I have been asked to speak about the role of the interpreter and/or translator.

My visiting card reads: Sarah Rossi, simultaneous interpreter specialising in legal translation.

Why did I put it this way?
Simply because I wanted to convey the idea that it is different from "ordinary" interpreting and also to make sure our lawyer clients who tend to call us interpreters "translators", were on the same page (as they say).

I am a qualified translator, but have, for some time, mainly worked as an interpreter, mostly in arbitration although I am sometimes involved in the taking of international depositions under The Hague Convention. This is why I shall focus today on interpreting in arbitration.

What is so special about legal interpreting? I would sum it up in the following way: the words, the whole words and nothing but the words!

Interpreting is a demanding and challenging occupation but even more so in the legal field. The usual recommendations apply here to the full, meaning that there is little, or no room for approximation.

In other words, the translation should not only be accurate but also *un-interpreted.* No "traduttore traditore" business.

There should be neither exaggeration, nor incompleteness, nor invention nor, worse, guesswork. The interpreter should stay as close as possible to the original while at the same time avoiding literal translation, which would ruin the semantics and often make no sense.

If I'm making it sound like a high-wire act performed in real time – then you're getting the picture.

What then will make the legal interpreter fully effective in the role?

The obvious qualities are a full command of both languages, mastery of the interpreting technique whether consecutive or simultaneous, plus solid nerves to face inevitable surprises (usually nasty), modesty if not humility, a passion for precision and thoroughness, and fortitude: in other words, the qualities of a quick-thinking saint.

But those are just the technical basics. Other essential skills have to be mastered too.

A quality which, as far as I am concerned, comes first is *Neutrality:* Forget your ego or your personal opinion. Just like the judge or arbitrator, the interpreter must not only be impartial but also be perceived to be so.

It is not the interpreter's role to try and judge who is right or wrong. If they could, they would be on the bench not in the booth.

It has often been said that interpreters should be "invisible". Much as I would agree with this in, say, diplomatic circles, I believe that the consecutive legal interpreter, at least, should be a reassuring presence for the sometimes nervous witness. This does not mean that he or she should mother the witness (which would be totally out of place) but, while remaining totally unbiased, it is important not to add to the stress.

By the same token, the interpreter must keep his/her cool even if the parties are antagonistic (which, in my experience, is far less frequent in arbitration than litigation, fortunately).

Next comes *Psychology:* It is important to constantly bear in mind the fact that we are there to transpose human words and convey the feelings behind them. An interpreter is a channel of communication. As such he or she must be supportive without overstepping his/her position.

Jokes should be translated without being blown up, and in the same way, understatements, hints or innuendos should NOT be spelled out. We are not there to finish or adorn the witness's sentence.

Nor should one try to make a vague statement explicit. If a witness is vague or ambiguous (as US litigators like to object), there are 2 possibilities:

-Either it is done on purpose, in which case the interpreter should take care to be as vague or ambiguous as the original.

- Or, the statement is indeed unclear: then, we have to do our best. In consecutive, however, it might be possible to ask for clarification or simply wait for the examiner to do so.

While we learn to anticipate at school, here it is OUT.

Add a pinch of tact to all the above, and the job should be well done!

Lets turn now to *Discretion:* Most parties turn to arbitration precisely because it is private, and offers a guarantee that their case shall remain confidential. The

interpreter should, therefore never mention anything relating to the case whether the names of the parties, the venue, the law firms etc. More and more recruiting parties or presidents of tribunals require us to sign confidentiality agreements. Most legal interpreters are acutely aware of the need to be and remain discreet, even though some might need a little reminding. Might it be that they have forgotten or misread our code of ethics?

It is also important for the interpreter to exercise a degree of *Authority*. I mean by this that when required, and only when, the interpreter should not hesitate to intervene in the interest of the proceedings: for instance when the equipment is faulty (Larsen, poor sound, the witness is not speaking into the mike etc.), when a text which is being read (usually at top speed) has not been provided, when the witness speaks too fast or several persons speak at the same time. A good indication of this is the court reporter's reaction: if the court reporter cannot follow, it means one or more of those things are not working.

What type of interpretation: Consecutive or simultaneous? These are two different schools. The choice is basically down to trust and cost.

Consecutive enables the parties to check the interpretation. In this regard, most parties make sure that someone on the party's team speaks the right languages. It saves costs insofar as there is usually a single interpreter as opposed to two (and even three at ICSID for simultaneous) and no need to set up a booth and/or pay for a technician.

Simultaneous on the other hand, will save a lot of time.

I sometimes have difficulty explaining that some types of depositions are not feasible in consecutive, for example, the deposition of a law professor on a specific point of law. In consecutive, the demonstration is piecemeal and the flow constantly interrupted.

When I first started working in this field, most depositions were done in consecutive but nowadays, I would say that this trend has been reversed in favour of simultaneous.

I believe that the advent of live notes has greatly contributed to this development as parties can now check the translation in real time from the transcript screen. Beware: this means that any mistake in the translation can be spotted immediately!

Unlike court interpreting, the use of "*bidule*" or whispering is very unusual in arbitration, and, as a matter of fact, we are not too keen as we usually need to

handle files and documents and it's easier to do that in a properly equipped booth.

Preparation (Valid for both types of interpreting)

Arbitration clauses usually set the language of the arbitration and, if not, it will be determined before the hearing. Occasionally there are two, but this is not the rule. Naturally, this feature will influence the preparation but the glossary for the case will inevitably be bilingual. I'll come back to glossaries in a moment.

It is preferable to have a team of interpreters going both ways rather than one going one way and the other the other way. However, if it cannot be avoided, each interpreter will have to be extra careful to use the language of the deponent in order to avoid adding to the potential distortion.

Legal interpreters deal with all sorts of different subjects: mining, oil, mobile phones, construction, also dredging of channels, transport of all kinds, chicken breeding, collagen extraction, garbage collection -- you name it! And, of course, they sometimes interpret pure law, because law professors and legal experts are sometimes called as witnesses. In such cases, it is not sufficient to be able to translate "estoppel" or "willful misconduct" (neither, by the way, translates perfectly): you also need to understand the underlying concept in its legal context. But, once again, my advice is : leave the explaining to the examiners and refrain from interfering.

Preparation is fundamental.

All those involved in arbitration have long understood the interest of having well prepared interpreters. The situation can be very different in French Courts, for instance, where I have sometimes felt sorry for court interpreters who had not been briefed about the case and were struggling.

Obtaining the documents can be done in different ways: ICSID and a number of law firms now use online Drop Boxes. Others send the materials by email. Rarer, nowadays, are those who send a paper bundle or box of documents although a lot of interpreters still prefer to work from hard copies in order to mark up, highlight, scribble etc.

Whatever the case, I personally also ask to be provided in the booth with a) paper copies of the witness statements etc. (because it is almost impossible when interpreting to find the right reference on a computer) and b) the "bundles" or collection of exhibits that are shown to the witness during the examination.

The ICC, specifically, uses Terms of Reference, which are drafted by the arbitral tribunal once it has been constituted. This is a key document and greatly helps preparation: it enables one, at a glance, to have an idea of the parties involved, the subject of the dispute, the applicable law, the main issues of law and fact, who is claiming what, whether or not there are jurisdictional objections, and of course, the amounts claimed.

Unlike the ICC, most arbitration institutions do not provide for a TOR. This means that the interpreter has to fish out the documents he/she will need to prepare. This can be difficult for an inexperienced interpreter, so here are a few personal tips. One should, naturally, start with the request for arbitration and the answer. These might be very lengthy but, with no undue disrespect to our lawyer friends, they can also be repetitive. Once one has a general picture of the claim, it is less time consuming to look at the other party's reply, point by point, and any counterclaim. I tend to examine the table of contents first as, like any outline, it gives a clear picture of the subjects that will be developed.

On that basis, interpreters can compile the glossaries that are so important for their work. Depending on the language of the case, documents presented for the purpose of the examination might have been translated by the parties. If the translation is good, it can help preparation and save time. However, difficulties might arise if there are inaccuracies, and the interpreter should not blindly rely on such translations. This could be a useful opportunity to ask the right questions, if suitable, from the deponent before the hearing starts but this has to be done openly vis-à-vis all concerned.

Once the interpreter has a general picture of the case, then comes the "real work", i.e. the reason why he or she has been recruited: studying the witness statements and expert reports.

If the documents are factual, the preparation requires the usual vocabulary and concept research.

If legal, then preparation is more delicate in that, as we know, there might simply be no equivalent word or even notion in the law applicable to the case.

We rarely interpret oral pleadings but sometimes have to do so. It is particularly difficult in that a) we seldom get the text as most lawyers will protect them with their lives rather than disclosing any part of it, b) the text in question has been worked and reworked by counsel till the last minute and is very much a WRITTEN as opposed to spoken text, not to say anything about clever hints or jeu de manche and c) it is usually read at speed given the restricted time allotted to the parties. Not an easy exercise!

It has taken quite an effort to educate lawyers that it is very much in their interest to let us have the text (even at the last moment). Slowly, however, they are beginning to understand this. The Secretary in charge of ICSID cases, or the secretary of an international arbitration (if any as it is not systematic) can be of great assistance in this regard.

Recent trends

Appointment of interpreters: Who recruits us?

Institutions, parties, ONE party, both parties together, the client, agencies, and colleagues.

Since until recently, interpreters were not allowed to advertise, recruitment is usually based on recommendation. True, one can be listed on some specialized websites such as IAI, or Paris Place of Arbitration, for instance, but in arbitration, there is no such thing as a list like those for certified court interpreters.

ICSID has its own pool of approved interpreters but the ICC does not. AIIC offers a directory but there is no information as to the interpreter's experience in the legal field.

Other networks can give a few names but it is random and nothing can replace word of mouth in judging the quality of an interpreter.

Thus work comes from lawyers or arbitrators' recommendations, through court reporters and even technicians, and naturally through colleagues (I for one, recruit all my teams when dealing with my own clients).

At least, while recruitment of interpreters is often a very eleventh-hour business in litigation, arbitration hearings are usually scheduled well in advance and those involved rarely wait until the last minute to secure the best interpreters.

"Judicialization"

Apart from live notes, which are a true revolution, arbitration has gradually moved closer to common-law style, especially American, litigation.

It would seem that legal cultural diversity in arbitration is diminishing in favour of American-style proceedings. A lot depends on the law applicable to the case and of course, that of the seat of the arbitration. But direct examination and cross-examination have become the rule, at least in my European experience.

Discovery has not, to my knowledge, made its way into arbitration here, but it is important for the interpreter to keep abreast of such evolutions as the new generation of arbitrators appear onto the international scene.

The late and much regretted Serge Lazareff was one of the first renowned arbitrators to criticise arbitrators for "mimicking" or "copycatting" American litigation usages. Judging by my experience, it would seem that this trend is now here to stay. Counsels in arbitrations are more and more frequently heard to say "strike that as non responsive" or "this is a yes or no answer", phrases which belong to the world of litigation, not that of arbitration.

By the same token, there have also been attempts at holding the interpreter liable for any wrong translation. There was even talk of getting special insurance coverage at some stage but I believe that this idea has, fortunately, been abandoned.

Conclusion

In closing, I shall say that legal interpreting is the most demanding and unforgiving type of interpreting but it is also, in my view, the most rewarding there is.

Rightly or wrongly, many interpreters fear this specific field: they tend to cringe when they hear the words "law" or "legal". But, in fact, they are mistaken as legal interpreting seldom deals with pure law and, although, in my view not suited for beginners, efficient preparation and experience will rapidly give any interpreter the upper hand as well as the satisfaction of doing a very useful job.

Thank you.