

Interpreters and the legal system (1994, Sydney, Federation Press)

By Kathy Laster and Veronica Taylor

Reviewed by Graeme Orr*

Translators and Interpreters

This is an intriguing study of the role of interpreters in the Australian legal system, because in addition to comprehensively describing the legal and professional context in which interpreters work, it also offers a re-conceptualisation of that role.

Part way through the book, I was struck by the self-conscious use of ‘*sic*’ by the authors following a quoted reference to interpreters as ‘translators’. Clearly everyday language distinguishes between ‘interpreting’ and ‘translating’. ‘Translating’ is pre-eminently the rendering of documents and written texts into another language; ‘interpreting’ is archetypically the immediate translation of spoken words. But I wondered if there was not more to the distinction than that.

Weekley’s etymological dictionary being handy (in both senses of the word), I soon learnt that ‘interpret’ harkens back to the Latin for agent or translator, with possible origins in the idea of one who helped make a bargain - the ‘pret’ suffix suggests ‘price’. ‘Translate’, however, originally meant ‘to bear across’. The interpreter then was one who acted as a go-between, helping to strike a bargain, but who remained allied to one party. The translator, perhaps, was more interested in the lofty task of capturing and carrying some idealised meaning.

Messing about in roots can be fun, but it can both reveal and mislead. James Boyd White in *Justice as Translation* claims that translation and interpretation have much in common, their central difference being that “translation offers itself as a kind of substitute for the original and undertakes to have an analogous form” whereas an interpretation does not (University of

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Chicago Press, 1990, at 236). I suggest that the difference between the terms lay somewhere else. A translator's chief task is to render an original work into a tongue to be understood by others: she focuses on imitating and capturing the spirit and flavour of the author, rather than concentrating on the intended audience. An interpreter, on the other hand, is more centrally part of a two-way process of communication between an utterer and an immediate and known audience.

Therein lies the chief lesson of Laster and Taylor's provoking book: the interpreter in a legal context is much more than a wordsmith engaged in a scientific (or even poetic) search for the very best words to convey a witness's intention and desires. The interpreter, as re-conceptualised in the authors' cumbersome but illuminating phrase, should be a two-way 'communication facilitator'.

Communication Facilitation

Lawyers, and indeed many interpreters, see the primary task of a legal interpreter to render a witness's evidence swiftly and exactly into English, for the benefit of the court - and similarly to map the court proceedings as neatly as possible into the witness's (or party's) own language. This vision of the interpreter's role is understandable. For the lawyer or judge, the ideal interpreter is invisible; they wish the proceedings to unfold *as if* the non-English speaker (NESB person is the abbreviated jargon) were proficient in English. The interpretive setting remains a legal one with legal outcomes, so the paramount concerns are the law's concerns, rather than those of ethnic sociology or comparative linguistics. Many interpreters, keen to entrench and enhance professionalism in their occupation, also embrace this view. As the authors point out, incidents of unprofessional mistranslation and even evidence falsification in the past damaged the standing of interpreters. By emphasising the more clinical aspects of their role, interpreters can gain the acceptance and respect that comes to professions whose chief role is the excellent performance of some circumscribed and uncommon skill.

However the authors of this book repeatedly search beneath the surface of this picture of interpreting to create a broader understanding of the profession. Lawyers, we are reminded, have long been guilty of treating interpreting as a sub-ordinate profession, the needs of which are subsumed to the needs of the law. To a certain extent this is inevitable and perhaps desirable. Given that

legal interpreting is more specialised, demanding and responsible than everyday interpreting, there is a need to specialise the education, accreditation and practice of its better exponents. We are likely to see a sub-branch of inte

preters who will practise exclusively in legal settings such as courts, tribunals, solicitors' offices and police interview rooms. Further, the widespread move since the 1980s to contracting out has inevitably seen a more customer or user-oriented profession. When courts and lawyers pay by the hour for services, they naturally want interpreters who will sub-ordinate their vocation to the demands of the legal milieu.

Specialisation and contracting-out aside, is there an alternative to the sub-ordinate view of interpreting? The authors believe there is, and outline it for us.

When law treats interpreting as a craft concerned only with outcomes - ie. a seamless, dictionary-accurate transcribing of certain words into their 'equivalent' in a target language - it treats interpreting as an idealised and mechanical act, without recognising the social and human dimensions of the practice. Yet it is these variables that are least able to be predicted or handled by the application of known rules or techniques. The authors dub this view of the interpreter as that of a 'mere conduit'. I would liken it to the phrase book view of languages: the simplistic notion that one can transliterate a word, phrase or sentence by consulting a glossary, without knowing the subtleties of the full context in which the utterance is made.

Consider the interpreter who is from a small language community, of little social status, called in to interpret for a defendant on criminal charges. Is it not inevitable that the client will latch on to the interpreter as more than a cipher or scribe? It would be unethical for the interpreter to take the client under her wing, but probably inhumane to not do so. In which case, what are the chances that confidences will pass to the interpreter that the police would like to hear? Yet ostracising the client will not just risk antagonising the client against the interpreter as well as the criminal process: it may also deny the interpreter access to important contextual information about the client without which the interpreter will be more prone to misinterpretation.

Through all of this, the authors do not pretend that the issues are anything but complex. Interpreters must still, first and foremost, strive to render communication as true as possible. But this goal will usually require them to

act as more than grammatical computer programmes. They will also often have to step into the NESB client's shoes to appreciate their perspective. Without that, they will not necessarily be able to give true voice to the client. They will also be called on to honestly explain to the court the ambiguities of translation, and sometimes to supply lawyers with the sort of cultural background without which the misconstruction of strict translations may occur. Occasionally then, as the authors note, the interpreter will have to transcend her role as 'language expert' and act as an aid to community professionals, an advocate for NESB people, and as a cultural bridge. The interpreter cannot aspire to complete invisibility.

Conversely, without a rounded understanding of both the legal institutions involved, and more particularly of the background of the case in question, the interpreter will not necessarily be able to fulfil the other half of her role: to ensure that the client understands the proceedings in which he is enmeshed.

A Three-Dimensional Work

Above, I have tried to distil the essential insight of this book, as it would appear to a generalist reader. There is much more besides. The authors have taken their extensive research and experience in the realm of legal interpretation practice and theory, and gathered together a seemingly comprehensive collection of material from legislative, case-based, international, governmental and private organisational sources. The book covers topics as diverse as professional accountability and ethics, the history of interpreting in Australia, the contrasting demands of interpreting in police custody and in civil trials, educational and accreditational aspects of the profession, and of course the quintessentially legal question of the right to an interpreter.

There is a growing body of case law, as well as legislative and international human rights material relevant to the dual questions of who has a right to an interpreter and who has a duty to provide one. A realist might cynically suggest that both these questions collapse into the pragmatic one of cost. A paradox is evident: the more professional interpreting becomes, the more it will cost, and hence the less room there will be in governmental, court and private budgets to afford it. There are no easy answers to economic questions such as this.

However for all the breadth and political nous of the authors, they do not seem to raise or anticipate this argument: if interpreting is both costly and always second best to mono-lingual dialogue (as it is for both the legal system and the NESB client), then why not develop prophylactic policies that ensure that all migrants (if not visitors) receive quality, intensive English language education shortly after arrival? If this smacks of a conservative approach to multiculturalism, it could be combined with a drive to enhance the bilingualism of the legal profession, to ensure that more lawyers and judges spring from non-English speaking backgrounds, and that lawyers learn other languages not just to enhance their standing in the commercial markets of Asia, but also to serve this country's diverse communities. (There may be side benefits to this latter pipe-dream as well. Ethical enhancement and improved expression are likely to follow from the cultural and linguistic enrichment of lawyers that widespread bilingualism would bring.)

The content and style of this book contrasts dramatically with another recent, and similar, local title: Ludmilla Robinson's *Handbook for Legal Interpreters* (Sydney, Law Book Company, 1994). Robinson's book is a straightforward primer, of practical interest to interpreters and social workers whose work involves them with migrants who have legal problems. That book is essentially a manual, with a central focus on explaining the legal system to non-lawyers. Laster and Taylor's work, however, is much more three-dimensional and challenging. It embraces political and sociological concerns, draws on jurisprudence, and serves as a scholarly overview of the legal interpreting profession in the past, the present and for the future.