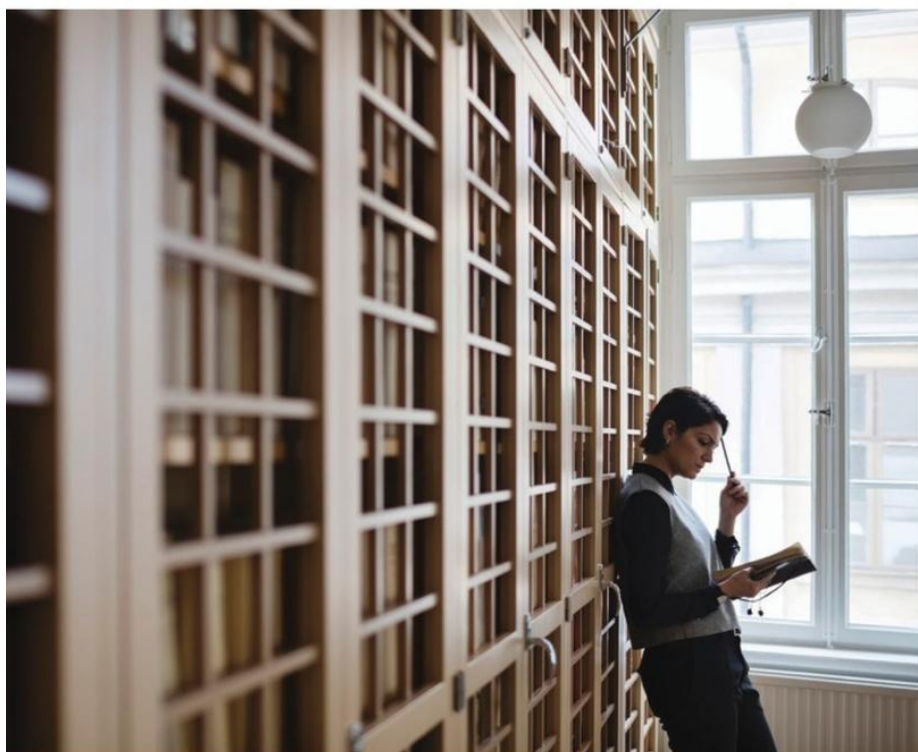




Evidentiary Translation for U.S. Courts

The evidentiary translator should observe like a detective, be faithful like a court interpreter, and decide like a judge.

Many translators make evidentiary translation their specialization, but others reading this article will be freelancers whose translations are used in the courts without their knowledge because their agency clients don't tell them. In both cases, the end user will evaluate the work based on its suitability as legal evidence. Beyond customer satisfaction, if your translations are going to be used in the justice system, you naturally want them to be well suited to the administration of justice. This is no minor consideration. To produce a translation that's suitable for use as evidence, we must take a specific approach that differs greatly from best translation practice in other fields.

Fortunately, there are some role models we can turn to for guidance. The evidentiary translator should observe

like a detective, be faithful like a court interpreter, and decide like a judge.

SPOTTING DOCUMENTS THAT MAY BE USED AS EVIDENCE

Our first job as a detective is spotting those documents that may be used as evidence. This is easy if you see that each page is stamped with "Confidential—Attorney's Eyes Only" or bears a Bates number (a page identifier that starts with a trial name or letter code followed by a long serial number), which is used as a method of indexing legal documents for easy identification and retrieval.¹ (See Figure 1 on page 15 for an example.) There are also some documents that are evidentiary by nature, such as birth certificates, diplomas, and licences. Published patents also fall into this class, unless you're specifically told that they

are being translated for another purpose. But even when something lands in your inbox with no context, there may be clues pointing to its potential use as evidence that a good detective can spot.

The first is the file format. It's exceedingly rare for legal evidence to be in the form of an editable text file, such as Microsoft Word, HTML, or a file formatted for use by a computer-assisted translation tool. Documents for court submission are overwhelmingly in PDF format. This characteristic is particularly telling in the case of documents that you would otherwise expect to receive in editable format. Scanned journal and newspaper articles, PDF copies of emails and letters, screengrabs of websites, hardcopies of financial reports, and printed advertising are all more likely to be used to prove what happened in the past than to serve some new purpose in the future. Another giveaway is the document's age. If you're asked to work on medical records, contracts, or expense reports that date back several years, ask yourself why they are being translated now.

For an evidentiary translator, the document is the witness.

Once you've done your preliminary detective work, it makes sense to confirm your suspicions with the client. While agencies don't always know how the translations they broker will be used, if you think it's likely that a document is being used for evidence, try asking the agency if the client is a law firm. Even when dealing with direct clients, a common answer to questions about these sorts of documents is that they "just want to know what it says." While that may be true for the moment, there's good reason to take a longer view. Now is the time to step into your role as a judge.

PREPARING EVIDENTIARY TRANSLATIONS

It's routine for people to review documents, including translations, well before deciding whether to begin civil litigation. Once the wheels of justice start turning, however, they will invariably

submit the documents they reviewed for information, including any translations, as evidence. A tiny subset of super-smart attorneys will go back to the translator at this point and ask if there are any changes that need to be made before it's submitted to the court. Most, however, will just file it, either as-is or with a certification provided by the agency. To be on the safe side, if you decide that the translation is likely to be used as a basis for legal determinations at any point, you'll serve your client best by preparing it as an evidentiary translation.

An evidentiary translation is defensible by one feature above all: fidelity. In the fields of literature, advertising copywriting, company reports, and user manuals, good translations are adapted to the reader with the goal of producing the same reading experience that a reader of the source text would have had. In this context, best practice calls for us to be more faithful to what the author meant than to the specific words they used. For example, a translation of a user manual might say "two feet" back from the screen, rather than "a half a meter." A localizer might replace the phrase "a cup of coffee" with "a glass of tea," depending on the country. But you can imagine the problems these translations would cause if they were presented as evidence in a product liability lawsuit or a trial for murder by poisoning.

Follow the Court Interpreter's Code:

This is where we turn to the role model of the court interpreter. The Code of Conduct for Court Interpreters in Washington State Courts, for example, tells interpreters to interpret "thoroughly and precisely, adding or omitting nothing, and stating as nearly as possible what has been stated in the language of the speaker, giving consideration to variations in grammar and syntax for both languages involved."² It reminds us that it's not appropriate to interject "personal moods or attitudes." Similarly, the U.S. Federal Court Interpreter Orientation Manual states: "The principal aim of interpreters is to give as exact a rendition as possible, using direct speech. This is true whether the language is nonsensical, fragmented and contradictory; or whether it is erudite, philosophical, and highly

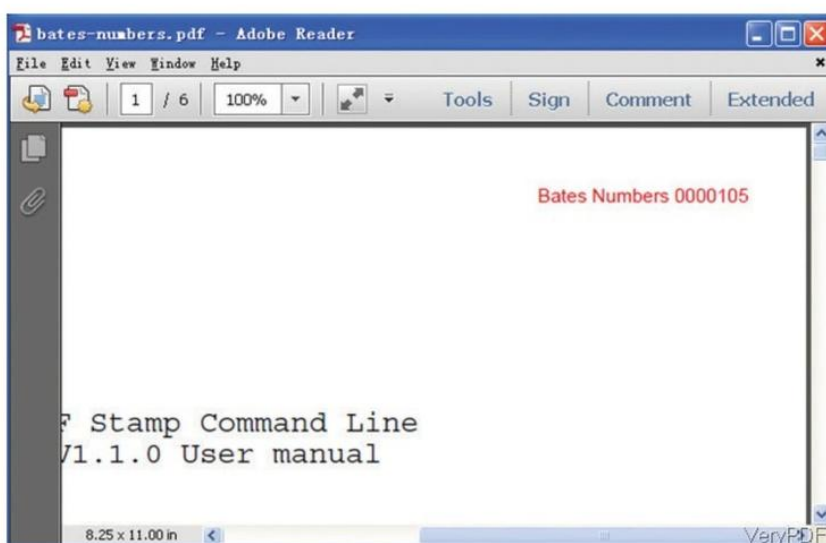


Figure 1: Example of Bates number on document

technical discourse. Interpreters are tasked with remaining unobtrusive so that the fact finders can concentrate on the witness rather than the interpreters."³

For an evidentiary translator, the document is the witness. It's easy to understand that a court interpreter should not fix the errors or smooth out the rough patches in what a witness says. Equally clearly, they should not add extra information to make it easier for the jury to understand, or recast what is said to match the culture of court. These principles apply equally well to written translation.

Maintain One-to-One Correspondence Between the Source and Target:

A translation that's faithful to the approach followed by court interpreters is generally referred to as a "literal translation," which can be defined as: *an exact and accurate reproduction of the entire content of the source text without embellishment or modification.* Working with the goal of literal translation doesn't mean that word-for-word calques are acceptable. A reasonable set of rules would be to reproduce the meaning, respect sentence breaks, use consistent vocabulary and phrasing, and maintain one-to-one correspondence between the source and target.

The first four rules are self-explanatory, but there are many ways to approach one-to-one correspondence. The key idea is not to leave anything out and not

to add information that was not found in the source text. If you're not sure, imagine yourself in court with a diagram showing the source text sentence and, below that, your translation, with arrows drawn to show how the various parts of your translated sentence all came from corresponding places in the source. The arrows might not be straight since, for example, a verb at the end of the source text might appear at the beginning of the translated sentence. In many diagrams there would be some arrows going between individual words and others between entire phrases. And some arrows might go from one word in the source to a four-word phrase in the target, or the other way around. What matters is that the arrows in your imaginary diagram account for everything. If you can't do this, or if you're not sure that the judge would accept the explanation you give for one of the arrows, rework your translation until you feel confident.

Check Everything—Small Details

Matter: Before submitting your faithful and exact translation, it's important to read it through again, but this time returning to the role of the detective. Specifically, imagine the detective on TV who notices the details that everyone else misses. Think of the scene in which the cops are gathered around the corpse, taking pictures and looking for clues,



If you decide that the translation is likely to be used as a basis for legal determinations at any point, you'll serve your client best by preparing it as an evidentiary translation.

but our detective is off in a corner eyeing a discarded gum wrapper, or over by the door staring at a pair of neatly lined-up shoes. Sometimes it's the little details that tell the most important story.

If we struggle diligently to find the best way to accurately reproduce the colloquial jargon in the minutes from a meeting but rush over the list of attendees at the end, we may find we've missed the only piece of information our client cared about. Likewise, no matter how precisely we translate complex legal provisions in a letter of intent, if we fail to include the fax

header at the top, we may have left out the proof that the entire case could have rested upon. Handwritten annotations, stamps, and even page numbers can all constitute vital evidence. We must never be so consumed by the corpse in the middle of the floor that we let the details slip by unnoticed.

WHAT IF YOU'RE ASKED TO CERTIFY THE TRANSLATION?

After exercising your newfound detective skills you may be asked to certify your translation. It might also happen that you deliver your translation without a certification and are asked to sign one at a later date. In both cases, you will be back to playing the role of the judge in deciding what, if any, certification is appropriate.

While it's common for translators to certify that their translations are faithful, unless you have agreed otherwise in advance, there's no obligation for you to do so. For example, if an agency asks for a "quick and dirty" same-day translation and then comes back six

months later asking for certification, it's reasonable to decline or suggest that you first perform a separately billed review of your own work.

In the U.S., there's no single agreed-upon format for certifying translations. Statements can range from a simple, "I certify that this translation is true and accurate to the best of my knowledge and belief," to multi-page declarations prepared by lawyers listing all your qualifications and employing words like "solemn" and "perjury." It's up to you to decide if the statement is reasonable and true. For example, unless you happen to be infallible, it's best not to certify that a translation is accurate without including qualifying language that mentions "knowledge and belief." If you don't like the way the statement is worded, have it rewritten or don't sign it. It's your statement, and that makes you the judge.

BE PREPARED, BE CONFIDENT

By following the examples of detectives, judges, and court interpreters, you'll be confident in providing a translation that's suited to its purpose and reflects well on both you and your client. ●

NOTES

- ¹ For more information on Bates numbering in PDF documents, <http://bit.ly/Bates-Adobe-PDF>.
- ² Code of Conduct for Court Interpreters in Washington State Courts, <http://bit.ly/Washington-Code>.
- ³ U.S. Federal Court Interpreter Orientation Manual, <http://bit.ly/Federal-Court-Manual>.



Martin Cross began his career as an in-house editor of Japanese patent translations in Tokyo more than 30 years ago. He lived in Italy and France for many years, where he translated from Italian and French into English. He has served as an expert witness on translation in patent litigation on multiple occasions. Currently, he is president of Patent Translations Inc., where he continues to translate and edit translations and train translators and editors about the ins and outs of patent translation. Contact: cross@patenttranslations.com.