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NEWSLETTER OF THE SLAVIC LANGUAGES DIVISION

www.ata-divisions.org/SLD/

WELCOME TO SLAVFILE's FOCUS ON LEGAL ISSUE

Nora Seligman Favorov, Managing Editor

Eduard Pesov/TASS

Left to right, Senator Joe Biden, Prokofiev, and Supreme Soviet Chairman Andrei Gromyko in the Kremlin, January 1988, during the START ratification process.

When we called for submissions pertaining to Slavic<>English legal translation and interpretation, we could not have imagined the riches that were about to come our way. If we have a regret, it is the absence of material pertaining to Slavic languages other than Russian. Stay tuned for future "Focus" issues designed to remedy that lack. Meanwhile, it is our hope and belief that this issue will engage and edify all our readers, whatever their language pairs and areas of specialization.

First of all, we are honored to have two items from **Victor Prokofiev**: an interview conducted by **Elizabeth Adams** and a discussion of the term *vykup*. The picture you see here should be sufficient to pique your curiosity. The theme of interpreting and translating for the courtroom (one of many touched on in the Prokofiev interview) permeates the issue. We are pleased to have a first-time contribution from **Michael Kapitonoff** offering some engagingly couched advice for anyone embarking on a career in that field. And all of us working between Russian and English—in or out of the field of law—should read and keep **Tom Fennell**'s glossary of legal terms, conveniently broken down into categories and including enlightening explanations. An article by

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Thanks to Jamie Padula of ATA Headquarters for his advice and help.

Olga Shostachuk generously shares her expertise on translating and interpreting within the U.S. immigration system.

The issue also features two excellent reviews of legal-related presentations at ATA61 last fall: Elizabeth Adams's review of **Eugenia Tietz-Sokolskaya**'s talk on contract language and **Steven McGrath**'s review of **Evelyn Garland**'s presentation on translating patents. In addition to refreshing our memories on the knowledge and advice contained in Eugenia's talk, Elizabeth contributed her own list of helpful resources. Steven's review is a must-read for anyone engaged in patent translation or thinking of entering that perilous field.

The contributions SLD members have made in translating laws and court-related information into Slavic languages can be found all over the web. From 2011 to 2017, **Igor Vesler** worked for the Maryland Judiciary System, translating over 700 laws, regulations, legal advisory notices, and court forms into Russian. A number of the bilingual forms he produced can serve as a valuable resource.

Back in the 2000s, **Elana Pick** performed similar services for the Commonwealth of Pennsylvania (with yours truly as her editor), so Russian-speaking Pennsylvanians who interact with their state's legal system will benefit from her clearly worded renderings. In 2008, Elana so impressed a District Court judge that she received a letter praising her "accurate translation, while preserving the cultural aspects of the linguistic communication as they relate to recognizable legal concepts," among other kudos. (Elana was also involved in the Maryland project, as Igor's editor.)

In addition to interpreting for the Ohio court systems, Olga Shostachuk has translated many of the documents on the Ohio Supreme Court's website.

Emma Garkavi (see her contribution on U.S. credentialing of court interpreters in our Spring 2018 issue) has long served as a Strategic Advisor for Seattle Municipal Court Interpreter Services, which provides interpreters in 139 languages. She also translates and interprets for the court between Russian and English.

There are undoubtedly many more SLD members whose translation and interpreting skills have helped Slavic immigrants to the United States navigate the legal system.

Lastly, as you will see on page 27, after 25 years at the *SlavFile* helm, **Lydia Razran Stone** will be stepping down as chief editor. SLD members can be proud that, throughout Lydia's tenure, *our* newsletter has stood out among ATA division publications for its excellence and downright readability. The newsletter and SLD itself would not be what they are today had Lydia not taken them under her wing. I still vividly recall my excitement the first time I laid eyes on *SlavFile* early in my translation career. Working on my own with no colleagues to talk to about the challenges I was facing and the linguistic complexities I was discovering, it filled me with excitement and a sense of community. And when it came to Lydia's writing, it usually made me laugh. Lydia, thank goodness, will continue to write for *SlavFile*. For now, I will try to fill her shoes. Thanks to Lydia and to everyone who has helped give our division the virtual meeting place that is *SlavFile*.

Victor Prokofiev is a trained lawyer (MGIMO and the London School of Economics), diplomatic interpreter (including as a UN Staff Interpreter in Geneva), and businessman who has worked at the highest level of Russian<>English interpretation, including for such world figures as Mikhail Gorbachev, Margaret Thatcher, Joe Biden, Rajiv Gandhi, Boris Yeltsin, Ronald Reagan—see his website for more details. He is currently head of Prokofiev InterLegal in London. This article is reprinted with gratitude from his blog, which, along with his "Word Bank," is a valuable resource for any Russian<>English T/I professional working in business and legal. The article has been lightly edited to fit with SlavFile*'s style conventions. Elizabeth Adams' fascinating interview with Prokofiev can be found on page 6.*

ВЫКУП: BUYOUT, BUYBACK; REDEMPTION; PURCHASE, RE-PURCHASE, ACQUISITION; ENFRANCHISEMENT (of a leasehold)

Victor Prokofiev

In my experience, over the past five years alone this word has given rise to lively exchanges between counsel and judges/arbitrators on at least three separate occasions, including during the landmark *Rusal v Crispian and Whiteleave* hearings, which focused on the shareholdings in the giant Norilsk Nickel plant.

I am sure that if we were to poll all Russian-English legal interpreters, the number would be much greater.

On multiple occasions, I have been asked both to write expert witness reports about this word and to disambiguate this term for the benefit of the Court/Tribunal.

On one occasion, I was directed to "translate exactly what this word means, literally" without the benefit of any context whatsoever.

The truth is, plucking this word out of context and trying to make sense of it is nearly mission impossible.

At another hearing, I was asked to translate—and again, translate "literally"—the locution "*преимущественное право приобретения всех отчуждаемых акций*," which can be translated into English as either "the right of first refusal in respect of all of the shares being disposed of" or, if you wish, as "the pre-emption right to acquire/purchase all of the shares being disposed of."

The reason for this request was that in the next paragraph the drafter literally said "*преимущественное право выкупа в отношении отчуждаемых акций*," which can be translated as "a pre-emption right to buy out the shares being so disposed of," or, if you will, "a pre-emption right to re-purchase the shares being so disposed of," or even as "a pre-emption right to buy back the shares being so disposed of."

The question before the Tribunal was whether the drafter deliberately intended to convey two different ideas by means of using slightly different language in the second case, or whether it was simply a question of sloppy drafting.

I think that, at a pinch, I could perhaps make a case that because the drafter wrote *преимущественное право приобретения всех отчуждаемых акций* ("pre-emption right to acquire all of the shares being disposed of") in the first instance, whereas in the second instance he said *преимущественное право выкуп в отношении отчуждаемых акций* ("a pre-emption buy out/buy-back right WITH RESPECT TO the shares being so disposed of")—in other words, because he added the locution "with respect to," which is absent from the first example—there may be a reason to translate it the way I suggested above.

However, it would be a case of the translator taking his linguist's hat off and putting on a lawyer's hat.

Importantly, in my answer to the Tribunal's question I did my best to make the following fundamental point: the translation will ultimately depend on the corporate *legal* context, as well as on how you construe the Russian sentence.

And the corporate legal context is unfortunately not something a translator is allowed to speculate about.

The problem, at least for legal interpreters, is two-fold.

Firstly, the Russian word *выкуп* can have materially different meanings in a variety of strict legal contexts and scenarios.

Secondly, when not used in a strict legal sense, or when used loosely, it is capable of a fair amount of mimicry.

There have been instances of legal drafters using words such as *priobreteniye/pokupka* to denote purchase or acquisition, often for full value/full market price, and *vykup* (literally buy-out/buy-back) to denote acquisition for a token amount.

The problem with this attempt to draw a distinction, by linguistic means, between what are eminently legal concepts, is an exercise in futility, as it has no basis in law.

The usage then is purely *ad hoc,* and at the discretion of the drafter.

I believe it would be fair to say that, by and large, the Russian term *vykup* is used pretty much as a stand-in for a host of legal concepts, from a plain purchase or acquisition (when someone simply buys X), re-purchase (of something that had previously been sold to someone), all the way to buy-back (by a company of its shares), buy-out (of shareholder A's shares by either shareholder B or an outside investor), enfranchisement (of a leasehold) or even redemption (of units/shares in an investment vehicle, such as a unit trust or investment fund).

Moreover, the verb "*выкупить*" often denotes the instance of buying assets from a bankruptcy estate or a deceased estate.

As a matter of fact, here it just means «*купить*," i.e., to buy (often at an auction), but for some reason people often call it «выкупить» (из имущества банкрота/из наследственной массы, etc.). There is no legal rationale for this, it's just popular usage, a fad if you will.

As an aside, this reminds me of another word widely used—and abused—by Russian speakers, including lawyers. (!)

The word is *pereustupka*, literally "re-assignment."

Stricto sensu, re-assignment is a follow-on assignment of a thing that has already been assigned at least once (in the meaning of the Latin legal term *cessio*).

That said—and professors at law schools keep reminding students that this is wrong—people persist in using "re-assignment" to denote a plain assignment (assignment of IP rights, assignment of a chose in action/actionable right [«право требования» in Russian], assignment of shares etc.).

At the end of the day, this is a matter of law, rather than linguistics.

A linguist can only do so much: the best we can do is translate the words and sentences being put to us to the best of our ability.

It is not open to linguists to second-guess what the legal drafter's intentions were.

It is simply not our job to do so.

Rather, it is up to our lawyer clients to then try and make *legal* sense/draw *legal* inferences from what we tell them we see written in the original language.

Exactly which of the seven distinct meanings of the word *vykup* (see above) should be used in which instance is unfortunately not a question linguists are well equipped to answer.

Throughout my 20-year-long career as a legal interpreter, both in litigation and arbitration, I have always tried to politely explain this to my clients.

On one occasion, the President of the arbitral Tribunal actually asked me to explain what Russian law understands *vykup* to mean, so exasperated was he with the confusion surrounding this word, which in that particular instance appeared to be dispositive of the proceedings' outcome.

As it happened, for a few minutes I found myself in a position where I was effectively giving legal expert evidence.

Disappointingly, the matter was unfortunately left without resolution as I was lacking broad context.

In yet another matter, all hinged on the translation of the Russian corporate term [*obratnyi*] *vykup*, which, as discussed above and depending on the circumstances, can be variously translated as acquisition, purchase, re-purchase, buy-back, buy-out, enfranchisement, or redemption.

It all depends on the specific corporate scenario you are dealing with. Again, it's not a linguistic issue, but rather a legal one.

What interpreters and translators ultimately do, on many occasions, is translate literally (but always using common sense and their best judgment): when the Russian text says *priobreteniye* or *pokupka*—we translate it as "purchase" or "acquisition," and when the original uses *vykup,* then we translate it as "buy-out" (or buy-back, if it is clear from the context that the drafter meant a buyback by a company of its own shares).

Literally, *obratnyi vykup* translates as "reverse buyback" or "reverse buyout," but as any translator worth his salt will confirm, a literal translation is quite often a mistranslation.

In many instances, the *obratnyi* ("reverse") qualifier does not mean anything at all and can be easily disregarded.

But to the extent that one does need to draw a distinction between *vykup* and *obratnyi vykup*, I would venture to suggest buyback/buyout for *vykup* and repurchase for *obratnyi vykup.*

Continued on page 5

Notes from the Administrative Underground: Together and Apart

Eugenia Tietz-Sokolskaya, Administrator

At the end of January SLD hosted its first Zoom networking session in the mold of the division meetup at last year's conference, complete with breakout rooms and discussion prompts. Based on member comments, it was a success! It's nice to be able to see and chat with our fellow translators and interpreters more than once a year (not to mention that contact between members is a core division function!). Most likely, by the time you're reading this, the next networking session will have been announced or even taken place — and perhaps you even took part!

Speaking of networking and conferences, you may be wondering what ATA62 will look like. As of now, ATA is planning for a hybrid conference, meaning that sessions will take place in person in Minneapolis and be live streamed online. Uncertainty around the hybrid nature of the conference and the feasibility of travel in far-off October has left potential speakers hesitant to propose sessions, but from the looks of it plenty of people have taken the optimistic view and submitted proposals. It's unfortunate that a year into this pandemic it remains so difficult to plan months ahead for both the conference organizers and us, its potential attendees. Let's hope that everything turns out as best it can and we can see each other in person in October.

In the meantime, the division carries on—as it always has—primarily online. The blog is becoming more active under its new editor, Veronika Demichelis, along with her newly-minted co-editor, Marisa Irwin. The Twitter account, currently curated by Lucy Gunderson, is also a place for interesting discussion and knowledge sharing. In response to member suggestions, and given the fragmented nature of today's internet, we have tried to make SLD available across as many platforms as we can. Now all we need is for you, dear members, to join us there!

Minneapolis, Here We Come!

ATA62 will be held in Minneapolis, Minnesota October 27–30, 2021

The conference will be both in-person and online, but we hope to see many of our Slavic Languages Division colleagues attending in the flesh.

Go to ata62.org for updates and information.

ВЫКУП *Continued from page 4*

And one final comment, of a more stylistic nature: what often happens is that some translators try to offer a "nicer, smoother read," deliberately anglicized to make the text consistent with the way English speakers are expected to express themselves, while others go with a translation which generally sticks closer to the original sentence structure.

Ironically, the latter is not necessarily a virtue.

Closeness to the Russian original often comes at the expense of literal calques and unnecessarily tedious, drawn-out repetitions.

After all, Russian is just about as verbose as German, and its sentences are typically 20 per cent longer than English ones.

But at least the judge, arbitrator, counsel, etc., will get a flavor of the Russian psyche and thought process.

My view is that an interpreter's job is to "bridge the cultural gap," i.e., to make the proverbial Russian soul digestible, transparent, and easy for native English speakers to understand.

However, the final decision is always a judgment call: in each and every case one ultimately needs to decide what is more important for the end user: understanding the intricacies of the Russian thought process, or getting an English sentence that reads smoothly (hence often anglicized).

AN INTERVIEW WITH VICTOR PROKOFIEV

Interview conducted by Elizabeth Adams

Victor Prokofiev is a unique individual in our profession: a lawyer-linguist with decades of experience interpreting, translating, and providing expert testimony in some of the most highly publicized litigation and arbitration of the post-Soviet era. After starting as a staff interpreter and later in-house lawyer for the United Nations, he moved to the Soviet/Russian Foreign Affairs Ministry, where he was personal interpreter to Presidents Gorbachev and Yeltsin. At different times, he interpreted for Shevardnadze, Nixon, Thatcher, Reagan, Bush, Sr., and Clinton. He spent several years interpreting at arms control talks, including for the Intermediate-Range Nuclear Forces Treaty and START. This was followed by a nine-year stint as a lawyer and interpreter in the private sector and, more recently, running a thriving freelance business in London offering interpreting and interpreter training. Fortunately for us, he's also a friendly, helpful colleague who enjoys sharing his knowledge and talking shop. Victor was generous enough to sit down with me on Zoom a few weeks ago for a conversation that spanned everything from sharp negotiating tactics to legal terminology.

Elizabeth: When you started college, did you know that you wanted to wear both hats and be both a lawyer and a linguist?

Victor: No, not really. My original idea was to become a lawyer. But during my fourth year at MGIMO Law School, by pure chance I heard about the United Nations Language Training Course. I realized that it might be sensible to use the three foreign languages that I had learned (English, French, and Spanish) to do some translation or interpreting. I wasn't entirely certain that I wanted to pursue that, but I decided to give it a try. I had no idea that I was making an important career move that would determine the rest of my life. That was in 1977, and I was 22. I applied for the UN language course, and I've been interpreting for the past 45 years now.

Do you remember your first day of work at the UN?

I certainly do remember. It was Monday, November 6, 1978 in Geneva. My first assignment was to interpret for a meeting of the Economic Commission for Europe's working group on power generation. I had arrived in town two days before, so I hadn't had any time to prepare. Just imagine how I felt staring down at that microphone. Luckily, I was sitting next to an experienced colleague who was ready to switch the microphone if he saw me struggling. But by some magic, it went fine. I learned a great deal of economic, legal, and technical terminology at that job. Then I saw an opening for a lawyer at the UN personnel service, and I started doing staff litigation. Eventually, I quit and started freelancing for the UN, NATO, the OECD, the ICAO, the ILO and a number of other international organizations.

How did the UN diplomats treat interpreters? Did they share their thought processes or discuss terminology with you?

Not at all. At the United Nations, you hardly ever have the opportunity to speak to the diplomats in person. Every now and then, I would get to speak to some of the delegates over coffee when we had a break from a highly technical meeting. But on the whole, other interpreters were a better source of information. I meet far more people now in the private market in London than I ever did at the United Nations.

Did you experience that same segregation when you were in the Soviet and then the Russian foreign service?

The foreign service was very different. When I needed to get ready for an upcoming encounter, such as the Geneva summit between Gorbachev and Reagan or a meeting between Soviet foreign minister Andrei Gromyko and Senator Joe Biden, I was always given materials I could use to prepare. The foreign service had departments covering various regions. If the visitor was an American, I could get help from the Department for the US and Canada. If he or she was a Brit, I'd go to the Second European Department. We were also encouraged to speak with our diplomats, many of whom were friends and generally, quite approachable. They were good about taking the time to help us understand any issues that might come up.

Because they understood how important your job was.

Sure. They knew that the interpreter needed to understand the terminology and the local vernacular. As an example, if we had a meeting between Rajiv Ghandi and Gorbachev, we at least had to know what the Rashtrapati Bhavan [Presidential Palace] was. Or if we went to Ireland, we had to know who the Taoiseach [Prime Minister] is, and how that position is different from the Tánaiste [deputy head of government]. When we went to Canada, we were expected to be able to use enough French when interpreting speeches to comply with protocol requirements. The degree of preparation was impressive. Things didn't always go well, of course. I remember one instance when a colleague of mine had to interpret simultaneously for ten hours straight because of a scheduling snafu. He said later that he slept in his chair in the booth during breaks. One of my own more stressful experiences happened in Wichita, Kansas in 1993, when I was told everyone was counting on me to make sure that Yeltsin was applauded for his speech. "Work your magic," they said. You can imagine how I felt in that moment, with Bob Dole and other US dignitaries looking on. But on the whole, it was an incredibly positive experience. During those years, I was exposed to top Russian diplomats and to foreign diplomats, people like James Baker, who actually remembered me when we met at a business event 15 years later. He said, "I remember you. You interpreted for us at a summit." I've always been amazed at the phenomenal memory diplomats have for facts and faces.

It sounds like they resemble interpreters in that respect.

Absolutely. They have to come up with solutions on the fly, and they have to have an impressive command of historical events and even famous quotations. But I think the key lesson I took away from my years in the foreign service was the realization that even the most important, powerful people are entirely human. They make mistakes, just like the rest of us. And that helped me become more relaxed as an interpreter. I learned to take things in stride. It all taught me humility and respect.

I like that—humility and respect. That's a wonderful way to describe how we ought to feel about our work. Would you like to share any lessons you took away from your experience in the business world?

Some three-fourths of my life I have been working with languages. There was only a short while, between 1994 and 2003, when I was both a lawyer and an interpreter in private business. Those years gave me an enormous boost in terms of understanding financial and legal terminology. I was fortunate enough to work with some of the brightest people in the Russian business world in the 1990s, and I learned a lot from them. When I engage with a potential client on the private market, I know exactly what I'm doing because I've seen the movie before. Asking position, fallback position, negotiating gambits, keeping your trump cards safely stashed away, etc. Those years in private business were incredibly educational. And aside from learning to think like a businessperson, I got the chance to further study law, write contracts, and structure transactions.

That experience sets you apart, doesn't it?

I wouldn't say it sets me apart. There have been quite a few interpreters, including Viktor Sukhodrev, Pavel Palazhchenko, Igor Korchilov, Bill Krimer, Dimitry Zarechnak, Dimitri Arensburger, Peter Afanasenko, and Tony Bishop, whose career paths have been just as interesting as mine, if not more so. But it has made my life richer to a considerable extent. There are other people in the interpreting profession who are either lawyers by trade or have a legal or business background. But I was lucky enough to get the best of all three worlds. I know how business people think. I know how to negotiate because I have been part of that. Just to give an example, when I talk to a client about a potential job, I can tell right away when they're going to ask for a break on the price. One strategy some of them use is to ask for a steep discount today in exchange for a promise of more work at some unspecified point in the future. To that, I usually reply by saying "Your offer is much appreciated, but how about this: I'll charge you 100% of my daily rate for the first job, but then I'll give you a percentage off the second job and all other jobs going forward." I'm not refusing to give a discount, but I'm protecting my interests. That's how I believe business people think, and that's what I learned from my former mentors in private business. They taught me the value of humility, respect for my negotiating partner and the ability to think about their interests as well as my own, patience, flexibility and, most important, the art of listening.

Can you give us suggestions on working with law firms as direct clients?

That's something we could spend hours discussing, but I can share a few tips. I have a boilerplate contract—funnily, in Russian we call a template like that «рыба договора»—that's about five or six pages long.

And there are a couple of things I am meticulous about, including the client's exact company name and registered address, their signatory's authority to sign, the name and email address of the contact person I'll be communicating with (for the same reason that corporates have a "registered address" for service of process, etc.), the exact dates and times (if a client needs you for just an hour or a half day, it may be a good idea to offer a sliding scale of fees), overtime, preparation time, and the mode of interpreting they want. When you're working with an international law firm, you have to be extremely clear about who your client is, if for no other reason than your VAT position. For example, Hogan Lovells has offices around the world, so if you contract with an HL entity without actually being clear as to where they are located and who has the authority to sign contracts for that office, you can run into VAT or other trouble.

And direct clients may not understand why you need to know that.

Absolutely. And that's equally true of agencies. But even law firms don't always realize this is an important consideration for an interpreter, and sometimes they do realize it and just can't be bothered. But I say, "Look, I need to have your registered address listed in the contract, and I need to know if the person who intends to sign the contract is duly authorized to bind the company by his sole signature."

And that brings me to the second important point: the signatory. My contract includes a statement in the representations section that the signatory is a duly authorized representative with the power and authority to bind their company. That means they are representing to me that they are duly authorized to sign. If it later turns out that they aren't, they are now estopped from backing out.

The third thing I always nail down in my contract is the mode of interpreting. That is a material term of the contract, and in case of breach, my remedy is to rescind the contract and claim damages, i.e., my fee in full. On several occasions, I've signed a contract for consecutive interpreting only to find out day-of that they expected me to do whispered simultaneous interpreting. Whispered is the hardest form of simultaneous. You don't have headsets, so you drown yourself out, and if there are a lot of people in the room you can't hear anyone properly. Imagine a brainstorming session with what feels like a dozen QC (queen's counsel) and solicitors on one side, and two dozen Russian-speaking clients using colorful language, including expletives, on the other. And they're all talking over each other. When that happens, I have leverage because I can point to the mode of interpreting specified in my contract. I only agree to do whispered simultaneous if it's a small room with two or three people and only one person speaking at a time.

Specifying the name of and email address of the contact person, who does not have to be the signatory, protects my position and protects my invoice from getting lost. The cancellation policy needs to be clearly set out, and the exact dates I'll be working are also a material term of the contract: sometimes clients tell me they are "moving the dates" at short notice. My polite reply is always that there is no such thing as "moving dates": you owe me for the dates set out in our current contract, and then we sign a new contract for the new dates. Lunch breaks: I usually insist on at least a one-hour break, with additional compensation payable if the break proves to be shorter than one hour. Only one client in my entire career has ever balked at paying when my lunch break was shorter than an hour. It was a good client, so I told him that while, pursuant to our contract, he had to pay for my reduced lunch break, I would give him an *ex gratia* credit in the same amount. He was happy because his bottom line was preserved, and I was happy because I made my point. I invoice extra for the short lunch and then offset that with the *ex gratia* credit.

You were setting a boundary.

And I didn't set a bad precedent for future dealings with the same client. If you absolutely have to make a concession on something envisaged in your contract, don't actually call it a concession. Call it a goodwill gesture, or an *ex gratia* credit.

I like to call it a goodwill credit.

Call it whatever you want. By any other name it will smell just as sweet. But the concept has to be there: I'm not caving in. You are misbehaving, make no mistake about it, but because I value your custom, I'll give you an *ex gratia* credit. At the end of the day, it's win-win, and we are both happy campers.

At what point in the discussion do you send over your contract?

It depends. If the job is a few months off, I'll send them my contract template as soon as they first contact me with an availability inquiry. This leaves us sufficient time to negotiate and iron out all the fine points at leisure. That said, clients occasionally reach out a day or two before the job, and they expect you to report to their offices the next day. If I'm available, I'm more than happy to do that. If it's for a court hearing, however, no notice is too long. Even five months may not be enough because of the preparation required. I

may be reading thousands of pages of documentation. In those cases, I will tell the client that I'm available for their date, but that I need to contract with them right now so I can guarantee my availability and be prepared. I also let them know that they will need to pay me for my reading-in time (in the runup to the *Berezovsky v Abramovich* trial in 2011-2012, I spent something like 100 hours reading about 3,000 pages of legalese). If they balk at that, I respectfully remind them that it's in their best interests for me to know their case.

I also ask for access to the LiveNote feed, which shows me everything taken down by the court reporter (or transcriber, as they are called in the UK). It's extremely helpful if I've missed a name or number. During the pandemic, I've been insisting that everyone use Ethernet cables rather than WiFi. Professional headsets, too. If a client asks why I want them to go to that extra expense, I again respectfully remind them that it's in their best interests: if I can't hear you, I can't interpret for you. As an example, I was interpreting remotely for a court hearing recently, and I had to let the judge know that I couldn't hear everyone properly. He responded that he could hear just fine. So I said, "Your Lordship only has to listen to the participants, while I have to listen, analyze what I hear, think about what they're saying, and translate it. And as soon as I start talking, I drown myself out if the sound quality isn't perfect or the volume is low." That made sense to him, so he ordered counsel to wear headsets. Most of them had headsets right there in front of them, but they weren't using them until the judge ordered them to do so. When I explained myself, however—and I'm always extremely polite, even when I'm not backing down, always couching my message in terms of their best interests—he issued a procedural order and they all put them on. It just takes patience and insistence on the part of the interpreter. We need to educate the market about who we are and about our best practices. We need to raise awareness and think of ourselves as equal players.

That's an important point, isn't it?

Self-perception is everything. Unfortunately, some people tend to have low self-esteem. Some think they are one of many. To them, I usually say, google Pia Silva and her badass marketing campaign. She says never compare yourself to anyone. You are the best. If they ask you why you charge so much, the answer is "Because I'm the best." If they ask you why they should sign a six-page contract that goes into the minutiae of exactly how many booths there are going to be, sets the rate of speech at 110 words per minute for simultaneous, etc., the answer is "Because I'm the best." And so on and so forth. So go for it, don't cave. Of course, you have to offer absolutely sterling service in exchange. But you can do it. It has as much to do with self-identification as it does with reality. If a lawyer can tell from your body language and how you present yourself that you're happy to accept any fee because you're desperate to get that job, you've already lost. Never be too eager. Fortune favors the brave, I say. But if I don't get the job, it's not the end of the world. I'll have time to read a good book or go hiking with my wife.

That's the healthiest advice!

Right! And I say that not because I'm the richest or smartest interpreter out there. I say that because I'm not afraid to lose out on a job. If you're scared of not getting the job, the lawyers—or whoever your clients may be—will know it. They see it in your facial expression.

Or in your email expression.

Or from the tone of your voice over the phone.

My problem is that I'm a workaholic. I would pay people to let me do the work because I enjoy it so much. Tell me how wrong that is.

Same with me, I'm passionate about languages. But you have to practice your poker face. Don't let it show. You have to have a deep conviction that no job is the end of the world. You have to be strong and tough. Always impeccably polite and accommodating and understanding of the client, but tough. Don't back down, unless there is a valid reason you should. I'll do whatever I can to be helpful and accommodate the client, but I keep my own interests foremost.

Articles on remote hearings:

https://www.prokofievinterlegal.com/the-challenges-of-the-new-normal-hearings-a-professional-legal-interpreters-perspective/

https://www.prokofievinterlegal.com/the-human-equation-of-remote-hearings-the-challenges-for-legal-interpreters/

https://www.prokofievinterlegal.com/how-to-make-remote-arbitration-interpreting-work/

I know you've interpreted for many of Russia's business leaders during trials or arbitration. Can you tell us about a time when you played a decisive role in a case?

The interpreter can certainly be of help, to the tribunal if it's arbitration or to the judge if it's a court. Incidentally, in England, interpreters are officers of the court, the same as solicitors. In one instance that comes to mind, I was interpreting for an arbitration hearing and the tribunal got confused in the course of a cross-examination of a Russian professor of law who was giving expert evidence. He was talking about the right of ownership, право собственности, in Russian law, which has three attributes: владение, пользование и распоряжение. In English, we usually translate владение as "the right to hold onto a thing." We don't call it possession, because that isn't explicit enough. Право пользования is usually translated as "the right of peaceful enjoyment." But then you have право распоряжения, and they spent about an hour trying to understand the evidence that the legal expert was giving. I was translating it as "the right of disposition," (mind you, not "disposal") and I even used the Latin term *jus disponendi*, which is arguably the best way to translate it. But they wanted to be absolutely certain that they understood what that concept meant in Russian law, since it was important for the matter they were considering. They asked me, the interpreter, to disambiguate the term for the tribunal, and they gave me 60 seconds to do it.

So I told them that право распоряжения is the right and ability to determine the legal fate of the thing, the *res*. The right to determine what will happen to it. That includes the right to sell it, assign it, gift it, lease it out, or even destroy it. And suddenly, all these English barristers' faces lit up, because now it made sense to them. English law does not necessarily use the same terminology, but it understands the concept these terms convey. As you can see, I sometimes find Latin helpful for disambiguating terms for concepts that exist in both the common law and the civil law tradition but are categorized differently in Russian law.

That's interesting, because I have heard a range of opinions on using Latin. I'd like to hear what you think.

Let me tell you a story. In 1989, I was working at the United Nations General Assembly in New York, and on one of my days off I went to Central Park. It was October, and there was a tree next to the bench where I was sitting. It was an oak. The genus is *quercus*. But this one looked different. It wasn't the Russian oak I was used to. Russian oak leaves are more rounded, and the tree I saw in Central Park had leaves with spikier lobes. As an interpreter, it was this moment of despair. I realized the utter futility of even attempting to translate things precisely and beyond doubt. Because if I told someone in Russian that I had sat next to an oak that day, they would see an image that was different from what I had actually seen. What do you do?

I would ask myself if it matters in my context.

Exactly. And there's the answer to your question about whether or not Latin is helpful. It depends on the context. If the distinction doesn't matter, then it's irrelevant, so don't sweat it. In my case, call it an oak, and ignore the fact that the leaves are slightly different. But if it does, then use Latin. *Quercus* followed by the species The problem, of course, is that while you gain precision, you lose audience. Only a handful of the eight billion people living on planet Earth will know what you mean. This is an argument I have with myself all the time: precision versus comprehension.

I think that argument right there is the whole point. It's not an obstacle that keeps you from arriving at the perfect answer. The argument is the answer.

Absolutely. And at some point, you have to make a choice and go with it. I always say that one of the most important psychological traits of an interpreter is a healthy dose of пофигизм. It's critical for your performance in the booth, and it's also critical for your mental health. Don't take the booth home with you. I interpreted at the European Court for Human Rights in Strasbourg in the Mothers of Beslan case. You remember the school hostage crisis in September 2004 when hundreds of people died, many of them children. I still get a lump in my throat every time I think about it. But you have to draw a line. It's not that I don't care. I just have to draw that line in order to be able to do the work.

Can you comment on the existing published English translations of the Russian Civil Code? There are situations when it would be nice to cite them, but I'm always hesitant because they follow unorthodox translation conventions.

William Butler and Peter Maggs both translated the Civil Code into English, but, with respect, I'm not sure I would call their work translation, exactly. I know both of them fairly well, especially Maggs. He's a wonderful lawyer and a thinker with a capital T. But when he translates Russian legal terminology, he always goes for the literal option despite very clear,

logical objections. For instance, he translates хозяйственное общество as "economic society." What on Earth is an economic society? The Russian term just means "company." It's true that a common law company differs slightly from the хозяйственное общество under Russian law (for instance, English companies do not have a Правление, or managing board), but that's not a valid reason to use a translation that simply does not make sense (remember that oak?). The only reason a company is called хозяйственное общество in Russian is to distinguish it from хозяйственное товарищество, which is a partnership. An общество unites capital, while a товарищество unites persons. The literal translation creates uncertainty where none existed in the source. Акт коммуникации не состоялся. The translator has not properly done his job.

It's a very academic approach.

Peter is conveying a message. He's basically telling people, "Look how different Russian law is from common law." He's trying to show readers that Russian (or any civil) law differs from what they're familiar with. What else is new? Of course it's different. But that's no reason to distort it beyond recognition.

When I read literal translations of the Civil Code, I feel like I'm wearing special glasses that turn each Russian word into an English word, but I don't understand anything.

You see, but you don't understand.

Is there a translation of the Civil Code that you do like?

Quite a few law firms, including White & Case, have their own in-house translations, which they hardly ever share. But I've seen some of them, and they were very good. At the very least, they call a company a company.

What are some other terms that risk becoming over-complicated in translation?

The first one that comes to mind is субъективное право. You'll often see it in this context: злоупотребление субъективным правом. Article 10 of the Russian Civil Code. What is the word "subjective" doing there? I remember the famous TadAZ case back in 2005 in London. It was a big case and very interesting. At one point, the lawyers were disputing the meaning of this term, which they were calling "subjective right." They were seriously considering instructing a Russian legal expert to write a report to the tune of ten thousand pounds to explain what a "subjective right" is and how one might abuse it. During the break, I approached the solicitors and explained that in Russian the word право means both law and right. So to draw a distinction, we call the law объективное право, and a right is called субъективное право. That's all there is to it. At common law, «злоупотребление субъективным правом» is called abuse of right. That includes vexatious litigation, which is one way a person can abuse his or her right, or bringing unmeritorious claims.

And that brings me to the word необоснованный. Translators always seem to reach for "unsubstantiated" when they translate it. It's a knee-jerk reaction, but there are dozens of other ways to deal with it. Unmeritorious, or without merit, frivolous, unreasonable, untenable, meritless, unjustified, unsupported, misconceived, or even grotesque. It depends on the context.

The same goes for the word незаконный. Again, the knee-jerk reaction often is to translate it as "illegal." This word works in quite a few contexts, including criminal. But in business contexts, I would rather say unlawful, wrongful or illegitimate.

I've also noticed that translators can sometimes run into difficulties with terms such as вещные права and обязательственные права. The best way to translate them into English is to use Latin. Вещные права are proprietary (not to be confused with "property") rights, choses in possession, or rights *in rem*, i.e., rights to a thing, while обязательственные права are choses in action, actionable rights, or rights *in personam*, i.e., rights with respect to a person, or права требования. When I have право требования к тебе, I have an actionable right against you. Not "right of claim," by the way, which is a calque that interpreters sometimes use. In English law, it's called "chose in action" or "actionable right." In a financial context, it might just be a "receivable."

Watching an interpreter make these decisions on the fly feels like watching a magician.

I suppose it is a kind of magic. Thankfully, we all have been thinking about terms like these for years, and interpreters get good at recalling the ones that come up often. But not always. Sometimes you make magic, and sometimes you make mistakes. It's never easy. Another term that can be difficult is security. I've heard interpreters in the booth translate this as "безопасность." That would be appropriate if you're at an OSCE meeting or at the IAEA and the speaker is talking about nuclear safety and security, but if you're in court and the speaker is talking about security for an obligation (such as a pledge, a guarantee, or a

performance bond), then the correct translation is обеспечение. Another tricky one is баланс. «На балансе нашего предприятия висят акции компании X». If you translate it as "balance," it won't make sense. A better option would be "balance sheet." Or you could say it's "in the books." Our legal entity has (or recognizes) those shares in its books/records/accounts.

Legal entity: that's a term we wanted to talk about.

Definitely. There was one occasion when Bill Butler, who is held in great regard as both a scholar and an attorney, was giving evidence at an arbitration hearing on the status of a government agency. The tribunal was trying to decide whether or not the agency was a юридическое лицо under Russian law. Throughout his evidence, Butler kept saying "This is a legal entity." In the booth, I was saying "Это юридическое лицо." At one point, he stopped and said, "That's incorrect. When I say legal entity, I mean субъект права." That was important to the tribunal, because субъект права is a much broader term than legal entity. Not all субъекты права are юрлица. In response, I pointed out that legal translation involves convention, and that certain words are traditionally translated certain ways. Historically, the conventional Russian equivalent of legal entity has always been юридическое лицо. If I'm supposed to translate legal entity as субъект права, then юридическое лицо needs to be something like juridical person. This is something that the speaker and the interpreter need to discuss and agree on well in advance of the court hearing. Otherwise, they may find themselves engaged in lively discussion in front of the judge or the tribunal.

If a speaker plans to use language in a non-standard way, then the interpreter needs to know that ahead of time.

That's a nice way of putting it. I have nothing against a speaker breaking with convention, but we have to be clear with each other in advance.

We've talked about a number of terms that can pose problems. In my own practice, I find that it's always better to read widely for background understanding so that when you're searching for terms in the heat of the moment you have enough context to navigate the subject. Do you have any recommendations for background reading?

I do have some resources for you. Mainly textbooks and scholarly research. Textbooks are an excellent resource because to do legal translation or legal interpreting, you need to fundamentally understand the law. I would start with «Гражданское право» by Professor Sukhanov, which explains all the basic concepts (get the second edition, which was published in 2020 , because the Civil Code was amended in many important respects a few years ago). Then you can pick any textbook on English or US law and start to find concepts that line up. Interestingly, the concepts are exactly the same: persons, legal entities, obligations, contracts, torts, limitation, etc. Those are the same across all systems of law. One series on US law that I like is called *In a Nutshell*. It's a series of dozens of smaller books that cover things like corporations, contracts, civil procedure, international business transactions, trusts & equity and more.

I use a similar series called *Examples & Explanations*.

Anything targeted at law students will be good. For English law, I would start with *Chitty on Contracts* because it covers absolutely everything in contractual law. The Russian equivalent would be «Договорное право» Брагинского и Витрянского. In terms of websites, I find TheLawyer.com and Law360.com to be useful. Both are subscription-based, but sometimes reading the headlines is sufficient.

You probably also want to have a dictionary like Black's or Barron's *Law Dictionary* or *West's Encyclopedia of American Law* for the US or *Stroud's Judicial Dictionary, Words and Phrases Legally Defined*, *Jowitt's Dictionary of English Law*, or *Garner's Dictionary of Legal Usage* for the UK (England and Wales, to be more exact, as Scots law is entirely different).

There is a good database of court judgments, among other things, at https://www.bailii.org/.

I'd like to throw out an idea and see what you think: I don't use dictionaries. Well, hardly ever. I look for a Russian lawyer writing on a topic, and then I find a US lawyer writing about the same topic and compare the terms they use. When I find a term used in the same context by the same kind of person, I feel safe with that as a translation.

I can't tell you how much I agree with what you just said. That was how we were taught to do economic translation at the United Nations course I took. Now mind you, this was the 1970s in the Soviet Union. None of us had heard of opportunity cost, blue chips, gilts or Treasury bills. We didn't know basic economic concepts. We didn't know what shares of stock were, or the difference between equity and debt. Our instructor told us to read economic literature in

English and in Russian, because eventually we would start to find parallels.

That kind of parallel reading was more difficult to do back then than it is now.

True. It's easier to find lots of instances of people using terms today than it was in the pre-internet days, but you still have to understand law. That's the only limitation to the approach you described. Also, I wouldn't totally discard dictionaries either.

That's where your recommended textbooks come in useful. It definitely takes both. Tell me more about the master classes that you taught this past September and your plans for future classes.

The classes in September 2020 covered the concepts and terminology translators and interpreters need to understand in order to work in the field of international arbitration. We covered a lot of ground in just five hours. I'd say it was equal to a one-year course in law school. The recorded class and the slides are available on my website for anyone who is interested. I leave time for questions after each lecture, and people go home with plenty of additional material for independent study. I'll be teaching more master classes later this year, most likely on contracts, corporations, and civil procedure, because those three topics together really cover almost everything. It's extremely satisfying to be able to share with my colleagues what I've learned over the decades in so many roles, and I'm always surprised how many good questions people ask. The whole thing is a lot of fun. I'll list at least one new class on my website, as well as on LinkedIn and Facebook (where I have both a personal page and a group called Prokofiev InterLegal) within the next few months. I also post regular articles on legal translation problems, which are available on my website, as well. Colleagues are welcome to reach out to me at v.prokofiev@aiic.net or victor@prokofievinterlegal.com with questions or topics they'd like to see me write more on.

Final note from Elizabeth: I thoroughly enjoyed talking to Victor about his career and his current interests. Our conversations ranged widely, and we even managed to pick apart Harry and Meghan's interview from his point of view as an interpreter. Unfortunately, there isn't room in a year's worth of *SlavFile* issues for it all, so I encourage everyone with an interest in the intersection of law and language to visit Victor's website and keep an eye out for his next round of classes. Thank you, Victor!

My Go-To Russian>English Legal Translation Resources

Elizabeth Adams

Between jobs, legal translation is a meditative practice. In the throes of a job, it's meditation on a deadline. Meditation with people critiquing your results (half of them spot-on, half of them deserving serious side-eye). Meditation in which errors are humbling and costly. It helps if you love doing it.

Here are some helpful resources for your Russian-English-Russian legal translation practice. If I've missed something, let me know!

Resources for contextual understanding:

The Civil Law Tradition, John Henry Merryman and Rogelio Perez-Perdomo (2018). This is an English-language guide to the history of the world's civil law systems. By the time I found it, I was already familiar with the top-down reasoning of Russian court rulings, but I wanted to understand how that thinking fit into a larger context and where it came from. Since this book focuses on Europe and Latin America, not everything in here is useful to a translator working between Russian and English. I recommend chapters 2, 4, 5, 7, and 16. The 2007 edition, which is what I have, is available to read on Google Books: https://tinyurl.com/y2fg9k33

Contract Law in Russia, Maria Yefremova, Svetlana Yakovleva, Jane Henderson (2014). This is an excellent resource for non-native Russian speakers who want to learn more about how contracts function in Russia's legal system. It explains specific performance and gives lots of good examples of contractual disputes and how they played out in real life. Warning: keep a pencil and paper handy or you'll get tangled up in the party names. Available on Google books: https://tinyurl.com/yxw2hqda

A Manual of Style for Contract Drafting, Ken Adams (2018). Follow a lawyer who thinks like a translator as he examines contract structure and language. This is your hall pass to use plain language. If you work into Russian, the Manual is a good resource for identifying meaningless English doublets and triplets that can be reduced to a single word in Russian. In a world of books I might read once, this one stays within arm's reach.

Russian Law, William Butler (2003). This one is fascinating for historical context, but I would not follow its translation conventions. There is no preview on Google Books, but you can get a used copy inexpensively on eBay.

Examples & Explanations: Civil Procedure, Joseph W. Glannon (2018). An engaging introduction to US civil procedure (Federal court? State court? Federal court using state rules?) for law students. I thoroughly enjoyed Chapter 18 on service of process ("The Bearer of Bad Tidings"). There are at least a dozen other books in this series, on topics from contract law to torts. Textbooks are usually a solid choice when you're looking for contextual understanding.

Practical resources:

The Civil Code of the Russian Federation (available in Russian at http://www.consultant.ru/document/cons_doc_LAW_5142/). The Civil Code is the first step for researching Russian contract terminology, especially when a drafter uses inconsistent terms. There is no good, freely available translation of the Civil Code, but at the very least you can get a sharper understanding of Russian terms and search for commentary by English-speaking attorneys using the Civil Code article number to narrow the search. (Yes, the WTO translation is freely available, but the language is clunky.)

Sudact.ru. This is a database of Russian court rulings I use when text is missing from a ruling (or a name seems to be misspelled, etc.). You can also search for party names or judges' names to find other rulings that provide context for what you're working on. I haven't used it in a while because of the pandemic, and tonight it didn't want to open in Chrome. Tor opened it right up.

UK BAILII databases (https://www.bailii.org/databases.html). I've used this when working on translations for cases being heard in the UK. As with Sudact.ru, you have to choose a court to search. If you don't know which one you need, I suggest starting with the Court of Appeal (Civil Division) or the High Court (Queen's Bench Division).

For cases decided by US courts, you can start at https://www.ilrg.com/caselaw/. From there, you choose a federal jurisdiction or one of the fifty state courts, each of which has its own website and search options. It's probably faster to start with Google: [court database Florida]. CourtListener.com is an open-source aggregator of opinions from hundreds of US jurisdictions.

Consultant.ru has been around forever, but I'm including it just in case you didn't know they offer templates for almost any document you can imagine. Downloading a template is often faster than OCR for something like a scanned tax form. They also send out a weekly email newsletter with legislative updates. I skim through them to keep my казенный язык on point.

Lexology.com publishes articles by lawyers around the world. The site lets you search by jurisdiction and topic, or you can use Google to search for your keywords and add the modifier "site:lexology.com" (not in quotation marks).

Handbooks on Russian civil and criminal procedure. There are a lot of these out there. I've read several published by Prospekt, but they aren't the only company that publishes them. *Настольная книга следователя и дознавателя* (Б. Т. Безлепкин, Проспект, 2016) gives a good explanation of how a criminal case proceeds, from finding the body to convicting someone to reviewing past cases. Terms of art that investigators need to be able to use are italicized in the text. Procedural documents make up a fair share of my work, so I value handbooks for their insight into how the people who draft these documents think.

Elizabeth Adams, CT, is a Russian-English legal translator with an absorbing interest in the nuts-and-bolts of translation research. She also translates fantasy and science fiction and is raising three bilingual children. She can be reached at ehadams@hotmail.com.

RUSSIAN-ENGLISH LEGAL GLOSSARY

Tom Fennell, CT

edited by
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Elizabeth Adams, CT

This article is focused on translations to use in strictly legal documents: contracts, laws, and court documents, in other words, documents of which lawyers are the most likely readers. The same legal words may be translated in a different manner in documents for the general public, such as journalism and corporate materials like annual reports or correspondence.

A general concept to keep in mind is that legal translation is a type of technical translation. People who teach translation are usually more involved in literary translation, where the transparency of the text for the general reader is the paramount goal. The translation should "sound like it was written in English." Technical translation also strives to be transparent to the reader, but it must give more weight to fidelity to the source text than is the case with translation for the general reader. Since precise meaning is so important with legal translation, one must preserve distinguishing vocabulary from the source text that sometimes sounds a bit awkward or "foreign" in the target language. One must make distinctions where the target language might often not distinguish.

A great example of this is the Russian pair поручительство/гарантия. In Russian law, an individual or a legal entity may provide a поручительство, but only a bank can provide a гарантия. If you were translating into a general-language text such as a newspaper article, you would probably use "guarantee" for both in English. But when translating a contract or a court document, it is better to use "surety," an English term of art that is not very frequent in English, for "поручительство" and reserve "guarantee" for a bank guarantee. This helps avoid confusion for the lawyers who are the most likely readers and who will want to keep these concepts as separate in the English as they are in the source language, since the source-language version is almost always the prevailing version of the contract.

It does happen that a bilingual contract originally written in Russian has the English translation as the prevailing version of the contract, but this is a rare occurrence. If a contract originally drafted in Russian is governed by, say, English law, the lawyers will surely be bilingual, and it is their responsibility to make sure that the necessary English-jurisdiction terms are used in the English and that the Russian reflects the common-law terms. Introduction of common-law terms only in the English may mask changes that may need to be made to the original Russian to describe these terms.

I will take the time here to describe one frequent situation that can cause much confusion. One often encounters litigation in courts in England with Russian witnesses. They have an interview with English lawyers (probably with an interpreter or expressing themselves in limited English), and the English lawyer drafts a witness statement in exquisite legal English, which is then translated into Russian (often not very well), and the Russian then becomes the "original" witness statement. The Russian-speaking witness may sign this or amend the statement, and then a RU>EN translator is asked to "proofread" and certify the "translation of the Russian source into English." What is really required is a back-translation of the Russian into English, at translation rates, not "proofreading" rates. Based on the back-translation, the lawyer should then make sure the Russian and the English translation do not need to be modified. All I can say is beware of taking these jobs "proofreading" witness statements.

Another good example is the pair доля (in a limited liability company)/акция (in a joint-stock company). Both can be rendered as "share" in English, but it is more useful to use the awkward "participatory share" for доля and reserve "share" for "акция." Readers are more likely to be helped by avoiding the ambiguous use of "share" for two Russian-law concepts than they would be hurt by using the foreign-sounding "participatory share."

Another important issue is the need to keep the tone and register correct. You do not want to translate a common word in Russian that an educated layperson will understand with a precise term in English that only a lawyer would understand. Something can be awkward in English, but it should still be

intelligible to the layperson whenever possible. If a difficult word becomes crucial to a legal case, the lawyers can argue among themselves and in court over all the ways to translate it best in a specific context. We cannot resolve all these problems in advance. See the discussion of "распорядиться" below.

The following Glossary is focused on words that are problematic in the Russian > English direction. Rather than just give an alphabetical listing, we have focused on prioritizing the most frequently used and often misunderstood words, which are grouped together, and then giving an alphabetical listing of translations of difficult or obscure, but less frequent terms. We have further grouped the words into Contracts, Legal Concepts, and Institutions; Court Documents; and General Language Used in Legal Documents, again focusing on problem words.

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Contracts, Legal Concepts, Institutions

Important Groups		
пункт	clause item claim	in contracts, laws (**not "paragraph"**) in reports, court decisions, statements of claim, briefs, other lists in patents
абзац	paragraph	
статья	Article	capitalized in English
приложение	attachment appendix	to an email or other document to contracts, laws An "appendix" is an attachment that is often an integral part of the main document.
	annex	Another document, often a table. In UK, used like "appendix" is in the US.
	schedule	similar to annex, but usually in tabular form and containing numeric and date content
	exhibit enclosure	used for attachments to court documents to a letter
акт акт суда законодательный акт	statement judicial act act of law	Акт is most frequently used for a bilateral document signed between two parties to acknowledge something has happened, especially the transfer of real estate under lease (possession, not ownership), or the transfer of work that has been completed. For these uses, "statement" is most definitely preferred. "Deed" is used in English mainly for the transfer of ownership of real estate. "Certificate" is a bad choice that is often used. A certificate in English is a unilateral document issued by some authority, which is almost never the case with an акт. The cognate "act" can only be used in very specific, very formal circumstances, such as a "judicial act" or an "act of law."

	<u>Alternative 1</u>	The main thing here is to be consistent. Most lawyers seem to prefer Alternative 1, for two reasons. First, the English concept of "contract" has technical aspects not included in the Russian concept of a "договор." Second, контракт is almost always used in Russian only for foreign trade contracts, and so it makes sense to reserve "contract" for this. However, one could argue that Alternative 2 better, albeit imperfectly, reflects the legal essence of the words. Even if Alternative 2 seems better, there are so many who use Alternative 1 that switching seems problematic until a critical mass begins to use Alternative 2.
договорённость	understanding	
соглашение	agreement (or additional agreement)	
дополнительное соглашение	additional agreement (or addendum)	
договор	agreement	
контракт	contract	
	<u>Alternative 2</u>	
договорённость	understanding	
соглашение	agreement	
дополнительное соглашение	additional agreement (or addendum)	
договор	contract	
контракт	foreign trade contract	
купить/покупатель	buy/buyer	The last two, "acquire" and "alienate," are awkward, and many use buy/sell or transfer here. But the Russian lawyer could have used купить/продать or перевести if they had wanted here. "Acquire" and "alienate" are cases where, in legal documents, it is best to stick to the literal translation reflecting the Russian-law concept, even if the English is a bit awkward.
продать/продавец	sell/seller	
передать	transfer	
приобрести/приобретатель	acquire/acquirer (or acquiring party)	
отчуждать/отчуждатель	alienate/alienator (or alienating party)	
	relinquish possession (or ownership)	
счет	invoice	"Bill of lading' is used mostly in shipping, and it involves a transfer of ownership of the goods (unlike a накладная). It should only be used to translate the specific equivalent of коносамент.
счет-фактура	VAT invoice	
накладная/товарная накладная	packing/shipping invoice	
	shipping invoice	
товарно-транспортная накладная	waybill	
коносамент	bill of lading	
единоличный исполнительный орган	single-person executive body	Again, best to remain faithful and close to the Russian language terms to avoid ambiguity and confusion, even if they are awkward in English. "Director General" is used mainly with international organizations, not with commercial entities. Best to avoid "CEO" in technical legal documents, because it is a more varied concept legally, unlike the specific Russian legal concepts of единоличный исполнительный орган and генеральный директор. CEO should be used only in contexts like journalism or an annual report for the general public.
генеральный директор	general director	
коллегиальный исполнительный орган	collegial executive body	
правление	management board	
совет директоров	board of directors	
наблюдательный совет	supervisory board	
совещательный совет	advisory board	
поручительство/поручитель	surety/surety provider	non-bank
гарантия/гарант	guarantee/guarantor	only a bank can provide a гарантия under Russian law
доля	participatory share	in a Limited Liability Company
акция	share	in a Joint-Stock Company
вред/ущерб	harm/damage	keep them distinct
компенсация	compensation	Legalistic English uses "pay damages" to indicate compensation for damage, but "damages" is best avoided when translating from Russian to avoid ambiguity and stay closer to plain-language English. Best to just use "compensation" or "compensation for damage."
компенсация ущерба	compensation for damage	
возмещение	reimbursement	especially when referring to monetary reimbursement

Individual Items		
бюджет бюджетный федеральный бюджетный	state funds state-funded federally-funded	"budget" is a false friend here—best to avoid it
выборка	draw down	used with a loan/credit/credit line
гражданские обязанности гражданские права	civil-law obligations civil-law rights	hyphenated adjective is tricky here
доля/акция	participatory share/share	See explanation in the introduction above.
займ/кредит займодатель/кредитор	loan/credit lender/creditor	Don't use "loan" for кредит, even though "loan" is more common in English. This will help keep the Russian-law concepts distinct.
злоупотребление правом	abuse of a right	
Единый государственный реестр прав на недвижимое имущество и сделок и ним (ЕГРП)	unified state register of rights to real estate and related transactions	Note: "unified," not "united"
истечение срока давности	expiration of the period of limitations	
налоговое начисление	tax assessment	not a "tax charge"
обременение	encumbrance	
объект	property facility	"property" if it includes the land, and ownership is the focus "facility" if the building is the focus
предложение/принятие оферта/акцепт	offer/acceptance formal offer/formal acceptance	
оценка рыночной стоимости	appraisal valuation	"appraise" real estate and other property "value" a company
право собственности	ownership rights title	"rights" usually plural "title" usually only for registered property like real estate or a vehicle
притворный	sham	
протокол	minutes report	of a meeting of an investigation, notary examination
распоряжаться	exercise discretionary control over exercise full legal control over exercise complete discretionary control over dispose over exercise the right of disposition regarding this property	Распоряжаться turned out to be the word that generated the most discussion among the editors of this glossary. A big problem is that распоряжаться is often translated as "dispose of," which is definitely incorrect. "Dispose of" would be closer to избавляться, отделаться or расправляться—all meaning "to get rid of," which is only one of the possible aspects of control within the meaning of распоряжаться. The other problem is that распоряжаться often appears in a list of verbs, such as "Ни одна из Сторон не вправе переуступать, обременять залогом, вверять, передавать или иным образом распоряжаться настоящим Контрактом…" and one needs a verb or verbal phrase here to maintain a clear list. We settled on variations of "exercise control over" as the best translation. A bit wordy, but clear and fits acceptably into a list of verbs. However, reader beware: this usage has not been "battle tested." We think it will work in a broad range of contexts, but we have not been using this option long enough to be sure.

распоряжаться, *continued*		One of us previously used “dispose over,” which is more correct, but awkward and rather obscure. This is not just a RU>EN problem. DE>EN translators have the same problem with “verfügen,” which is an exact equivalent of распоряжаться. And indeed, the Germans do say “verfügen über.” We also consulted a German lawyer-linguist colleague, and he had as much trouble translating “verfügen” into English as we had translating распоряжаться. One could also use “have the right of disposition in regard to”—but this seems very unwieldy, obscure, and legalistic, unlike the Russian, which is a commonplace and understandable verb.
ревизионная комиссия аудитор	internal audit commission auditor or outside auditor	
смета	cost estimate or budget	
солидарный	joint and several	doublet in English
справка	information statement	
страховые вносы	insurance premium	
субъект Российской Федерации	(territorial) constituent entity of the Russian Federation	not “subject of the Russian Federation”
устав	charter articles of association (UK)	“Charter” is the general term for a corporate governance document granted by and registered with the state. Better to use this in US English, signaling the more extensive and “foreign” nature of a Russian устав. Various terms are used in various US states: “Articles of Association/Incorporation/ Organization.” In the US, this is a much more limited document that gives only bare-bones registration data, which is supplemented by by-laws for corporate governance, which need not be registered with the state. In the UK, “Articles of Association” are the equivalent of a Russian устав.
формула изобретения пункт формулы	set of claims of an invention claim of the set of claims	not “formula”
холдинг концерн	holding company group	English does not use “holding” alone; it usually uses “holding company.”

Court Documents

Important Groups		
решение	judgment (US)	final judicial act of a court of first instance (trial court)
	decision	a decision of the trial court that is not the final judicial act
постановление	decision or resolution	a decision or resolution of a corporate body, especially a general shareholders meeting
	decision	decision of an appellate court (not a resolution)
	resolution or order	a resolution or order of another government authority
определение	ruling	
приговор	judgment sentence	final judicial act in a **criminal** case the punishment in a **criminal** case
решение присяжных	verdict	only juries can issue verdicts
удовлетворить	grant	a motion, a petition, a claim in court, not "satisfy" or "refuse"
отказать	dismiss	
отменять	reverse	"reverse": a judgment, decision or ruling of a lower court;
	cancel	"cancel": a decision of an authority (such as a prosecutor, investigator, the tax authorities, the enforcement of a judicial act)
оставлять без изменения	uphold uphold in full	a judgment, decision or ruling of a lower court
истец	plaintiff (US) claimant (UK, US arbitration) complainant (UK—criminal law)	"Plaintiff" is the term used in civil cases in most English-speaking jurisdictions, the notable exception being England and Wales, where a plaintiff has, since the introduction of the Civil Procedure Rules in 1999, been known as a "claimant," but that term also has other meanings. In UK criminal law, the key complaining party is often called the "complainant."
заявитель	plaintiff (US), claimant (UK) appellant	
ответчик	defendant (US) respondent (UK civil law, US arbitration)	In the US, "claimant" is used in some civil-law cases, especially in divorces and arbitration. "Заявитель" may be used for a plaintiff in the trial court, but in an appeal, it is used to refer to the "appellant," which could be the plaintiff or the defendant. In criminal cases, the prosecutor brings the case against the "defendant."

обвиняемый обвинение	accused, defendant (criminal) charges (US) indictment (UK)	 In the US, only a grand jury can issue an indictment. Prosecutors or the police file charges. There are no grand juries in Russia, so the only context when you would use “indictment” to translate “обвинение” into US English is if US grand jury proceedings are being described in Russian.
заявление заявление исковое заявление	application report statement statement of claim	“Application” is the general meaning, but not the most common in legal usage. A заявление submitted to the police may be a “crime report.” One can file a “statement” with other authorities. An исковое заявление (often shortened to just заявление) submitted to a court is a “statement of claim.”
требование претензии	claim complaint	formal claim in court a formal complaint, but out of court, pre-trial
ходатайство	motion petition	A motion is a request to a court made after court proceedings have been initiated. A petition is a request to a court made before court proceedings have been initiated, or made to another governmental body.
допрос	question interrogate	A witness is usually questioned, not interrogated. An interrogation is an aggressive form of questioning, usually only reserved for suspects.
дознаватель следователь	questioning officer investigator	authorized to investigate low- and mid-level crimes authorized to investigate all crimes
несостоятельность банкротство наблюдение внешнее управление финансовое оздоровление финансовая реструктуризация санация конкурсное производство ликвидация прекращение статуса юридического лица	insolvency bankruptcy supervision external administration financial rehabilitation financial restructuring winding up (UK) liquidation proceedings dissolution	“Insolvency” is the financial condition where liabilities exceed assets. “Bankruptcy” is the judicial proceedings initiated when insolvency has been recognized, leading to either financial rehabilitation or liquidation. Both “rehabilitation” and “restructuring” can be used for санация (which comes from the German term Sanierung). “Winding up” is the cessation of business and distribution of assets, part of which is “liquidation,” the sale of assets to pay off liabilities. Конкурсное производство is always part of bankruptcy proceedings, unlike “winding up,” which can also be voluntary.
конкурсный управляющий	bankruptcy administrator insolvency practitioner (UK)	Note that a “receiver” has a much more specific meaning, related to Chapter 7 and Chapter 11 bankruptcies in the US. Its use differs in US and UK bankruptcy law, often connected to Debtor in Possession financing. There is a similar situation with “bankruptcy trustee,” which is connected to Chapter 7 and Chapter 13 bankruptcies in the US. Therefore, the more generic “bankruptcy administrator” or “insolvency practitioner” (UK) is used to convey the Russian-law concept, which has its own particularities.

Individual Items		
арбитражный суд	commercial court	“arbitrazh court” and “arbitration court” are best avoided unless the client requires it
в соучастии	as an accomplice	
виновные действия	culpable actions	
действуя согласно отведенной им преступной роли	performing the roles assigned to them in the crime	
заключение под стражу	detention	
избрать меру пресечения	apply a pre-trial restriction	
императивные нормы законодательства Российской Федерации	mandatory provisions of Russian law (or legislation)	
к уголовной ответственности не привлекался	has no criminal record	
коллегия	panel board	judicial “panel” “board” of a ministry
материалы дела	case record	
мера пресечения	pre-trial restriction	
наложить арест	place a lien	on property or funds under a court order not “arrest”
обоснованный	substantiated (or justified)	Not “reasonable.” When translating from English to Russian, “обоснованный” is often used to translate the common-law concept of “reasonable,” but that does not mean one should use “reasonable” to translate the Russian-law concept of “обоснованный.”
обратить в доход государства	confiscate	
отзыв на иск	statement of defense	
пленум	plenary panel	not “plenum” in English
подписка о невыезде	written pledge not to travel	
пособничество	aiding and abetting	usually a doublet in English
потерпевший	injured party	“Victim” should be reserved for жертва.
Признаки преступления признаки состава преступления	elements of a crime	
принять заявление на рассмотрение (судом)	accept a statement of claim for examination	by a court
принять уголовное дело к своему производству	accept a criminal case for proceedings	
суд первой инстанции	trial court court of first instance	Common law term vs. civil law. English will usually use “trial court,” unless the client prefers using civil law terms.
судебное разбирательство	court proceedings	

General Language Used in Legal Documents		
-ваемая продаваемая доля	being participatory share being sold	The key item here is the use of the past passive participle -ваемый, which is very often best rendered using a “being” construction.
в случае	if in case, in the case	“If” is usually better than “in case,” or “in case of,” but not always. Context is key here.
согласно в соответствии с	in accordance with under	Almost always instead of “according to.” “Pursuant to” is considered antiquated and legalistic, and legal stylists recommend avoiding it.
всероссийский	Russian national	not "All-Russia(n)"
груз	cargo freight	carried by ship or aircraft carried by land-rail or truck
данные	information data	non-numerical numerical, computerized
и	and or	This is tricky! Russian uses и in places where English requires “or,” especially in lists of requirements.
обязательный	mandatory	Not “compulsory,” which is “принудительный” in Russian.
позиция	item	when used in a list
порядок	procedures	usually plural in English
при этом	furthermore, moreover	almost always better than the other options listed in dictionaries; other options may be better in certain contexts
работа, работы	work	usually singular in English
рабочий день	business day workday	when referring to calendar days or the working hours of a company when referring to the length of an employee’s day
технологический	technical technological	usually “technical,” sometimes “technological”
товар продукт продукты	goods (usually plural) item of goods (if singular needed) product item of groceries groceries	Not “commodity,” which is a very specific type of goods, usually raw materials like oil, iron or wheat: “… a commodity is an economic good, usually a resource, that has full or substantial fungibility: that is, the market treats instances of the good as equivalent or nearly so with no regard to who produced them.”—Wikipedia Best to avoid using “product” for товар in order to be able to distinguish the two Russian words in English. Of course, one doesn’t find “groceries” very often in legal texts; it is included here just to recognize another common meaning of the word.
фонды	balance sheet funds targeted special reserves	A type of balance sheet liability that is a holdover from socialist accounting, when enterprise profits could be dedicated to specific projects, often social projects.

"Contract Language Categories: Russian versus English"

Presented by Eugenia Tietz-Sokolskaya

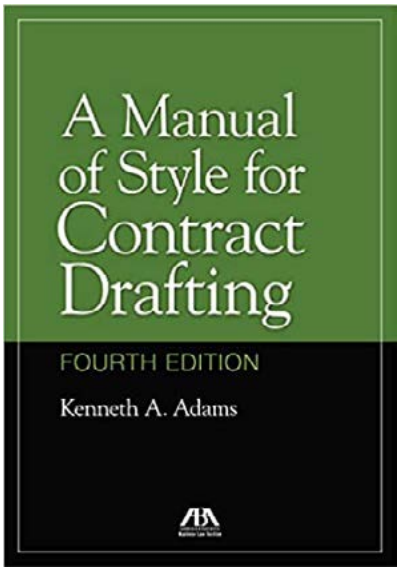
Reviewed by Elizabeth Adams

We showed up, we peered into our screens, and magic happened: T&I colleagues from around the world presented outstanding sessions that reminded us what we love about this job and offered tips on how to do it better. The sessions on legal translation were impressive, drawing attention to the critical role translators play in promoting plain language in the law. SLD Administrator Eugenia Tietz-Sokolskaya took one of the most important plain-language references for translators who work with contracts, Ken Adams' *Manual of Style for Contract Drafting,* and broke it down into a useful set of rules for conveying contracts between Russian and English.

While the *Manual of Style,* which first came out in 2005 and is now in its fourth edition, never mentions translation, it's an excellent reference work for legal translators who have clarity as their ultimate goal. Ken Adams (not a relative) has spent decades working to convince drafters to figure out what they want to say and then say it economically, instead of leaving it to the reader to decipher the text with tears of frustration. I bought my first copy around 2009 and was impressed to find a lawyer who thought like a translator.

Eugenia's explanation of the *Manual* focuses on its categories of contract language, a solid, well thought-out system for using verb structures consistently in English. The usefulness of this system is immediately apparent to translators working with Russian contracts, where every verb but the very first one (заключили) is likely to be in present tense. As she took her audience through each category, Eugenia stopped to explain the corresponding verb structures in Russian and highlight potential pitfalls. For example, вправе—which Adams would categorize as language of discretion—simply means "may," but it would be dangerous to translate не в праве as "may not," because this could be understood either as language of prohibition (must not) or as language of discretion (is not required to).

Verb structures like these are terms, and translators have to approach them with the same rigor they would use with Latinisms and terms of art. While Eugenia is not adamant that legal translators use Adams' preferred terms for each category, she emphasizes that we have to be consistent and be prepared to explain our choices.



Perhaps the most important point in the presentation—one Eugenia makes several times—is that each sentence in a contract is doing something, and that something is not magic. If you focus on identifying the category of contract language, you can render a clear translation without getting distracted by English arcana or losing your nerve when faced with pages of present-tense Russian.

Eugenia also pointed out that Adams differs from the other English legal usage guru, Bryan Garner, in his attitude toward "shall." While Garner thinks of "shall" as dangerous because drafters use it inconsistently to express both obligation and future action, Adams advocates using it consistently when an obligation is imposed on a party ("ABC Bank shall purchase the Shares of XYZ Bank from Ivanov."). Adams only uses "must" if the subject of the obligation is not a party ("This purchase and sale agreement must be registered by December 1, 2021.").

Toward the end of the presentation, Eugenia offers the promise that using a contract language system like the one in Adams' *Manual of Style* will help translators improve the drafting of the contracts they translate (or at least avoid adding ambiguity). That is an excellent goal and more than enough reason to go back and watch the presentation if you missed it in October.

"Patently Useful: Insider Knowledge Gleaned from Patent Attorneys"

Presented by Evelyn Garland

Reviewed by Steven McGrath

Few thoughts terrify legal translators more than having their words read out in court, the fate of the client and millions of dollars hanging upon them. The time has passed for clarification or correction, and the success or failure of the translator's efforts rests on a choice of words half- forgotten until the summons. What translator would risk the loss of professional reputation, or the threat of lawsuits, by having their work judged in this way? In a memorable presentation at ATA61, Evelyn Yan Garland shared her experience preparing herself for the hazardous and rewarding field of patent translation.

"In general, the more I translate in an area, the more comfortable I feel about doing it," the presentation began, "but not with patents. The more patent-related work I do…the more I feel I'm walking on thin ice."

Evelyn, who works between English and Chinese, has had the unique experience of dealing with the subject on both ends: translating some patents for initial submission to the US Patent and Trademark Office (USPTO) and then interpreting in court when others are challenged. In many cases, the validity or invalidity of a claim rests on narrow linguistic distinctions. Seeing this in person made a strong impression on Evelyn. "Until the final judgement, we do not know for sure if it's going to heaven or hell."

Where, then, should a patent translator seek salvation? For Evelyn, the path was clear: "I decided I would read what my clients read and hear what they hear, so that I could think like them and better serve them, but also better manage my own business risk." The wealth of sources in the presentation bears testament to this research. In one book on the subject, *Litigation-Proof Patents* (see the box accompanying this article for information about the sources mentioned), Evelyn found a list of common mistakes made by patent agents and drew upon this to point out several pitfalls a translator might stumble into.

One common pitfall is to translate two source terms into one target term. If this results in one term having two conflicting definitions, it may invalidate the patent due to a lack of clarity in the claims. Legal translators across many fields have heard that they should preserve subtle and consistent distinctions in terminology even when the contrast is not readily apparent, but this advice carries special weight when translating patents, since lawyers often hinge their challenges to them on narrow equivocation.

Frustrations arise with regard to claim term clarity in no small part because patents go through many rounds of editing by people with different preferences and priorities. What sounds fine to a technical specialist from a company or the patent office might still make red meat for lawyers. What, objectively, is a good patent? "If you asked a patent examiner, which I did," Evelyn explains, "you would get an answer like, 'Every patent that has been issued is a good patent, because it meets all the requirements we have here at the USPTO.' But, if you ask a patent attorney, you'll likely get a different answer."

Indeed, one expert cited by Evelyn, writing for the *World Intellectual Property Organization Magazine*, parallels this answer by saying, "There are, in fact, no 'bad' patents: just valid and invalid ones"—before going on to reveal that upwards of 90 percent of patents in many major portfolios are questionable.

So, if there is no consensus about what makes a "good" patent among the specialists who write, issue, and challenge them, how can patent translators assess the quality of their work? Evelyn sums up the essence of good patent translation in one word: "defensible." One hopes it will be defensible for the patent holders, but it must certainly be defensible for the translator. For a patent translation to be defensible, according to Evelyn, it must meet two criteria:

1. It does not add new weaknesses to the patent.
2. It puts the translator on solid ground to defend the translation.

And that brings us to another common patent-translation pitfall. Whereas signifying two source terms with one target term may compromise clarity, using two target terms for a single source term can lead to "defective parallelism," a mismatch between sections of the patent that can lead to it being declared invalid. This problem, too, arises in patents whether or not they have been translated. For example, US Patent #5,414,796 contains an independent method claim that reads, "A method of speech signal compression…" and an independent apparatus claim that reads, "An apparatus for compressing an acoustical

signal…" This lack of parallelism made the patent vulnerable to challenges. With patents, according to Evelyn, "Consistency is not a stylistic issue, it is a substantive issue."

A similar pitfall is the danger of creating an unnecessary limitation of claims in the written description. The technology covered by a patent may fall into broad categories or narrow subcategories. A lawyer may consider the weaknesses and limitations of broad vs. narrow claims, but for the translator, once again, the priority must be to avoid adding any new weaknesses to an already-written patent.

Evelyn presented a court case in which two parties had patents on an exhaust filter for internal combustion engines. The earlier patent covered use in, among other specific categories of vehicles, "boats." Ten years later, another company received a patent on a similar product for "ocean-going vessels," which led to a challenge. When a dispute involves distinctions of language, the judge cannot rely on anything so straightforward as a dictionary or common sense. People with practical knowledge of the industry in which the technology is used, whom the law refers to as "Persons of Ordinary Skill in the Art" (POSITAs), provide expert testimony on whether two words mean the same thing. Evelyn highlighted how one might research the way POSITAs use terminology on industry websites (for example, "7 Differences Between a Ship and a Boat" on the *Marine Insight* website). The opposing legal teams each brought in POSITAs with opposite points of view. In the end, the judge ruled as any layperson would, that an ocean-going vehicle must surely be a boat.

Patent translation requires that standard terminology be used properly, and failure to do so is a pitfall it shares with many other specializations. A translator should phrase claims using standard language, such as "comprising" for open-ended claims and "consisting (essentially) of" for closed claims, since other phrases may introduce ambiguities that diminish the value of the patent. The words "device" and "apparatus" are equivalent words in the opinion of many patent agents, and both are valid, but, as always, they must be used consistently.

The appropriately-named presentation *Patently Useful* offered many fascinating particulars of patent translation, but the biggest lessons reinforced skills that experienced legal translators should already have and which Evelyn has effectively reapplied to her specialization. Understand your clients, know what will be important to them in your translation, be diligent in research, and always be consistent. In other words, do what it takes to complete the job well. When you are sure you have done that (and you pay your insurance premiums), there is no need to fear your work being put to the test, not even in a court of law.

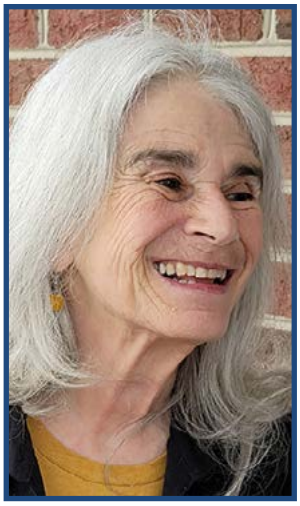
Steven McGrath is an ATA-certified Russian to English translator who received a master's degree from Lomonosov Moscow State University. He translates material in the humanities and social and natural sciences. Steven lives in Iowa City, Iowa and can be reached at steven@mcgrathtranslation.com (website: www.mcgrathtranslations.com).
He is currently serving as the SLD's Assistant Administrator.

Evelyn Garland wishes to acknowledge the people and resources that helped inform her presentation:

- *Litigation-Proof Patents: Avoiding the Most Common Patent Mistakes*, by Larry M. Goldstein (True Value Press: 2014)
- *True Patent Value: Defining Quality in Patents and Patent Portfolios*, by Larry M. Goldstein (True Value Press: 2013)
- "The Puzzle that is Patent Quality," WIPO Magazine: https://www.wipo.int/wipo_magazine/en/2015/04/article_0004.html
- Practicing Law Institute: Patent Fundamentals Bootcamp. Especially Michael Molano, Esq. and Marc Sockol, Esq.
- USPTO webinars: https://www.uspto.gov/about-us/events

SLAVFILE LITE: NOT BY WORD COUNT ALONE

Lydia Razran Stone



Dear Readers of *SlavFile* and this column: I have been *SlavFile*'s chief editor for more than 25 years. Although I do not plan to make this my last column or other contribution, I feel it is time to cede the editorship. My husband and I moved approximately a year ago to a smallish and vital retirement community. Even during Covid quarantine, which is now slowly ending, I have taken on a number of roles that I feel I am more fit to perform than editing ATA's Slavic Languages Division publication in this year of 2021. My 21st century Russian is deficient and my mastery of this century's translation technologies is even more so. For much of the current century, I have not been actively engaged in seeking remunerative translation work. I feel the editorship should go to someone who is less out of step with the real professional needs of the great majority of our readership. My dear friend and admired colleague Nora Favorov has agreed to assume this role for at least a year. I plan to remain on the editorial board and will continue writing columns, reviews and the like.

In honor of the legal theme of this issue, I have appended a Krylov courtroom drama. Although no interpreter is mentioned, it would seem clear that the deceased would have required one to plead his case in the language of the gods. This translation first appeared in *The Frogs Who Begged for a Tsar (and 61 other Russian fables)*, published in 2010 by Russian Life Books and available from them or on Amazon. As I have stated in this column before, my procedure for translating Krylov, in whose work line length, number of lines and rhyme scheme vary considerably, is to allow myself the same freedom, even if I produce a translation significantly shorter or, as in this case, longer than the original.

ВЕЛЬМОЖА

Какой-то, в древности, Вельможа
С богато убранного ложа
Отправился в страну, где царствует Плутон.
Сказать простее,— умер он;
И так, как встарь велось, в аду на суд явился.
Тотчас допрос ему: «Чем был ты? где родился?» —
«Родился в Персии, а чином был сатрап;
Но так как, живучи, я был здоровьем слаб,
То сам я областью не правил,
А все дела секретарю оставил».—
«Что ж делал ты?» — «Пил, ел и спал,
Да всё подписывал, что он ни подавал».—
«Скорей же в рай его!» — «Как! где же справедливость?»
Меркурий тут вскричал, забывши всю учтивость.
«Эх, братец!» отвечал Эак:
«Не знаешь дела ты никак.
Не видишь разве ты? Покойник — был дурак!
Что, если бы с такою властью
Взялся он за дела, к несчастью?
Ведь погубил бы целый край!..
И ты б там слез не обобрался!
Затем-то и попал он в рай,
Что за дела не принимался».

Вчера я был в суде и видел там судью:
Ну, так и кажется, что быть ему в раю!

THE VIP

In ancient times an ailing VIP
Rose from his bed of luxury
And traveled to Tsar Pluto's land
I mean he died, you understand.
That country's surely no resort.
Our traveler had to face a court
Before they'd let him in.
Therein the judges asked his name,
His place of birth and who his father'd been.
And then the crucial question came:
They asked what post he'd held.
"I ruled a Persian province for the king
Although, because I was not well,
Not well at all, I hardly did a thing.
But left such matters to my aide
And he's the one who all my rulings made."
"But all that time, what did you do?"
"Ate, drank and slept and signed a few
Official papers, all unread."
"To Paradise with him," the chief judge said.
Then someone cried, "I must object,
This man did nothing worth respect.
So why is he rewarded?"
The judge then said, "It's very plain
That you're new here, so I'll explain
Just why this verdict was accorded.
You surely see this man's a fool
And quite incapable of rule.
So if to rule his province he'd endeavored
It might have been destroyed forever.
To paradise we send a few
As a reward for what they failed to do."

Last night I met a judge who tried to rule
And wished him gone to paradise, the fool.

The Terminological and Emotional Challenges of Immigration Court Interpreting

Olga Shostachuk

Hello! My name is Moxie (formerly Maxim). I am a male-to-female transgender woman from Russia, who used to be married and has two kids. After my transition, I joined the LGBTI movement and was detained by the Russian authorities. I was placed in a cell with male criminals. I was beaten up and tortured every day by the authorities and raped, physically and verbally abused, and humiliated by my cellmates. They urinated on me and made me drink their urine. On some occasions, I would wake up in the morning with "Die, freak" written in feces on my chest.

People like Moxie are everywhere. They come from all over the world, bringing with them their cultures and languages and their traumas. According to the United Nations High Commissioner for Refugees (UNHCR), asylum claims in industrialized countries have increased 20 percent since 2010. More than 500,000 survivors of torture have fled their countries of origin and are now living in the United States. According to the most recent UNHCR statistics, at least 79.5 million people around the world have been forced to flee their homes. Among them are nearly 26 million refugees, around half of whom are under 18. Millions of stateless people have been denied a nationality and lack access to basic rights, such as education, health care, employment, and freedom of movement.

Mona Baker noted in her *In Other Words: A Coursebook on Translation* (Routledge, 1992) that 85 percent of asylum seekers and refugees have been tortured in their home countries. In 2011, *The Guardian* reported that 48 women were being raped every hour in the Democratic Republic of the Congo, the "rape capital" of the world. The United States continues to receive the most asylum seekers and refugees. According to statistics from the U.S. Department of Justice (DOJ) and U.S. Office of Immigration, a total of 29,916 persons were admitted to the United States as refugees during 2019. Leading home countries for refugees admitted during this period were the Democratic Republic of the Congo, Burma, and Ukraine. An additional 46,508 individuals were granted asylum during 2019, including 27,643 who were granted asylum ***affirmatively*** by the Department of Homeland Security (DHS) and 18,865 who were granted asylum ***defensively*** by the DOJ. (I will discuss those two terms and many others below.)

Most of the asylum seekers, refugees, stateless people, victims of trafficking, unaccompanied or separated children or migrants of any status need an interpreter and/or a translator to help them with their linguistic and cultural needs, and sometimes even to navigate a new society. Therefore, the role of a translator and/or interpreter goes far beyond the simple replacement of words. The interpreter and/or translator must ensure that communication among the parties is effective, smooth, and impartial. This is easier said than done, though, since the law is always convoluted and complex, and when attorneys say, "Immigration law is a different animal," they mean it. Thus, for interpreters to function effectively in the field of immigration, they have to have a solid grounding in the law and its terminology and keep up with the changes brought by every new policy, regulation, or law.

Interpreting is a demanding occupation fraught with a variety of challenges, such as the complex linguistic, environmental, interpersonal, and intrapersonal factors noted by Robyn Dean and Robert Pollard in their writings, as well as intrinsic and extraneous cognitive loads. I will try to address some of these factors in this article and make some suggestions on how to handle them. Linguistic challenges pertain to expressive communication among the participants and are self-explanatory yet central, since they have a direct bearing on effective communication. Environmental challenges are those related to settings in which interpreters or translators work: for example, ambient temperature or noise, the availability of a notepad, etc. Interpersonal ones include the accents or idiosyncrasies of the participants or the power differentials and dynamics of the interaction. Intrapersonal challenges could include the interpreter or translator's current physical, emotional, or psychological state, resulting from, for example, too much (or not enough) coffee, lack of sleep, an uncomfortable temperature in the room, etc.

To cope with linguistic challenges, Roman Jakobson, in his "On Linguistic Aspects of Translation," proposed three ways to interpret a verbal sign: intralingual translation, or *rewording*; interlingual translation, or *translation proper;* and intersemiotic translation, or *transmutation*. During

intralingual translation, verbal signs are interpreted by means of other signs in the same language. That is, a word belonging to a particular language is replaced by another word from the same language. In the process of interlingual translation, by contrast, a verbal sign in one language is replaced with another sign from a different language.

In order to see how Jakobson's approach can be applied in interpreting and/or translation, let us take a close look at some terms central to the field of immigration. Under immigration law, ***parole*** differs in meaning from the same term in the criminal justice context, where it means the conditional release of prisoners before they complete their sentences. In the immigration context, however***, parole*** facilitates certain individuals' entry into, and permission to temporarily remain in, the United States. Under U.S. immigration law, the DHS Secretary has discretion to grant ***parole*** to certain noncitizens, allowing them to enter or remain in the United States for specific reasons. For example, individuals outside the United States who may be inadmissible or otherwise ineligible for admission may be granted ***temporary humanitarian or significant public benefit parole***, which would allow them to be paroled into the United States. As if this were not complicated enough, an ***advanced parole*** in immigration law is a document required for certain aliens to reenter the United States after traveling abroad without an immigrant or nonimmigrant visa. The examples above illustrate the importance of a strong intralingual check to avoid disaster.

Another consequential term is ***aging out***, whose meaning is hard to guess unless you do your intralingual research. The term pertains to children and the fact that they lose their immigration benefits because they turn 21 before being approved for ***lawful permanent resident (LPR) status*** (in other words, before they become a ***green card holder***) and can no longer be considered children for immigration purposes. Under the current law, when a U.S. citizen parent sponsors a child under the age of 21 to become a lawful permanent resident (by submitting what is known as an ***immigration petition***), the child is considered an immediate relative and can complete the legalization process without being subject to a backlog and years of wait time. However, once the child turns 21, he or she ***ages out*** and is no longer considered a child for immigration purposes. The potential consequences of ***aging out*** include a longer wait time before the foreign national can complete the legalization process, or that he or she can no longer benefit from the original ***immigration petition***. This also often means that these applicants will have to file a new petition or application, wait even longer to get a green card, or may no longer be eligible for a green card.

A distinction is always made between a ***refugee***, an ***asylee***, and an ***asylum seeker***. Title 8 Sections 1101 (a)(42) and 1157 of the United States Code (USC) defines a ***refugee*** as someone who has suffered past persecution or has a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, and who has crossed the national border and is unable or unwilling to return to his or her home country. A ***refugee*** is expected to petition the U.S. government from outside the country to be accepted into the United States.

According to Title 8 USC Section 1158, an ***asylum seeker*** must meet the same criteria for persecution but has already arrived in the United States when he or she files the petition or has arrived at a U.S. port of entry (POE). Upon approval of such a petition either ***affirmatively*** or ***defensively***, an ***asylum seeker*** receives ***asylum*** status and becomes an ***asylee***, eligible to file a petition to become a ***permanent resident*** (***green card holder***) a year after he or she receives an ***asylum status***.

Even if you never work as an interpreter in an immigration setting but instead work in the criminal or civil courts, you will definitely encounter some immigration verbiage in criminal and civil proceedings; thus, understanding the terms is key. For example, the Ohio Rights Announcement for Criminal and Traffic Arraignments has a clause that states the following:

> "If you are not a citizen of the United States, you are also informed that a conviction of an offense or offenses to which you offer a guilty or no contest plea may have the consequences of ***deportation, removal, rescission, or exclusion from admission to the United States, or denial of naturalization*** pursuant to the laws of the United States."

What is the difference between ***deportation***, ***removal***, and ***exclusion***, to take just three of these terms? "Don't they mean the same thing?" you might ask. Just as in real estate, location, location, location is watchword—for us it's research, research, research!

The laws pertaining to removal proceedings can be confusing and often change, so let's try to find some clarity in all this. Prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), ***exclusion*** was the formal term for denial

Source: https://www.clipartmax.com/middle/m2i8A0d3N4Z5A0G6_united-states-of-america-american-history-clip-art/

of an alien's entry into the United States. The decision to exclude an alien was made by an immigration judge after an exclusion hearing. Since April 1, 1997, the process of adjudicating ***inadmissibility*** may take place in either an ***expedited removal process*** or in ***removal proceedings*** before an immigration judge.

Both ***deportation*** and ***removal proceedings*** apply to people who are physically present in the United States and have been found by an immigration officer, inspector, or Border Patrol agent to have committed an act that rendered them deportable from this country (e.g., criminal offense, terrorist activity, inadmissible at time of entry/adjustment, false claim to U.S. citizenship, previously deported, etc.).

Exclusion proceedings apply only to people arriving at a POE—airport or sea landing zone, or other entry or departure route to or from the United States. This is a formal proceeding in which a person's admissibility to the United States is determined. If a person is determined to be inadmissible to the United States, the person may be excluded from entry and forced to return to his or her last foreign departure point or removed to the home country.

Following the enactment of IIRAIRA, ***deportation*** and ***exclusion proceedings*** have been combined into one unified proceeding known as ***removal***. When people are found to be deportable from the United States, they may be removed and forced to return to their last foreign departure point, removed to their home country (sometimes at U.S. government expense), or ordered removed and held in detention indefinitely in cases where the person's home country will not accept removed persons (e.g., Cuba, Vietnam, etc.).

What is ***removal*** anyway? Again, an intralingual approach is needed. *Black's Law Dictionary* (9th ed.), for example, defines ***removal*** as the transfer of a person or thing from one place or position to another or the transfer of a case from one court to another. This definition is close but still not precisely applicable to immigration. According to the Immigration and Nationality Act (INA) §240; 8 C.F.R. §1003 et seq.; INA §238(b); and 8 USC §1229a, ***removal*** is an administrative hearing process in which the U.S. government seeks to remove a noncitizen from the United States by establishing removability.

Another interesting situation involves ***admissibility*** or ***inadmissibility*** to the United States. When a person arrives at a U.S. POE, she or he is subject to ***inspection, admission***, and ***entry***. The concept of an ***admission*** to the United States is critical to U.S. immigration law because it can determine whether an alien is eligible for ***immigration relief***, such as ***adjustment of status*** or a ***waiver***. It can also determine the procedural rules that may apply in ***removal proceedings*** and even the ***grounds for removal*** to which a person may be subject. In fact, the concept is so important that the term ***admission***—or a variation of it—appears hundreds of times throughout the Immigration and Nationality Act and various immigration regulations, according to an American Immigration Council Practice Advisory.

Customs and Border Protection (CBP) officers inspect (question) all applicants for admission (be they U.S. citizens, lawful permanent residents, nonimmigrant visitors, or those with another status), review their paperwork, and then decide whether the person should be allowed to enter the United States. The officers may also ***waive*** a person ***in/through*** (also known as ***wave in/through*** or a ***Quilantan*** Entry) a POE, an act that also constitutes ***inspection*** and ***admission*** under the law, even if the inspecting officer asks no questions. If the officers ***waive in/through*** a noncitizen without valid entry documents, the noncitizen is considered ***inspected*** and ***admitted***, but he or she does not gain lawful immigrant or nonimmigrant status following this admission. Thus,

upon ***admission***, the individual is present in the United States without lawful status and subject to removal under the deportability charge specified in INA § 237(a)(1)(A) (***inadmissible at the time of entry***).

Nonetheless, because such a person was considered ***inspected*** and ***admitted***, he or she may be eligible for immigration benefits in the future. For example, if that person subsequently marries a U.S. citizen or has a U.S. citizen child over 21, he or she would satisfy the ***inspected and admitted*** requirement for adjustment of status under INA § 245(a). ***Entering*** the United States, however, does not mean that a person has been ***inspected*** and ***admitted***. People can ***enter*** while being ***inadmissible*** (for example, if they are waived in, smuggled in, or otherwise not inspected).

All of the above examples clearly show the challenges of translating or interpreting in an immigration setting, especially if the translator or interpreter is unfamiliar with the law and terminology and has not done the necessary intralingual homework. Challenges may also arise, even when an interpreter is familiar with the law and terminology, if the interpretation is done in the simultaneous mode where speed and accuracy are of the essence. Most of the time no word-for-word equivalences exist, and an interpreter must use descriptive definitions.

Let's take the ***affirmative*** vs. ***defensive asylum application***, mentioned elsewhere in this article, as an example. The former is an asylum application that is filed with the DHS Asylum Office by an alien not in ***removal proceedings***. If that office declines to grant an ***affirmative asylum application***, ***removal proceedings*** may be initiated. In that case, the ***asylum application*** is referred to an immigration court for a hearing, and a respondent or his or her representative may file a ***defensive asylum application*** to forestall removal from the United States. In other words, ***defensive asylum*** is used as a defense mechanism against removal. Thus, for the three English words ***affirmative asylum application***, we may have as many as 10 to 15 words in Russian (one of my working languages) to describe the same concept, and by the time the interpreter utters all of them, the judge or officer may be 50 words ahead of the interpreter, who then needs to catch up.

In addition to the linguistic challenges, various other stressors can be anticipated during interpreting encounters—those associated with transfer and production skills and those associated with the emotional impact of the sessions on the translator or interpreter. The former are visible immediately and might have various causes: the interpreter is not ready for this professional challenge, the interpreter did not sleep well, the interpreter lacks the linguistic skills needed in this particular domain, or environmental stressors are present during the encounter, such as noise, temperature, etc. The latter might be the result of the former (noise in the courtroom interferes with and diminishes the interpreter's production skills, causing the interpreter added stress) or the result of exposure over an extended period of time to survivor trauma.

Everyday exposure to traumatic narratives like Moxie's, multiplied by the number of horror stories interpreters must deal with on a daily basis (rarely does an interpreter have only one case per day or per week), causes considerable distress and can be damaging if not properly addressed. (The same can be said of translators who work in this field.) In fact, interpreting for trauma survivors, refugee resettlement and migration procedures, asylum seekers, mental health evaluations, sexual and domestic abuse survivors, medical exams and interviews, and forensic psychosocial assessments, to name just a few situations, can be regarded as "extreme interpreting," as Marjory Bancroft et al. put it in their *Breaking the Silence: Interpreting for Victim Services*. Survivors who have suffered torture, humiliation, oppression, persecution, and untold losses use descriptions and narratives that evoke extreme shock and horror. Their vocabulary and emotional language create pressure and conjure dreadful feelings, yet the interpreter and/or translator must deliver professional and effective service, taking into account cultural considerations, the burden of confidentiality, language and dialect variations, and clarification of boundaries, to name just a few factors.

Interpreters as well as translators are seen as mediators or negotiators of meaning among discursive partners, all with their own social and political agenda; their social roles differ depending on the players involved in the particular social, political, legal, or medical discourse. Interpreters and/or translators are not simply bystanders or machines, windows, bridges, or telephones; they can be self-victims, unconsciously sacrificing their well-being in an attempt to compensate for the pain of those for whom they are interpreting and/or translating because they feel empathically attuned with them, as Michael Harvey noted in his "The Hazard of Empathy." In line with Holly Mikkelson, Melanie Metzger, Claudia Angelelli, and others, Cecilia Wadensjo, in her *Interpreting as Interaction*, has noted that

interpreters—by bringing their own cultural values and societal norms to the encounter, whether intentionally or unintentionally—actively shape the development and outcome of the mediated encounter and cannot remain immune to the interaction of social factors. The same can also be attributed to translators.

At the same time, all the other players bring their social and cultural values to the table as well and in turn influence the interpreter and/or translator, because the mediating encounter is a socially constructed context—an amalgam of cultural, ideological, political, and social values, and a whirlpool of personal backstories. If these personal histories include torture, violence, physical, verbal, or psychological abuse, emotional stress and despair, the interpreters become "sin eaters," a metaphor that James Janik has applied to law enforcement, social workers, or emergency responders—people who find themselves psychologically traumatized as a result of their work and service to others if these experiences are not processed, detoxified, or addressed.

To summarize, interpreters are not neutral channels through which the mediation encounter proceeds. Quite the contrary, interpreters act as social agents imbued with their own cultural, political, religious, and ideological values. Given the emotions involved and the power dynamics among (a) the disempowered, oppressed, violated survivor who is usually in no position to choose or change anything; (b) the provider, judge, and attorney, who bring power as well as their emotions to the encounter; and (c) the interpreter, who also brings emotions and values to the table and can consciously or unconsciously affect the outcome of the encounter, interpreting encounters can be very taxing. Thus, self-care is critical for a translator or interpreter to offset and compensate for the physical and psychological stress and the emotional strain of "just another day at the office."

A list of resources:

- http://www.justice.gov/eoir/
- https://www.justice.gov/eoir/eoir-policy-manual
- http://www.dhs.gov/xlibrary/assets/dhs-orgchart.pdf
- https://www.ice.gov
- https://www.un.org/en/universal-declaration-human-rights/index.html
- https://www.hcch.net/en/instruments/conventions
- https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/
- https://www.uscis.gov/tools/glossary
- https://www.echr.coe.int/Documents/COURTalks_Asyl_Talk_UKR.PDF
- https://www.unhcr.org/ua/11846-2
- https://www.unhcr.org/ua/wp-content/uploads/sites/38/2018/08/2018-08-UNHCR-UKRAINE-Refugee-and-Asylum-Seekers-Update-FINAL-UA.pdf
- Kurzban, I. (2020). *Immigration Law Sourcebook* (17th ed.). American Immigration Law Foundation

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LEGAL? WHAT'S THAT?

Michael Kapitonoff

Don't get me wrong—I am a very private person. To borrow from a legendary Russian rock balladeer of my generation, ordinarily, I "do not write articles, nor send telegrams." So when a long-time friend, colleague, and client called and asked me to write and share my thoughts on my craft of legal translation, I felt flattered. I also immediately thought of all those numerous newbie questions—the "how to's" and "what should I's," with an occasional "But why, SpongeBob?" thrown in—that I have seen over the years posted on different platforms, on and offline. I knew right away that was what I was going to write about. But first, a disclaimer. I am a native speaker of Russian, a life-long speaker of English and a resident (and proud citizen) of the United States since the time I was still a young man (which I am resoundingly not anymore). My regular MO is Russian, Ukrainian or, to a lesser extent, French into American English. If you strongly believe in what the book says, spare yourself the aggravation and read no further. If you care to know what worked and what didn't for this particular nonnative little piggy, soldier on. Most of what I am about to say will likely apply to other language pairs and subject matter areas as well. So here goes.

1. DEVELOP YOUR WRITING SKILLS FIRST

Legal English, by definition, is a specific subset of literary English—"literary" being the operative word here. If you cannot produce coherent, grammatically correct, and stylistically appropriate copy in your target language, you are probably not going to make a successful legal translator or, come to think of it, any other kind, unless you intend to spend your entire career translating vital statistics records or "software strings." How does one develop writing proficiency? Well, by doing, of course, i.e., by reading and writing. The more, the better. Your reading need not be legal (this will come later), and it doesn't matter what you write. Stories, essays, love letters—anything goes, as long as you're not typing with your thumbs and provided that your sentences are five words or longer. If you can't find proper readership to give you feedback on your writings, hire an editor; just kidding, that would be the job for the agencies lining up to contract your services later on. For now, just have a friend look it over. If you fancy yourself an *auteur* and write your own fiction, that's even better. Then it even becomes kind of fun. Oh, and no, you do not have to go to school for it, "take a course," or "get a certificate."

2. IT ALL STARTS WITH AN INTEREST

I have eventually developed into a legal and financial translator because I had a keen interest in business, investment management, and law. On the other hand, I could never quite tell a nut from a bolt and still can't. All things technical scared me silly. I am the kind of guy who never looks under the hood of his car if he can avoid it. I'd rather be making dinner than putting together that godawful IKEA furniture (I have a wife for that, thank you very much). I don't do technical. But perhaps you do. Maybe you are good at math and science, or simply like working with your hands. Perhaps you should follow your natural inclinations then and become a technical, rather than legal, translator.

Once you develop an interest, you begin reading up on it. For me, personally, my narrow specialization in international commercial arbitration started with reading case law, a surprising amount of which is available free on the net. Man, those stories read better than crime novels! For you it may well be something else—legal articles, perhaps, or a law school textbook or two. As you go along, you also begin to notice the specific ways certain things are said in certain contexts, because, make no mistake, things are said differently in different languages, and not only in terms of the actual words used but also in how these words are put together. Some of my more learned colleagues call this "collocation" and assign numerical indexes to things. I call it commonly accepted usage, and in my book, accepted usage always rules. It is also the hardest part of achieving that natural feel and "flow" in the final product. Learning grammar is a piece of cake. Learning usage is not, and it takes forever—more often than not, your entire professional life.

3. LEGAL DOES NOT MEAN LITERAL OR VERBATIM

It is a common misconception that legal texts must be translated verbatim—or else. To be sure, one can envision certain limited circumstances under which your lawyer client would want to know what the original text says word for word. Sure thing, oblige them then. However, most clients prefer to read smooth copy in the target language that adequately renders what the original text says—put in whatever

words you, the consummate professional that you are, have chosen to use for the purpose. No one likes to wonder what "withdraw from the guarantee" might mean, all the more so since there is actually an accepted term for the purpose in English. It's called "void the warranty."

4. LEGAL IS NOT EVEN WHAT MOST OF US THINK IT IS

Doing notarized birth certificates isn't "legal"—you can teach a monkey do that. Standard commercial contracts are not "legal" either. Or rather, they are, sort of, but that's not what I'd call "yummy legal." Now then, when two private whales sue each other in London for an amount larger than that involved in the never-ending spat between Apple and Samsung, or when an arbitral tribunal in Europe makes a ridiculously outsized award against a sovereign government to a private party, and the lawyers for both sides start bombarding each other and the courts with hundreds of pages of submissions arguing what the arbitration clause did say, should have said, or should be construed to have said—now, that's when my juices start flowing. This is also where the real money is in this business. But you have to have skills for that, and, if my experience is any indication, few of those who claim they can do the job actually can. Google Translate can't either. Hence the relatively high rates those who really know their way around such juicy stuff can command.

5. YOUR BIRTHPLACE ISN'T A SENTENCE

The last thing I want to do is reignite that perennial jihad over who can, may, or should translate from what into what. To be sure, there is an underlying core reason for every generalization, and yes, it makes much more sense for most of us to translate into the language we've been born with and use in our everyday lives. Yet, had I been paid a dollar, or even a Russian ruble for every iniquity I have had to correct after bona fide "native" speakers over the years, I would be a much richer man now. On the other hand, I have had the pleasure of meeting and corresponding with native Russians whose written English was amazingly rich and natural—to the point of being too perfect to have come from a native. Some of these individuals have never even been to a legitimate English-speaking country—not even as tourists. Besides, these days the times are a-changing so much that it is not always easy to tell what you are. What if your father is from Mars and mother from Venus (hehe)? What if you left your native country at a young enough age and learned everything you know professionally in a language that is technically not your own? What if your nouveau riche Russian parents shipped you out of the country to attend an international school elsewhere and you never came back—or even if you did, you can no longer tell a Moskvitch from a Lada? Methinks, from the client's standpoint, your personal story matters precious little. What does matter is whether you can do the job. That is something that becomes abundantly clear from the first half page you translate or write.

6. YOUR SO-CALLED CREDENTIALS MATTER NOT

Read my lips: no one gives a hoot about what your diploma says or what "certificates" you have hanging on your wall—at least not in this blessed country of ours. The best and most respectable operators I know in this business have never been trained as translators. None of them has a Master's in Translation (silently rolling my eyes). The best deals are made on a (often virtual) handshake, and if the client then comes back again, you know you've passed muster. But this only lets you get your foot in the door. You are only as good as the last job you did, and once you are out, you are out.

I could keep going and going about this as if I were the Energizer Bunny, but my word counter here is telling me I will now need to go back and squeeze some verbiage out to make this piece fit its intended slot. So that's what I am going to do, folks. Anyway, I think I have said enough to earn me plenty of dirty looks. Cheers, and thank you for smoking. I mean, reading.☺

In his past life, Michael may have been a cowboy. In this one, he was born and raised in Odessa, Ukraine when the Iron Curtain was still holding up strong. He started speaking and reading English at the ripe old age of six, and it only went down from there. These days—two college degrees, one moderately successful business, and half a lifetime spent in Brooklyn, NY later—he is a hardcore freelancer and constant traveler who spends most of his time in and around the Mediterranean. He can be reached at MKapitonoff@gmail.com.