

## Enhancing the Quality of Court Interpretation— A Functionalist Approach

Brenda Yaling Chen  
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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 greater 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 issues, and that genuine assessment cannot be confined to a linguistic substrate but must be conducted also at the level of communicative effect and impact within a particular situational and institutional environment. Based on Hans Vermeer's skopos theory, Christiane Nord (1997) discusses the multiplicity of mediated intercultural communication activities, including translating and interpreting, in terms of 'translation as an action', 'translation briefs', 'function plus loyalty', 'functional equivalence' and the 'adequacy principle'. In this study, the authors adopt Nord's ideas as the criteria for the enhancement of quality in court interpreting and explains them by providing concrete examples based on the authors' own observations and experience. In the conclusion, the authors state 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 the concepts of 'interpretation brief' and 'loyalty' to each speaker, and the concept of 'supreme loyalty' to the judge entrusted by the judicial institution, and adheres to the 'adequacy' principle when dealing with the translation of legal terms. The results of this study are expected to improve the training procedures for court interpreters and even to contribute to the study of quality assessment in and for the field of interpretation.

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

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## 法庭口譯品質提升的功能視角

陳雅齡 陳子瑋

進入二十一世紀，口譯界明顯已經開始注意到會議口譯外的多重面貌。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觀察或親身經歷的例子。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

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## Introduction

### Purpose of 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 situations 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, these concerns highlight the importance of quality assessment or assurance of interpretation, in particular court interpreting which plays an important role in the ruling of court judges.

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 (e.g. 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.

On the other hand, research on quality insurance of court interpreting has been focused on a pragmatic and linguistic perspective (e.g. Gonzalez, Vásquez & Mikkelsen, 2012; Hale, 2004; Mason, 2008). Hale (2004) has discussions of interpreters' treatment of discourse markers like 'see', 'well', 'now'; Mason

(2008) has examinations of interpreters' additions or omissions of politeness markers such as 'sir', 'please', which may cause false impressions to the audience. Different from these analyses, the authors adopt a perspective of German Functionalism in this study. They first review the nature and development of legal translation from literalness to communicative trend during the past years. Next, the authors discuss Nord's functionalism with its theoretical framework in Vermeer's *skopos* theory. Nord's 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 to establish a theoretical base for self-improvement and overall training of court interpreters, and even useful to the research of quality assessment for interpretation in the future.

### **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, p. 23). 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, p. 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 communicative approaches in court interpretation. It is important for us to review the characteristics of legal discourse and translation strategies

including the communicative approach adopted by linguists and lawyers in the past years.

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, p. 55). 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, p. 11). Some scholars, however, comment 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 (2007) 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, p. 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, p. 17). 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, p. 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, p. 23). By applying a general translation theory from a lawyer's view point, W.E. Weisflog then draws upon Nida's theory, prominent during the 1970s, of formal and dynamic correspondence. 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, p. 195).

Continuing with 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 Mason (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 (Hatim & Mason, 1997, p. 11). 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 stems from 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, p. 9). In response 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, p. 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.

## German Functionalism Translation

Vermeer's *skopos* theory breaks with traditional perspective of linguistics, which can be traced as far as 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 expanded 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, p. 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.

Nord continues this line of functional analysis and includes interpretation in her functionalist approach as shown below:

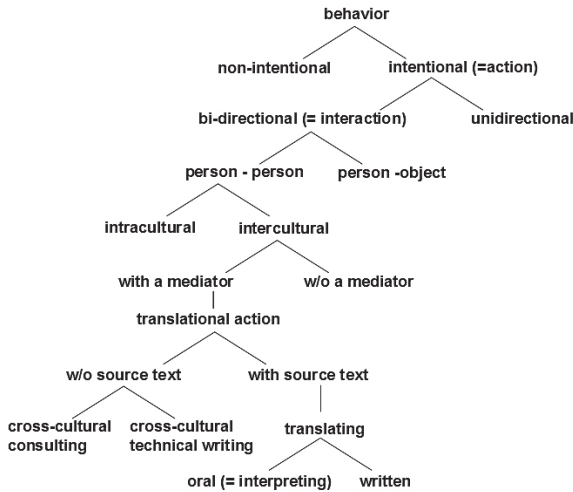


Figure 1. Translation as a form of mediated intercultural communication (Nord, 1997, p. 18).

According to the chart above, translating, either oral or written, is a kind of mediated intercultural communication. 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.



## Translation 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. 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 authors' 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 agreeable to 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 in the first place.

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, p. 23).

Communicative – Vermeer and Nord indicates 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. In translation, the translator produces signs for the target audience. The meaning of the signs might be known, although there might be a possibility of misinterpretation from a target-culture point of view.

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 – ‘Text’ is 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 creates 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 the preparation period of a translation brief, when an interpreter generates a brief, 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 authors have 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 臺北縣林口鄉	籍 貫	(出生地)
姓 名	陳雅齡	先 生	性 別
		女 士	出 生 年 月 日
案 號	逃脫	98年度他字第	詐欺案
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官室指引 至第 偵查庭 /訊問室		
下次應 到日期	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、被告應攜帶此傳票及國民身分證向法官室報到。 四、遞送書狀應註明案號及聲別。 五、當事人如有證據提供調查，請攜帶到庭；如為書證， 併請備妥影本一份到庭；如有證人請求調查，請信開 列處或查明姓名、住址，以利傳訊。 六、訴訟進行應請候檢察官公平處理，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或透股分機 6576 八、如有假冒本署名義行騙或本署人員涉有貪瀆情事， 請向政風室檢舉，檢舉專線(02)2262-4063。		附 本件被傳人係 通譯
書記官	檢察官		
中 華 民 國	年 3 月 18 日		
(本傳票除檢察官及書記官簽名或蓋章者無效) 98.4.100.0008			
附註：經濟狀況不佳者有 66328282，服務分 「省時、便民、快遞」— 請多利用本署各項線上申請作業 網址：http://www.aauth.moj.gov.tw		附圖法人法律扶助基金會，洽詢：電話：(02) 第一分機265號10樓，電話：(02)22527778。	

Figure 2. 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 股別：庚 股

被傳喚人姓名	郭遜區號：244 住新北市林口區		
特約通譯	1 陳雅齡	先生	女士
案號	101年度審		
案由	過失傷害		
被傳喚人性別	女	被傳喚人年齡	被傳喚人出生地
應到時間	民國 101年 7月 3日 下午 3時 20分	應到處所	臺北市博愛路131號 法院大廈 四樓第4調解室
待證之事項	備註：附註詳書乙件。 附記：調解		
注意事項	一、被告經合法傳喚，無正當理由不到場者，得拘提之。 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，若傳不到者，亦同。 三、被傳喚人出庭應訊時，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，如提出書狀應記明案號，股別。 四、被告或自訴人如有新證據提供調查，請攜帶到院；如有新證人請求調查，務請註明姓名、住址，以便傳喚。 五、證人得請求法定出庭費(新臺幣伍佰元)及旅費(交通費、住宿費)，於訊問完畢即向承辦書記官索取。日後費申請書費領款。後領款(但被拘提或無正當理由拒不到庭者，請勿來庭。 六、如通知應訊後，請勿失期。 七、訴訟案件應向本庭辦理。 八、訴訟程序由本庭已提供。 九、非法定進出本院已提供。 (http://www.tjpc.gov.tw)		
中華民國	101年	7月	21日
書記官	法官		


101.2.200.000 (本傳票無本院審判長或法官及書記官簽名或蓋章者無效) 股別：庚 股  
101年6月21日

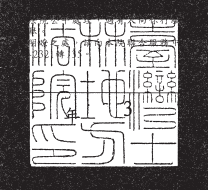
Figure 3. Interpretation brief (2).

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：

被傳喚人姓名	郵遞區號：244 住台北縣林口鄉 通詳 1陳雅齡		
地址	[Redacted]		
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	臺北市東路190號 本院 二樓 第六法庭
待證之事實	本大期由郵局被寄請光臨。		備註
注意事項	<ul style="list-style-type: none"> <li>一、被告無正當理由不到場者，得命拘提。</li> <li>二、證人受合法傳喚，無正當理由不到場者，法院得以裁定科新台幣3萬元以下罰鍰，並得拘提，再傳不到場，否則。</li> <li>三、被傳喚人出庭時，應攜帶警券，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，如提出書狀應認明案號、股別。</li> <li>四、被告或自訴人如有新證據提供調查，請攜帶到院；如有新證人請去調查，務請查明姓名、住址，以便傳喚。</li> <li>五、證人詳請表法定之自費及旅費，於訊問完畢即向承辦書記官索取「自燃費申請書表填據」，填妥後，即持此填據向承辦書記官領取，逾期不候。</li> <li>六、如遇颱風、地震、或政府宣布停止辦公時，請勿來院，另予通知。</li> <li>七、訴訟案件，除向本法院或向本法院檢察處查詢外，請向電話(02)2834-1590號。</li> <li>八、訴訟程序，請向電話(02) [Redacted] 查詢。</li> </ul>		
中華民國	9	15	日
書記官			
	法官		

(本通知書無本院審判長或法官及書記官簽名或蓋章者無效)

Figure 4. Interpretation brief (3).

## Function Plus Loyalty

As previously stated, 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 more practical guiding standard to produce a successful transmission of messages between

different speakers than adhering to the traditional ‘fidelity’ and ‘equivalence’ standards.

For a court interpreting assignment, there is even a one-sheet document the interpreter is required to read aloud and sign at the bottom to swear his/her loyalty for a fair and faithful delivery (See Appendix including an English translation). Any impartiality or dishonesty detected in the interpretation data may result in perjury punishable by seven years in prison.<sup>1</sup>

The interpreting oath 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 may consider this kind of supreme loyalty as a role morality in ethical theory. The notion of ‘role morality’ suggests 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, p. 17). In one of 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 oath 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 authors 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:

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<sup>1</sup> As a reference, an English translation for Witness Protection Act according to <http://db.lawbank.com.tw/Eng/FLAW/FLAWQRY03.asp?lsid=FL000851&keyword=perjury>: Any protected witness will be considered to have committed the perjury by making a false statement on the material facts of the criminal case or gangster case at issue, and shall be sentenced to imprisonment between one year and seven years.

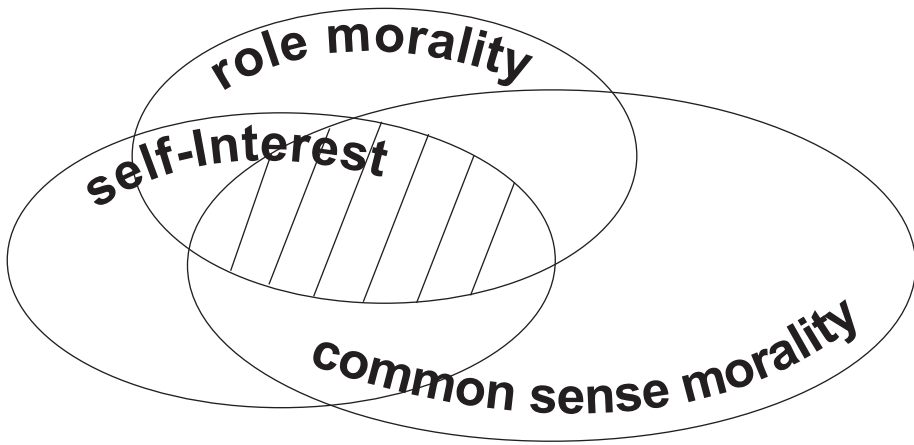


Figure 5. Potential areas of tension between self interest, role morality, and common-sense morality (Drongelen & Fisscher, 2003, p. 53).

In this regard, the authors compare 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, p. 125)

Note the use of the words '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 the 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 in the event of any conflict, as shown below:

Table 1

*A comparison on Nord’s loyalty and court interpreter’s loyalty*

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

Source: Compiled by the authors

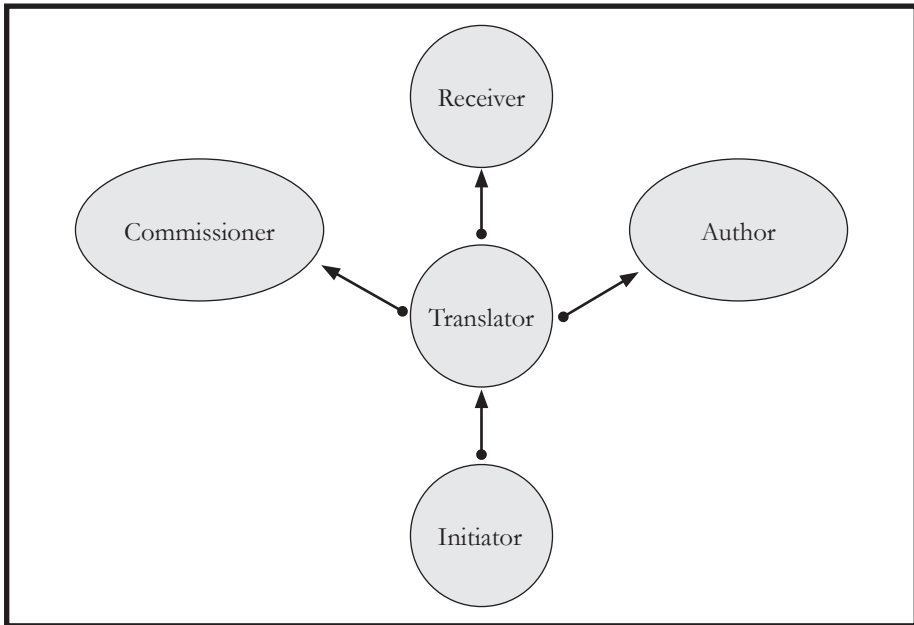


Figure 6. Nord’s loyalty. Source: Compiled by the authors

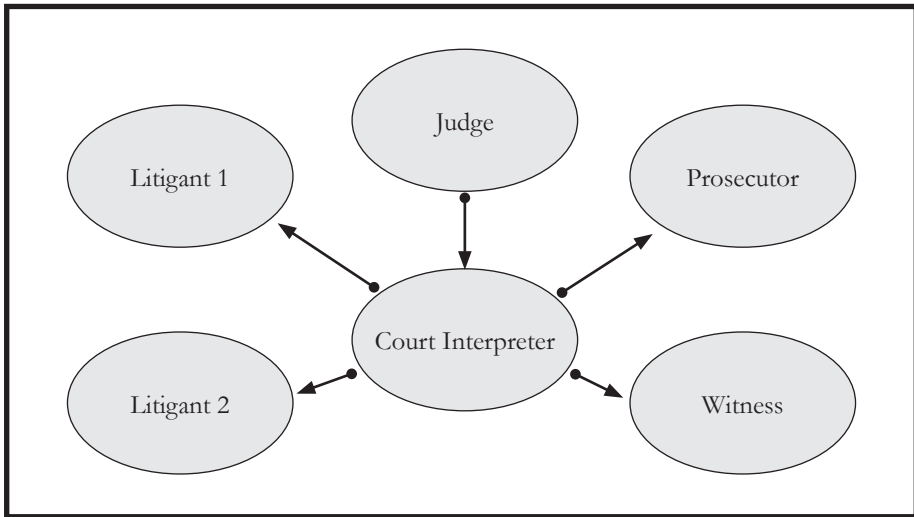


Figure 7. Court interpreter's loyalty. Source: Compiled by the authors

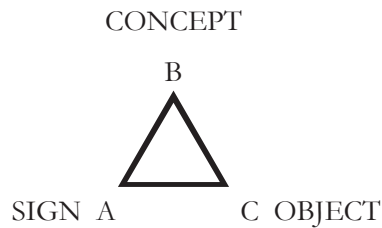
In introducing her loyalty principle in the same book, Nord mentions “radical functionalism”. This term actually concerns the relationship between the source-text author and the translator. She emphasizes the need for trust.

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, p. 125)

Regarding this ‘radical functionalism’, in terms of special characteristics possessed by legal language and high expectations of faithfulness in court interpretation, the phenomenon of ‘radical functionalism’ with any participant, in the authors’ opinion, is not going to happen automatically to court interpreters. More discussions are needed in this regard in the future.

## 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 8.* Triangle of Signification (Šarčević, 1997, p. 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. 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, p. 1). As cited by Cao, Yan Fu 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, p. 1). 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 Lee, Shane explains,<sup>2</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>3</sup> In terms of general translation theory here, Nida proposes to use ‘formal equivalence’ and ‘dynamic equivalence (functional equivalence)’, suggesting the latter one is better than the former in his later works (Nord, 1997, p. 36). 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, p. 36). Šarčević (1997) emphasizes ‘functional 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 (Šarčević, 1997, p. 236). There are three types of translation equivalence in legal terms: near equivalence, partial-equivalence, and non-

<sup>2</sup> 李憲榮 (2010) 〈法律翻譯的困難〉。2012年6月24日取自 <http://www.taiwantati.org/?p=359>；沈美真、李炳南、楊美鈴 (2012)。司法通譯案調查報告。

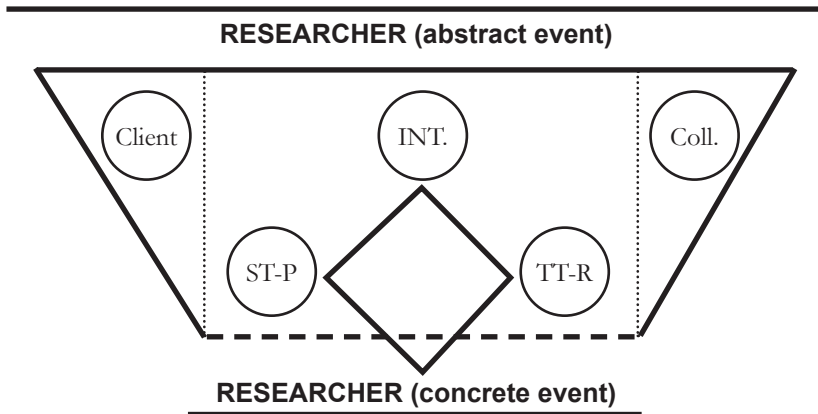
<sup>3</sup> 李憲榮 (2010) 〈法律翻譯的困難〉。2012年6月24日取自 <http://www.taiwantati.org/?p=359>；沈美真、李炳南、楊美鈴 (2012)。司法通譯案調查報告。

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, p. 237). In other words, court interpreters have to exercise great caution in the selection of functional equivalents. For instance, the term ‘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’, although they might all be 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, neutral terms as alternative equivalents to solve terminological problems (Šarčević, 1997, pp. 250-259). For example, the French term “hypothèque” applies only to immovables; as a result there is no adequate equivalent for the common law term “chattel mortgage”. Šarčević suggests filling this gap by expanding the sense of hypothèque to include movables as well, thus creating ‘hypothèque mobilière’ (Šarčević, 1997, p. 251). 庭外合解 can be interpreted through a descriptive paraphrase and becomes ‘settlement through mediation’; 公然猥褻 can be paraphrased as ‘publicly commits an indecent act’. Moreover, ‘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 authors suggest 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.

Being a researcher of interpretation studies and himself a conference interpreter, Pöchhacker (2001, p. 412) draws upon Vermeer's *skopos* theory and takes a functionalist approach to the study of interpretation by treating the whole conference interpreting as a 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 9. Perspectives on quality assessment in interpretation (Pöchhacker, 2001, p. 412).

As seen, there are many roles played in the whole event, such as client, source text producer, and target text receiver as well as colleagues in the above diagram. Pöchhacker (2001, p. 412) 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 12 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.

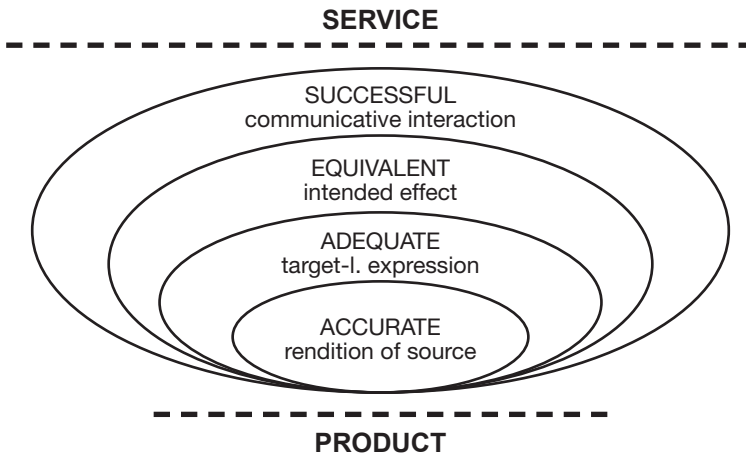


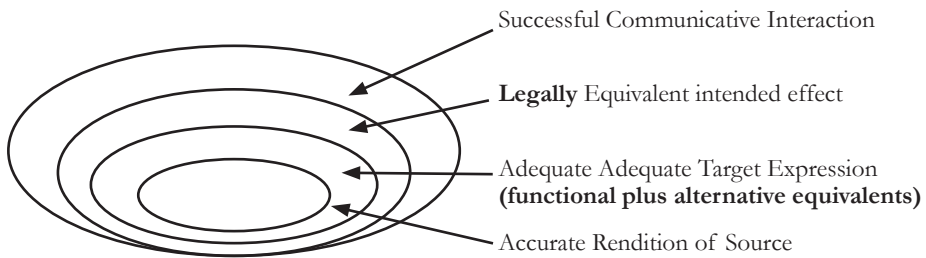
Figure 10. Pöchhacker’s quality standards for conference interpreting based on *skopos* theory (Pöchhacker, 2001, p. 413).

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 authors devise quality enhancement standards for court interpreting according to Nord’s functionalist approach. The authors explain each standard along with examples the authors have 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.

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

### Service Oriented

**(brief plus loyalty)**



### Product Oriented

**(brief plus loyalty)**

*Figure 11.* Court interpreting quality enhancement standards.

Note that the authors have included additional 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 authors’ complements to Pöchhacker’s original device. The authors 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 pertinent to court interpreting events. Otherwise the framework remains the same.



## Conclusion

This paper first reviews the nature of legal translation and application of translation strategies in the past. Next, the authors discuss the theoretical framework of Nord's functionalist approach with its framework on *skopos* theory. From part two to part four, the authors explore three major ideas of Nord's functionalist approach, including translation brief, function plus loyalty, and the adequacy principle. To make each standard more specific to a court setting, the authors revise 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, p. 236). To conclude the discussion on standards, the authors in particular demonstrate the relationship of these standards by modifying Pöchhacker's diagram 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 cultural differences 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.

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# Appendix

## 通譯結文

結 文			
茲於			
貴院	年度	字第	號
<small>事件為鑑定人，本所知必為公正誠實之鑑定，          案件為通譯，當為公正誠實之譯述。</small>			
此結。			
鑑定人			
通 譯			
中 華 民 國      年      月      日			
<small>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。」</small>			
<small>(民刑適用)</small>			

### Interpreting Oath

Here I am entrusted by this court and interpreting for case number \_\_\_\_\_ in the year \_\_\_\_\_. I swear I will interpret accurately, completely, and impartially, using my best skill and judgment in accordance with the standards prescribed by law and follow all official guidelines established by this court for legal interpreting or translating.

Year \_\_\_\_\_ Month \_\_\_\_\_ Day \_\_\_\_\_ .

*Note:* According to Criminal Code Article 168, during public trials, a penalty of seven years in prison shall be incurred if there is any dishonesty detected in the oral statement of witnesses, expert witnesses, or interpreters.