the administration of the judicial process and as well as translating they interpret), at the Council of Europe in Strasbourg, in government offices throughout the

world, and in many other places. But this paper covers only areas in which I have direct experience, that is to say, the work of London notaries and lawyer-linguists at the Court of Justice of the European Communities.

First of all, notaries. Some readers will know precisely what English notaries are, many will be surprised that they exist, and many will have an inaccurate view of what they are. Anyone from the State of Louisiana in the United States will doubtless be aware that notaries in Louisiana are like French notaries, since the Louisiana system of law is based on French law and notaries there thus differ radically from those of the other forty-nine states, where as a rule they have no legal qualifications. The role of English notaries calls for some clarification. One of the functions of a notary is to translate legal (and other) documents. There are many reasons for this. The notarial profession in England can be divided into two branches. First there are London notaries, or Scriveners, who are members of the Worshipful Company of Scriveners, a City of London Livery Company which celebrated its sixth centenary in 1973 (and therefore all London notaries are freemen of the City of London). Then there are provincial notaries, who are usually solicitors. The London notaries serve five-year articles and take two sets of examinations — the second set includes translation into English from two foreign languages and into one of those languages from English of legal texts. The five-year articles cannot be reduced for any reason whatsoever — unlike solicitors and accountants, notaries are not allowed truncated articles by virtue of having been to university or anywhere else. London notaries are not solicitors (although there is nothing to prevent them from taking the Law Society exams and serving articles with a solicitor after the now compulsory year of pre-articles study). Provincial notaries are solicitors, and are either appointed on application, if it is considered that there is a need for more notaries in the area where they practise as solicitors, or else they serve articles of five years with another notary — but they are not required to take an examination. Thus, they do not take examinations in languages or translation. However, paradoxically, they have the same powers as London notaries and any provincial notary is entitled to certify translations.

London has always been a great commercial centre — perhaps more so in the past than now — and there many bargains are struck every day between parties of many different nationalities. Most countries in which English is the main language have inherited as well the English system of law, the Common Law, in which the notary is unimportant. By contrast, most other European countries and their ex-colonies where English is not spoken have a system of law in which the notary is important. However, notaries existed on both sides of the Channel long before the Code Napoleon was invented.

The notary's office was originally an ecclesiastical one. Even in

England, notaries were appointed by the Pope until Henry VIII decided that the Pope was a bad thing. Since then they have been appointed by the Court of Faculties of the Archbishop of Canterbury. With the development of the Common Law, the notaries' domestic role shrank (although they had a monopoly on conveyancing until 1760, when they lost an action to preserve that monopoly against the professional body of a group of people who called themselves somewhat comically 'Gentlemen Practisers'; they later adopted the equally comical name of 'Solicitors').

As a result of these developments, the London notary exists more to satisfy the requirements of non-English law than to satisfy those of English law. And because of this, in centuries past many London notaries were in fact foreigners, proficient in English as well as in the law of their own countries and, obviously, in their own languages, who prepared documents in various languages and, to comfort the parties involved, attested to the fact that the various versions were true translations of each other. That is why London notaries are still translators today and it may also account for certain peculiar notarial usages which survive to the present day — for example the word 'appearer', which is not a sudden manifestation of ectoplasm but merely a party appearing before a notary, a 'comparant', a 'compareciente', a 'comparente'. Similarly, many English notarial instruments end, or used until recently to end, with the words 'Whereof an act being required I have granted these present to serve and avail as and when need may require'. Here, 'Whereof an act' is clearly a translation of the French *Dont acte* which appears so laconically at the end of French notarial documents. And notaries always say 'at foot of' rather than 'at the foot of', which is probably influenced by the Italian *in calce al documento*.

You may have wondered why in this country we have no equivalent of the *Traducteur Juré* of the Continent. Well, in fact we have one, the notary public. But he or she is a sworn translator more because of custom than anything else. There are rules dealing with translations — for example Rules of Court made under the Foreign Judgements (Reciprocal Enforcement) Act 1933 and the rules of the Supreme Court relating to translations of notices of writ to be served out of the jurisdiction — but in neither case does the notary have a statutory monopoly. In most cases, a translation by a non-notary will be acceptable provided that the translator appears before a notary and swears an affidavit to the effect that the translation is a true translation. So nearly always a notary is involved. Incidentally, the relevant order in the rules of the Supreme Court lays down fees for notarial translations per 100 words of resultant English text, which could lead, or may in fact have already led, to translations which perpetuate expressions containing redundant elements, where three words at least are used instead of one: for example, 'null and void' instead of merely 'void', 'place

and stead' instead merely of 'place'. This custom dates back to the days when legal draftsmen were paid by the word and created such phrases to increase their income. Some even used to say 'null and void and of no effect'.

In view of the notary's role it is no coincidence that three of the London translation companies were started by notaries — one started as Walmica (and has changed name several times since then), another is Falcon Translations and the other I shall not name, out of modesty, since I was, over a period of years, sequentially the company secretary and a director of it.

It has always been a matter of great astonishment to me that no-one appears to have challenged the privileged position of notaries with respect to translations. Take a typical notarially certified translation. It bears a red seal and red tape stitching the documents together. The notarial certificate reads as follows:

I the undersigned, Whatshisname, notary public of and practising in the City of London, England, by Royal Authority duly admitted and sworn, do hereby certify and attest: that the document in the English language hereunto annexed is a true and faithful translation of the document in the Spanish language also hereunto annexed. In witness whereof I have hereunto set my hand and affixed my seal of office at London aforesaid, this first day of April one thousand nine hundred and seventy-nine.

I think it is a fairly impressive and pretty document. But there is nothing to prevent anyone from stitching documents together and securing the ends of the ribbon (notaries refer to it as silk) with a big red seal. And the red seal could be impressed with words such as 'Whatshisname, Member of the Translators' Guild' for example. I am sure that in many circumstances such translations would be — or become — acceptable. Admittedly, the translator would not be entitled to use the magic words 'by Royal Authority duly admitted and sworn' but these are mainly ceremonial in any case and some notaries in fact dispense with them.

Another possibility would be for an organised group of translators — and again I am thinking of the Translators' Guild — to apply to the government for an examination procedure to be established in order to create sworn translators, who would have their own seal and would be officially recognised as competent. This would be particularly useful for translations from English being sent abroad, which are often required to be 'legalised'.

Legalisation is the procedure whereby a document going abroad is taken to the consulate of the country of destination and a consular official certifies the authenticity of the document or of a signature and/or seal on it. This is, of course, a cumbersome procedure and fortunately one which has been simplified for most European countries and for many others. The

Hague Convention of 5 October 1961 dispenses with consular legalisation, which is replaced by the affixing to documents of a form of wording called the *Apostille*. Thus in the UK a document can be legalised by the Foreign and Commonwealth Office if it is going, for example, to Spain, Portugal, France, Italy, Yugoslavia, Belgium, Luxembourg, the Netherlands, Japan, the United States, or West Germany. In most other cases the document goes first to the Foreign Office and then to the relevant consulate, which legalises the signature of the Foreign Office official. Thus, if government-accredited sworn translators had their signatures and seals registered with the Foreign Office, documents certified by such translators would probably be acceptable in most countries of the world. I say probably because in some cases local legislation requires a translation to be done locally. This is certainly the case in the United Kingdom. When practising as a notary I spent much time re-translating into English the statutes of Panamanian companies which had already been translated in Panama into slightly incorrect — but in many cases entirely comprehensible — English by Panamanian sworn translators.

The translations that notaries provide are concerned mainly with commerce, property, and birth, marriage, divorce and death. Very nuts-and-bolt type documents, in which accuracy is all-important and style is of secondary importance. And in most cases errors in the original must be reproduced in the translation, since it is not for the translator to make value judgements in legal matters (although of course he will draw attention to errors where he thinks this is appropriate). In very few cases do documents translated by notaries have to be published, and in those cases it is nearly always merely a formality.

In the Communities, however, legal translation is somewhat different. Much of the work translated has to be published and, having been published, is often quoted and referred to again and again. Therefore the translators have a great responsibility, which sometimes weighs heavily upon them. It is as if their final versions were engraved in stone. Many a translator or reviser wakes up in the night in a cold sweat, fearful of having made an error in an important judgement or piece of legislation. And errors in Community documents can be difficult to correct. The classic example is the Italian version of Article 118 of the EEC Treaty which for nearly thirty years has contained an error. *Droit de travail* (labour law) was erroneously translated into Italian as *diritto al lavoro* (entitlement to employment) which is something entirely different. And there seems to be no way of rectifying the error. Likewise, if you examine the French and German versions of the Swiss Code of Obligations (the German was the original) you will find numerous errors in the French version.

But before going on to specific problems of legal translation, a few words about the translations at the Court of Justice of the European

Communities. As far as I know, the Court is the only institution where translators are required to have a formal, non-linguistic qualification as well as a linguistic qualification. They must have a law degree or else be a solicitor, barrister or other recognised legal practitioner. At present, the translators in the Division include solicitors, barristers, a notary, law graduates, and former law lecturers. The documents dealt with are of three main types: judgements of the Court; Opinions of the Advocates General (who are members of the Court who examine each case and state their view as to how it should be resolved); and requests submitted by the national courts for preliminary rulings on the validity or interpretation of Community Law under Article 177 of the EEC Treaty.

The working language of the Court is French, a fact which produces some unusual consequences. Everything has to be translated into French, and all the judges and Advocates General are presumed to know French.

Although each case has a 'language of the case', that being the language of the court from which the case originates or that of the party who commences the proceedings, all judgements are drafted in French and translated into the other languages. Each judge has two legal secretaries who do much of the drafting and their mother-tongue is not necessarily French. Thus, the following situation is quite possible. An English court submits a question to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty. The judgement is drafted by a German in French and is then translated into English, the language of the case, by a Welsh, Irish, Scottish or English translator. As you can imagine, there is room for many a misunderstanding along the way, and therefore friendly consultation between the translator and writer is essential. This is one reason why translation at the Court of Justice could never be privatised and placed in the hands of agencies. Another reason is that many of the documents to be translated are very sensitive and must be kept confidential until the appropriate moment. This applies particularly to judgements which have to be translated into the language of the case by, but not made public before, the day on which judgement is to be delivered, and which therefore have to be kept secret. Recently the Court gave judgement in the important case of *Adams v. Commission*. That case was viewed by the media as the story of one man's valiant struggle against a large multinational company and Community bureaucracy, and therefore I don't doubt that many journalists would have loved to see a copy of the judgement before judgement day. None of them did, but had the translation been farmed out security would have been very difficult.

Since I wish to demystify legal translation, let me, before dealing with the difficulties, mention some ways in which legal translation is easy and straightforward, and even pleasurable.

I should like to think that I am being objective when I say that those

who have to translate judgements — and please note that the comments which follow are confined to judgements — from English into a foreign language are in a privileged position. One of the differences between the legal system of the Common Law countries and that of the Roman Law countries is the emphasis placed in the Common Law countries upon the oral procedure. Common Law judges are not career judges from the start but are appointed from among senior members of the Bar. Therefore they have had long experience of advocacy and have doubtless on many occasions been ticked off by judges for expressing themselves vaguely or even merely ungrammatically. The following exchange between a judge and counsel is quite conceivable: ‘I take it that when you say “compared to” you mean “compared with”, I take it that you are highlighting the differences rather than the similarities.’ ‘Yes my lord, I am most grateful to you for your guidance.’ As a result, by the time a barrister becomes a judge he has usually learnt — and had branded into his consciousness — the importance of expressing himself clearly and concisely. Sadly, this is not so in the case of English-speaking lawyers who are not given a public wiggling from time to time by judges or lawyers in countries where the oral procedure is less important. Although it is true that *verba volet scripta manet*, written pleadings are not as a rule published and it would be very unusual for a writer of ungrammatical submissions ever to be made aware of his mistakes in a manner as memorable as by rebukes from the bench in open court. As a result, many judgements delivered by courts of Roman Law countries and many documents prepared by English lawyers who are not judges are put together with all the grace and cohesion of a punk rocker’s hairdo, are badly reasoned, ungrammatical and disastrously punctuated.

Another advantage of the Common Law system is that in collegiate courts each of the judges gives his own judgement and it is therefore published with his name at the bottom — he feels personally responsible for it. Under the continental system, collegiate courts deliver a single judgement which purports to be the unanimous view of the judges. Although it bears the name of all the judges, any peculiarities in it are attributable to none of them individually — they enjoy a sort of collective anonymity, and their words of wisdom are recorded in a collectively neutral style.

Many parts of translations of judgements are easy because they contain few or no legal terms, as they merely recite the facts of the case. This applies both to Common Law and Napoleonic systems but, once again, I think the Common Law system produces more interesting writing in this respect because the judge (the writer) is identified individually and often feels he is engaged in literary rather than legal writing. Here is an example, from a judgement of Lord Sands of the Scottish Court of Session delivered in 1932:

In this case the local committee have preferred to follow our judgement rather than that of the House of Lords. Now while one may appreciate their patriotism, one regrets that one is unable to support their conclusion. It is quite true that we are a supreme tribunal in valuation matters and our judgements are not subject to review by the House of Lords; and accordingly, in a technical sense the judgements of the House of Lords may not be binding upon us. But there is one thing that is binding upon us and that is the law and the House of Lords is an infallible interpreter of the law. A batsman who, as he said, had been struck on the shoulder by a ball, remonstrated against a ruling of LBW; but the wicket-keeper met his protest by the remark: 'It disna' matter if the ball hit yer neb, if the umpire says yer oot, yer oot'. Accordingly, if the House of Lords says 'This is the proper interpretation of the statute', then it is the proper interpretation. The House of Lords has a perfect legal mind. Learned Lords may come and go but the House of Lords never makes a mistake. That the House of Lords should make a mistake is just as unthinkable as that Colonel Bogey should be bunkered twice and take eight to the hole. Occasionally to some of us decisions of the House of Lords may seem inconsistent. But that is only a seeming. It is our frail vision that is at fault.

On a more practical note, a legal translator working in the commercial world will often find that he or she is asked to do the same work over and over again, with variations. For example, once again if they are working from English, they will often be asked to translate into a foreign language notices of writs to be served out of the jurisdiction where proceedings are started in a UK court against a defendant resident abroad. The document contains a short statement of claim which, like the names of the parties, will be specific to each case, but the bulk of the document will be identical to other notices of writ. And there are several translation agencies in London which have at least French and Spanish versions of notices of writ for service out of the jurisdiction programmed into their word processors so that they can produce a longish document in a remarkably short time, and earn a splendid fee. The same applies to the memoranda and articles of association of English companies which are often based on well-worn precedents. Changing the odd word here and there is what some lawyers call legal drafting. Translating into English, this also applies to the statutes of, for example, the Panamanian companies mentioned earlier, which usually follow a predictable pattern. And, also, the statutes of many French companies reproduce word-for-word large chunks of French company legislation, which the translator may well have translated before or have obtained a reliable translation of.

Those are some of the pleasures. Now for some of the pitfalls and difficulties. People don't, in general, like lawyers as a breed. They are regarded as devious. One reason for this is that they appear in literature and drama more than the members of any other profession. There may have been — but I can't recall any — TV series about chartered surveyors or

accountants — but there are many about lawyers: *Perry Mason*, *Rumpole of the Bailey*, A.P. Herbert's *Misleading Cases*. And the works of Dickens are full of lawyers, many of whom are portrayed as devious. And of course many *are* devious — the only consolation is that the majority of the devious ones have become politicians and don't bother us translators too much.

Another reason for their unpopularity, apart from their sometimes exorbitant fees for an intangible product, is their alleged or actual pomposity. People feel that lawyers have created their own mystery and mystique and speak exclusively in juridical jargon. Even the editors of *The Economist* take this view if *The Economist's* style sheet, part of which was published as an advertisement in *The Sunday Times* colour supplement, is anything to go by. It says, 'Do not be stuffy or pompous. Use the language of everyday speech, not that of spokesmen, lawyers or bureaucrats'. But it is remarkable how many people, including non-lawyer translators faced with a legal text, try to ape lawyers by adopting what they regard as a legal style. When in practice, I occasionally received letters from lay clients which were incomprehensible because of the writer's insistence on peppering them with obsolete legal terms. It is a matter of fact that lawyers' letters to each other are much more straightforward than those written to lawyers by their clients.

One result of this cloak of pomposity is that a translator is often tempted to use a legal-sounding word incorrectly when a simpler word was the correct one. Here is a specific example: a document in Russian issued by a registrar in the Soviet Union certifying the identity of a child's father. A literal translation of its title is 'certificate of affiliation'. However, the English translator, who fell into the sin of pomposity, decided that 'certificate' was not a legalistic enough word and decided to call the document an 'affidavit of paternity'. The error here is that, just as it takes two to tango, it takes two to make an affidavit: the person making the statement and the person who administers the oath to that person to endow the document with the required solemnity. Another specific example is in a decision of the Commission of the European Communities where a German term was translated as 'scheme of arrangement'. The literal and the correct translation of the German term was 'compromise'. The parties to the dispute came to a compromise, as simple as that. However, the translator thought that this sounded too simple and used the grand-sounding term 'scheme of arrangement', which is wholly inappropriate since it is a term of art relating specifically to an arrangement between a debtor and his creditors whereby the creditors obtain some advantage which they would not obtain from bankruptcy or other insolvency proceedings.

The use of appealing ready-made expressions was gently castigated in an Opinion delivered to the Court of Justice of the European Communities by Mr (as he then was) Advocate General Jean-Pierre Warner. He was dealing

with a staff case arising from a notice of vacancy issued by the Commission of the European Communities for the post of a lawyer. To quote him:

A third [notice of vacancy ...] required a good knowledge of Dutch law and in addition, rather oddly, knowledge of Anglo-Saxon law, a system which I have always understood became defunct about 900 years ago. Nevertheless, a knowledge, and if possible experience, of this law, was required by a further notice of vacancy.

For me, that alone is good enough reason for rejecting the expression ‘Anglo-Saxon’. It is usually used of English-speaking countries or, in a legal context, countries where the Common Law prevails. But in most cases it is wildly inaccurate, particularly since it ignores the waves of Scandinavian, Italian, Chinese, Slav and other immigration to most English-speaking countries.

A further example of pomposity is the excessive use of words such as thereof, whereof, wherefore, thereto, thereunder, therein and thereout. On the other hand, moderate use of such words is useful in cases where the original text makes ambiguous or vague use of words like *ceci*, *celle-ci*, *celle-là*, and so on, so that the antecedent is not clearly identified. Sometimes the translator has no alternative but to use a thereof to preserve an ambiguity which he is unable to resolve.

On the other hand, there are occasions when it would be appropriate to be bold and to use slightly unusual legal terms in order to be accurate and to avoid long circumlocutions. Lord Diplock wasn’t afraid to do so. Here is a quotation from him:

In the *Hong Kong Fir Shipping* case [...] I was careful to restrict my own observations to synallagmatic contracts. The insertion of this qualifying adjective was widely thought to be a typical example of gratuitous philological exhibitionism; but the present appeal does turn on the difference in legal character between contracts which are synallagmatic (a term which I prefer to bilateral, for there may be more than two parties), and contracts which are not synallagmatic but only unilateral, an expression which, like synallagmatic, I have borrowed from French law (Code Civile, Articles 1102 and 1103).

Similarly, it would have been convenient if, when the UK came into the European Communities, English translators had decided boldly to use the English word, common in Scots law, ‘prestation’ in certain cases to translate the French word *prestation*. Although initially the word would have sounded strange and would have attracted cynical comment from sections of the press, it would have become accepted in time and would have avoided numerous translation difficulties — after all, we have swallowed words such as ‘conjunctural’, so why not words such as ‘prestation’?

The difficulties described so far arise from characteristics of the translator rather than from the text with which he or she is dealing. But the vast majority of problems arise from the nature of the text. I have already spoken in unglowing terms of documents produced by lawyers and judges within a system which accords very little importance to the oral phase of the procedure. Incidentally, this difference is highlighted linguistically by the fact that in the House of Lords the judgements of the learned Lords are referred to as ‘speeches’, and by contrast in some Spanish language contexts proceedings are said to be seen (*visto*) rather than heard, even though what is involved is in fact the oral phase of the proceedings. Although I love the Spanish language and nation, I have to say that I believe the Spanish judiciary to be amongst the worst offenders when it comes to writing nearly unintelligible judgements. There appears to be a convention according to which it is bad form to have more than one sentence per paragraph in the recitals to a judgement. Thus you have a series of extremely long sentences beginning with the words *considerando* or *resultando* or *por cuanto*, followed by a main clause onto which are tacked innumerable phrases each containing what Fowler described as an unattached participle, where it is impossible to identify the logical subject of the participle. As often as not this is combined with the vaguest and most ambiguous possible use of *este* and *aquel* (the latter and the former) so that the poor translator is entirely lost unless he or she has been provided with sufficient background information and documentation — which happens in about one case in one hundred.

In the European Communities a number of difficulties arise from the fact that legislation is published in all the official languages and all the versions are supposed to carry the same force. Mistakes are occasionally made in some of the language versions and these may give rise to references to the Court of Justice for interpretation of the provisions in question. In one such instance the following judgement was given: ‘De uitdrukking “diens echtgenote” in artikel 10, lid 1, sub b, van verordening nr. 574/72 heeft ook betrekking op de gehuwde man die in een Lid-Staat beroepswerkzaamheden uitoefent’, the English translation of which is: ‘The expression “whose wife” in Article 10(1)(b) of Regulation No. 574/72 includes a married man who is engaged in a professional or trade activity in a Member State’ — truly a case where the female embraces the male.

All lawyers — and thus legal translators as well — are expected to handle Latin maxims with ease. I used to cherish the idea that all the translator needed to do was to translate the surrounding words and leave the Latin phrases in Latin. But now I’m not so sure. It seems that the use of Latin varies from one country to another. When the French use the words *a priori* they are not using them as a term of logic but merely to say ‘at first

Sight'. Similarly, *a posteriori* is often used merely to mean 'subsequently'. If the translator is enamoured of Latin he or she can, in many cases, translate *a priori* as *prima facie* and *a posteriori* as *ex post facto*. A phrase often used in the Court of Justice is *fumus boni iuris* (literally 'the smoke of good law'), which I believe we used in the English translation to leave in the Latin, until we realised that it made people laugh. So it is now translated using words such as 'a *prima facie* case'. And Italian lawyers seem to love the expression *in apicibus* — I've not yet met an English lawyer

who knew what it meant. It appears to mean 'on the peaks' and is used by lawyers where a court has touched lightly upon a subject without going into it deeply. It is clearly a case where it is inappropriate to leave the Latin untranslated. Finally, there is the expression *in continenti* often used in Portuguese. It certainly conjures up a splendid image of urgency and in fact is used to mean 'immediately'. It is another phrase which clearly should not be left untranslated.

Fewer difficulties than you might think arise from the difference between the Common Law system and the Continental system of law. After all, it is much less easy to confuse chalk with cheese than to confuse two kinds of cheese. In a lecture given in 1966, when all the legal systems in the Common Market were similar to each other, André Donner, who was the President of the Court of Justice of the European Communities from 1958 to 1966, said the following:

[...] it certainly is true that many fundamental concepts and notions are common to the law of every one of the Six. But in a way that only adds to the misunderstanding. We use the same terms and reason along the same lines, but this seeming identity can intensify the difficulty, because we suppose that in using identical terms we give them identical content. And that is just not correct, for the content of those terms has been developed and modified in the course of six different legal histories. It is not the big differences that are the most irritating. The small and seemingly unimportant ones may be much more so. It would in some way clarify the situation if among the Member States there were at least one with an obviously different system of law, for example England, for then no one could continue to argue as though there were no legal diversity and to presume as a matter of course that every civilised nation has exactly the same notions as his own legal system.

Of course, the UK and Ireland have acceded to the Communities, but whether or not their accession has made life easier for the translators of the original Six I would not presume to say.

Even where the legal systems are radically different, problems may arise where the differences are concealed by linguistic similarity. The case I most often encountered as a notarial translator was that of Argentine *divorcio* proceedings. The obvious temptation is translate *divorcio* as 'divorce'. But divorce does not yet exist in Argentina and it is clearly

stated in the Argentine Civil Code that *divorcio* does not dissolve the marriage bond. A result of *divorcio* proceedings is that the parties may be legally separated and terms may be arrived at for the settlement of their property rights. So, a more accurate translation for *divorcio* is 'legal separation'.

I shall mention just a few more difficulties. The first derives from the fact that we do not always see ourselves as others see us and therefore we do not always call ourselves what others call us. Here are just two examples: the first is that Ireland, the southern part of the island between the Irish Sea and the Atlantic, calls itself in Community documents merely Ireland, not the Republic of Ireland. As a general rule, Ireland's wish to be known as Ireland is respected but from time to time someone forgets (a recent example is to be found in the case of *Commission v. Ireland* (on co-insurance) now pending before the Court of Justice, where the Commission's Service Juridique refers to *la République d'Irlande*. When this happens, the English translation division courteously truncates the expression to the single word Ireland. I just mentioned the Service Juridique of the Commission. I use the French expression so as not to give away the other example. At an early stage, the English translation division decided that the expression 'Legal Service' was a mis-translation of *Service Juridique* and always refers to it in translation as the Commission's Legal Department, even where in the pleadings the department in question calls itself the Legal Service.

A further difficulty is not strictly a legal one but it arises by operation of law. Under Portuguese law, notarial documents (wills, conveyances and so on, and many certificates of marriage, birth and death) must be written by hand. This would present no problem if the documents were written legibly. But few are. Cacography prevails. It seems mandatory to make what I believe graphologists call garlands and arcades — the peaks and valleys of 'n's and 'u's for example — identical, so that it is impossible to detect the beginning and ending of 'n's and 'm's and 'u's and (in foreign names) 'w's, and with a little imagination, which the writers rarely lack, it is possible to make 'a's look like 'o's and 'p's look like 'q's and to make many other pairs of letters indistinguishable. It is a problem which can be overcome in most cases by guessing what the words ought to be, but the translator is usually stumped where the illegibility occurs in the name of a party or of a small village in Portugal which does not appear on the map.

The last difficulty of legal translation I would like to cover is the lack of good legal dictionaries. I work mainly from Spanish, Portuguese and French, and over the years the only legal dictionary for which I have developed any respect is one that is now out of print, namely the *Legal, commercial and financial dictionary* written by Lewis Sell in two volumes: English/Spanish and Spanish/English. The ones which I find useless I will

not name. The main criticism is that they include all the words you know already and none of the words you don't know. In addition, many of them contain erroneous entries. And some contain silly entries. For example, in one dictionary under the French word *fautif*, only one English word is given as a suggested translation: 'faulty'.

Because so much legal work is repetitive — as mentioned earlier much so-called legal drafting consists of changing a word here and there in an old precedent — the legal profession was among the first to invest in word processors. However, they seem to have a childlike trust in whatever is produced by word processors. Many legal documents go through many versions before the final wording is agreed and many times I have seen, faithfully reproduced in the final version, typing errors which occurred in all the previous nineteen versions and should have been removed from the first version.

As regards computer translation (will somebody please tell me why it is called machine translation, when the connotations of a machine are oily cogs and pistons and rattling camshafts?), I must confess that I am among those who are yet to be convinced of its worth. I would like to mention just one aspect, being provoked by an article by James Wilkinson, BBC News Science Correspondent. He referred to a system which 'can translate 1600 words an hour — some five to ten times faster than a person'. I wonder where he got his figures? Those figures indicate that someone somewhere has observed translators at work and decided that they can translate at the rate of 160 to 320 words an hour, that is a maximum of less than one-and-a-half A4 pages with double spacing. And presumably both the computer and the humans whose performance has been monitored are producing raw text.

I made my own observations — not at the Court of Justice but in the commercial world before I joined the Court. For the purpose I divided legal translation into two broad types, which is convenient to call contentious and non-contentious. Contentious, in this context, describes the kind of language used by people who are trying to convince others of a particular view of a situation, as for example in pleadings, opinions and judgements. Non-contentious describes the kind of language used to lay down rules of conduct (legislation, contracts etc.) or to record undisputed facts. I found that the average rate for translation from Spanish into English of contentious material (the more difficult of the two categories) was over 1,000 words per hour raw text dictated, and that for non-contentious material the rate was over 2,000, sometimes as many as 2,500, words per hour raw text dictated — and the non-contentious text needed very little tidying up. The only long-winded part of the operation was the transcribing of tapes. As a legal translator, therefore, I for one would prefer to see money spent on word processors capable of taking dictation,

equipped with sophisticated spelling checkers, than on computer translation equipment.

Since I have made frequent references to the differences between the Common Law and Napoleonic Law, let me conclude with a quotation which refers to Napoleon with a mixture of admiration and arrogance on the part of the speaker. It comes from a speech by Lord Brougham to the House of Commons in the nineteenth century, in which he sought help in reforming the law:

The course is clear before us; the race is glorious to run. You have the powers of sending your name down through all times, illustrated by deeds of higher fame, and more useful import, than were ever done within these walls. You saw the greatest warrior of the age — conqueror of Italy — the humbler of Germany — the terror of the north — saw him account all his matchless victories poor, compared with the triumph you are now in a condition to win — saw him condemn the fickleness of fortune, while, in despite of her, he could pronounce his memorable boast ‘I shall go down to posterity with the code in my hand’. You have vanquished him in the field; strive now to rival him in the sacred arts of peace! Outstrip him as a law giver, whom in arms you overcame! [...] It was the boast of Augustus that he found Rome of brick and left it of marble [...] But how much nobler will be the Sovereign’s boast, when he shall have it to say that he found law dear and left it cheap; found it a sealed book and left it a living letter.

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