Book Review

Legal interpreting at a turning point
La interpretación en el ámbito judicial en un momento de cambio

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Legal interpreting at a turning point
La interpretación en el ámbito judicial en un momento de cambio
María Jesús Blasco Mayor & Maribel del Pozo Triviño (eds.) (2015)
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Those of us, interpreter educators, academics and interpreters alike who have been campaigning for quality and professionalisation in interpreting for the past twenty years or so might be tempted to view the title of this excellent volume with some caution. There have been many occasions when we had thought that a "turning point" had been reached, only to be bitterly disappointed, especially in the United Kingdom. New laws, regulations or EU Directives have been passed in the UK and then ignored or subverted, agreements have been made and subsequently abandoned, professional standards have been devised and then rendered redundant because of prevailing political ideologies. It was thus with a rather heavy heart that we began reading.

In their eponymous chapter Blasco Mayor and Triviño describe the current state of legal interpreting Spain where there is a complete lack of awareness of interpreting amongst the judiciary, no national interpreting register, and poor testing procedures with no check on interpreting ability for so-called "sworn translators/interpreters". They illustrate how the government has abrogated its responsibility for cultivating quality legal interpreting by outsourcing the service to commercial companies "interested in hiring interpreters at ridiculously low rates in order to increase their profit…persons working for them as interpreters do not bother to get training which is costly in terms of time and money" (pages 60–61). This is a scenario all too familiar here in the UK since the

Ministry of Justice did the same in 2012, with disastrous results for defendants, victims, witnesses and interpreters alike. Because of this, the cause of quality interpreting was set back twenty years overnight. The authors have put forward an excellent case for the establishment of a national register of public service interpreters in Spain, but as we have seen in the UK, this by itself is not sufficient to ensure quality of interpreting, as many interpreted events still end up being mediated by non-professionals who are not registered. The authors recommend that "the [Spanish] Ministry [of Justice] should not only be responsible for the provision of this service but also for the accreditation process" (page 52) and that the government should "encourage and financially support the persons" to take interpreting courses in languages of lesser diffusion and that they should do this in conjunction with academic experts and other interested professionals. Even if this commendable ideal were to be implemented, the whole project is always vulnerable to political whim. In a European climate of economic austerity and mass migration, any imperative for the state to regulate legal interpreting is often over-ridden by the commercial imperative to have regard to the bottom line.

Hertog's chapter "Directive 2010/64/EU of the European Parliament and of the Council on the Right to Interpretation and Translation in Criminal Proceedings" provides us with a masterly survey of the progress of issues of interpreting and translation within the European Union, and, specifically, how the Directive on interpreting and translation in criminal proceedings came about. There can be little doubt that the principles of harmonising arrangements for legal interpreting across EU borders are sound ones, but Hertog does not underestimate the challenges that countries will face in their implementation. This chapter is surely set to become a point of reference for campaigners and researchers alike.

Corsellis sees a "community of practice" of legal interpreters evolving, and to some extent this is true. However, we know from previous work by Hale (who is also one of the contributors to this volume) that communities of practice have to be informed by theories of language, discourse and linguistics to rule out the possibility of interpreting intuitively, rather than operating on an informed basis thoroughly underpinned by theory and an understanding of how language works (Hale, 2007). As Hale has pointed out, unless interpreter communities of practice have access to theories of interpreting they will simply interpret as they see fit. So the missing dimension in any community of practice is contact with academic researchers (for instance, we still hear interpreters professing themselves to be "conduits" – a concept which was comprehensively ditched twenty years ago). We disagree with Corsellis that "the logic [for outsourcing] is understandable" (page 110) (in our view, public services are not commodities which can be bought and sold for profit). Despite this statement, however, Corsellis is to be commended for her unequivocal assertion that for-profit commercial interpreting companies hinder and ultimately prevent professionalisation of interpreting by weakening professional accountability and by "taking on a multiplicity of roles, such as being both employer and regulatory body. Overall slippage of standards takes place swiftly and is difficult to recover from" (page 110). This is a crucial point, and as the UK government embarks upon a new round of procurement (where doubtless yet another multinational company will be the preferred bidder) it is one which any Ministry of Justice would do well to bear in mind. However, only an optimist could say that matters are "improving" as she claims in her conclusion.

Wallace describes yet another chaotic situation in the US, where there is no nationally held register of public service interpreters, and where 28 US states (in common with many other countries) have no publicly searchable lists of legal interpreters and no national criteria for training. She describes various admirable initiatives for remedying the situation, including the establishment of a new register. However, the differentiation into tiers by certification/qualification is something which has been attempted in the UK both before (during the era of the National Register) and after outsourcing. There is evidence to show that service providers have little regard for levels of registration and certification, and take for granted the competence of the service. In addition, the companies to whom interpreting services are outsourced tend to ignore such differentiations (called "tiers" in the UK) and are often content to send any "interpreter" who answers their call. Where this chapter excels is in the discussion and explanation of the concept of "market disorder", a term first coined by Tseng (1992). Wallace goes on to quote Aequitas authors Grollmann *et al.* (2001) who maintain that there should be an agreement to use only interpreters who appear on the national register, a recommendation which we wholly endorse. In the UK we once had something called a National Agreement, which had just such a stipulation. It has now been bypassed, a largely disregarded by-product of the fashion for outsourcing in 2012.

Andjelic's analysis of the current unsatisfactory state of affairs regarding court interpreting in Montenegro is patiently and carefully detailed in French. The proposals made by the author in section 6 seem sensible and based on verifiable facts regarding Montenegrin legislation, EU Directive 2010/64 and personal reflection. The author states that the Montenegrin language is linguistically identical to that of neighbouring countries (Bosnia-Herzegovina, Croatia, Serbia) so interpreters from these other jurisdictions might be deemed sufficiently qualified to be recruited for interpreting in Montenegrin, despite their lack of awareness of the legal framework. The chapter makes important points relating to Montenegro, the 47th member of the Council of Europe, which appears nevertheless, with regard to legal interpreting and translation, to lack:

- Coherent and consistent terminology, especially a distinction between the terms 'interpreting' and 'translation' in the legal sphere. Paragraphs 4.2 and 5.1.1 elaborate on making the differentiation quite obvious by using different terms in Montenegrin.
- Quality control, code of conduct, CPD and disciplinary procedures for professional interpreters/translators.
- Training for potential interpreters/translators.
- Tests for/checks on linguistic competence.
- Written test of legal knowledge for translators and interpreters.

It is a pity for English language readers that the footnotes and bibliography are in a language which will probably be unfamiliar. The author has, however, been diligent and thorough in detailing the present inadequacies and steps which need to be taken if Montenegro wants to progress with its accession into the European Union. It is in the EU of today and tomorrow where accurate and faithful interpreting and translation will play a vital role in the 'right to be understood' of so many disparate nations.

Perhaps any change for the better in public service interpreting will come from the judiciary itself, who, after all, have the power to ensure the smooth and effective functioning of the courtroom in terms of communication and protect the rights of the non-

English speaking defendant. Some of the loudest voices who have protested against the outsourcing arrangements here in the UK have belonged to judges, lawyers and magistrates. The chapter by Hale is particularly useful and practical. It tackles the lack of awareness of interpreting issues in the judiciary head on with a detailed description of her workshop on how to work effectively with interpreters. This extremely well-thought-out 90-minute workshop is targeted at members of the judiciary in Australia, with five stimulating sections devoted to the following topics. First Hale establishes the audience's expectations and experiences of interpreters (in our view a most fruitful activity; when expectations are revisited at the end of such a workshop, the participants can measure for themselves how far they have travelled in terms of awareness). In the second section, a written excerpt of a hearing over which a magistrate is presiding is displayed. The magistrate's speech is presented as confusing, as it is not clear whom s/he is addressing (the interpreter or the defendant). It would be a straightforward matter for any of us who want to use the format of Hale's workshop to substitute their own examples of similarly confusing judicial instructions. The points to be elicited through this activity are the differences between translation and interpreting and the impossibility of interpreting word for word. The next section is devoted to linguistic theory which leads to a discussion about language in context and cultural assumptions. The fourth is devoted to debates about interpreter accuracy and the fifth offers practical guidance on working effectively with interpreters. The evaluations of the participants demonstrate that the workshop was very well-received, and it seems to have had tangible results for the better treatment of interpreters themselves. Hale gives us all hope for the future, but adds the caveat that raising awareness among the judiciary will not be sufficient in itself to improve the quality of court interpreting. We would go so far as to say that the judiciary is a very good place to start, since only judges and magistrates have the powers to enforce good practice in their courts and governments seem generally more inclined to listen to judges than to interpreters.

In the chapter which follows, the practice of outsourcing interpreting services to private for-profit companies is held up to scrutiny and found to be wanting. Claudia Angelleli provides a fascinating and disturbing account of a telephone interpreter-mediated interview between two Border Patrol guards on the US side of the Mexican border and a monolingual Spanish speaking male who was subsequently arrested, suspected of having smuggled drugs across the border in his lorry. She provides us with a short review of the most relevant literature about how information can be accessed, blocked or constructed by speakers of a language other than that of the court and how defendants' rights can be misinterpreted (a frequent occurrence in the UK because many interpreters appear to have no prepared translation to carry with them to which they can refer) with the result that any testimony may be excluded from proceedings. Angelleli also discusses the difficulties and problems of telephone interpreting, and illustrates how the telephone interpreter in question misunderstood a vital part of the interview because she was not able to see the body language of the suspect. As one of the authors of this review has studied interpreted prison video link in detail, we were particularly interested to read that Angelleli considers that telephone interpreting leads to an increased use of third person by the interpreter, a tendency frequently noted when observing lawyers' consultations via video link with their clients in prison. Angelleli shows how catastrophic these misunderstandings were for the defendant concerned, who voluntarily crossed

the border into the US as soon as he became aware that someone was going to load his truck with illegal substances, having previously spoken to a US agent who had made an arrangement with him that he should come straight to him after crossing the border. His aim was therefore to alert the Border Agents of the situation and to seek their help and protection. Through a series of serious interpreter-generated misunderstandings, including failure to use the correct intonation, the driver is arrested and spends two months in prison, only to be set free on appeal, having lost his right to work as a driver across the border. Jurors in this case only saw the English version of the phone interview transcription, whereas Angelleli believes that expert transcribers and translators should be used to first transcribe the foreign language script then translate it. Only then can a direct comparison be made between the utterances in the two languages and a proper judgement of the facts be undertaken. Worst of all, commercial companies to whom telephone interpreting is outsourced in the US tend to use unqualified and untrained interpreters for these interviews. Angelleli highlights the considerable gaps in competent interpreting provision at the Mexican/US border, and again, blame can be fairly and squarely laid at the door of the prevailing fashion of outsourcing services to commercial companies, whose only interest is making a profit. As Angelleli says, multilingualism is the norm in modern society; the judiciary had better get used to it!

Soriano writes about impartiality in police interpreting, and is a trained conference interpreter. She is evidently aware of the challenges and the ethical demands of working in this context. However, the chapter has not greatly advanced the understanding of public service interpreting; the analysis of five interpreted sessions is not really enough to constitute a serious study, as the author rarely moves out of the sphere of anecdote.

Ng, on the other hand, in a fascinating chapter, shows how the Hong Kong bilingual courtroom is unlike most others. This is because of the dominance of the English language, a legacy from the colonial era. However, most of the witnesses and defendants appearing in court nowadays (as well as the onlookers) are Cantonese-speaking. Ng adapts Bell's model of audience roles to show the complexity of interaction in the HK courtroom (Bell, 1984). For example, one of its most unusual features is the presence of a large number of bilingual court personnel (judges and lawyers) who are competent speakers of both Cantonese and English. So the renditions of interpreters into Cantonese can be accessed, criticised and exploited by these bilingual participants, and are frequently the cause of disputes by counsel, even when they are not the direct addressees of the rendition (in this volume, see Hale's assertion in this volume that bilingual court personnel often overestimate their own second language ability). Bell's Audience Design theory needs to be reconfigured to take account of interpreter-mediated events, especially those which take place in the bilingual courtroom, and Ng has succeeded in making us re-think these configurations in a bilingual context. What is particularly interesting is her recommendation for the use of team interpreting and simultaneous interpreting equipment so that both *chuchotage* and consecutive techniques can be used in appropriate situations. In this way, all those present in the courtroom would be able to access the speakers' utterances as well as the judge's interventions in English. Of course, we need to consider what relevance this has to other, more typical bilingual courtrooms. In the UK the layout of courtrooms and acoustics are often so unfavourable for an interpreter (they have no electronic transmission equipment) that they can sometimes neither hear nor see speakers properly, and are often are too timid to alert the court to this fact. Working

in pairs and the use of equipment for simultaneous interpreting would go a long way to reducing mental fatigue and ensuring good communication, particularly in long trials which may proceed for many days or even weeks.

Finally, Creezee, Burn and Gailani consider the considerable challenges of providing authentic teaching materials for a multilingual cohort of interpreters, something that is of great relevance to those of us who are interpreter educators and especially to those who have a range of speakers of languages of lesser diffusion within our classes. It is well known, as the authors point out, that trainee interpreters have particular difficulties with courtroom question types, often failing to understand how they can inadvertently subvert lawyers' rhetoric by not interpreting them properly, or by omitting the question frame. The challenge for interpreter educators is to be as creative as possible with materials that are freely available on the internet, and the authors' idea of creating blanks in YouTube postings to allow trainees to interpret prior to receiving feedback from assessors is a creative one which is likely to yield fruitful results. However, we would have liked more information about the length of each clip (the clips appeared to be no longer available when we attempted to retrieve them). To be meaningful clips need to replicate as closely as possible the sometimes lengthy question and answer sequences in the courtroom. However, we thoroughly endorse their "situated learning" approach and concur with the authors that "teachers should create a scaffold for learning and gradually allow students to safely construct their knowledge through practice" (page 275). After all, within a short period of time trainees will need to learn how to monitor their own output, as well as be trusted, competent and completely independent. Practice like this is one step away from role plays with a fully staffed courtroom in simulation.

We began this review with a heavy heart, and it is perhaps notable that out of a total of ten articles, two of the authors explore the causes or effects of poor quality public service interpreting or its lack of regulation, while four of the authors discuss (to a greater or lesser extent) the damage caused by outsourcing. As this latter phenomenon now dominates most aspects of public service interpreting (especially in the UK and Europe), this research emphasis seems set to continue. The volume as a whole, however, is a valuable compendium of research, both positive and negative, about various aspects of public service interpreting. In our view, it presents a balanced, accurate and up-to-date picture of the field. Whilst Hale, Hertog, Ng, Creezee *et al.* and other doughty researchers continue to uplift us with new approaches to research, training and regulation, we await events in the field with bated breath.

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