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Crossing Borders in Community Interpreting. Definitions and dilemmas.
Edited by Carmen Valero-Garcés and Anne Martin

Crossing Borders in Community Interpreting

Definitions and dilemmas

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CHAPTER 2

The role of the interpreter in the governance of sixteenth- and seventeenth-century Spanish colonies in the “New World”

Lessons from the past for the present

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The fourteen laws found in Title 29 of Book Two of the *Leyes de las Indias* which governed the selection, procurement, role and compensation of the interpreters used in the governance of the New World by the Spanish Crown provides rich fodder for present days dilemmas. Each of these laws addresses an issue that continues to be a point of debate in the legal interpreting community. Detailed development of each law adds insight into specific problems and offers guidelines for dealing with the challenge presented. These laws constitute one of the most interesting, yet surprisingly unknown, sources of historical thought on the role of interpreters in society. In this paper, each law and its detailed development will be presented in both Spanish and English, and their application to contemporary society explored.

Introduction

The apostle Paul when he appeared before King Agrippa to answer the charges which were brought against him, wishing to use language intelligible to his hearers and confident of the success of his cause, began by congratulating himself in these words: "I think myself happy, King Agrippa, because I shall answer for myself this day before thee touching all the things whereof I am accused by the Jews: especially because thou art expert in all customs and questions which are among the Jews." He had read the saying of Jesus: "Well is him that speaketh in the ears of them that will hear"; and he knew that a pleader only succeeds in proportion as he impresses his judge. (St. Jerome. To Pammachius on the Best Method of Translating. AD 395. Letter 57.1)

In Letter 57.1, Saint Jerome, accused of falsifying an original text and harshly criticized for his philosophy on translating, answers his critics and defends what has become a universally accepted tenet in translating and interpreting today: "give sense for sense and not word for word". This great translator of the Bible and Father of the Church begins his letter by recounting the apostle Paul's sense of satisfaction at being heard in a tribunal by someone "expert in the customs and questions" of the accused (himself) and states that Paul was familiar with the

words of Jesus who recognized that advantage is to be had when speaker and listener share the same language. St. Jerome tells us that Paul knew that success was proportionally related to the impression the “pleader” made upon the judge. Of course, this is a truism that is as applicable in the courts of law today as it was in the times of the apostles. Human communication, the basis for human interaction, is a complicated undertaking. Culture, in its broadest sense, informs messages that are emitted and received, and signs, linguistic or otherwise, are the means by which information is conveyed. The accurate and complete transfer of meaning from one code to another can be a daunting task, which becomes even more challenging when the consequences of error or lack of diligence are serious. Such is the case with legal interpreting when not only are an individual’s rights, reputation, economic well-being and freedom at stake, but the broader issue of ensuring that justice is done is also in play. Thus, the ongoing debate as to the role of interpreters in court or legal interpreting venues is a valid one. An examination of certain historical precedents can enlighten us and enhance that debate.

A brief overview of the role of interpreters throughout history

A look back through history shows us that language mediation has existed for millennia and that interpreters have played pivotal roles in not only the important but also the mundane interactions of peoples throughout the ages. Interpreters have been at times held in high esteem and at others looked upon with disdain, have often been forced into the role of interpreter against their wishes, have sometimes been recognized for their contribution but have also been unjustly blamed for matters clearly beyond their control. Interpreters have been essential to the success of military conquests, the dissemination of holy scripture, the expansion and governance of empires, the administration of justice and the social and economic commerce of everyday life in virtually any spot and at any time that peoples who did not share a common language had the need to interact.

There is evidence of the use of interpreters that dates as far back as 3000 BC in Egypt (hieroglyphs and tomb inscriptions) and documentary references to the important role interpreters played in ancient Greece and the Roman Empire. The writings of Caesar, Cicero, Horace, Pliny and Valerius Maximus all allude to language transfer (see Delisle and Woodsworth 1995 for more complete information on the history of interpretation). Using interpreters to spread the word of God was a common practice during the Islamization of Africa which began in the seventh century and in the oral conveyance of public readings of the Torah, written only

in Hebrew, to speakers of Aramaic, Greek and Arabic from the sixth through the twelfth centuries.¹ European clergy also began to spread Christianity in keeping with the Biblical mandate *eunte et predicate*, and by the thirteenth century they had traveled to Asia through southern Russia and the Urals and eventually covered Persia, Cyprus and Tripoli. In Al-Andalus, the *mozárabes*² were the go-betweens in the very diverse society of the Iberian Peninsula during the eight centuries of Moorish occupation.

The interconnection of peoples, languages and religions was so great in the known world by the twelfth century that the School of Toledo was created to translate works from Arabic to Latin. However, it was Alfonso X the Learned in the thirteenth century who instituted the practice of translating works not only into Latin but also into the Castilian Spanish of the time. One of the most fascinating aspects of the work done at the School of Toledo was the method used for transferring texts from one language to another. For example, an Arabic text would be read aloud to a “translator” who would then render it orally in Spanish to another “translator” who dictated its Latin equivalent to a scribe who recorded it in writing. The innovation Alfonso introduced was to add a scribe who actually wrote down the intermediate oral version given in Spanish.³ As can be seen, the entire process depended heavily on the oral transference of information.

The multiple invasions and incursions into Asia, Africa and the Americas that took place during the period of European colonialism propitiated language contact and required language mediation. The French depended upon interpreters for their exploration of what is today the northern and southern fringes of the United States, and George Washington used interpreters to communicate with both the Indians and the French during his years as an officer in the British colonial army and as a civilian surveyor. Finally, the Spanish and Portuguese, the great explorers, conquerors and settlers of the New World in the fifteenth to eighteenth centuries, also depended greatly upon interpreters as language and cultural intermediaries to achieve their goals and change the face of the world as it was known prior to that time.

1. Hutzpit Hameturgeaman, known as Hutzpit the Interpreter, is one of Judaism’s Ten Martyrs. His tongue was said to have been pulled out and dragged in the dust for the crime of teaching the Torah. He and many other “interpreters” from the sixth to the twelfth century were put to death by the Romans for such activities.

2. Mozarabic was the Ibero-Romance language spoken by the Christians in the Muslim possessions on the Iberian peninsula during the period of Muslim occupation (711–1492).

3. Petersen, Suzanne. *Alfonso X, el Sabio Escuela de Traductores [1252–1277]* [Online] <http://faculty.washington.edu/petersen/alfonso/esctr13.htm> (Accessed March 12, 2006).

Interpreters in the “New World”⁴

The exploration, conquest and settlement of the New World hinged upon interaction between Europeans and the indigenous peoples they encountered. Whether a military conquest, the spread of religion, or the exploration of territories that had not yet been charted, language mediators were pivotal to the success of any type of mission that was undertaken. The realities of communication were complex, and often interpreting “teams” were used. For example, until La Malinche learned Spanish, communication between the Mayans in Mexico and Hernán Cortés was achieved using two interpreters: Doña Marina translated from Nahuatl (Aztec) into Mayan and Jerónimo de Aguilar, an interpreter who accompanied Cortés from Spain, translated from Mayan into Spanish. Likewise, during the Lewis and Clark expedition in the early nineteenth century, Sacagawea, a Shoshone Indian who spoke Shoshone and Hidatsa (the language of the Hidatsa–Mandan tribe of what is today North Dakota) formed part of an interpreting team with her husband, Toussaint Charbonneau, who spoke Hidatsa and French and another expedition member, Francois Labiche, who spoke French and English. Thus, during the expedition, the chain of interpretation when Shoshone were encountered was Sacagawea — Charbonneau — Labiche — Lewis and Clark.⁵

It is important to remember, however, that these interpreters did not only serve as language mediators. Metcalf (2006) reminds us of the important role they played as “go-betweens” who often affected the course of relations. Sacagawea served as a guide as well as an interpreter, and according to an annotation in Clark’s journal, her presence on the expedition was seen by the Indians as “a token of peace.” In Brazil in the early seventeenth century, the French Jesuit historian Pierre de Jarric writes of a woman from the feared Aimoré tribe who had been “domesticated” by the Portuguese and had learned their customs and language. She was sent by her master to offer gifts and persuade the Aimoré to live peacefully with the Portuguese. Because of her knowledge of both languages and cultures, she was able to bring about peaceful encounters between two groups that until that time had feared and mistrusted each other.

4. In “Language and Empire” La Rosa reminds us that words such as “New World”, “America” and “Indian” were, of course, all European inventions with no meaning whatsoever to the indigenous peoples encountered when Columbus and other conquistadors arrived. Naming peoples, places and things was an important aspect of claiming land and peoples for the Spanish Crown and therefore much importance was given to actually stating aloud the names conferred in the presence of Spanish witnesses and having the naming ceremony recorded in writing by the expedition’s scribe or chronicler.

5. Anderson, Irving. (1997) Lewis and Clark. Inside the Corps. Sacagawea. *PBS Online*. <http://www.pbs.org/lewisandclark/inside/saca.html>. (Accessed March 12, 2006).

The Spanish had a three-fold purpose in the New World: to spread Christianity, to claim territory for the Spanish crown, and to find riches and wealth to take back to Spain. All depended upon communication with the indigenous peoples. Christopher Columbus took two interpreters with him on his original voyage, Rodrigo de Jerez and Luis de Torres. Of course, their language skills were of no help to him in the New World, but their inability to bridge the communication gap made it quite clear that “interpreters” would have to be found or “made”. Thus the practice of capturing a few Indians to be trained as language intermediaries whenever the Spanish planned to enter a new territory was instituted. It became such a routine part of expeditionary life that the policy was codified into law in 1573 in the *New Ordinances of Discovery and Population* (La Rosa 1995). Law 15 of these ordinances related the ways “interpreters” could be used to the advantage of the Spanish not only by serving as language bridges, but also by becoming familiar with all facets of life of the indigenous peoples they were encountering:

Try to bring some Indians for interpreters to the places you go, where you think it will be the most fitting. [...] speak with those from the land, and have chats and conversations with them, trying to understand their customs, the quality and way of life of the people of that land, and disperse yourselves, informing yourselves about the religion they have [...] if they have some kind of doctrine or form of writing; how they rule and govern themselves, if they have kings and if they are elected as in a republic or by lineage; what taxes and tribute they give and pay and in what way to which persons [...] And in this way you will know if there is any type of stones, precious things like those which are esteemed in our kingdom. (de Solano 1991:72)

Some fifty years after the arrival of Columbus to the New World, entire societies had been conquered and nations such as the Aztecs and the Incas had been greatly diminished. European culture began to replace Indian cultures through aggressive evangelization by Catholic missionaries and generous land grant programs instituted by the Spanish government. Church officials debated the nature of the Indians’ souls and tried to determine if the natives had the intelligence and wherewithal to conscientiously choose to convert to Christianity or if they should simply be baptized *en masse* by throwing a bucket of holy water on them. Meanwhile, many of the Spaniards who decided to stay in the New World argued that the entire colonizing effort was in danger of failing if the Indians were not forced to provide the manpower that they needed. Therefore ways were sought to provide the *mano de obra* that was needed. In the early sixteenth century, systems of forced servitude based on European feudal practices were established. Through the *encomienda* system, the Spanish crown granted large landowners (called *encomenderos*) the rights to a free workforce for which they, in return, were to provide protection and instruction in Christianity for the natives assigned to them. The *mita* (Quechua

term for turn or shift) was used extensively in Peru and required each indigenous group to send a certain number of workers to Spanish enterprises (mines, farms, public works, etc.) for a specified period of time, although in this case, these workers were to be compensated for their labor. The *repartimiento* system was another way in which *haciendados* used Indians in situations of “forced” labor. A petition was made by a local landowner and a grant was proclaimed that specified the number of Indians to be assigned, the specific objectives of the *repartimiento*, and the salary and compensation that was to be provided to the “workers”. (González Navarro 1953:15).

Many abuses occurred under these systems. Bartolomé de las Casas, a Dominican friar who had held Indians in *encomienda*, took up the cause of the Indian peoples and denounced the abhorrent treatment to which they were subjected. Charles I of Spain (Charles V of Germany) set up the Council of the Indies in 1524 and passed what has come to be known in English as the *New Laws of the Indies for the Good Treatment and Preservation of the Indians*.⁶ This compendium of laws covered a wide variety of topics related to the administration and governance of the colonies and included several key provisions meant to protect the indigenous peoples. Among these were the prohibition of enslavement and the abolishment of the forced labor systems. Unfortunately, the laws provoked a very strong negative reaction from the “settlers” in the New World and a struggle ensued between those who defended the interests of the Spanish colonizers and those who defended the Indians’ right to human dignity and reasonable treatment.

The New Law of the Indies (*Las Leyes de las Indias*)

The *New Law of the Indies* is a series of royal decrees, ordinances and laws written and enacted over several decades in the sixteenth and seventeenth centuries, which Charles II ordered compiled and printed in 1681. The 218 titles found in the books that comprise the four volumes of the *Leyes* cover an amazingly broad range of issues related to life in the Spanish colonies. For example, Book Two includes 34 titles on the administrative and structural aspects of colonial governance. A great deal of detailed attention is given to the judicial system, and Title 29, entitled *De los intérpretes*, specifically addresses issues of communication between the governing institutions and the native peoples. It includes fourteen laws that set out in some detail the rights and responsibilities of the interpreters who worked in the

6. *Recopilación de Leyes de los Reynos de las Indias. Mandadas Imprimir, y Publicar por la Majestad Católica del Rey Don Carlos II.* Madrid: Por Ivlian de Paredes, año de 1681. <http://www.congreso.gob.pe/ntley/LeyIndiaP.htm>. Full text facsimile copy online. (Accessed December 2005).

judicial system. It is important to realize that these interpreters, or *lenguas*, as they were called, did not enjoy high prestige or recognition for the service they provided. They were not trained or instructed in any way and were often drawn from the domestic staff of the *conquistadores* or were held in *encomienda*. However, the promulgation of these laws does attest to a recognition of the problems involved in interaction between linguistically different peoples and the need to define and regulate the role of language mediators in the governance and administration of colonial society.

The laws are succinctly written and address topics such as the qualifications, skills and traits an interpreter should have, how interpreters should interact with the parties to judicial or administrative proceedings, what rights interpreters have as regards the workplace, work hours, and remuneration, and what constitutes ethical behavior. Each is accompanied by a detailed explanation of the reasoning underlying it and instructions for implementation, including penalties and consequences for infringement. These explanations provide important insights into the day-to-day functioning of the judicial system and the problems inherent to language mediation. A close analysis of their content shows how pertinent they are to the realities of court interpreting in many countries today, and in some cases it could be argued that the laws in the sixteenth and seventeenth centuries were more progressive than the ones that currently regulate language mediation in many modern societies.

Book Two, Title 29: *De los intérpretes*

The fourteen laws found under this heading are an interesting compendium of regulations which seem to reflect concerns based on real experience. They were promulgated between the years 1529 and 1630, with the bulk of them coming as a set of ordinances proclaimed in 1563. In the compilation ordered to be printed in 1681 by Charles II, the laws are gathered and published, although not in chronological order according to their issuance. For example, the earliest “law”, dated 1529, is the last one listed in the compilation (Law XIV). Next came Law XII, promulgated in 1537, and then Laws II through XI in 1563. The first law listed in the compilation came in the middle chronologically speaking, being issued in 1583 and “updated” or amended in 1619. The last law to be promulgated was Law XIII, dated October 16, 1630, which in the compilation ironically comes between the two earliest dicta. Furthermore, the ten ordinances that are dated 1630 are numbered, but do not appear in the compilation in numerical sequence. These chronological or sequencing irregularities are probably due to the fact that the compilation process took more than a century to complete given the numerous laws,

decrees and ordinances that had been issued and the difficulties involved in identifying, classifying and ordering all of the legislation that had been passed. Whatever the historical reasons for the final presentation of the laws in the 1681 compilation, today these laws are usually read and studied in order. However, there is some insight to be gained by looking at them chronologically. By doing so, we see that the earliest concerns regarding interpreting had to do with ethics given that the first law to be promulgated prohibited interpreters from accepting any kind of compensation from the Indians. Consequences for infringing this law were quite extreme and even included exile. However, the wording of the law also tacitly recognized the abuses that were taking place in the *encomienda* system by alluding to limits on the Indians' obligations to their *encomenderos*, thereby reflecting one of the purposes of the *Leyes* themselves which was to ensure the "preservation and good treatment of the Indians."

The second law to be promulgated (Law XII in the compilation) was the lengthiest and most complex in terms of content. It refers to reports of irregularities, enumerates the kinds of assistance interpreters provided the Indians, and states that Indians' rights were sometimes violated due to faulty interpreting. An attempt is made to find a solution to the problem of misinterpretation, whether intentional or unintentional, and although the solution provided is one of the few concepts found in these laws that would not be accepted or supported in most countries nowadays,⁷ it does show that efforts were made to find a way to deal with a very complex problem.

It took another 25 years before a more comprehensive set of ordinances was formulated to regulate interpreting in colonial society. By this time, experience had shown what some of the problems were. Nevertheless, it is interesting to note that several of the laws had to do with functional or organizational issues such as workplace, time schedules, travel, compensation and so on, or with proper comportment, providing an early "code of ethics". Punishment for misdeeds was also stipulated in most of the laws. Professional and ethical oversight and fair consequences for malfeasance is an issue that many feel needs continued examination even today.

The final law, dated one hundred years after the first, is quite interesting in that it shows that perhaps the most basic issue related to interpreting, namely how interpreters should be chosen and qualified, still had not been resolved. It called for structured "hiring" practices and fair dismissal procedures.

7. For example, California State regulations stipulate that only the interpreter's version of court proceedings is official and should be considered by jurors and jurists, even when they speak or understand the language being interpreted. This standard has been sometimes tacitly and sometimes explicitly accepted in several U.S. jurisdictions for many years. See Giambruno (2007).

As mentioned earlier, the laws speak for themselves and a careful reading provides an excellent overview of the problems, issues and attempts to deal with the realities of interlingual communication and human interaction in the sixteenth and seventeenth centuries.

Although occasional reference has been made to the laws on interpreting from the *Leyes de las Indias* by translating and interpreting scholars in publications and scholarly presentations, a complete translation of the laws into English with an analysis of the content of each has yet to be published. Therefore, in this section, an English language version of each law will be presented in its entirety side-by-side with the original Spanish version. The translation has been done to facilitate understanding and applicability to today's realities rather than to conserve the style and conventions of sixteenth- and seventeenth-century legal or administrative writing, and some consolidation of terms has been used in order to enhance comprehension. A brief comment is provided for each law which highlights content that is particularly relevant to the realities of court or legal interpreting in modern day society.

Terminology

There are a few terms used repeatedly in the original laws that merit a brief explanation. They are:

Audiencia: Once the conquest was complete, the new territories had to be governed. Over the course of two centuries, thirteen administrative divisions called *Audiencias Reales* were established. In reality, these *audiencias* were tribunals covering a defined geographic jurisdiction, with political, judicial and administrative duties including enforcing the wishes of the Spanish monarchs, collecting tributes from the *encomenderos*, establishing *encomiendas*, *mitas* and *repartimientos*, addressing any abuse or injustice committed against the Indians, overseeing the conduct of the colonial governors and serving as consultants to the Viceroy and other officials. As regards their judicial functions, these tribunals were the first level trial courts for some civil and criminal cases, and the court of appeals for decisions made by colonial officials. While their rulings in civil matters could be appealed to the *Consejo de Indias* if they involved large sums of money, the judgments issued in criminal cases were final.

Escribano: Named by the Crown, this colonial functionary was responsible for certifying all legal acts within the *audiencia*. The English-language term most frequently used for this figure when translating historical documents is "notary" (although in some contexts "scribe" is also found). However, a more functional

equivalent nowadays, based on the true duties and responsibilities of *escribanos* in this period of time, would be “clerk of court” or “judicial secretary”.

Gastos de justicia, estrados o penas de cámara: These terms refer to both taxes levied by the colonial government on local communities and to monetary damages and fines imposed by judges and other officials. No monies from the royal coffers could be dispensed unless specifically ordered by the King. Thus, Law I of Title 29, which regulates interpreting, stipulates that interpreters’ salaries will be paid from these taxes and fines.

Ladino cristiano: This term was used in Spain, often pejoratively, to refer to both Africans living in Spain who had been baptized Catholic, spoke Castilian, and knew Spanish customs, and to Sephardic Jews who were also able to cross the language and culture barriers. There were large numbers of *ladinos* living in Spain after the Reconquest and many participated in expeditions to New Spain during the fifteenth and sixteenth centuries. The term came to be used in Spanish colonies to refer to natives who could speak Castilian, had converted to Catholicism, and knew the ways of the Spanish.

Presidente y oidores: In each of the *audiencias*, there was a President and several ordinary judges (*oidores*) to hear cases in the tribunals.

Residencia: This was one of the most important mechanisms of the colonial system to guarantee proper conduct on the part of functionaries. Special judges, called *jueces de residencia*, were assigned to scrutinize the official actions of agents of the Crown and hold them responsible for any damage or harm that they may have caused the people under their jurisdiction. Likewise, recognition was given for exemplary service. This was a common tool used in the oversight of correct governance.

Setenas, cuatro, pena dobrada: Often times the fines that were assessed for infringement of the laws or ordinances were based on multiples of the actual damages that could be determined for a specific act of wrongdoing. The expression *pagar con las setenas* referred to paying a fine seven times the amount of the actual damages. Likewise, *pena de pagarlo con el cuatro tanto para nuestra camara*, refers to a four-fold fine and *la pena dobrada*, to a two-fold increase.

Tomines, pesos: Several of the laws regulating the work of interpreters stipulate pay scales and/or specific fine amounts. It is difficult to know the impact of these amounts without understanding the value of units of currency in that period of time. The main Spanish coin was the “8 Reales” piece which later came to be called the *peso*. *Tomín* was an alternate term used for *real*. Historical documents tell us that forced laborers under the *mita* system earned one to two *tomines* a day at the end of the sixteenth century, while free laborers in the mine system earned seven (Hylton 1998), and that workers assigned through the *repar-*

timiento system were paid *uno o dos reales* per day depending upon the type of work done (González Navarro 1953: 20). Some insight as to the relative importance of the interpreter in the administration of the colonies can be obtained from comparing the wages they received and the fines levied against them in cases of misconduct to the wages or compensation paid to others during the same period of time.

De los Intérpretes. The Fourteen Laws.

Law I. His Majesty Phillip II in Aranjuez, May 10, 1583

Que los intérpretes de los indios tengan las partes y calidades necesarias, y se les pague el salario de gastos de justicia, estrados o penas de cámara.

Muchos son los daños e inconvenientes que pueden resultar de que los intérpretes de la lengua de los indios no sean de la fidelidad, cristiandad y bondad que se requiere, por ser el instrumento por donde se ha de hacer justicia, y los indios son gobernados y se enmiendan los agravios que reciben, y para que sean ayudados y favorecidos. Mandamos que los presidentes y oidores de nuestras audiencias cuiden mucho de que los intérpretes tengan las partes, calidades y suficiencia que tanto importan, y los honren como lo merecieren, y cualquier delito que se presumiere y averiguaré contra su fidelidad, lo castiguen con todo rigor, y hagan la demostración que conviniere.

Interpreters for the Indians shall be skilled and qualified, and their wages paid from court revenues.

Much harm and prejudice can be caused if the interpreters of Indian languages do not possess the loyalty, faith and good will that are required of them as instruments by which justice is done and by which the Indians are governed and their grievances addressed. Therefore, and so that the Indians may receive assistance and favorable treatment, we do hereby order our court officials to take great care to ensure that interpreters have the skills, qualities and abilities that are deemed important, that they be treated with the respect that they deserve, and that any alleged breach of their trustworthiness that is proven to be true, be punished appropriately.

Comment: The most relevant point of this law is the explicit recognition that poor interpreters can cause grievous harm and that it is the responsibility of court officials to ensure that interpreters have the skills and personal qualities needed to guarantee quality and reliability. This goal is one that is still not fully recognized in many judicial systems in which the use of virtually anyone perceived to be even minimally competent in the language pair involved is condoned. Secondly, and just as important for the well-being of the profession, this law recognizes that interpreters should be respected and compensated. A review of the professional status of court interpreters in many countries today shows that court interpreters are often grossly underpaid and woefully treated. Gaining full respect and recognition for interpreters as vital members of the judicial team in any legal proceeding has yet to be achieved.

Law II. His Majesty Phillip II in Monzon, October 4, 1563. Ordinance 297

Que haya número de intérpretes en las audiencias, y juren conforme a esta ley.

Ordenamos y mandamos que en las audiencias haya número de intérpretes y que antes de ser recibidos juren en forma debida, que usarán su oficio bien y fielmente, declarando e interpretando el negocio y pleito que les fuere cometido, clara y abiertamente, sin encubrir ni añadir cosa alguna, diciendo simplemente el hecho, delito o negocio, y testigos que se examinaren, sin ser parciales a ninguna de las partes, ni favorecer más a uno que a otro, y que por ellos no llevarán interés alguno más del salario que les fuere tasado y señalado, pena de perjuros y del daño e interés y que volverán lo que llevaren, con las setenas, y perdimiento de oficio.

There shall be an adequate number of interpreters in the courts, and they shall take the oath stipulated by this law.

We do hereby order and command that there be a sufficient number of interpreters in the Courts and that before they assume their duties, they take an oath to correctly and faithfully carry out the duties of their profession by stating and interpreting the legal matter or complaint at hand in a clear and open manner, without omitting or adding anything, and by simply stating the facts, offence or matter and the testimony given by witnesses. [They will] remain impartial and not favor one party over the other, will not accept any type of gratification other than the salary they are due under penalty of breach of oath and damages, and will return anything improperly received sevenfold and be banished from the profession.

Comment: This law is surprisingly detailed in setting guidelines for correct interpretation. It stipulates coverage of court needs, establishes an interpreter's oath, and lists specific interpreting practices that are to be followed. It also addresses ethical issues such as impartiality and not accepting improper compensation of any kind. These elements are virtually identical to the ones still found in modern day codes of ethics. However, what is not found nowadays is the stipulation of specific consequences for incompetence or improper acts, especially ones as severe as those established here.

Law III. Ordinance 301. 1563.

Que los intérpretes no reciban dádivas ni presentes.

Los intérpretes no reciban dádivas ni presentes de españoles, indios ni otras personas que con ellos tuvieren o esperaren tener pleitos o negocios en poco o mucha cantidad, aunque sean cosas de comer o beber, y ofrecidas, dadas o prometidas de su propia voluntad, y no lo pidan, ni otros por ellos, pena de que lo volverán con las setenas para nuestra cámara, y esto se pueda probar por la vía de prueba que las leyes disponen, contra los Jueces y Oficiales de nuestras Audiencias.

Interpreters shall not accept gifts or presents.

Interpreters shall not accept gifts or presents from Spaniards, Indians or any other person with whom they have or expect to have legal cases or matters, regardless of the amount involved, whether food or beverage, and even when these are offered, given or promised freely. They will not request such things nor ask anyone one else to request them on their behalf, under penalty of being required to return anything so obtained sevenfold to the Court if proof of such a deed is provided as stipulated by law.

Comment: This ordinance further addresses the issue of compensation and the impropriety of interpreters accepting gifts of any kind from individuals involved in judicial matters. The admonishment mentioned briefly in Law II is developed more fully here by emphasizing that any kind of recompense, including something as seemingly innocent as food or beverage, would be improper, and that the indirect solicitation of any type of compensation through other individuals would be considered as serious as the interpreter being directly involved. The ordinance also stipulates a rather stiff fine for such inappropriate acts, setting clear consequences for what is considered unethical behavior. However, it is worthy of note that the law also stipulates that misdeeds of this sort must be proven, thereby providing some basic due process rights to the interpreters.

Law IV. The same. Ordinance 298. 1563.

Que los intérpretes acudan a los acuerdos, audiencias y visitas de cárcel.

Ordenamos que los intérpretes asistan a los acuerdos, audiencias y visitas de cárcel cada día que no fuere feriado, y a lo menos a las tardes vayan y asistan en casa del presidente y oidores. Y para que todo lo susodicho y cualquier cosa, y parte, se cumpla, tengan entre sí cuidado de repartirse, de forma que por su causa no dejen de determinarse los negocios, ni se dilaten, pena de dos pesos para los pobres por cada un día que faltaren en cualquier cosa de lo sobredicho, además de que pagarán el daño, interés y costas a la parte o partes que por esta causa estuvieren detenidas.

Interpreters must be present at all proceedings, hearings and prison visits.

We do hereby order that interpreters be present at court proceedings, hearings and prison visits every work day and that in the afternoon they render service at the home of the president or the judges. And so that this may be so, [interpreters] must carefully divide and assign their duties so that they cause no legal matter to be delayed or left pending, under penalty of two pesos for the poor for each day that they do not meet the aforementioned obligations, as well as damages, interest and costs to be paid to the party or parties who were detained as a result of their absence.

Comment: This law recognizes the pivotal role that interpreters play in the judicial process. It acknowledges that without the interpreter, cases cannot be heard. It penalizes interpreters for not being available when their services are needed, and it places the responsibility on them as a group to make sure that all services are covered. It also recognizes that the services of an interpreter are not only needed in courtrooms but also in other judicial proceedings, and that individuals suffer and their rights are violated when interpreting services are not available to them. The penalty for infringement is stated with a specification that the fine be given to the poor, an interesting detail that is included in some of the other ordinances as well.

This ordinance seems particularly relevant today as the provision of interpreting services still represents a significant challenge in many judicial systems. As was the case in the sixteenth century, court procedures are sometimes delayed or

postponed because an interpreter is not available due to the lack of a workable structure or protocol for identifying cases in which an interpreter is needed and an efficient system for procuring interpreting services in a timely manner. Perhaps it is unrealistic to think that nowadays this responsibility should fall to the interpreters themselves, especially in large jurisdictions with very busy court calendars. However, it is not unreasonable to expect that an effective system be put into place to avoid the delays and damages caused by the absence of a qualified interpreter.

Law V. Ordinance 306. 1563.

Que los días de audiencia resida un intérprete en los oficios de los escribanos.

Mandamos que un intérprete resida por su orden los días de audiencia en los oficios de los escribanos a las nueve de la mañana para tomar la memoria que el fiscal diere, y llamar los testigos que convinieren examinarse por el fisco, pena de medio peso para los pobres de la cárcel por cada día que faltare.

An interpreter must be present in clerk of court's office on court days.

We do hereby order that an interpreter, by turn, be present in the clerk of court's office at nine o'clock in the morning on court days in order to receive the prosecutor's report and to summon any witnesses that the prosecutor may wish to call, under penalty of one-half peso per day absent to be paid to the poor in jail.

Comment: This ordinance, like the previous one, recognizes the importance of interpreters to the smooth running of the judicial process in general. It broadens the role of the interpreter by stipulating a service that seems to be secondary to interpreting itself, i.e. ensuring that witnesses are notified and present in court. While in this case it seems reasonable for the interpreter to be involved given that language barriers do exist, the specification of this ancillary role does bring up the still controversial issue of delimiting the role of court interpreters.

Interpreters are routinely asked to perform functions that fall outside of the purview of their profession as defined by their codes of ethics and professional good practice. What is expected of interpreters varies greatly from one judicial system to another, and often even from one courtroom to another in the same system. It is widely accepted that the judge in a courtroom establishes how that courtroom will function. However, it is also true that the level of awareness of how to best incorporate an interpreter into the proceedings varies greatly among the members of the judiciary. Therefore, one of the challenges that still faces court interpreters and the professional associations that represent them today is how to educate and inform the judiciary at large as to the appropriate use of interpreters within the legal system.

Law VI. Ordinance 298. 1563.

Que los intérpretes no oigan en sus casas ni fuera de ellas a los indios, y los lleven a la audiencia.

Ordenamos que los intérpretes no oigan en sus casas ni fuera de ellas a los indios que vinieren a pleitos y negocios, y luego sin oírlos los traigan a la audiencia, para que allí se vea y determine la causa conforme a justicia, pena de tres pesos para los estrados por la primera vez que lo contrario hicieren; y por la segunda la pena dobrada, aplicada según dicho es; y por la tercera, que demás de la pena dobrada, pierdan sus oficios.

Interpreters shall not discuss [legal matters] with Indians in their homes or anywhere else, but rather shall bring them before the courts.

We do hereby order interpreters to refrain from discussing legal cases or matters with Indians in their homes or anywhere else, and require that they [the interpreters] bring them [the Indians] to court so that the matter can be resolved in accordance with the law, under penalty of three pesos to be paid to the court for the first infraction, twice that amount for the second infraction, and the fine doubled and banishment from the profession for the third infraction.

Comment: It is interesting to note that the fines for infringing this law are quite substantial as compared to those for infringing some of the other laws. Repeat offenses are treated severely, and a sixteenth century three-strike rule is in place. This law speaks to the issue of confidentiality and inappropriate contact between interpreters and anyone who may have a matter that should be heard by a judge. It prohibits interpreters from discussing legal matters with "clients" and instructs them to direct anyone who has a legal issue to the courts. If the modern-day issue derived from the previous ordinance was limiting what court officials should expect from interpreters, the issued derived here is interpreters themselves not overstepping their professional boundaries by entering into improper contact with parties to a case. Interpreters are often approached by participants in legal proceedings and asked for legal advice, suggestions for comportment in court, or information about the judge presiding over a case. They are often seen by the language-limited defendant or witnesses as an ally or confidant, the one person with whom communication is possible. This fact often puts the interpreter in an untenable situation in which professional ethics and human emotion are at odds. Codes of good practice have been designed so that interpreters learn to recognize and handle situations in which contact with an involved party would not be ethical.

Law VII: His Majesty Phillip II, Ordinance 300. 1563.

Que los intérpretes no sean procuradores ni solicitadores de los indios ni les ordenen peticiones.

Los intérpretes no ordenen peticiones a los indios, ni sean en sus causas y negocios procuradores ni solicitadores, con las penas contenidas en la ley antes de ésta, aplicadas como allí se contiene.

Interpreters shall not serve as counsel or represent Indians in legal matters nor encourage them to file complaints.

Interpreters shall not encourage Indians to file complaints nor represent or serve as counsel for them in legal matters, under the same penalties as stipulated in the previous law, applied as indicated therein.

Comment: This relatively short law is closely related to the previous one and addresses similar issues. While the previous ordinance prohibited interpreters from "hearing" the Indians, i.e., discussing legal matters with them, this ordinance specifically prohibits them from entering into a more structured legal relationship with the parties to a case, and establishes the same rather stringent consequences for doing so.

While it is widely accepted today that interpreters should refrain from giving legal advice, there is less consensus on just what the nature of the relationship between interpreters and individuals involved in court proceedings should be. Many interpreters report situations in which they are expected or asked to take on roles that go beyond being linguistic or even cultural mediators. Judges often depend on interpreters to explain courtroom practices and procedures directly to defendants or witnesses, and defendants who do not share the language of the court often view the interpreter as their one link to a system that they are not familiar with and cannot successfully navigate. Studies on actual interpreter performance show that interpreters sometimes function as advocates for one of the parties and at others as gatekeepers who wield a significant amount of power in the courtroom. They try to faithfully render what is being said, but sometimes filter, embellish and clarify utterances, as pointed out in the articles by Hale and Ortega and Foulquié in this volume.

Law VIII. The same. Ordinance 301. 1563.

Que los intérpretes no se ausenten sin licencia del presidente.

Mandamos que los intérpretes no se ausenten sin licencia del presidente, pena de perder el salario del tiempo que estuvieren ausentes, y de doce pesos para los estrados por cada vez que lo contrario hicieren.

Interpreters shall not be absent without permission of the president of the tribunal.

We do hereby order that interpreters not be absent without the permission of the president of the tribunal, under penalty of loss of wages for time missed and a fine of twelve pesos for the courts for each occurrence.

Comment: Laws II, IV and V partially or totally address the issue of the availability of interpreters in different legal and administrative proceedings. Law VIII further develops this issue by stipulating that interpreters shall report for work unless permission is granted by the highest judicial authority. Nowadays, in some systems, interpreters who do not report for scheduled work or who in some way do not comply with the requirements of their profession are held in contempt of court. However, in many venues, the only consequence of an interpreter not appearing when called is that the proceeding is delayed or even rescheduled. Perhaps the most noteworthy aspect of this law, however, is the amount of the fine that is levied for non-compliance. While there are certainly some consequences that are much more serious than a monetary penalty (banishment from the profession or exile), it is also true that most of the laws that specify a fine, set the amount of the fine at two or three pesos. Thus it is significant that the fine for failing to appear for work is several times more than the fines for other types of misconduct.

Law IX. Ordinance 303. 1563.

Que cuando los intérpretes fueren a negocios fuera del lugar, no lleven de las partes más de su salario.

Ordenamos que cuando los intérpretes fueren a negocios o pleitos fuera del lugar donde reside la audiencia no lleven de las partes, directé ni indirecté, cosa alguna más del salario que les fuere señalado, ni hagan conciertos ni contratos con los indios, ni compañías en ninguna forma, pena de volver lo que así llevaren y contrataren, con las seteras, y de privación perpetua de sus oficios.

When interpreters work outside of their normal workplace, they shall not accept from the parties any compensation other than their regular wages.

We do hereby order that when interpreters work in a place other than the established courts, they shall not directly or indirectly accept compensation from any of the parties other than their normal wages, nor will they enter into any kind of agreement or contract with the Indians or any one else under penalty of having to return that which they received sevenfold and being permanently banished from the profession.

Law X. Ordinance 304. 1563.

Que se señale el salario a los intérpretes por cada un día que salieren del lugar y no puedan llevar otra cosa.

Cada un día que los intérpretes salieren del lugar donde residiere la audiencia por mandado de ella, lleven de salario y ayuda de costa dos pesos, y no más, y no comida ni otra cosa, sin pagarla, de ninguna de las partes directé ni indirecté, pena de las seteras para nuestra cámara.

The wages interpreters shall receive for each day they work away from their normal workplace will be stipulated and no other type of compensation allowed.

For each day that interpreters are required to travel to a location other than where the court is located, they will receive two pesos as wages and expenses and nothing more. They will not receive food or anything else free of charge either directly or indirectly from any of the parties involved, under penalty of *seteras* paid to the court.

Comment on Laws IX and X: These two ordinances reflect the fact that judges and court officials, including interpreters, often traveled to small towns to hold hearings and resolve cases. They once again touch upon the issue of compensation, one that is amply covered in these 14 laws. Law IX reiterates the prohibition on interpreters accepting any type of compensation other than salary while Law X establishes a wage and daily stipend for interpreters required to work outside of their normal place of residence.

Law XI. Ordinance 305. 1563.

Que de cada testigo que se examinare lleve el intérprete los derechos que se declaran.

De cada testigo que se examinare por interrogatorio que tenga de doce preguntas arriba lleve el intérprete dos tomines: y siendo el interrogatorio de doce preguntas y menos, un tomín, y no más, pena de pagarlo con el cuatro tanto para nuestra cámara; pero si el interrogatorio fuese grande, y la causa ardua, el oidor o juez ante quien se examinare lo pueda tasar, demás de los derechos, en una suma moderada, conforme el trabajo y tiempo que se ocupare.

The interpreter shall receive a set fee for each witness that is questioned.

For each witness whose interrogation consists of more than twelve questions, the interpreter will receive two *tomines*. If the interrogation consists of twelve questions or less, the interpreter will receive one *tomín* and not more, under penalty of paying four times that amount to the court. However, if the interrogation is long and arduous, the magistrate or judge hearing the case may award [the interpreter] a moderate sum in addition to regular wages, commensurate with the work and time involved.

Comment: This law is the only one that gives us minimal insight into the “pay scale” established for interpreters. Compensation seems to be based on a per-witness basis, but a two-tier system is established which sets a limit for what might be considered the “standard” interpreting situation. When examination of a specific witness is longer than usual, compensation is doubled and there is even a provision that allows a judge to use his discretion to award greater compensation for particularly long or challenging interpreting sessions. It is difficult to know how the compensation of interpreters compared to the compensation given to other types of functionaries or just how much an interpreter might really have earned. As mentioned in the terminology section, there were approximately 8 or 9 *tomines* to a *peso* so interpreters could conceivably have interpreted up to 100 questions for each *peso* they were paid. When sanctions were set for wrongdoing, they were usually based upon the damages assessed in each case, but in a few instances specific monetary fines were set. These ranged from one-half peso to twelve pesos for unauthorized absences (Laws IV, V, and VIII) and from three to six pesos for improper contact with Indian clients including encouraging them to file complaints and providing legal advice (Laws VI and VII). Thus the fines that might be imposed on an inter-

preter for wrongdoing were equivalent to the compensation they would receive for interpreting anywhere from 50 to 1200 questions and answers.

Law XII'. Proclaimed by Charles in 1537.

Que el indio que hubiere de declarar, pueda llevar otro ladino cristiano que esté presente.

Somos informados que los intérpretes y nagualtatos que tienen las audiencias y otros jueces y justicias de las ciudades y villas de nuestras Indias, al tiempo que los indios los llevan para otorgar escrituras o para decir sus dichos, o hacer otros autos judiciales y extrajudiciales, y tomarles sus confesiones, dicen algunas cosas que no dijeron los indios, o las dicen y declaran de otra forma, con que muchos han perdido su justicia, y recibido grave daño. Mandamos que cuando algunos de los presidentes y oidores de nuestras audiencias u otro cualquier juez envíe a llamar a indio o indios, que no sepan la lengua castellana, para les preguntar alguna cosa, o para otro cualquier efecto, o viñiendo ellos de su voluntad a pedir o seguir su justicia, les dejen y consientan que traigan consigo un cristiano amigo suyo que esté presente, para que vea si lo que ellos dicen a lo que se les pregunta y pide, es lo mismo que declaran los nagualtatos e intérpretes, porque de esta forma se pueda mejor saber la verdad de todo, y los indios estén sin duda de que los intérpretes no dejaron de declarar lo que ellos dijeron, y se excusen otros muchos inconvenientes que se podrían recrecer.

Any Indian who is required to give testimony is allowed to bring a person who speaks Castilian and knows the customs of the Spanish to be present at the hearing.

We have been informed that when interpreters and speakers of Nahuatl who work in the courts or for the judges and jurists of the cities and towns in the Indies have been taken by the Indians to authorize writs, interpret their words, facilitate other judicial and extra-judicial acts, or take their confessions, they sometimes say things that the Indians did not say or state things in a different way, thereby preventing justice from being done and seriously harming the party involved. We do hereby order that when any of the presidents or judges in our courts, or any other judge, summons an Indian or Indians not able to speak the Castilian language to answer questions or for any other purpose, or when they come to the courts of their own accord to initiate or follow up on a case, they be allowed to bring with them a friend who will be present to ensure that their answers are transmitted correctly by the interpreters and speakers of Nahuatl. In this way the truth will better be known and the Indians will harbor no doubts as to whether or not the interpreter said what they had said, and thus many other problems that might arise will be avoided.

Comment: As mentioned earlier, this was one of the earliest of the laws and could arguably be called one of the most significant. It recognizes not only that faulty interpretations do occur, but also that errors in interpreting often harm individuals and prevent justice from being done. It also tacitly recognizes the importance of maintaining the trust of those who use the system. However, the solution that is proffered in this law—to allow individuals who do not speak the language of the court to bring along someone who does to “monitor” the interpreter’s output—would be greatly questioned today on the grounds of impartiality and competence.

Law XIII. His Majesty Phillip IV in San Lorenzo. October 16, 1630.

Que el nombramiento de los intérpretes se haga como se ordena, y no sean removidos sin causas y den residencia.

Nombran los gobernadores a sus criados por intérpretes de los indios, y de no entender la lengua resultan muchos inconvenientes. Teniendo consideración al remedio, y deseando que los intérpretes, demás de la inteligencia de la lengua, sean de gran confianza y satisfacción. Mandamos que los gobernadores, corregidores y alcaldes mayores de las ciudades no hagan los nombramientos de los intérpretes solos, sino que preceda examen, voto y aprobación de todo el cabildo o comunidad de los indios, y que el que una vez fuere nombrado no pueda ser removido sin causa, y que se les tome residencia cuando la hubieren de dar los demás oficiales de las ciudades y cabildos de ellas.

Interpreters will be appointed in accordance with the law and will not be discharged without cause and without an evaluation of their service.

Governors appoint their servants to be interpreters for the Indians, and if they do not understand the language, many problems arise. In considering possible solutions, and with the hope that interpreters, in addition to having a good knowledge of the language, are also trustworthy and competent, we do hereby order that interpreters not be simply appointed at will by the governors, chief magistrates and mayors of our cities, but rather that they be tested, voted upon and approved by city representatives or the Indian community, and that once appointed, they not be dismissed without cause and that their professional activities be examined in the same way and at the same time as those of other local officials.

Comment: This last law, promulgated in 1630, sets standards for the selection of interpreters which preclude government officials from arbitrarily appointing interpreters and establishes a testing and approval approach which includes the participation of local officials and community members. It also confers certain employment rights on interpreters and prohibits their dismissal without proper evaluation and just cause.

Establishing performance criteria and qualification standards continues to be one of the major challenges facing judicial systems today. Even the most conscientious find themselves up against a myriad of situations that are extremely difficult to address properly. In most countries where training and certification have been established, training courses and certification procedures are available for only a limited number of languages. Less stringent and less reliable methods are used to "qualify" individuals in what are commonly called more "exotic" languages. Even when interpreters in a specific language have been qualified in some way, they may not be available for a specific proceeding or in a specific location, making it necessary for the judicial system to resort to other means such as telephone interpreting or the use of family members or friends who accompany one of the parties to the case. Even when an interpreter has been "qualified," actual performance is very difficult to monitor, and therefore standard levels of quality assurance are difficult to achieve. In most countries, expert oversight committees do not exist, and it is

often almost impossible to know if errors are being made. In spite of this, there has been an increase in some countries in the number of cases that have been appealed on the grounds of faulty interpreting, indicating that some type of ad-hoc monitoring is being done.

In the sixteenth century, there was already a call for independent, transparent and professional qualification procedures and for evaluation of interpreter performance. Just as importantly, there was recognition of interpreter rights and of measures for ensuring fair treatment.

Law XIV. Charles in Toledo, August 24, 1529.

Que los intérpretes no pidan ni reciban cosa alguna de los indios, ni los indios den más de lo que deben a sus encomenderos.

Mandamos que ningún intérprete o lengua de los que andan por las provincias, ciudades y pueblos de los indios a negocios o diligencias que les ordenan los gobernadores y justicias, o de su propia autoridad, pueda pedir, ni recibir, ni pida, ni reciba de los indios para si, ni las justicias, ni otras personas, joyas, ropas, mantenimientos ni otras ninguna cosa, pena de que el que lo contrario hiciere pierda sus bienes para nuestra cámara y fisco, y sea desterrado de la tierra, y los indios no den más de lo que sean obligados a dar a las personas que los tienen en encomienda.

Interpreters shall not request or receive anything from the Indians, nor Indians give more than required to their *encomenderos*.

We do hereby order that no interpreter assigned to work in Indian provinces, cities or towns by the governors or courts, or any interpreter working of his own accord, request or receive from the Indians for himself, for judicial officers or for any other person, any jewelry, clothing, support or item of any kind, under penalty of forfeiting all of his assets to the court and state treasury and being exiled from the territory. The Indians will not give more than required to their *encomenderos*.

Comment: Although this is listed as Law XIV, it was promulgated in 1529 and was the first law related specifically to interpreting. It prohibits interpreters from accepting any type of compensation from the Indians, but equally as important, it also stipulates that Indians should not give more than required to their *encomenderos*. This reflects the fact that one of the main reasons the *New Laws of the Indies* were written and proclaimed was to help protect the rights of the Indians and ensure a dignified existence for the indigenous peoples of the New World.

Conclusion

In the sixteenth and seventeenth centuries, the Spanish Crown sought to ensure competence, fair play and equality in the governance of the colonies in the New World. Many of the issues addressed in Title 29 of Book II of the *New Laws of the Indies*

Indies are still being addressed today. Recognition of the importance of the interpreter in seeing that justice is done is patent in both periods, but so is the fact that limits must be set and malfeasance avoided. Four hundred years have not altered the basic facts, and goals remain essentially the same. The challenge, then, is not only to define the role of the interpreter, but rather to continue to raise the awareness of all of the parties involved in the judicial process about the issues involved in order to gain their assistance in ensuring that these canons of judiciary interpreting are respected. In today's world that means that court interpreters must be properly trained, the difficulty and importance of their work fully recognized, their pivotal role in the judicial process acknowledged and accepted by judicial authorities, and their compensation established in accordance with their responsibilities. Moreover, interpreters must be constantly vigilant of their own performance and professional behavior and take on the responsibility of monitoring other members of the profession so that the high standards justice demands are always met. The laws found in Title 29, *De los Intérpretes*, prove that this was known to be true in the sixteenth century. We would do well to heed the lessons that history provides.

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