

## 法庭口譯品質提升的功能視角

陳雅齡

### 摘 要

進入二十一世紀，口譯界明顯已經開始注意到會譯口譯外的多重面貌。口譯質量評估的研究從 1980 年代開始，不過多集中在會議口譯方面。其中，Pöchhacker (2001) 主張：口譯品質評估有許多層面及不同立場，評估時不能只針對語言層面，應同時衡量整體溝通效果及對當時翻譯情境及機構因素所造成的影響。Nord 根據 Vermeer 理論框架，於著作《翻譯是一種目的性活動》提出幾種概念，包括「翻譯是行動」(translation as an action)、「翻譯綱要」(translation brief)、「功能加忠誠」(function plus loyalty)、「功能對等」(functional equivalence) 及「適切原則」(adequacy principle) 等。筆者因此應用這些概念，作為提升法庭口譯品質的準據，並對照筆者在法庭上親身經歷或觀察的例子。結論提出，法庭口譯是一種極具目的性及溝通性的活動、主要是用來協助法官在法庭上審理案件，口譯員若能應用 Nord 功能理論之行動概念，譯前規畫「翻譯綱要」、過程中恪守對各講者「忠誠」及代表國家法律—法官的「最高忠誠」；法律術語上把握諾德的「適切」原則，如此將有助於確保或提升口譯員的翻譯品質。本研究結果期望有助於日後法庭口譯人員的訓練，甚或為整體的口譯品質評估研究引進新作法與新方向。

**關鍵詞：**法庭口譯、功能論、忠誠、翻譯綱要、適切原則

# Quality Enhancement for Court Interpretation- A Functionalist Approach

Brenda Yaling Chen

## Abstract

The increasingly diversified nature of the field of interpretation has drawn more attention in the twenty-first century than ever before. In particular, the quality of interpretation has come into new focus. Scholars began to research the methods of assessing the quality of interpretation in the 1980s, but mostly targeted conference interpretation. Pöchhacker (2001) indicates that to assess the quality of interpreting activities involves many perspectives, and that genuine assessment cannot be confined to a linguistic substrate but must be conducted also at the level of its communicative effect and impact within a particular situational and institutional environment. Based on Hans Vermeer's skopos theory, Christiane Nord discusses the multiplicity of mediated intercultural communication activities including translating and interpreting, in terms of "translation as an action", "translation brief", "function plus loyalty", "functional equivalence" as well as the "adequacy principle". In this study, the author adopts Nord's ideas as the criteria for quality enhancement in court interpreting and explains them by providing concrete examples the author has encountered or observed in actual practice. In the concluding part, the author states that since court interpreting is a highly purposeful and communicative event, the interpreter is able to assure or enhance interpretation quality if he/she applies concepts of "interpretation brief", "loyalty" to each speaker and "supreme loyalty" to the judge entrusted by the judicial institution, and adheres to the "adequacy" principle when dealing with the translation of legal terms. Results of the study are expected to improve the training procedures for court interpreters and even to contribute to the study of quality assessment for the field of interpretation.

**Keywords:** court interpreting, functionalist approach, loyalty, translation brief, adequacy

## 1. Introduction

### 1.1 Purpose of Study

Studies on quality assessment for interpretation began with conference interpreting in the 1980s. Generally, two types of quality assessment emerged--one is an expectation/assurance study (e.g. Bühler, 1986; Kurz, 1989), and the other is actual performance analysis (Gile, 1990; Meak, 1990). Many scholars (e.g. Pochhacker, 2001; 蔡小紅, 2006) however, indicate that quality assessment for interpretation is difficult to conduct, and may lead to conflicting results due to different factors and perspectives in the study. Today's global village raises the needs and demands for investigations of other modes of interpretation such as medical interpreting and legal interpreting. These new kinds of interpreters are engaged in a situation involving a dialogical mode and usually have to pay attention to the manner and style of more than one speaker at a time. In particular, court interpreters are advised to follow a professional code of ethics based on human rights as stipulated by "Human Right Law" and "International Covenant on Civil and Political Rights" of United Nations in 1948 and 1966 respectively. All these factors then contribute to the level of risks due to improper interpretation, while at the same time highlighting the importance of quality assessment or assurance of interpretation, in particular court interpreting which plays an important role in the ruling of court judges. In this study, the author first reviews the study of the legal translator/interpreter as communicator during the past years. Next, the author discusses Nord's functionalism with its theoretical framework in Vermeer's skopos theory. Her main ideas of "translation as an action", "translation brief", "loyalty", "functional equivalence", and "adequacy principle" are established as the standards of quality assurance to be applicable to court interpreting regardless of cultures and language combinations. It is then hoped that the results of this study are helpful toward self-improvement and overall training of court interpreters, and even useful to the research of quality assessment for interpretation in the future.

### 1.2 Legal translator/interpreter as communicator

Translation or interpretation of legal texts is said to be among the oldest and most important activities in the world (Šarčević, 1997: 1). In Canada and Switzerland, there is a constant task for bilingual or multilingual drafting and translation of national laws. Also in the European Union where there are more than twenty official languages, member states heavily rely on translation as well as interpretation to understand each other. Hong Kong, after the change of sovereignty in 1997, has become a bilingual jurisdiction where bilingual legislative drafting and laws are the norm involving a lot of translation practice (Cao, 2007:2). Currently,

globalization has resulted in a rapid rise in the need for quality translation or interpretation of this type of document. This paper focuses on court interpretation. It is important for us to commence with a review of legal discourse, types of legal translations, and strategies adopted by linguists and lawyers in the past. Considered a special language for special purposes (LSP), legal texts are a “communicative occurrence” (like even literary texts) produced at a given time and place and intended to serve a specific function (Šarčević, 1997: 6-9). Generally, the function of legal translations can be divided into three areas: (1) primarily prescriptive, e.g. laws, regulations, codes, contracts, treaties, and convention; they are normative texts; (2) primarily descriptive and also prescriptive, e.g. judicial decisions and legal instruments used to carry on judicial and administrative proceedings such as actions, pleadings, briefs, appeals, requests, petitions, and so forth; and (3) purely descriptive, e.g. scholarly works written by legal scholars such as legal opinions and law textbooks (Šarčević, 1997: 6-9). Harvey (2000), however, comments that Šarčević’s classification does not include a large part of the legal translator’s workload in real life such as private agreements and correspondence between lawyers and clients. Cao in her *Translation Law* broadens Šarčević’s scope of legal translations and emphasizes that legal language does not just cover the language of law alone, but all communication in legal settings (Cao, 2007:10). For a long time, linguists and lawyers have attempted to apply theories of general translation to legal texts such as Catford’s concept of situational equivalence and Nida’s theory of formal correspondence (Šarčević, 1997). Many jurilinguists in Canada maintain that special techniques must be used for languages for special purposes, yet they rely heavily on contrastive linguistics (Šarčević, 1997:2). It was not until in the twentieth century that literal translation was replaced by a more idiomatic approach when translators of lesser used official languages finally began to demand equal language rights; thus the stage was set for the development from literal to near idiomatic translation (Šarčević, 1997:23). By applying a general translation theory from a lawyer’s view point, W.E. Weisflog (1987) then draws upon Nida’s theory of formal and dynamic correspondence of the seventies. He explains that in regard to the translation of national legislation, “there is little or no room for free translation; but in regard to textbooks, articles in legal journals, and lectures, the translator’s task is to ‘get the author’s message’-meaning here his thoughts and ideas rather than his words-over to the receptor”(Weisflog, 1987:195). To continue Nida’s study, Newmark brings up the notions of “semantic translation” and “communicative translation”, which somehow corresponds to Nida’s formal and dynamic equivalence. Regardless of Nida’s or Newmark’s distinctions, Hatim and Masion (1997) from a communicative perspective suggest that it is the notion of *skopos* (purpose of translating) which affects the translator in his/her selection of translation strategy. Also, according to them, both translators and interpreters work as source text receiver and target text producer at the same time-they are

both communicators. This communication theory can therefore serve as a common ground for researchers of both translation and interpretation studies. We are further justified to adopt more communicative translation theory to interpretation study. On the other hand, when translating legal texts or interpreting in legal settings, one great problem lies in the fact that the elements of the national legislation in the source system cannot be simply transposed into the target legal system due to differences in history and cultural background in establishing laws, (Šarčević, 1997: 9). To respond to this issue, Hans J. Vermeer emphasizes a functionalist approach by making a shift from interlingual to cultural transfer based on skopos theory (Vermeer, 1986:33). To prove that function is a key factor in specialized translation, Vermeer presents an example of an insurance contract which in his opinion should be translated in different ways depending on the communicative function in each situation. Below is a discussion of Vermeer's skopos theory with Nord's expansion of it in more detail.

### 1.3 German functionalism translation and Pöchhacker's application

#### 1.3.1 Vermeer's Skopos theory

Vermeer's skopos theory breaks with traditional perspective of linguistics, which can even be traced back to Reiss' functionalism. Reiss argues that the traditional equivalent of concepts should not stay at the level of word or phrase unit, but instead be expands them to the level of the whole text, taking factors other than the text into consideration as well. Her student, Hans Vermeer, formally proposes the skopos theory, which regards translation as an action. As cited by Nord (1997), Vermeer states:

Any form of translational action, including therefore translation itself, may be conceived as an action, as the name implies. Any action has an aim, a purpose. [...] The word skopos, then, is a technical term to represent the aim or purpose of a translation. (Nord, 1997:12)

Apart from the term *skopos*, Vermeer brings up related words such as “aim” and “purpose,” “function” and “intention.” He defines “aim” as the final result and “purpose” as a provisional stage in the process of attaining an aim. According to Vermeer, “function” refers to what a text means or is intended to mean from the receiver's point of view; and “intention” is conceived as an aim-oriented plan of action on the part of both the sender and the receiver. In applying these terms to a court interpretation setting, the aim is to protect the human rights of litigants or participants who speak a different language in a court setting as required by international laws. The purpose is for the interpreter to help the judge carry out a hearing or trial without language barriers. Next, the function is for the interpreter to play an intermediary

role in the process of communication. Finally, the intention is to transfer as much message as possible for the speaker and other participants.

### 1.3.2 Nord's functionalist approach

To follow her teacher Vermeer in this respect, Nord continues this line of functional analysis and includes interpretation in her functionalist approach as shown below:

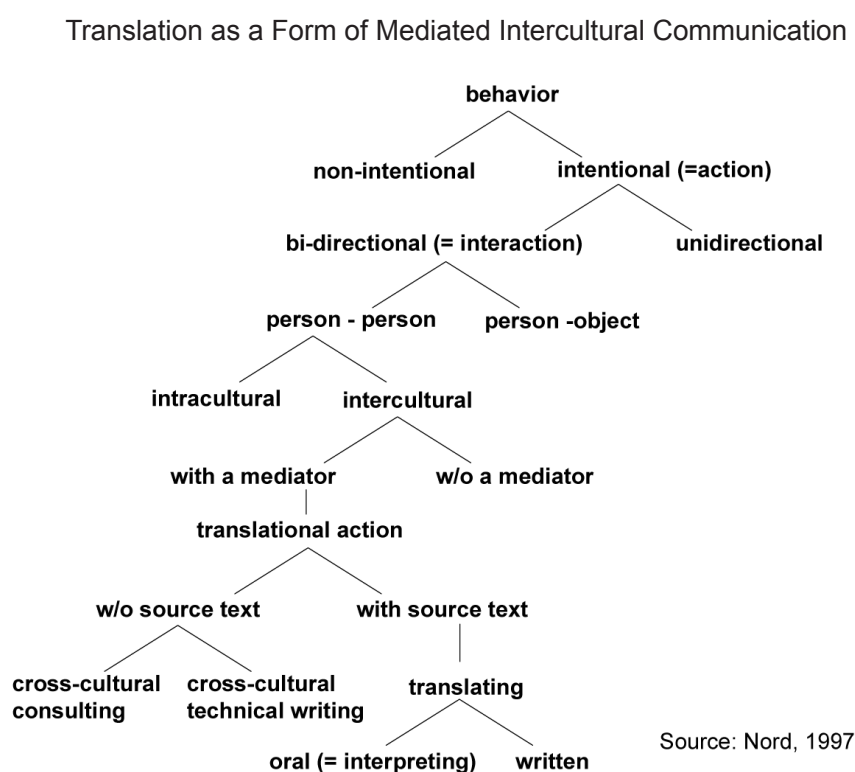


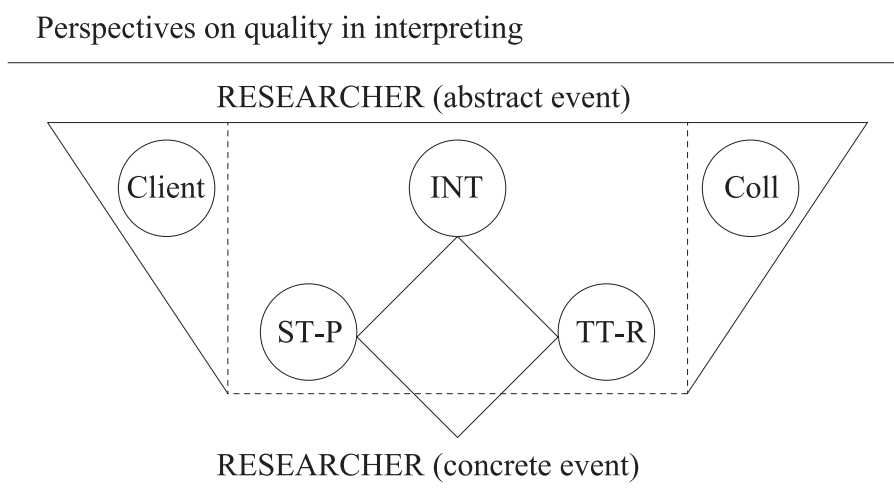
Figure 1. Translation as a form of mediated intercultural communication

According to the chart above, translating, either oral or written, is a kind of mediated intercultural communication. In the process of translation, there generally includes a commissioner or an initiator at the beginning of the process. The initiator is the person or group that starts off the translation process and determines its course by defining the purpose for which the target text is needed. The commissioner asks the translator to produce a target for a particular purpose/addressee and perhaps demands a particular text format or terminology. In the author's experience, a court clerk representing the court (initiator) usually contacts the interpreter by telephone about a forthcoming interpretation task appointed by the judge (commissioner). The clerk explains the purpose of this interpreting activity and checks if the task/date is fine with the interpreter. The interpreter then usually requests a simplified

indictment document to be sent to him/her for preparatory measures. A court interpreting activity therefore starts with a very purposeful interactional communication right from the start.

### 1.3.3 Pöchhacker's application to interpreting

Being a researcher of interpretation studies and himself a conference interpreter, Pöchhacker (2001) draws upon Vermeer's skopos theory and takes a functionalist approach to the study of interpretation by treating the whole conference interpreting as an communicative event. His diagram of quality assessment for interpretation is as follows:



(◆ = communicative event. ST-P = source-text producer. TT-R = target-text receiver)

Figure 2. Perspectives on quality assessment in interpretation (Pöchhacker, 2001:412)

As seen, there are many roles played in the whole event, such as client, source text producer, target text receiver as well as colleagues in the above diagram. Pöchhacker further explains that the external observers investigate the various actors either on site for a concrete communicative event or off-site with regard to an abstract interpretation event. This concrete event is represented in Figure 2 by the broken rather than continuous line separating their researcher from the constellation of participants. Regardless of whether on site or off-site, the research on quality in an interpreting event may focus either on the recordable product or on the overall process of communicative interaction as shown in another of Pöchhacker's diagrams.



### Quality standards for the product and service of interpreting

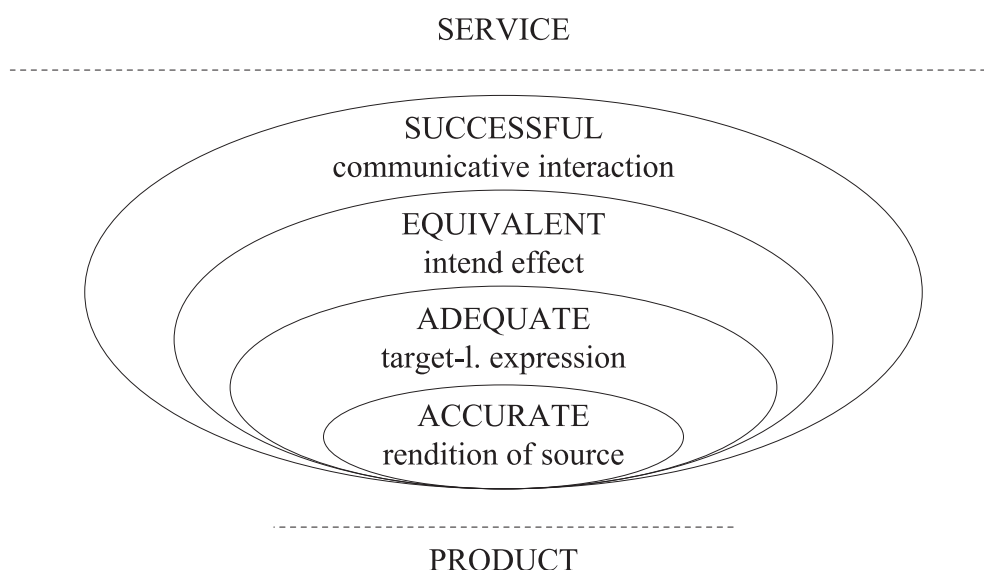


Figure 3. Pöchhacker's quality standards for conference interpreting based on skopos theory (Pöchhacker, 2001:413)

Note that the ultimate skopos of an interpreting event is a successful communicative interaction from a service perspective, or an accurate rendition of source text from a product perspective. In this paper, the author devises quality enhancement standards for court interpreting according to Nord's functionalist approach. The author explains each standard along with examples the author has experienced or observed in actual practice. To conclude discussions on these quality standards, a revised chart based on Pöchhacker's standards diagram is presented by considering both product and interaction dimensions as Pöchhacker suggests.

## 2.Action with a plan (brief)

As Vermeer suggests, translation is an intentional action: a choice to act one way or another; to refrain from acting in a particular way; or to not act at all. To continue this line of investigation, Nord explains that there are at least three types of actions involved in a translation activity: communicative, intercultural, and text-processing. Let's proceed to discuss these types of actions in detail in the following instances (Nord, 1997:22-26).

Communicative-Vermeer and Nord indicate that translating, including either oral or written means, is a kind of mediated intercultural communication. The process of communication generally includes a commissioner or an initiator at the beginning of



each assignment. To be more explicit, the initiator is the person or group that initiates the translation process and determines its course by defining the purpose for which the target text is needed. The commissioner asks the translator to produce a target for a particular purpose by demanding a particular text format or terminology.

Intercultural-As language is an intrinsic part of a culture, translation involves the translation of different cultural markers. Regardless of verbal or nonverbal elements in an oral or written communication, they are culture-specific and require scrutiny.

Text-processing-Nord uses “text” as a term to indicate a broad concept that combines verbal and nonverbal elements, situational clues, and hidden information. In Vermeer’s terminology, a translation is a new offer of information in the target culture about some information originating from the source language and culture.

To prepare this kind of intentional communication, Nord recommends the translator to use a “translation brief”-to first analyze the purpose, the addressees, time, place, and occasion as well as the medium of communication and the function of the source text. After analyzing the text, the translator then create a translation brief based on the above six elements to facilitate his/her understanding of the translation task so as to reach the purpose of communication for target readers. Differing from a translation brief, however, when an interpreter generates a brief, the producers of the source texts confront their interpreters in the same time frame and even in the same place (except telephone or video interpretation). There is usually no time for the interpreter to analyze the features of each source text as required by Nord’s brief. This is the major difference between Nord’s type of translation brief and an actual interpretation brief. Upon receipt of an interpreting notice (口譯傳票), court interpreters can acquire most details for a target text by listing out details including (1) the function of the interpreting task (interpreting for a criminal or civil case); (2) date of the interpreting task, audience of the interpretation (usually judges, prosecutors, litigants, and witnesses); (3) time of interpretation; (4) place of reception of the interpretation (court, prosecutor’s office, mediation room); (5) media of transmission (mainly oral to oral, or sight translation for reports and paper documents); and (6) motive of production (normal judicial proceedings, prosecutor interrogation, or mediation). All instructions serve as guidelines for an interpreting assignment. Below, the author has created three interpretation briefs based on authentic interpreting notices to show what a real interpretation brief may look like:

### Example 1

- (1) Function of the interpreting task-interpretation for a criminal fraud case
- (2) Audience of the interpreting task-prosecutors
- (3) Time of interpretation-2010 March 22

- (4) Place of reception of the interpretation-interrogation room in Banqiao District Court
- (5) Medium of transmission-oral/spoken
- (6) Motive of production-prosecutor's interrogation

臺灣板橋地方法院檢察署刑事傳票	
被傳人 地址	244 臺北縣 [redacted] (出生地)
姓名	[redacted] 先生 性別 女士 出生 年月日
案由	詐欺 98年度他字第 [redacted] 詐欺案 字
應到 日期	99年3月22日下午3時0分
應到 處所	臺北縣土城市青雲路138號本署偵查大樓由本署法警室指引 至第 [redacted] 偵查室 / 訊問室
下次應 到日期	年 月 日 午 時 分 年 月 日 午 時 分
備 註	
注 意 事 項	一、被告無正當理由不到場者，得命拘提。 二、此傳票不收取任何費用。 三、被傳人應攜帶此傳票及國民身分證向法警室報到。 四、遞送書狀應記明案號及股別。 五、當事人如有證據提供調查，請攜帶到庭；如為書證， 併請檢卷影本一份到庭；如有證人請來調查，請偕同 到庭或查明姓名、住址，以利傳訊。 六、訴訟案件應俟檢察官公平處理，不要聽信不法份子 詭辯捏造。 七、訴訟程序有不明瞭之處請向「為民服務中心」詢問。 詢問電話：(02)2261-6192轉6116或遠區分機 6576 八、如有假冒本署名義行騙或本署人員涉有貪污情事， 請向政風室檢舉，檢舉專線(02)2262-4063。
書記官	檢察官
中 華 民 國 九 十 八 年 三 月 十 八 日	
(本傳票 [redacted] 官簽名或蓋章者無效) 註. 4. 90. 999	
附註：經濟狀況不佳者，可向「財團法人法律扶助基金會」洽詢，電話：(02) 66128282。被傳人 「省時、便民、快速」— 請多利用本署各項線上申請作業 網址：http://www.auth.moj.gov.tw	

Figure 4. Interpretation brief (1)

### Example 2

- (1) Function of the interpreting task-interpretation for a criminal case caused by negligent injury
- (2) Audience of the interpreting task-mediators and two-party litigants
- (3) Time of interpretation-2012 July 3

- (4) Place of reception of the interpretation-mediation room in Taipei District Court
- (5) Medium of transmission-oral/spoken
- (6) Motive of production-reconciliation

**臺灣臺北地方法院刑事庭傳票**

法院電話：(02)2314-6871 分機 6359 設別： 殿

被傳喚人 郵遞區號：244 住 新 北 市		姓 名 特 約 通 譯 1		委 生	
地 址					
案 號 101年度審		案 由 遺失傷害			
被傳喚人	被傳喚人	被傳喚人	被傳喚人	被傳喚人	被傳喚人
性 別 女	年 齡	出 生 地	特 徵		
應 到 民 國 101年7月3日		應 到 臺北市博愛路131號			
時 間 下午3時20分		處 所 法庭大廈 <input type="checkbox"/> 庭址 本院 四樓第4調解室			
待 證 之 事 由		備 註			
		附 記 調解			
注 意 事 項		<p>一、被告經合法傳喚，無正當理由不到場者，得拘提之。</p> <p>二、證人經合法傳喚，無正當理由不到場者，法院得以裁定科新臺幣3萬元以下之罰鍰，並得拘提之；再傳不到者，亦同。</p> <p>三、被傳喚人出席應訊時，請儀容整齊，並應攜帶國民身分證及此傳票準時報到。此傳票不收任何費用。如提出書狀應認明案號、股別。</p> <p>四、被告或自訴人如有新證物提供調查，請攜帶到院；如有新證人請求調查，務請查明姓名、住址，以便傳喚。</p> <p>五、證人得請求法定之日費(新臺幣伍佰元)及旅費(交通費、住宿費)，於訊問完畢後即向承辦書記官索取「日費費申請書及領據」後領款(但被拘提或無正當理由不到者，請勿來院)。</p> <p>六、如遇颱風、豪雨、大雪、地震、停電、水災、火災、政府宣布停止辦公時，請即向本庭書記官查詢，電話為(02)23812285。</p> <p>七、訴訟案件應於開庭前向本庭書記官查詢，電話為(02)23813674。</p> <p>八、非法定強制到案者，得聲請法院指定代理人，相關資訊請至本院網站查詢。</p> <p>九、本傳票業經本院審判長或法官及書記官簽名或蓋章者無效。</p>			
中華民國 101 年 6 月 21 日					
書記官	法官	法官			

101.2.290.000 (本傳票業經本院審判長或法官及書記官簽名或蓋章者無效)  
101年6月21日 設別： 殿

Figure 4. Interpretation brief (2)

Example 3

- (1) Function of the interpreting task-interpretation for a criminal case caused by bigamy
- (2) Audience of the interpreting task-judge, prosecutors, litigants
- (3) Time of interpretation-2010 April 22

- (4) Place of reception of the interpretation-courtroom in Taipei Shilin District Court
- (5) Medium of transmission-oral/spoken (including sight translation)
- (6) Motive of production-judge's investigation

**臺灣士林地方法院刑事庭傳票**

法院電話：(02)2831-2321 分機：599 股別： 股


被傳喚人姓名	鄭進區號：244 住台北縣林口鄉 [REDACTED] 通譯 1陳雅齡				
地址					
案號	98年度訴字第 [REDACTED]				
案由	[REDACTED] 等 重婚等				
被傳喚人性別	被傳喚人年齡	被傳喚人出生地	被傳喚人特徵		
應到時間	民國 99 年 4 月 12 日 下午 2 時 30 分	應到處所	臺北市士東路 190 號 本院 二樓 第六法庭		
待證之事由	本次刑罰動機被告警詢光碟。		備註		
注意事項	一、被告無正當理由不到場者，得命拘提。 二、證人受合法傳喚，無正當理由而不到場者，法院得以裁定科新台幣 3 萬元以下罰鍰，並得拘提，再傳不到者，亦同。 三、被傳喚人出庭時，請攜帶印章，並應攜帶國民身分證及此傳票準時到。此傳票不收任何費用，如提出書狀應註明案號、股別。 四、被告或自訴人如有新證物提供調查，請攜帶到院；如有新證人請求調查，務請查明姓名、住址，以便傳喚。 五、如人得請求法官之府費及旅費，於訊問完畢即向承辦書記官索取「自費申請書」填明。如有新證人請求調查，請攜帶到院。 六、如遇妨礙，請即向承辦書記官或本院秘書處報告。 七、請知照傳票向承辦書記官或本院秘書處領取。 八、通知程序電話為 (02) 2831-1590 號。				
中華民國	9			15	日
書記官	法官			法官	

Figure 5. Interpretation brief (3)

### 3. Function plus loyalty

To complement Reiss and Vermeer's skopos functionalist approach, Nord adds

the loyalty principle to her theory to ensure the quality of each translation assignment. Nord differentiates “loyalty” from “fidelity”, stating that “fidelity” is to emphasize the reproduction of the original text, but that “loyalty” requires translators to be responsible to the original author, the recipient (receiver), the task initiator, and all other partners involved in the translation process. This “function plus loyalty” principle then serves as a guiding standard to produce a successful transmission of messages between different speakers, more practically than by adhering to the traditional “fidelity” and “equivalence” standards.

For a court interpreting assignment, there is even a one-sheet document the interpreter is

結 文

茲於

貴院            年度            字第            號

事件為鑑定人，謹本所知必為公正誠實之鑑定，  
案件為通譯，謹當為公正誠實之譯述。

此結。

鑑定人

通 譯

中 華 民 國            年            月            日

注意事項：  
刑法第 168 條規定「於執行審判職務之公署審判時，或於檢察官偵查時，證人、鑑定人、通譯於案情有重要關係之事項，供前或供後具結，而為虛偽陳述者，處七年以下有期徒刑」。

(民刑通用)

Figure 6. Pledge statement

required to read aloud and sign at the bottom to pledge the interpreter's loyalty for a fair and faithful delivery. There might be a crime of perjury with a sentence of seven years in prison for the interpreter if any impartiality or dishonesty is disclosed in the interpretation data later on.

The above pledge statement (通譯員切結書) then serves as a guarantee of loyalty for the interpreter to all participants involved. In court, the interpreters' loyalty to the judge entrusted by the judicial system certainly surpasses his/her loyalty to other participants if any conflict occurs. We consider this kind of supreme loyalty as a role morality in ethical theory. The notion of "role morality" suggest individuals may adopt a different morality depending on the roles they undertake. According to Gibson, we wear two moral hats-one is for work (role morality) and the other is for everywhere else (Gibson, 2003). In the author's experience, she once encountered a situation where the defendant told the interpreter to conceal part of his statements from the judge. Based on the above pledge statement, the interpreter consequently chose to deliver exactly what the defendant said, including the defendant's request to withhold a complete translation. At that time, the author experienced quite a great deal of tension between common-sense morality and role morality as a court interpreter, quite corresponded to one of diagrams on ethical dilemmas as illustrated by Drongelen & Fisscher in 2003:

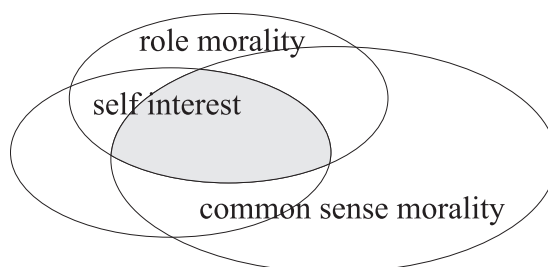


Figure 7. Potential areas of tension between self interest, role morality, and common-sense morality (Drongelen & Fisscher, 2003)

In this regard, the author compares Nord's loyalty and the court interpreter's loyalty. According to Nord's functionalism, her "loyalty" pertains more to a common moral sense as quoted below:

[...] Yet there is a moral responsibility not to deceive them. Of course, it may be difficult to know exactly what readers expect of a translation, since this is a field where extensive research remains to be done....Loyalty commits the translator bilaterally to the source and the target sides. It must not be mixed up with fidelity or faithfulness...Loyalty is an interpersonal category referring to a social relationship between people. (Nord, 1997:125)

Note the word of “moral” and “social” in the above quotation. In court interpreting, Nord’s loyalty as a common moral responsibility should therefore be modified to a role morality type with legal consequences if any violation of the fair and faithful principle happens. Due to role morality issue, the interpreter should hold supreme loyalty to the judge on behalf of the judicial system if any conflict occurs; loyalty to other participants in court takes secondary place if any conflict occurs, as shown below:

Nord’s loyalty and Court Interpreter’s loyalty-A comparison

	Type	Ranking if conflict occurs
Nord	common morality	Not specified
Court interpreter	role morality	Supreme loyalty to the judge

Figure 8. A comparison on Nord’s loyalty and court interpreter’s loyalty

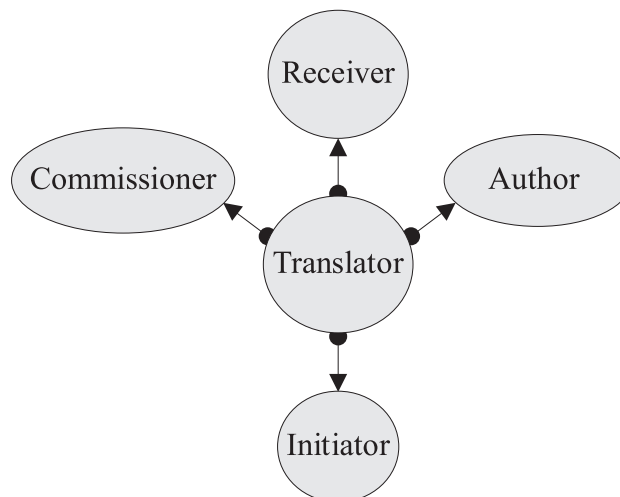


Figure 9. Nord’s loyalty

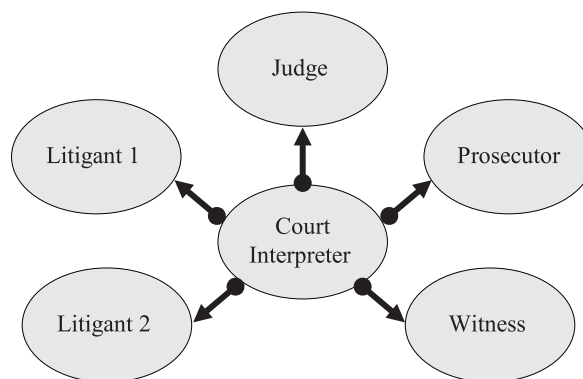


Figure 10. Court interpreter’s loyalty



In introducing her loyalty principle in the same book, Nord mentions “radical functionalism”. This term actually concerns the relationship between the source-text author and the translator. She emphasizes the need for trust.

Normally, as authors are rarely experts in translation, they are likely to insist on a faithful rendering of the source text in surface structures. Only if they trust the translator’s loyalty will they consent to any changes or adaptations needed to make the translation work in target culture. (Nord, 1997: 125)

Regarding this “radical functionalism”, in terms of accuracy of surface structure characterized by legal language and high expectations of faithfulness in court interpretation, a bilateral loyal relationship with any participant, in Nord’s idea, is not going to happen automatically to court interpreters. More discussions are need in this regard in the future.

#### 4. Adequacy principle

A court interpreter must deal with the interpretation of legal concepts which is both a process of language transfer and legal transfer. According to Pierce’s semiotics, a legal concept includes linguistic, referential, and conceptual dimensions. The relationship between each of them, in the currently accepted terminology-the sign, concept, and object, can be illustrated by the diagram below:

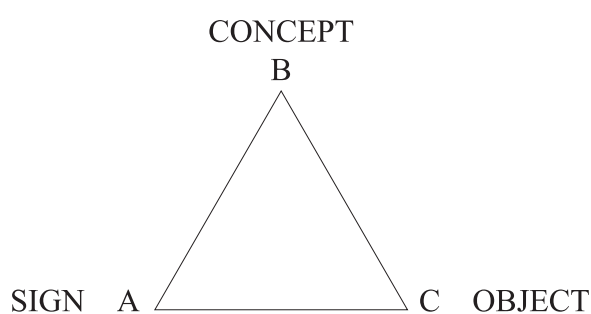


Figure 11. Triangle of Signification (Šarčević, 1997:230)

As seen in the diagram above, C represents the indirect relationship between the sign and its object; and AB and BC represent the two basic relationships of signification--the sign signifying the concept and the concept signifying the object. To ascertain whether a legal concept in one language can be translated as a concept in another language, we need to consider whether they are equivalent or similar in these three dimensions (Cao, 2007). Yan Fu

(1854-1921), one of the most influential Chinese thinkers and translators in Chinese history, in his translation of Montesquieu's *De l'esprit des lois* published in 1913, warns readers about conceptual differences between the Chinese term *fa* ("law") and the western term "law" (Cao, 2007). He considers that the word "law" in western languages actually has at least four different interpretations in Chinese as in *li* [order], *li* [rites, rules of propriety], *fa* [man-made laws], and *zhi* [control] (Cao, 2007). The main challenge to the legal communicator is therefore the incongruence of legal systems. For example, European countries and Taiwan use the civil law system, while English-speaking countries such as the United States and the United Kingdom use the common law system. Both law systems have passed down different concepts and establish different legal terminology as a result. As Shane-rong Lee explains<sup>1</sup>, countries following civil laws would not understand what "Allen charge" or "dynamite charge" refers to under their particular jury systems. "Allen charge" or "dynamite charge" actually refers to the judge's advice and/or request to the jury for a reconsideration when the trial comes to a stalemate<sup>2</sup>. In terms of general translation theory here, Nida proposes "formal equivalence" and "dynamic equivalence (functional equivalence)", suggesting the latter one is better than the former (Nida and Taber, 1969) in his later works. To continue with this "equivalence" study, Nord defines "equivalence" as a static and result-oriented concept to describe a relationship of equal communicative value between two texts, two words, two phrases, and so on. The term "adequacy" in her functionalist approach is a dynamic concept to reach the communicative purpose in its goal-oriented selection of signs. In other words, "adequacy" is the same as "functional equivalence" (Nord, 1997:36). Šarčević (1997) emphasizes "function equivalence" in the field of comparative law as well. According to his definition, "functional equivalence" is a term designating a concept or institution of the target legal system having the same function as a particular concept of the source legal system. There are three types of translation equivalence in legal terms: near equivalence, partial-equivalence, and non-equivalence. Near and partial equivalences are both "functional equivalence". However, in order to determine the acceptability of a partial equivalent, translators must compare the target and source concepts to establish their degree of acceptability (Šarčević 1997:237). In other words, court interpreters have to exercise great caution in the selection of functional equivalents. For instance, "jail" and "prison" are not functionally equivalent. We may interpret the former one as "看守所、拘留所" and the latter one as "監獄". Also, the word "verdict" (jury's decision) is different from "decision", "judgment", and "sentence",

<sup>1</sup> 2012/6/24 李憲榮，臺灣翻譯學會，法律翻譯的困難 <http://www.taiwantati.org/?p=359>；沈真、李炳南、楊美鈴（2012）。司法通譯案調查報告。

<sup>2</sup> 2012/6/24 李憲榮，臺灣翻譯學會，法律翻譯的困難 <http://www.taiwantati.org/?p=359>；沈真、李炳南、楊美鈴（2012）。司法通譯案調查報告。

although they might be all translated as “判決” in Chinese.

Many times interpreters cannot recall on the spot a proper functionally equivalent term during the act of interpreting. In these instances, the interpreter is advised to use lexical expansion, descriptive paraphrase and definitions, neutral terms, or transcription/transliteration as alternative equivalents to solve terminological problems (Šarčević, 1997:250-258). For example, “depose” or “deposition” indicates the process of collecting evidence outside of the court proceedings which is not applicable to the Taiwan court systems. When translating into Chinese, we had better translate them into neutral terms, such as 庭外採證, 庭外證詞筆錄, to avoid any confusion with the common translation of “testimony” (證詞). In revising Nord’s idea of “adequacy,” the author suggests that the above alternative equivalence strategies should be considered in the scope of an adequacy principle to be more practical in rendering a legally equivalent outcome. In short, the adequacy principle in legal translation and interpretation should cover both functional equivalents and alternative equivalents.

To conclude this section on the adequacy principle, the author would like to demonstrate her standards for quality enhancement in court interpreting by revising Pöchhacker’s diagram on quality standards (as shown previously) to the following model:

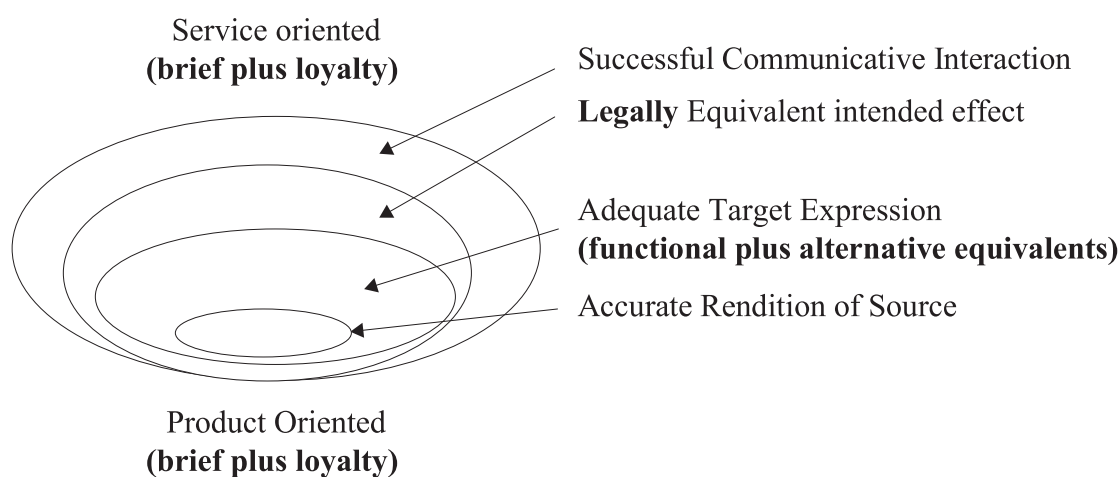


Figure 12. Court interpreting quality enhancement standards

Note that the author has included added standards of “brief” and “loyalty” principle to court interpreting toward both the service and product perspective. The boldface characters on the right side of the diagram demonstrate the author’s complements to Pöchhacker’s original device. The author also adds “legally” to the standard of “equivalent intended effect” to make it more specific to a legal setting. Finally, by including both functional and alternative equivalents to the standard of “adequate target expression”, the definition of ‘adequate’ is more pertaining to court interpreting events. Otherwise the framework remains the same.

## 5. Conclusion

This paper first reviews the nature of legal translation and application of general translation theories in the past. Next, the author discusses the theoretical framework of Nord's functionalist approach with its framework on skopos theory and Pöchhacker's functionalist application to conference interpreting. From part two to part four, the author explores three major ideas of Nord's functionalist approach, including "action with a plan (brief)", "function plus loyalty", and "adequacy principle". To make each standard more specific to a court setting, the author revises some elements of Nord's concept. On the other hand, Šarčević maintains that a functionalist approach needs to consider whether the signs in the target text refer to objects and concepts in the source legal system (Šarčević, 1997:236). To conclude the discussion on standards, the author in particular draws up the relationship of these standards by modifying one of Pöchhacker's diagrams on quality standards for conference interpretation. As the court setting is usually not a public place and the data is confidential, it is difficult for outsiders to perform a quality assessment at the scene. We establish these three standards for the interpreters' self enhancement as well as for training programs regardless of different cultures and language combinations. It is hoped that these results might even add insights to the study of quality assessment for the whole interpretation field in the future.

## 6. Acknowledgement

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