

Miriam Shlesinger and Franz Pöchhacker (eds.)

DOING JUSTICE TO COURT INTERPRETING

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The book comprises eight papers and three book reviews preceded by notes about the authors and the “Introduction – Doing justice to court interpreting”. Miriam Shlesinger and Franz Pöchhacker, the editors, introduce the reader to court interpreting, its rationale (*raison d’être*) and observe the growing interest in and recognition of this professional domain. They mention the launch in 2009 of EULITA, the European Legal Interpreters and Translators Association, as well as the Directive of the European Parliament and of the Council on the rights to interpretation and translation in criminal proceedings as tokens of the growing importance of professionals and of the need to provide better access to justice despite language and culture barriers. The issue of ensuring that all participants in legal proceedings intermediated by interpreters understand one another has gained not only institutional but also academic importance. Academic interest and research in this domain is more and more visible. Professional literature and the articles in this volume address issues related to the definition and categorization of court interpreting, discourse of the courtroom, roles and expectations, access to justice, and quality. There is a “common thread that runs through the eight papers and the search for a link between theory and practice, between the letter of law and its implementation”. (p.4)

The authors call for action, for concrete implementation of research findings as this will safeguard mutual comprehension on the part of all involved in court proceedings.

The first article, by Kayoko Takeda “Interpreting at the Tokyo War Crimes Tribunal” is a sociolinguistic, insightful study of the historical interpreting provided during the International Military Tribunal for the Far East. The body was set up at the conclusion of World War II to try 28 Japanese military and political leaders and is known as the Tokyo War Crimes Tribunal, often compared to the Nuremberg Trials, although it has enjoyed far less study than its German counterpart.

The paper begins with a summary of the interpreting arrangements at the IMTFE, emphasizing that there were untrained interpreters and court participants equally inexperienced in using the services of interpreters. The author shows how the interpreting norms were developed through negotiating from the tribunal’s norms (p.14) to accommodate through “trial and error” the cognitive limitations of the interpreters. The reader learns that interpretation throughout the trial was provided mainly between English and Japanese¹. The interpreting process was hierarchical and involved the engagement of three groups of linguists, different ethnically and socially: Japanese nationals who interpreted the proceedings, Japanese Americans who monitored the interpreters’ performance, and Caucasian US military officers who acted as arbiters in interpreting and translation disputes. The linguists had passed the screening test but received no training for interpreting in the courtroom. Interpreting was predominantly conducted in the consecutive mode although IBM booths, identical to those used during the Nuremberg Trial, were installed at the IMTFE. This mode of interpreting is believed by the author to have been causative in extending the length of the proceedings but with no consequences on the outcome of the trial. Indeed no arguments were ever uttered that the judgment would have been different if the interpreters or monitors had been more competent.

She perceives interpreters as communication mediators and interpreting as a “social practice”, conditioned by the social, political, and cultural contexts of the setting.

Takeda proves this by her thorough examination of the interpreters’ and mediators’ behaviour during the testimony of Hideki Tojo, exemplified by excerpts from the court transcripts. She concludes by saying that the linguists’ behaviour was consistent with their relative power position and hopes that the issues addressed by her will be revisited in the future. Her “findings reinforce the notion that

interpreting is conditioned by the social, political and cultural context of the setting in which the interpreted event takes place” (p.25).

In the next article “Judicial systems in contact”, Susan Berk-Seligson examines the issue of the access to justice and the right to interpreting and translating services among the Quichua of Ecuador, a native ethnic group of people with limited proficiency in the official language of the law (Spanish) and a long history of struggle to preserve their language and culture. The language spoken by them, Quichua, is the predominant indigenous language of Ecuador.

Against the background of the efforts and initiatives of indigenous peoples “to establish an autonomous justice system, in which conflict resolution and crime are handled independently of the state (page 31),² the author conducted (in 2006) research on issues related to interpreting in legal settings by interviewing Ecuadorians playing various roles in the judicial system.

These interviews gave a picture of little or no consensus between indigenous leaders and the ordinary indigenous community on the one hand, and among state judicial authorities on the other. The contentious issues she observed are predominately of an ideological nature and involve, among other things, the extent of autonomy and enforcement of the right to use ancestral languages in judicial contexts.

The author takes us through the attempts to implement legal, human, and linguistic rights for the indigenous peoples³ in which the right to publicly provided interpreters/translators is implied only without further reference to the quality or costs of such services. Interesting are the quotes from diverse opinions of judges and lawyers who, though aware of the right as laid down in the legal codes, either speak about small number of cases in which the need for interpreting services arises (judges) or minimize the need for interpreters, explaining that few Quichua are monolingual (lawyers). The cited study of languages spoken in Ecuador as broken down by sex shows, however, the opposite. The perspective of state justice providers on language rights is not in line even with the heterogeneous perspective of indigenous peoples. This lack of agreement refers to when interpreting/translating services should be provided and who is to be responsible for providing them. We learn this multi-faceted perspective in the context of the ideology of autonomy. The author perceives the need for interpreting as dependent upon the ideological position occupied by representatives of the justice system, be it one associated with the state system or the indigenous autonomy, or their sympathy for ethnic minorities or sensitivity to the needs of those who do not speak or understand Quichua or Spanish. Although appointing ad hoc interpreters/translators is an acceptable status quo in legal settings it is interesting to see the growing awareness of the need for professionalism originating among indigenous educators and lawyers. They are in favour of university degrees in court interpreting or at least courses to get rid of the status quo, where despite the fact that every court in Ecuador has a list of peritos,⁴ prosecutors appoint anyone they see competent.

This broad, socially contextualized view is continued by Ruth Morris, who reviews judicial attitudes toward interpreting in Canada and Israel. Morris commences her article “Missing stitches” by quoting the provisions of law referring to the assistance of an interpreter /translator in the 1982 Canadian Charter of Rights and Freedoms (Sect.14), and Israel’s 1982 Criminal Procedure Law. She shows that the proper legislation is in place however asks about the extent of compliance in practice with the letter, spirit and substance of the provisions. Relying on case reports from England, Australia, East Africa, Canada, and Israel she takes up many vital issues associated with interpretation. She recalls Talmudic discussions on interpreting practice and quotes insightful comments made by judges in a number of seminal cases⁵ in which many essential issues were addressed both in majority and dissenting opinions. The judges discussed the issue of quality of the interpretation, which in their opinion should be performed by a competent interpreter and overseen by the judge. Some however would voice an opinion in line with the Talmudic approach as well as some findings of modern scholars (Loftus and O’Bar p.58) that the interpreter should be a conduit. However, Morris juxtaposes the research in this scope and concludes that the concept of the interpreter as a conduit is gradually being discredited, adding that those lawyers who call for “verbatim” or “literal” renderings indicate a lack of background in the field. The fact that many codes of practice expressly forbid the court interpreter to add, omit, summarize or explicate poses dilemmas for court interpreters since according to Gonzales et al.(p.60) “interlingual communication requires that some intuitive leaps be made”.

Morris emphasises the “need to train, qualify, certify and recruit [court interpreters] according to the principle of excellence”, otherwise “the tissue of justice” may be seriously impaired by “missed stitches”. (p.60)

Reviewing attitudes to translation activities in the legal sphere, Morris mentions Jean Herbert's (p.61) opinion about lawyers and judges who often perceive interpreters as a “necessary evil” or treat them with distrust. She also examines the attitude toward translation of the body of Israeli law during the process of updating and expanding it, noting the lack of linguistic quality control, and asking whether contemporary attitudes to court interpreting are different.

In answering she reviews, among other things, another seminal Canadian case⁶ in which the Canada's Supreme Court laid down quantitative and qualitative standards to be met by interpretation in court proceedings (adequacy, quality of interpretation and laid down that interpretation must be “continuous, precise, impartial, competent and contemporaneous” (p. 62). This signalled departure from the debate in the British House of Lords in 1991 in which accent was put only on organizational issues such as provision of and payment for interpreting services.

Morris further observes that, although attitudes toward interpreters tend to be that of mistrust among the English-speaking legal professionals many changes may be observed. For instance, in Australia, where a report entitled “Access to Interpreters in the Legal System” was issued in 1991 by the Commonwealth Attorney General's Department for the Multicultural Australia Project. This covered the most vital issues such as: the availability of competent interpreters, the adequacy of existing and proposed arrangements for the provision of interpreters, or the means by which professional standards of interpreters in the legal systems can be maintained or improved, cost effective provision of services, responsibility for the costs of interpreters. Again Morris refers to the Canadian Tran case to notice an advance in judicial thinking as regards the approach to the provision of court interpreting which requires fairness and compliance as well the principle of understanding.

Against this background, in a historical context of the “Tri-Lingual Area” under the British Mandate of Palestine and the time after the Declaration of Independence (1948), Morris examines the situation in Israel where up till this day there exists an ad hoc approach to language services. Though judges are nowadays aware of the unsatisfactory state of affairs in respect to the provision of interpretation and aspire to improve the situation, still the practice of police officers or even family members or passers-by to provide interpretation prevails. Having reviewed many cases, Morris concludes that although the Supreme Court identified linguistic and procedural issues as of great importance to the administration of justice and the Attorney General issued instructions to the police in 1969, up to this day police have routinely failed to observe them except in “serious” cases. Thus, despite linguistic sensitivity in Israeli law, judicial members of the criminal justice system fail to change the attitude or habit persistent among police to record suspect and witness statements in Hebrew, except in “serious” cases. She stresses the importance of making arrangements for simultaneous interpreting and audio-taping, because such measures would preserve the original–language testimony needed for subsequent reviews” (p.57). Israeli police do not see the necessity of providing high-calibre interpretation at their level and magistrates and district courts must arrange for court interpretation with private agencies.

Morris concludes by stating that interpreting arrangements are problematic in nature and the responsibility for them should be taken by the government and its players, otherwise the fundamental right of those who do not speak the language of the proceedings may be jeopardised because of “missing stitches”.

The issues related to Israeli court interpretation are continued by Shira I. Lipkin, whose article “Norms ethics and roles among military court interpreters” reports on research among military court interpreters of the Yehuda Military Court.⁷ Lipkin carried interviews with eleven interpreters (Hebrew – Arabic) and two officers and observed court sessions in 2005. In these interviews, she sought answers to the issues of their powers and duties, the nature of their work, personal preferences, the rules of practice and the training of interpreters who perform their job in a court functioning in a specific political situation. She makes references to interpreting in the Talmudic era and then the times of the British Mandate in Palestine when under the Emergency Defence Regulations military courts were established. Then over time the status of these courts changed and their competences varied, however from the outbreak of the second intifada they have again been in operation. Interpreters were in a regular army service of three years, with the option to continue because of attractive salaries.

Interesting are their answers regarding the roles they play in the court, which are not only those of interpreters, but were diverse and perceived by them as equally responsible (ushers or administrative duties). While performing their interpreting tasks they acted within the norms handed down by previous "generations of interpreters" in their renditions they used chuchotage (whispered simultaneous interpretation), consecutive and sometimes sight translation of Hebrew documents. Her findings indicate that it would be desirable and helpful for interpreters to have a code of ethics which would be instrumental in putting a definition of their status and in providing guidelines on how to deal with interpreting problems. No wonder Lipkin's findings lead her to conclude that interpreters' tasks should be restricted only to interpretation in order to guarantee best quality.

The reader of Lipkin's paper is, however, left believing that a key challenge the interpreter/translator faces in Israeli military courts has been overlooked- namely, that the interpreter is often interpreting for a suspected enemy of the state and this must impact their impartiality. Takeda addresses this issue in her paper but Lipkin overlooks it.

The next paper takes us from the Jewish to an Australian courtroom discourse in which Jieun Lee focuses on "Interpreting reported speech in witnesses' evidence". In her analytical paper Lee explores how Koreans' preference for indirect reported speech is handled by Korean interpreters. Her study involved seventy five hours of audio recordings of five Australian court proceedings, five interpreters and twelve Korean witnesses. Out of those five, three interpreters were accredited professionals with extensive court interpreting experience. She concentrated on interpreted reported speech used by witnesses in giving evidence in the context of good practice for verbatim rendering designed to minimize the interpreter's "interference".

By discussing differences between English and Korean,⁸ she makes an insightful study of English renditions of the reported speech used by Korean-speaking witnesses focusing also on how original reported speech is modified and may affect the legal testimony and the courtroom interaction. She reports that Korean interpreters frequently converted indirect into direct reported speech seemingly due to their attempt to adapt to the discursive practices of the court or to avoid grammatical problems. They would not resort to interrupting the proceedings for clarification or even to disclosing difficulties in the interpretation but they would rather provide arbitrary interpretation. This study is also of importance to interpreters working with English and Japanese or Chinese as preference of indirect reported speech to direct exists in those languages as well. Since little research has been conducted on the cross-linguistic aspects of interpreting reported speech this article and future studies are indeed welcome.

The paper of Bodil Martinsen and Friedel Dubsclaff "The cooperative courtroom" presents a case study of an interpreting event that took place in a Danish courtroom. The case under study was held in a district court, composed of a professional judge, two lay judges, the prosecutor and the defence counsel and involved a trial of a UN Convention refugee from an African country charged with two criminal counts. The trial was interpreted between Danish and French but by a court interpreter who was a state authorised interpreter and translator in a language other than French. The authors present and analyse four excerpts from the questioning of the defendant and five excerpts from the questioning of the witness. They depict erroneous interpretation which triggers the conflict in the courtroom and criticism of the interpreter's performance from the audience in a situation where the judge, who is not aware of the error and thus cannot monitor performance, shows difficulty in accepting criticism of the interpreter who in turn does not behave in a responsible, loyal or normative manner. Being a state interpreter in another language she must have been aware of the provisions of the code of ethics included in the Guidelines for interpreting in Danish court proceeding, devised by the Danish Court Administration. The Guidelines constitute a normative model concerning quality in Danish courts. They describe the performance requirements of court interpreters and include a set of expectancy norms concerning court interpreting - which embrace regulations on accuracy/completeness, conflicts of interest, confidentiality and impartiality, forms of address and other issues" (p.130).

For their study, the authors adopted Prunc's (p.127) model of translation culture and a qualitative approach. Since the model is based on a set of democratic principles, such as cooperativeness, loyalty and transparency, they examined the influence of this exceptional and non-normative interpreter's behaviour on the courtroom interaction between all the participants involved in the interpreting event.

By presenting the excerpts from the questioning of the defendant and the witness the authors illustrated manifold cooperativeness on the part of institutional participants and the defendant, but not the interpreter, who behaved in an atypical role. The authors focused on instances of participants' responses to each other's behaviour and different participant constellations. They also depicted lack of transparency of the proceedings for the witness and partly for the judge owing to erroneous interpreting. Despite this failed performance, showing insufficient generic knowledge of the routine sequence of questions in criminal proceedings of the interpreter, the judge agreed to continue with the same interpreter and other participants did not object, thus demonstrating mutual respect. The fact that the interpreter held only a BA degree in French (implying that her training did not include Danish-French interpreting, which could have an unfavourable bearing on her failed performance) cannot explain her unethical behaviour. Being a state interpreter of another language, in which she held a MA degree implied that she could have been expected to behave in accordance with the norms provided for in the Guidelines, and that the court could presume that she is competent and reliable.

The authors stress that awareness of the interpreter's responsibility in criminal proceedings is of great importance in order to guarantee that justice is served and that such cases are indeed exceptional in Denmark. In the case under study, criticism of the interpreter's performance did not have any serious bearing on the judgement and for the interpreter resulted only in a comment made in the court records.

We continue to explore the situation in Danish courts with Tina Paulsen Christiansen who in her article "Judge's deviations from norm based direct speech in court" presents an empirical study of legal discourse focusing on the use of direct and indirect speech in Danish court proceedings. She aims at studying the potential correlation between the use of these speech styles and certain stages of court proceedings as stipulated in the law.

The author refers to the Guidelines for interpreting in Danish court proceedings as translational norms, embracing expectancy norms relating to, among other things, forms of address. The Guidelines provide for the use of direct, first-person style for all the participants of court proceedings. Accordingly, the interpreter is required to translate verbatim and use direct speech while their use of indirect speech is perceived as failing to comply with the prescribed normative behaviour. However, on the grounds of existing studies she notes that switches in the form of address to the third-person or indirect form are commonplace in court practice and therefore observes the roles of primary participants and irregularities of their behaviour. For the correlation of judges' use of direct and indirect speech she employed corpus analysis of the transcripts of authentic proceedings. The data are interesting because of their authenticity. She also used a survey to explore whether there were differences between what the judges said about the style they use as well as the questionnaire to obtain comparability. The data come from the three audio-recorded proceedings which were interpreted in their entirety. The trials involved three different interpreters.

Her findings showed that in practice, judges (unlike interpreters) generally fail to perform in accordance with the expectancy norms stipulated by the law and in fact do not address non-Danish speaking defendants directly. And thus the deviations were documented during the initial stages of the proceedings when the judge addressed questions indirectly to the interpreter instead of the person questioned, also when reading out statements made by the defendant or asking further questions that were to be included in the case record. The judges also used indirect speech when announcing the judgement and informing the defendant about their right to appeal. However, since the stages were not repeated in all three proceedings the results can be treated as observational only and not conclusive while the use of either direct or indirect speech may result from the individual choice and most often occurs in relation to reading and writing the court records.

This interesting study can undoubtedly help both students and practicing interpreters gain awareness and insight into what may be anticipated in the court setting, how to react to challenges and ultimately improve the quality of their interpreting.

The final article "Interactional pragmatics and court interpreting" by Bente Jacobsen is an analysis of face in a triadic speech event which involves a prosecutor's interpreted questioning of a defendant in a criminal trial in a Danish district court. The author considers different cultural concepts of "face" for this study, primarily that of face, as understood by Brown and Levinson (p.195), which means "the public self-image" that everyone wishes to claim for themselves with two main aspects of face: negative face, and positive face. Their concept is based on the notion that everyone chooses communication

strategies that either protect, maintain or enhance face or mitigate threats to face. The author refers also to another more culturally universal concept of face defined by Spencer-Oatey (p.197) i.e. “the positive social value” understood as a desire for positive evaluation in terms of personal qualities (quality face) and in terms of social identity or roles (identity face). In this article, the author aimed at analysing face-work by focusing on those instances where the face-protecting strategies of one of the three interactants resulted in threats to own face or the face of another interactant, or reversely offered the face of another interactant some protection. The questioning involved seven themes which included questions that could or did threaten the defendant’s negative or positive face. The interpretation was done by an authorised interpreter, fully qualified and with some years of experience who employed consecutive and simultaneous whispered modes. In certain situations however her communicative strategies resulted in multiple overlaps and loss of information. The analysis of the questioning was performed on eight extracts which in a thorough manner exemplify the face of all parties involved in the communication event. It depicted how the threatening and protecting utterances were translated and coordinated, and also how the interpreter attempted to save her own face and the face of other participants.

The author also refers to the legal setting as an example of a power differential between the legal professionals (judges, prosecutors and defence counsel) and the non-lawyers (defendants and witnesses). The degree of power held by each participant is dependant upon the role played by them. In that setting all participants potentially put their face at risk in many ways, e.g. defendants’ negative face may be threatened by questions which require information they are unwilling or unable to provide while their positive face may be put at risk by questions designed to challenge their positive self-images as cooperative and trustworthy persons. Also the legal professional face must be attended to.

The publication ends with three book reviews which complement the articles. Christiane Driesen reviews two German publications⁹ on the Nuremberg trial, Cecilia Wadensjö - a collection of papers¹⁰ discussing academic approaches and developments in studies of interpreting in legal, medical and other institutional settings, and Holly Mikkelson on community interpreting in which she presents an overview of a selection of papers from the Critical Link Conference in Stockholm.¹¹

By giving useful insight into different facets of court interpreting, this volume touches on and raises very many interesting issues and questions and thus leaves the reader feeling they have gained much expert knowledge. Ruth Morris’s article is particularly noteworthy in that it presents impressive study of various cases relevant to court interpreting. This volume is a valuable work also for all those interested in research on various aspects of interpreting.

The only wish the European reader of “Doing Justice to Court Interpreting” feels is that too little is presented about the European realities, which of course are very unique and therefore require special examination.

Zofia Rybinska

¹ Relay interpreting with English and Russian as the pivot languages was also offered.

² which resulted in an amendment of the Ecuador’s 1998 Constitution “granting the right to be tried in one’s indigenous language”.

³ after the 1998 Constitution presenting versions of the Law of Official Use of Ancestral Languages and reactions of various groups to this bill.

⁴ i.e. approved experts who are accredited on the basis of documents proving their educational degree and evidence of moral character. p. 47

⁵ The Canadian case *Robin v. College de St-Boniface (1984)* in the Manitoba Court of Appeal was one of them which addressd such issues as the right to speak French in court, bilingual judges, fairness, the help of translator, consecutive translation v. simultaneous interpretation, ideal v. practical

⁶ *R. v. Tran* considered by Canada's Supreme Court in 1994.

⁷ located in Ofer army base – West Bank, Israel.

⁸ including different order (SVO v. SOV respectively), particular syntactic structures, (e.g. in Korean the reporting verb comes at the end of the reporting sentence) register (where the longer the sentence ending form and the more numerous the lexical items the more formal is the register) and diverse types of reported speech (direct, semi- direct, indirect).

⁹ Martina Behr and Maïke Corpataux. *Die Nürnberger Prozesse – Zur Bedeutung der Dolmetscher für die Prozesse und der Prozesse für die Dolmetscher*. München: Martina Meidenbauer, 2006 93.pp ISBN-3-89975-078-0 [InterPartes, 2],

and

Hartwig Kalvarkämper and Larisa Schippel (Eds.) *Simultandolmetschen in Erstbewährung: Der Nürnberger Prozesse 145. Mit einer orientierenden Einführung von Klaus Kastner und einer kommentierten fotografischen Dokumentation von Theodoros Radisoglou sowie mit einer dolmetschwissenschaftlichen Analyse von Katrin Rumprecht*. Berlin:Frank &Timme, 2008.336 pp ISBN 978-3-86596-161-7 [TransÜD,17.]

¹⁰ Erik Hertog and Bart van der Veer (Eds.) *Taking stock: Research and methodology in community interpreting (Linguistica Antverpiensia, New Series, 5/2006)*. Antwerp: Hoger Instituut voor Vertalers & Tolken, Hogeschool Antwerpen, 206. 377 pp. ISBN 978 90 775 5405 0

¹¹ Cecilia Wadensjö, Birgitta Englund Dimitrova and Anna Lena Nilsson (Eds.). *The Critical Link 4: Professionalisation of Interpreting in the community. Selected papers from the 4th International Conference on Interpreting in Legal, Health and Social Service Settings, Stockholm, Sweden, 20-23 May 2004*. Amsterdam/Philadelphia: Jogn Benjamins 2007.x +314 pp. ISBN 978 90 272 1678 6