Professional secrecy: Until the bitter end?

Danielle Gree considers some of the fundamental issues, and picks up on points made by Maitre Pierre Lambert, a lawyer at the Brussels bar, when he spoke at a conference titled "The Sworn Translator"

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Imagine that at the meeting where you are interpreting your clients are planning the physical removal of a troublesome partner. Or they are plotting a complex and obscure system for laundering hot money. To what extent are you duty-bound as a professional interpreter to abide by professional secrecy? In these troubled times, when any merchant or travel agent may be inadvertently involved in political sleaze and be called to testify in court, it is worthwhile considering exactly what the interpreter's duty of professional secrecy entails. This question was in fact asked by one of our Eastern European colleagues at the seminar "AIIC and the enlargement of the EU" held in Brussels 9-10 March 2001. It may be useful for us to consider some of the essentials, based on notes taken from Maitre Pierre Lambert's paper given at a conference on "The Sworn Translator" organised by the Belgian Society of Translators, Interpreters and Philologists held on 25th February 1989.

The modern concept of professional secrecy appears in the Napoleonic Criminal Code of 1810; for the first time the law punishes violation of professional secrecy (Art 458): "Should physicians, surgeons, health officers, pharmacists, midwives, and all others who through their status or profession be in possession of information confided to them reveal such secrets, they shall be punished with imprisonment of 8 days to six months and a fine of 100 to 150 francs - unless called to testify as a witness in a court of law or compelled by a court or the law to divulge the secret."

Since 1810 the criminal law has provided for sanctions against those disclosing information held in confidence. However, the law only mentions the medical professions; there is no reference to either clergymen or even bankers, as they only have a duty of discretion. Although banking secrecy exists, breaking it does not result in a legal penalty. Therefore, the interpreter's circumstances chiefly depend on whose words he or she has to translate. If he works for a doctor and patient, the interpreter is clearly subject to the same rules as the doctor. It is therefore important to establish whether the interpreter's work is connected to the activity of someone who is subject to professional secrecy rules, to rules of discretion or a duty of non-disclosure.

These three categories are defined as follows:

- Those bound by professional secrecy may face a criminal sanction if they infringe (cf Art 458 of the Napoleonic Criminal Code);
- Those bound by a rule of discretion would simply have to pay damages to the person whose secret they had disclosed;
- Those who are only subject to a duty of non-disclosure (judges and public servants) would only face disciplinary measures. (This is called a devoir de réserve in French, and it is an
obligation on a judge or civil servant to refrain from any actions or expressing any opinion incompatible with his functions or loyalty to the state.)

Can the "duty of secrecy" be used to refuse to answer a question from a court, an examining magistrate or a law enforcement agency? You can only avoid the obligation to speak if you are covered by professional secrecy as defined in criminal law (for example if you have interpreted between a doctor and patient).

However, the duty to disclose information is a basic legal principle. There are exemptions for people who are subject to professional secrecy. Here the interpreter is caught between two conflicting duties: he must make his statement to the court yet must respect the professional secrecy by which he is bound. The solution is ultimately a matter of conscience. Nonetheless, there are no punitive sanctions for revealing professional secrets.

The law contains two exemptions to professional secrecy: when testifying as a witness in a court of law and when there is a statutory duty to reveal confidential information (say, a doctor having to report contagious diseases). Case law has shown that the principle of medical confidence may yield to overriding interests, such as life, truth, honour, and public safety. The citizen bears a moral responsibility to tell law enforcement agencies the whereabouts of persons who have committed a crime and who are liable to offend again and put the public at risk. Maitre Lambert therefore concludes that the concept of absolute professional secrecy has been abandoned, and that we now have to weigh the pros and the cons and, as in so many other areas, obey the dictates of our conscience.

Some of us have recently interpreted at meetings organised by various international institutions about combating money laundering. When the Financial Action Task Force on Money Laundering was set up, the duties and responsibilities of bankers, lawyers, and Financial Intelligence Units were discussed and defined. One frequently hears people from the anti-money laundering bodies, complain about the role played by some bankers or lawyers who, when asked to set up complex financial systems designed to hide the origin of ill-gotten money, see no reason to file a "suspicious transaction report" with the appropriate Financial Intelligence Unit. Whether you're a lawyer, a banker or a Conference Interpreter - you must listen to the voice of your own conscience.

The professional conference interpreter is scrupulous in abiding by his obligation of secrecy, particularly as regards industrial and trade secrets. However, one is never under an obligation to conceal criminal acts. The professional conference interpreter is able to make this distinction.

1) Mœ Pierre Lambert, Member of the Brussels Bar Association - Symposium « The Sworn Translator », 02/25/89 Belgian Society of Translators, Interpreters and Philologists.
2) This article may not necessarily apply to anglo-saxon law.

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