

Memoirs of a Court Interpreter

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Recently we have been hearing expressions of growing concern about the ability of Ireland's court system to deal with users-defendants, witnesses, victims or plaintiffs-with limited or no English. Mass immigration has brought tens of thousands of people from legal systems that are different to ours, speaking different languages, and having different experiences of the law and of the police. It seems fair to say that Irish society has devoted little reflection to the myriad problems thrown up by this influx. It may therefore be instructive to seek to learn from the experience of the United States, where such issues have been confronted for decades.

It is a long tradition in Western law, and indeed in the legal codes of many other societies, that everyone should have equal access to the courts and that a person has a right to be informed of the nature and cause of a criminal accusation. In the United States, the right of equal access is embodied in the 14th Amendment to the US Constitution. The Sixth Amendment also enshrines the right to be confronted with witnesses, to be present during legal proceedings, and to have the assistance of counsel. Though the country has always had a large population of speakers of languages other than English-six states now have more than a million non-English speakers - it is striking how recent is the realisation that such persons' rights may be prejudiced if provision is not made for them. Indeed, state and federal law much more carefully delineates the obligations to provide legal services to deaf people than it does to non-English speakers.

Obviously, the right to confront adverse witnesses cannot be exercised if one does not know what these witnesses are saying. The right to be present at all crucial stages of the proceedings is not fulfilled by mere bodily presence. The 'presence' must be conscious, that is to say the person must be aware of what is going on. In this context, we sometimes overlook the fact that most interlocutions in the courtroom do not directly involve the defendant - they are between native speakers of English - judge, police, witnesses, attorney. Further, the legal system, and hence the need for interpretation, extends far beyond the four walls of the courthouse. For the right of access to counsel to have any meaning, the defendant must have effective communication with counsel during pre-trial preparation as well as throughout the trial. The defendant must understand counsel, and counsel must understand client. It is quite tenable to cast the constitutional net even wider, to the point of including proper access to interpretation in the kinds of services supplied by court support personnel such as police, probation officers, clerks, bailiffs, receptionists and so forth. Ancillary services are as integral to the administration of justice as is what goes on within the courtroom itself. For instance, long before they set foot in a US courtroom, Hispanics run the risk of having the police label them as using an alias when what has happened is merely that confusion has arisen between one or other of the Hispanic's *apellidos*. Let us take a name such as Juan López García. I have heard a policeman saying "Well which is it? You said your name was García, now you're saying it's López." Police and Probation Officers sometimes rely on fellow prisoners to interpret when conducting interviews or relaying information in county jails. In the case of Spanish, I have known a lot of officers who fancied themselves as "bilingual", when the reality was they relied on a mere smattering of

"street Spanish" (jail Spanish, more accurately) to communicate with prisoners. It is not unknown for prisoners to have their probation privileges revoked for noncompliance, very often due to misunderstanding of what the conditions of probation were. The results of interviews of this nature are usually written up in a report, and it is notoriously difficult to catch and correct errors in such documents.

Courtroom interpretation should obviously be as efficient and unobtrusive as possible; the proceedings should be interrupted as little as possible for interpretations to take place, and it is vital to obviate any bad interpretation or confusion, if for no other reason than to avoid giving grounds for an appeal or retrial. The US federal government has become relatively diligent in addressing these questions. A national Court Interpreters Board and certification process exists, which administers an examination for those seeking certification. Passing rates on this exam tend to be quite low, partly because standards are high, and partly because a lot of unqualified people take the exam. Indeed, many "bilinguals" are surprised, even angry when they find themselves failing. They do not realise that the kind of discourse in the second language that is required for court interpretation goes well beyond that which is learnt in the typical bilingual home in the US. In the case of Spanish in the US, for example, speakers of the language who have grown up in the US rarely have had opportunities to develop full competence in their mother tongue, to acquire the richer vocabulary and master the range of registers required for court work. They are very at home with the language of family, friends and neighbourhood, perhaps, but totally unprepared for the formal registers and abstract concepts they need to dominate as part of their repertoire for court work. This refers as much to their mastery of English as to their command of the foreign language.

It is common in US court interpreting to think in terms of four different modes: simultaneous, consecutive, summary, and sight translation. The consecutive mode is most common in the US courts system and is the one specified by Congress in the 1978 Court Interpreters Act. The interpretation is provided during short pauses in the proceedings, where the speaker

stops and permits what he has been saying to be rendered into the other language. Simultaneous mode is generally preferred at the defense counsel table, where the proceedings are being explained to the defendant. In this case the interpreter whispers a real time version of what is being said. An important point to remember is that the language of all court records in the United States is English. No record is kept of what was said in the non-English language. This applies to all forms of interpretation. What the interpreter says in English is what is recorded, in utterances be they from defendant or witness; the original is quite ephemeral and lost forever. Indeed, in a case in Massachusetts it was ruled that a juror who understands the source language must disregard his understanding of it and count as evidence only what is supplied in English by the interpreter, even when he knows or considers the interpretation to be flawed.

A third required skill for interpreters is the ability to give summaries or condensed versions of the testimony that has been given. This is commonly found in civil cases, divorces and such, where precise word-for-word equivalence may not be considered vital. Apart from interpreting, the court interpreter is also occasionally called on to perform at-sight translations of written documents - depositions, contracts, divorces etc. (Duenas Gonzalez and Vasquez, 1994).

Clearly, as can be seen from this listing of duties, it is not enough for the interpreter to be bilingual. She (a majority of court interpreters are women) must know both source and target languages, standard as well as dialects. The interpreter must have mastered the characteristics and peculiarities of legal terminology, as well as being aware of general legal procedures and appreciating judicial and cultural differences between foreign country and host. Roy (1990) gives an example which alerts us to how language errors can produce legal errors. A restaurant owner was accused of income tax fraud in the US. The incident began when an undercover agent approached this man, a native speaker of Greek, and offered to "fix" his taxes. The man agreed, and this became the basis of the case against him. However, the accused's attorney argued successfully in court that "fix" did not have the connotation of

illegality or dishonesty in Greek which it has for the native speaker of American English. Another, more terminological example comes in the phrase notary public, a very minor legal figure in the American system. In some Hispanic countries the *notario público* has much wider duties than his counterpart in the U.S. The interpreter needs to know these things. Personality-wise, she must operate well under pressure. She will seldom have the opportunity to consult a colleague or dictionary, nor time to dwell on any possible ambiguities in the source or target. If she is to come near to furnishing "legal equivalence", she must control a large number of language registers, from the informal, perhaps even slang of a witness or defendant, to the sometimes abstract or pompous utterances of judge or counsel. In my own case I remember the effort needed to master the seemingly inexhaustible store of Spanish words relating to the drug trade and crime generally. Many of the terms are regional, so one must learn Mexican argot, Colombian argot, Cuban etc. These rarely, if ever, appear in published dictionaries, so interpreters tend to maintain their own word-lists and even exchange them with colleagues. Indeed it could be argued that because the interpreter has to deal with such a wide and unpredictable range of language registers, her work is more challenging than say a United Nations interpreter, who needs only dominate the formal register appropriate to high diplomacy. Ideally, she should seek to fulfill the concept of "conservation" (rendering no more nor no less than what was said in the non-English language) through paralinguistic as well as linguistic elements, such as pauses, self-correction, even emotion, following a middle course between excessive literalness on the one side and excessive accommodation to the target language on the other. A high level of general education is required. Charrow and Charrow, who measured the comprehension of judges' instructions to English-speaking jurors, found that the average juror understood only slightly more than half of the essential ideas. Note that these jurors were *native speakers of English*. Eugène Brière found that many Americans who are arrested do not know enough English to understand the reading of the Miranda rights ("You have a right to remain silent etc...").

Again I should stress that this applies to *native speakers of English*.

Since the interpreter may be the only person in court who understands both languages, she can have an extraordinary, even dangerous degree of autonomy and freedom from scrutiny. Indeed the lack of monitoring within the court was for a long time paralleled throughout the profession as a whole. There was little supervision of interpreters as a body, no hierarchy of responsibility, no career structure, and inadequate procedures for dealing with the incompetent. Salaries were low, and educational levels were unimpressive. Much of the work was done by casual, *per diem* staff, and these people usually came from agencies, with no quality control save the agencies' recommendation. For a long time there existed an attitude that interpretation is a clerical, not a professional skill. It was seen as facilitating the defendant or perhaps the court, not as a service to the entire community. Interpreters were sometimes asked to do clerical non-language work, or even work in languages in which they were not competent. This problem of 'language-family' interpretation has yet to be fully eradicated. In my case, though claiming no formal training in Italian I was once called on to give an English version of an Italian legal document. I was able to give a fairly presentable translation, largely because of the language's similarity to Spanish, my own specialization. Unfortunately this led to my being called on to "help out" with Italian on several subsequent occasions, including once being asked to interpret spoken Italian, a task for which I was totally unqualified. Other language specialists will tell the same story - a Russian interpreter being asked to work with Polish etc.

The major qualification for the job tends to be experience. The quality of experience, however, is very uneven, and can even be damaging, since long, unmonitored experience reinforces substandard practices. In one study, three experts in Spanish-English court interpreting evaluated the quality of interpreting provided by forty-two persons in the trial courts. Only seven of these met or exceeded what was defined as a minimally acceptable level of proficiency. In another study, the investigators judged that

perhaps half of the cases reviewed gave evidence of one or more interpreting errors that actually or potentially affected the trial outcome (Hewitt 1995).

Apart from linguistic mistakes, procedural errors are quite common, sometimes the fault of the interpreter, sometimes the fault of the system itself. Carlos Astiz (1996) who surveyed court officials, found that many-including interpreters-expected the interpreter to "interpret" not just what is said, but the whole legal/criminal system, for example by explaining plea options or likely sentencing arrangements etc. In Astiz's words, judges and attorneys see defendants "as alien to the criminal justice system, indeed as alien to them". Astiz also reported that interpreters often felt they simplify court proceedings for individuals, who, in the interpreters' judgment, would not understand an accurate rendering. They also took it on themselves to modify the speech of non-English speakers when, in their opinion, it was uncouth or offensive. Astiz argues that this kind of "babysitting" role for interpreters, however well meaning, contradicts the expectations of accuracy and neutrality which are essential to their task. Worse, an interpreter may take improper initiatives such as volunteering information above and beyond what she has heard from a witness, in a misguided desire to assist either the defendant or the court in general. She may "simplify" or "explain" or "add to", even to the degree of prompting witnesses. Sometimes she may offer gratuitous legal advice to the defendant. Indeed, on more than one occasion I myself felt a little uncomfortable with what I considered to be unacceptable pressure from the Prosecution to aid them in convincing the defendant to accept a plea bargain. Often, since both interpreter and defendant share the same culture, a certain bond grows between them, for one is articulating the thoughts of the other. This can even make a defendant or witness offer information, perhaps self-incriminating, that he might otherwise not have disclosed to the court. It is of course the duty of the interpreter to render this to the court.

Who decides if an interpreter's services are needed? When a request for an interpreter is made, it is the judge's decision as to whether this is *bona fide*. Invariably, judges

automatically grant access to an interpreter, though sometimes not without a little grandstanding. Some judges think that their expertise in legal matters is equalled by their skill on language questions. I remember hearing one judge in a pre-trial session saying to a defendant "Do you mean to tell me you're living here 10 years and don't understand English?" A colleague told me of a case where the defendant appeared to answer a question before it had been fully interpreted. The judge intervened with a triumphant "I thought you claimed you didn't understand English. I think you do." In another case I can remember, the Prosecutor alleged that the defendant might be committing perjury in claiming he didn't speak English. There are some judges who give a cursory exam to see if the defendant understands English, though there is no research on the threshold of proficiency in English that a person should possess before being expected to function effectively in a courtroom, or indeed no evidence that judges or attorneys are equipped to assess command of English. It would not in any case be so simple to measure, since even a normally competent speaker can deteriorate under the stress of courtroom appearance, with obvious effects on the linguistic quality of his testimony.

There has been great variation among the states with regard to the seriousness with which they address questions of court interpretation. Many of the states - not surprisingly those with fewer non-English speakers - have but recently paid attention to the issue. Others have built up a web of expertise and good practice. One of the states to make most progress is New Jersey. It is estimated from census data that well over 10% of persons five years old and over speak a language other than English at home in New Jersey. This is without counting illegal immigrants, many of whom are probably missed by the census. Some areas have non-English speaking populations comprising more than 50%. Apart from Spanish, significant numbers of people speak Italian, Polish, Russian, Haitian Creole and Brazilian Portuguese. In an average month, up to 10% of all court proceedings involve the need for a foreign language interpreter. Some years ago the Supreme Court of the State of New Jersey set up a Task Force to investigate the current status and projected

needs for court interpreter and translator services in the state. The report of this Task Force showed that the situation was unsatisfactory in many areas of the judicial system. It found that persons providing court interpreting services generally did not possess requisite skills and training, and that existing procedures for establishing qualifications were inadequate (Final Report 1995). Throughout the 1990s New Jersey addressed in a systematic way the interpretation needs of its judicial system. An examination was put together, in which the aspiring interpreter is tested on a variety of modalities, e.g. rendering a lawyer's closing arguments, interpreting a witness's testimony, translating a written deposition. Two raters score the candidate on the basis of "scoring units"-specific elements which are checked as right or wrong-things such as accuracy on numbers, dates, legal phrases, idioms, criminal argot etc. There is also assessment on a global scale of overall effectiveness. Passing the exam is a necessary though not sufficient condition for hiring, as there is a period of subsequent monitoring and training. Indications are that the standard of education and professionalism of court interpreters in New Jersey has made considerable progress in recent years as a result of the state's effort to upgrade its force. Their status and salary have significantly improved. Here and in other states, universities and colleges are offering degree or diploma courses in legal interpreting. There are regular professional conferences, as well as such things as web-sites devoted to the subject. In the case of Spanish, there are even courses for police officers, with titles such as "Spanish for Law Enforcement".

The foregoing has been a fairly impressionistic account of some of the issues to be faced in any consideration of legal interpretation. While not every aspect that has been alluded to is likely to present itself in the Irish context, I hope I have at least alerted readers to some of the complex

questions that will have to be solved in the coming years. Our record in the matter of language rights has been quite poor in the case of Irish - imagine demanding to be addressed in Irish by an arresting Garda, for example. One is therefore apprehensive how the legal system here will deal with perhaps dozens of languages. We will certainly need to look beyond our shores for guidance as to how other countries have faced these challenges, and in this the American experience can teach us much.

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