

Quality Assessment and Political Will: A Necessary Symbiosis

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Abstract. *The focus in the field of legal interpreting is shifting from simply complying with international and national mandates on the provision of interpreting services in judicial settings to addressing issues of quality assurance. In this paper, the argument is made that qualifying individuals to work as legal interpreters is pivotal to achieving the legal certainty that is required in judicial systems today, and that positive political will and administrative action are necessary to ensure that valid certification procedures are supported and funded. A critical analysis is presented of some common elements of current assessment practices in a number of countries, together with examples of the effects of positive and negative political will.*

Keywords: *Legal interpreting, assessment, political will, policy.*

Resumo. *Na área da interpretação jurídica, o enfoque está a mudar da simples observação das indicações nacionais e internacionais relativamente à prestação de serviços de interpretação em contextos jurídicos para o tratamento de questões de garantia de qualidade. Neste artigo, defende-se que a formação dos profissionais para desenvolverem o seu trabalho como intérpretes jurídicos é essencial para assegurar a certeza jurídica necessária nos sistemas atuais, e que é necessária vontade política e ação administrativa favoráveis para assegurar o apoio e o financiamento de procedimentos de certificação válidos. Apresenta-se uma análise crítica de alguns elementos comuns das práticas de avaliação correntes em diversos países, bem como exemplos dos efeitos da vontade política favorável e desfavorável.*

Palavras-chave: *Interpretação jurídica, avaliação, vontade política, políticas.*

Introduction

Legal interpreting can no longer be considered a field of study in its infancy as we now have several decades of research behind us, a number of national and international associations involved in the field (see Annex I for a partial list), some 20 major research projects dedicated to legal interpreting completed since the turn of the century (see Annex 2), and professional meetings and conferences organized each year at which to share the results of current work. In spite of this, progress has been slow as regards recognition of the field, and professionalization has not been widely achieved. Many judicial

authorities and members of the legal profession are not aware of the issues related to interpreting in legal settings, nor of the best ways to incorporate interpreting into judicial proceedings. It is surprising that there is still some reluctance, on the part of government agencies and public administrations, to expect and require the same degree of professionalism in this field as they do in others. While there are clear standards and exigencies for virtually every other participant in judicial proceedings, the use of ad hoc or inadequately vetted language mediators is still all too common. The same level of competence and high quality performance should be expected of legal interpreters as is expected of judges and lawyers, and, if allowing unqualified individuals to step into these professional roles would be considered unacceptable, the same should be true for interpreters. Raising awareness among judicial authorities and legal practitioners about the importance of quality in interpreting services is key to achieving practices that can guarantee procedural rights to all individuals, regardless of their national, racial or ethnic origin, their cultural beliefs, or the language that they speak. Only through adequate information and understanding can those who have a voice, and ultimately those who have decision-making power, appropriately regulate legal interpreting in judicial settings and take the administrative and legislative steps needed to ensure quality.

Until recently, emphasis, in many countries, has been on providing the interpreting services that are stipulated by international treaties and conventions and in national legal codes. However, emphasis has gradually shifted to the issue of quality assurance as an essential element for ensuring legal certainty and enhancing mutual trust between countries and their respective judicial systems. By gradually coming to recognize that an undetected faulty interpretation can be as bad as, or even worse than, no interpretation at all, authorities have begun to redirect efforts towards monitoring the effectiveness of interpretation. One clear example of this was the issuance by the Council of the EU and the European Parliament of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. Article 2.8 of the Directive states that “interpretation... shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence” (European Commission, nd). EU Member States were directed to take “concrete measures” to ensure that the quality stipulations were met (Art. 5.1), to establish a register of “appropriately qualified” interpreters (Art. 5.2), and to provide training for judges, prosecutors and judicial staff, with special attention being given to “the particularities of communicating with the assistance of an interpreter, so as to ensure efficient and effective communication” (Art. 6). Perhaps not surprisingly, at the end of the 36-month grace period for the transposition of the directive into national law, only eight member states had complied. Sixteen then received formal notices for lack of compliance.¹

At present, some six years after the issuance of the Directive, full information about the results of the review of implementation measures is still not available, but preliminary reports, based on surveys and studies, show that a variety of approaches have been proposed and that the degree of standardization that was desired for a pan-European network of registers to be effective, still seems to be an elusive goal.

So what is it that makes this issue so difficult to tackle? Why is quality assurance such a challenge in legal interpreting? There are two main issues to examine. The first has to do with broad societal attitudes and garnering the necessary support and politi-

cal will to effect positive change. The second, which largely depends upon the success of the first, has to do with the very real challenges involved in accurately and dependably assessing the knowledge and skills that an interpreter must bring to bear in a very complex professional activity.

Political will and societal attitudes

Developing mechanisms for ensuring quality in a highly complex field such as legal interpreting may seem like a daunting task. However, similar challenges have been faced and good results have been achieved in other fields when there has been a general acceptance of the need to do so. The importance of raising awareness and garnering positive political will is key to bringing about change, and effecting the kind of change that is needed requires both attitudinal shifts and pragmatic action.

Analyzing societal attitudes about legal interpreting generally reveals that there is a lack of knowledge about and interest in this topic, most likely due to the fact that legal interpreting does not touch most members of society in a direct way. However, when the topic does come up, there is often a societal backlash against providing services or giving any kind of special consideration to people who are perceived of as “foreigners” who have been welcomed into a country and then infringe the law. At best, this attitude reflects a misunderstanding of the concepts of rule of law, of being innocent until proven guilty, and of due process, or at least a rejection of the universal application of these concepts. At worst, it reflects a general mistrust of the “other”, and a latent type of racism that has yet to be eradicated in some societies. It also reflects a misconception on the part of those who hold these attitudes that they could never find themselves in a situation in which they themselves might need and would certainly expect this type of assistance. They cannot imagine being accused of a crime or being the victim of criminal behavior in a legal system they do not understand and in which their inability to communicate becomes a significant barrier, and therefore they lack empathy for those who do.

Second, there is a general lack of awareness of the pivotal role that interpreters play in every interaction in which they participate, and of the challenges involved in providing a correct interpretation of everything that is said in an exchange between parties who do not share a common language or culture. Interpreters – and even the interpreting function itself – are often taken for granted, with the widespread misconception that anyone with some knowledge of another language can interpret, or that defendants, victims or witnesses with conversational capacity in a language can fend for themselves. Consequently, there is little recognition of and respect for professional interpreters and the training, skills and knowledge they need.

Finally, there is the more pragmatic issue of the cost of providing interpreting services, which in criminal cases is borne by the State. In times of general economic crisis, earmarking funds for services whose cost cannot be accurately predicted from one budget cycle to the next, leads to situations in which “easy” solutions are sought. In the case of legal interpreting, one approach has been to outsource the responsibility for providing interpreting services to private agencies under a tender process that caps the total expenditure and requires the successful bidder to assume the risk of depleting funds before the contract cycle is completed. The unpredictability of the number and type of services that will be needed, together with the profit motive that, by definition, underlies private

business, has, in many cases, led to a drastic decrease in pay for interpreters, resulting in compensation that is in no way commensurate with the social responsibility that they assume in the performance of their duties. This, in turn, has led to qualified interpreters abandoning the field and an influx of untrained and inexperienced practitioners whose skills are usually not assessed in any meaningful way. The negative impact on quality, and thus on the outcome of legal proceedings, is not surprising.

What is clear is that these factors should not condition the provision of interpreting services. As mentioned earlier, international human and civil rights declarations and most national legal codes recognize, either directly or indirectly, the right to interpretation in criminal cases, and like other rights, this one should not be curtailed due to societal attitudes or budgetary constraints, nor can the quality of service be compromised due to administrative challenges. In countries in which significant strides have been made to address issues of quality, political will has been pivotal, and in others, where expediency or cost containment has been the driving force, quality has suffered. A quick review of some of the approaches that have been taken illustrates this point.

On the positive side, a good example is provided by Australia, where a company was created to “set and maintain high national standards in translating and interpreting to enable the existence of a pool of accredited translators and interpreters” (NAATI, nd). In the strategic plan set out by this company for 2015-2017, the goals include providing a system of certification that “has integrity and accountability”, which “sets the standards for interpreting and translating in the world”, and which fosters “a culture of continuous quality improvement”. What is interesting about this company, the National Accreditation Authority for Translators and Interpreters (NAATI), is that it is jointly owned by the nine governments of Australia² and is governed by a board of directors appointed by these “owners”. NAATI “works in conjunction with a range of different industry partners, including government, professional associations, multicultural organisations, indigenous organisations, educational institutes and service providers” and it is a clear example of positive political will and the effective involvement of major stakeholders.

Another example is the United States, where a series of laws and executive orders dating back to 1964 have strengthened the push for quality interpreting services. In that year, the Civil Rights Act prohibited discrimination against any person based on race, color or national origin, and the legal interpretation of Title VI of this law provided the foundation for requiring interpretation for Limited English Proficient (LEP) individuals in both civil and criminal cases in federal courts. Federal laws also required that interpreters be skilled. In 1978, the passage of the Court Interpreters Act established the right of individuals to have a *certified* or otherwise *qualified* court interpreter, which led to the creation of the Federal Court Interpreter Certification Examination program and the creation of a register of federally certified court interpreters. In 1979, the National Center for Interpreting Testing, Research and Policy was created to develop a certification exam for federal court interpreters. This effort produced a measurable reduction in the number of appealable interpreter errors. In the year 2000, the then President Bill Clinton issued Executive Order 13166 (US President, 2000) on “Improving Access to Services for Persons with Limited English Proficiency” which required any agency that received funding from the federal government to examine their current practices and services for LEP individuals and take reasonable steps to provide adequate services or risk losing federal funding. In 2004, the U.S. Department of Justice, Civil Rights Division, issued

a report related to this executive order and provided “tips and tools” for courts, police, emergency call centers, domestic violence specialists and service providers, which included a specific section on ensuring quality (U.S. Department of Justice. Civil Right Division, 2004). Finally, in 2010, the US Assistant Attorney General for the Civil Rights Division of the Department of Justice, sent a reminder to all chief justices and court administrators of the obligations set out in Executive Order 13166 (Pérez, 2010).

At the other end of the spectrum, we can cite examples of what might be called negative progress. The best known example is the case of Great Britain, where a shift in policy, based principally on the desire to contain costs, brought about significant changes in the methods used to procure interpreting services. Until 2012, courts directly booked qualified interpreters from those listed on the National Register of Public Service Interpreters. This register was well known and respected among legal professionals, and individuals who wanted to be included on the register had to submit to a fair and valid assessment process. The courts, and other social services agencies, regularly selected professionals from the register. With these measures in place, a good level of legal certainty was achieved. However, in 2011, the Ministry of Justice decided to outsource the provision of legal interpreting services for police, prisons, courts and tribunals in order to curtail costs. The service provider that was awarded the contract had no prior experience in the language sector and problems arose almost immediately. There was a cut in both standards and pay, which led to the exodus of many qualified and experienced interpreters, and there have been instances in which proceedings were interrupted or postponed due to the lack of an interpreter. In some cases, family members and friends were allowed to interpret, a practice which was thought to have been eradicated. In response to criticism leveled at the new system, the Ministry of Justice commissioned an independent review (TMKG, 2014), the results of which were published in November 2014. Among the findings reported was the fact that qualifications and experience were not being considered as an important part of the procedure for selecting interpreters and that less than half of the interpreters employed by the agency were qualified. The report recommended that more emphasis be put on the use of qualified interpreters and highlighted the need for Continuing Professional Development (CPD).

As a final example, the approach that has been taken in Spain is worth examining. In the process of preparing the transposition into Spanish law of the previously mentioned Directive 2010/64/EU on the right to translation and interpretation in criminal cases, the government and judicial authorities undertook a series of consultations with stakeholders, including professional associations and academics specialized in the field. All of the stakeholders strongly recommended the development of a valid and reliable testing procedure to qualify individuals before allowing them to work in judicial settings. Unfortunately, their recommendations were not heeded and an *a posteriori* approach to quality control was adopted. Thus the new law, (*Ley Orgánica 5/2015, de 27 de abril*), establishes that interpreters are to be chosen from a list drawn up by competent authorities or, in certain circumstances, appointed by a judge, and that in situations in which the judge, prosecutor, defense attorney, or a party to the case considers that the interpretation does not “offer sufficient guarantees of accuracy” (my translation), they can ask for a review and request another interpreter. In real terms, this means that judges and attorneys (and even defendants) are expected to monitor the performance of interpreters and bring a complaint if their performance is deemed faulty. Expecting judges or lawyers to detect

poor quality interpreting during a hearing in which the language involved is one they do not understand is absurd. Only the most blatant of errors could be detected, those in which the answers given clearly do not respond to the questions asked, or when communication breaks down completely. When the information given is plausible and the delivery of the interpretation gives the impression that effective communication is being achieved, errors would most certainly be missed – or if suspected, simply tolerated for the sake of expediency – and the result would be serious miscarriages of justice. This *a posteriori* approach to quality control is highly questionable and was not supported by the experts who were consulted.

These brief case studies serve to exemplify the impact of political will and the effect of policy on quality issues in the field of legal interpreting. It is quite clear that without general societal support and a willingness on the part of the political class to seriously examine this issue and provide mandates and funding for the appropriate steps to be taken, progress will be slow. In cases in which positive steps are taken, being able to efficiently and effectively assess interpreter performance is then of paramount importance.

Assessment and Qualifications

Establishing criteria and methods for evaluating interpreter knowledge and performance in legal settings is a complicated undertaking. Legal interpreters must know the workings of the judicial system in which they are providing services, be familiar with and competent at correctly implementing the professional code of ethics, and have an excellent proficiency in two languages, including mastery of all registers, terms of art, and legal language. By definition, they must master the techniques of the different modes of interpreting that are used in legal interpreting situations. Interpreting itself entails not only understanding the words that are used, but also the context in which they are produced, the cultural aspects of the communication, and the tone the speaker uses and the implications thereof. An interpreter must be able to “read” how utterances are understood both by the person who produces them in the source language and by those who receive them in the target language. Furthermore, they must understand the impact of the choices they make when interpreting in legal proceedings. Given the complexities of assessing the capacity of individuals who wish to work as legal interpreters in all of the necessary knowledge and skills sub-sets, input from a wide array of experts is needed. Each has a specific contribution to make to the process. Of course, experienced professional interpreters must be involved, as must jurists who work with interpreters in court or other legal venues. Academics from the fields of translation and interpretation, linguistics, philology, and the law should be consulted as their knowledge of theory and their research and experience in training future interpreters and jurists would be a vital component of an assessment scheme. Skilled psychometricians are key to the success of these efforts, as they can provide specialist knowledge in testing theory, test development, and evaluation methods that guarantee the validity and reliability of the testing instruments being developed. Representatives of professional associations, whose task it is to examine the current state of affairs, oversee issues related to working conditions, help control intrusion by the unqualified, and monitor protocols, legislation, guidelines, etc. should be involved, and finally, representatives of language minority communities should be involved whenever possible.

A critical look at current assessment practices

³ Most approaches to interpreter certification currently involve reviewing a candidate's training or academic preparation, their experience in the field, and their character and/or good standing, especially vis-à-vis the legal system. Minimum requirements are often set in each of these categories as a pre-requisite for further assessment. Those who make it past this first screening are then usually tested to ascertain their proficiency in the languages in question, including their knowledge of legal terminology, their knowledge of the legal system, their understanding of the professional code of ethics and its application in real situations, and their interpreting skills. All but the interpreting skills can be tested using a written instrument. Interpreting, by definition, must be face-to-face or at the very least, video recorded using a computer. The standard is to have a live session for the interpreting portion of the exam. These categories of evaluation are broadly accepted in the field, although not every certification or assessment scheme includes all of them or assesses them in the same way. Nevertheless, it is worthwhile to examine some of the more prominent categories and evaluate their effectiveness and possible flaws.

Personal integrity and good standing

Most professionals who work in the administration of justice are expected to meet certain criteria as regards their personal history and character. Moral "fitness", while a somewhat ambiguous term open to a variety of interpretations, is required in many professions. For example, The New York State Bar Association says that "applicants for admission to the Bar must show that they possess the personal qualities required to practice law and have the necessary character to justify the trust and confidence that clients, the public and the legal system place in them" (NYLAT, nd). In Spain, individuals with a criminal record are barred from becoming a member of the armed services, Civil Guard, or national or local police, and they cannot be judges, work in a prison, or become university professors. In Australia, members of the legal profession must be of "good fame and character" or "a fit and proper person" (Australian Human Rights Commission, nd). As regards legal interpreting, there are similar requirements in many of the countries that have formal requirements for admission to the profession. In Austria, for example, candidates must have moral integrity and a normal economic and financial situation (defined as no bankruptcy or business failures); in Sweden, candidates must be known to have "personal integrity"; in Poland they must have "full capacity" according to the law; in Luxembourg and Slovenia, among others, they must not have a criminal record. In Canada, individuals with a criminal record who wish to become court interpreters must apply for a pardon from the National Parole Board. In some countries, requirements vary because the regulating function pertains to specific courts, jurisdictions, or regions (Italy, Germany and Belgium, for example). Determining a candidate's "moral fitness" can be a highly subjective undertaking, and those charged with making these determinations range from judges to civil servants. While expecting individuals who work in the judicial system to have a clean criminal record may seem logical and reasonable, determining if someone has moral or personal integrity is not a clear or easy undertaking. More specific criteria, with careful consideration of the pertinence of each to the role of the court interpreter, should be developed (Ministry of the Attorney General, Ontario, Canada, nd).

Academic preparation and training

Formal academic preparation and some type of continuing professional development are common criteria for professional practice in many fields. This is certainly true of judges and attorneys, who must complete rigorous programs of university level studies (in some cases at both the undergraduate and post-graduate levels), as well as pass qualifying tests after completing their academic programs. In legal interpreting, access to the profession through certification often includes educational or training requirements. For example, in Poland, candidates who wish to sit for the certification exam must have a Masters level (or equivalent) degree, although proposals have been made to modify that requirement to an undergraduate degree. In Denmark anyone who has an MA degree in translation and interpretation is automatically qualified to become a State-Authorized Translator or Interpreter, and those who have an undergraduate or graduate degree in languages are also usually accepted, even though their degree programs only include training in literary translation and no training whatsoever in interpreting. In the Czech Republic, candidates for the LI qualification exam must have a university degree (T&I, law, languages, among others) and prove language competence (graduates of interpreting programs are exempt, and for languages for which it is objectively impossible to test language knowledge, the language test is not required). Those who do not hold a university degree in law must also complete a 28-week course consisting of 84 lectures on the legal system and 84 language-specific lessons (available in English, French, German and Russian). In Slovenia, all candidates for the certification exam must complete a short seminar offered by the National Certification Center (CIP, *Center za Izobrazevanje v Pravosodju*), which is taught by LITs and professors of law and covers topics related to the political structure of Slovenia and criminal procedures. At the other end of the spectrum are those countries that do not require any specific educational requirements at all. In the United States, for example, access to the Federal Court Interpreter Certification Exam does not specify any academic credentials and most state certification procedures are open to any candidate with a high school diploma (Qualitas Projet, nd).

The problem with academic preparation is that in many countries university level degree programs in Translating and Interpreting simply don't exist, and specific training in legal translating and interpreting is often limited. Even when university level degree programs are offered, a very limited number of "B" languages are covered, with languages that are widely required in the legal system not always included.⁴ For example, Polish is now the second most spoken language in England, but there is no university level program in which the Polish-English language pair is fully developed. Furthermore, at the university level, training in interpretation often takes a backseat to training in written translation, and what is offered often focuses on conference interpreting rather than public service or community interpreting. For these reasons, requiring a university level degree in translating and interpreting does not necessarily guarantee proficiency in the interpreting skills or the specific professional contextual knowledge needed to work in judicial spheres. Thus, waiving some parts of a certification process for individuals with certain broad categories of training may not provide the guarantees that a certification or assessment process is meant to provide. Requiring a university level education may serve to ensure the general educational maturity of a candidate, their knowledge of the world, and their ability to think critically and analytically, but it does not fully guarantee specific preparedness for professional performance in this field.

Specialized training courses are often offered to complement general academic preparation or to help those who do not have formal training to acquire the skills they need. These courses are usually designed by professional associations, academic institutions, or other stakeholders, and are meant to provide specific instruction related to the practice of a profession, to enhance already obtained knowledge or skills, and to keep practitioners up-to-date as regards developments in the field. Continuing professional development (CPD) is often required to maintain certification or inclusion on lists or registers. In the field of legal interpreting, there are certain skill domains that can be addressed in these kinds of training programs, but several of them are language specific. The challenge then becomes one of providing training in language pairs for which there are only a few practitioners or candidates, or for which it is difficult to find a qualified trainer. Thus, these short specialized training courses are often offered only in the language of the judicial system and cannot provide development in linguistic or cultural practices that are related specifically to interpreters in a given language pair.⁵

Finally, it is also quite common for an educational requirement to be stipulated, but then qualified with “or equivalent”. A good example is a 2013 Judiciary Department Civil Service job posting in Hong Kong, which sought part-time interpreters for African languages (Ewe, Soninke, Lugbara, Sesotho, Bambara, Afrikaans, Wolof, Amharic, among several others). The posting stipulated that “all applicants must (a) possess a recognized university degree or an equivalent academic qualification” (Civil Service Bureau, Hong Kong, nd). However, what constitutes an “equivalent” qualification is rarely specified, and while the responsibility for making a determination often falls to a judge or magistrate, it may also be borne by administrative personnel, who might not be well prepared to undertake such an important task.

Experience

The criterion that is most often used to offset an individual’s lack of academic preparation or specialized training is experience. Counting experience as a criterion for measuring competence is difficult to justify, if an assessment of the quality of the performance is not contemplated. Experience in and of itself does not guarantee quality. It is true that many individuals who began working as interpreters before any type of training or assessment was available have developed into excellent interpreters, but it is equally true that many have not. There are practicing interpreters who have consolidated poor professional practices and are unaware that their skills and knowledge of the field are deficient.

From a practical point of view, requiring experience as part of a qualifying procedure for legal interpreters is a slippery slope, as experience is often difficult to quantify in any meaningful way. It is most often listed in qualification criteria as periods of time: 2 years of experience if a candidate holds a degree in T&I and 5 years of experience for those who do not (Austria), or 5 years of professional experience (Czech Republic, Slovakia, Luxembourg). The question then is, what exactly constitutes a year of experience? Does this mean full-time employment as an interpreter? Does it refer to a certain number of days of interpreting per year? How is a day of interpreting defined? Does it mean a certain number of hours of interpreting, or does any interpreting assignment, be it 15 minutes or 8 hours, constitute a day of interpreting? What kind of interpreting is acceptable, given that including experience as a prerequisite generally precludes individuals from gaining experience in the legal field? Is interpreting at a conference, a business

meeting, in a school, or at a social service agency pertinent? What about interpreting at church services, for a friend at the doctor's, or at the bank for a neighbor? Are all types of interpreting the same? And what constitutes proof of interpreting experience? Would certificates from clients or agencies, a professional activities log, invoices, or even a list of volunteer interpreting events with no contractual factors involved be acceptable?

One of the complaints most often heard as regards the current trend towards outsourcing legal interpreting services to private agencies is that quality control is not mandated in contract tenders, and agencies often employ individuals with no credentials and whose skills have not been adequately tested, and performance is not adequately monitored. Nevertheless, these individuals accrue experience, no matter what their performance level might be. Therefore, for experience to be a valid measure of a candidate's qualifications, a serious approach to defining what constitutes experience is needed. Furthermore, testing should be required, even for individuals with experience. Those who are competent should not object to demonstrating their knowledge and skills.

Testing

The difficulties in defining and quantifying the criteria mentioned above point to the importance of having a valid and reliable certification program that would set minimum performance standards, and, at the very least, be able to exclude the clearly incompetent. Anyone wishing to be included on a register of qualified interpreters should be required to take this professional level qualifying exam, regardless of prior experience, training or personal characteristics. As mentioned previously, developing an adequate certification test is a complex undertaking, considering that exams at approximately the same level of difficulty and measuring the same skills and knowledge must be developed for a myriad of languages. Furthermore, the logistics of test development and test administration, and the perceived costs involved, are often used as justification by governments and judicial authorities to forego the type of serious effort that is needed. However, the challenge is not as daunting as it seems if the right experts are brought into the process and a step-by-step approach is used. In Poland, for example, the Committee of the State Examination Board is comprised of 11 members including four academics, three sworn translators who are nominated by professional T&I associations, three members appointed by the Minister of Justice and one member appointed by the Minister of Labor. Outside consultants are also called in for specific language pairs when necessary. In Austria, the president of the regional court in the district in which a candidate resides examines applications to ascertain if prerequisites are met, and when candidates are approved for testing, a judge sits on the examination board. In the United States, experts from the fields of linguistics, testing, law and translating and interpreting are consulted when developing certification tests. When there is a careful, purposeful approach to test development, a set of detailed test specifications can be produced to serve as a prototype for many language pairs and then adapted to the specific characteristics of each.

As stated earlier, there is a general consensus that a good certification exam should measure a candidate's knowledge of the legal system and professional code of ethics, as well as proficiency in the language pair for which certification is being sought, and the ability to interpret proficiently in the modes that are commonly used in the judicial system. Exams must be performance-based and criterion-referenced. Performance-based assessment means that candidates are asked to demonstrate proficiency by actually doing tasks similar to those they would confront in the everyday practice of their

profession. Thus, any evaluation of the oral language skills of LI candidates that does not specifically include interpreting exercises would not be valid, because simply holding a conversation or answering questions about a written text, (the approach used in Spain and Slovenia, for example), would not give any evidence of a candidate's ability to interpret. Criterion-referenced means that the standards for passing the exam are pre-determined and all candidate performances are measured in accordance with those standards. The cut-off level for passing should be quite high, usually 75-80%, typically higher than in other types of academic testing.

In order to streamline the process, reduce administrative complications and contain costs, a screening exam or exercise in the language of the proceedings can be developed to test all candidates on certain knowledge sub-sets. For example, a screening exam or exercise about knowledge of the legal system could be developed and any candidate who is not able to pass this portion of the exam, be it due to lack of actual knowledge of the legal system or to lack of sufficient proficiency in the language in which the exam is given, would not be given the opportunity to take the costlier interpreting portion of the exam. A language proficiency exam for the majority language could also be given using an objective test format, which would include legal terminology, registers, idiomatic usage, terms of art, and so on. With current technology, this portion of the exam could be given in a secure electronic format at a relatively low cost. Other incremental approaches could be taken to measure certain skills and knowledge that all candidates should have, regardless of the language pair involved. Thus the more complicated and costly portions of the testing process would only be administered to individuals who were successful on the portions of the exam that would be common to all candidates.

The final and most important part is the interpreting exam. Each judicial system must decide what modes of interpreting to include given the characteristics of their legal system. In most systems, the oral interpretation of written documents of interest to the court and dialogic exchanges (testimony, questioning), are commonly used. Sight translation and consecutive interpreting are the two modes of interpreting that are used for these purposes and so a candidate's ability to perform these types of interpreting should be assessed. Sight translation skills are generally evaluated in both directions, in other words, into and from each of the languages involved, and consecutive interpretation skills are usually tested through live or recorded role-play. There are two approaches to this portion of the exam: the first is the use of a standardized, pre-scripted text in which all candidates are asked to interpret the same exchange and are evaluated using an item-analysis or holistic approach; the second is to use an interactional approach, which allows for greater authenticity. However, this latter approach requires a very skilled test-specialist who can use a set of conversational prompts to lead the candidate through the pre-determined set of skill assessment items, without sticking to a word-for-word script.⁶ In all of these approaches, careful training of raters is essential in order to ensure inter- and intra-rater reliability so that all candidates can feel certain that the evaluation of their performance does not depend upon who evaluates them and/or under what conditions.

Finally, because of the challenges involved in identifying and appropriately evaluating interpreters for languages of lesser diffusion, it is imperative to use the most rigorous criteria possible and ensure that diligence trumps expediency. Interesting approaches have been developed in Norway, Sweden, the Netherlands and the UK, countries in

which testing procedures are adapted to a large number of languages. Furthermore, having structures and protocols in place for languages of lesser diffusion will enhance the quality of the provision of services in general. These might include training for legal personnel on how to work with interpreters, orientation programs for “occasional” interpreters (those who are called upon only infrequently), understandable written reference materials, such as procedural protocols for jurists and interpreters, and briefing and debriefing sessions whenever possible.⁷ Finally, the use of technologies, such as video-conferencing, to access a qualified remote interpreter hold promise for the future.⁸

Conclusions

In Madrid (Spain), Luna Jiménez de Parga, Pilar, a criminal court magistrate, spoke out strongly about the problems she encountered in her courtroom when an interpreter was needed. In a speech she gave to the Association of Judges for Democracy in Bilbao a few years back, she identified several pertinent issues: How can a judge appoint an interpreter before a trial if there is no way to check that interpreter’s language skills? What assurances are there if an interpreter has no degree or credentials? How is it possible to know if the accused understands what the interpreter is saying during questioning or cross-examination? How can a judge know if the interpreter clearly understands the questions that are being posed and if these questions are being correctly interpreted? She observed that competent interpreting is a way to safeguard an individual’s right to a fair trial and recognized that linguistic errors can lead to the conviction of innocent people.⁹ Her views and concerns were reported in the national press and brought about further examination of these issues, a clear example of how the voice of jurists can open the doors of change. Magistrates, judges, prosecutors and attorneys can make a significant difference by paying attention to interpreting and speaking out when they detect, or even suspect, deficiencies. To change the reality of legal interpreting, more judges and lawyers need to become actively involved by denouncing cases of faulty interpreting, by demanding proven competence when interpreters are sent to their courtrooms, and by being willing to participate in projects aimed at improving the procedures that are currently in place for procuring interpreting services.

In a letter to Chief Justices and State Court Administrators in 2010, the then Assistant Attorney General of the United States for the Civil Rights Division, Thomas E. Pérez, reminded judges and court administrators that “dispensing justice fairly, efficiently, and accurately is a cornerstone of the judiciary” (Pérez, 2010). He went on to say that any policy or practice that restricted the “meaningful access to the courts” of individuals with limited proficiency in English undermined that philosophy. He recognized that “court systems have many operating expenses – judges and staff, buildings, utilities, security, filing, data and record systems, insurance, research, and printing costs, to name a few”. He acknowledged the challenges of covering the costs of these services, but still stated clearly that “language service expenses should be treated as a basic and essential operating expense, not as an ancillary cost” and that budgeting adequate funds to ensure language access was “fundamental to the business of the courts”.

This type of awareness and these attitudes are needed to achieve the level of quality that any society expects of its public services. Only when politicians, governmental officials and judicial authorities embrace these ideas will significant change take place. Even though quality goals have not been completely met in any of the countries mentioned

above, in those countries where progress has been made, (Australia, Canada, U.S., Sweden, Norway), governmental mandates and policies have moved the process forward. The same is true for countries in which progress has been stunted (the UK) or is virtually non-existent. In Europe, it took more than a decade of determined work, by specialists from several fields, to get a directive that was specifically related to legal translating and interpreting and recognized the importance of quality, but the obligatory nature of this directive and the fact that sanctions can be applied in cases of non-compliance, are the factors that are beginning to produce positive change.

In any legal proceedings in which one party is not sufficiently proficient in the language being used, the only fair and just way to ensure that all of his or her procedural rights are respected is to provide effective translating and interpreting services. The ultimate key to achieving equal status and equal treatment for all individuals in all legal proceedings is the political will to mandate and fund the processes needed to train and assess individuals to provide the required services. Only when interpreters gain equal footing with other legal professionals will a cadre of competent interpreters begin to emerge.

Notes

¹See response to a parliamentary question to the EU Commission on transposition of the Directive. <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2015-005875&language=EN>. Further detailed information on the current state of affairs is available in the interesting report prepared by the Council of Bars and Law Societies of Europe and the European Lawyers Foundation (Goldsmith, nd).

²Australia has one federal parliament, 6 state parliaments and 2 territorial parliaments for a total of 9 “governments”.

³Except where otherwise cited, the information presented in the section entitled “A Critical Look at Current Assessment Practices” was taken from the results of the research done for the Qualitas Project. Specific country information can be found in the member state profiles found on the project webpage at <http://www.qualitas-project.eu/country-profiles> (Qualitas Project, nd). Information was provided by informants in each of the EU member states.

⁴For readers from outside of the field of interpretation, a “B” language refers to a language which is not the interpreter’s mother tongue, but in which he/she has complete fluency. Interpreters are able to interpret both into and from their B language(s). In Spain, for example, most universities offer undergraduate degree programs with English, French and German as the B languages. Meanwhile, the language most required in the judicial system is Arabic. The only undergraduate degree program in Spain that offers Arabic as a B language is the program at the University of Granada.

⁵For more information about the work being done on training interpreters of languages of lesser diffusion, see the TrailLed Project (Training Interpreters in Languages of Lesser Diffusion) at https://www.arts.kuleuven.be/english/rg_interpreting_studies/research-projects/trailld.

⁶For more information on these two options, see (Ortega *et al.*, 2014).

⁷A good example can be found in the U.S. state of Minnesota where the Judicial Branch has a section on Judge and Attorney Resources that includes information on statutes regarding the appointment and qualification of court interpreters in civil and criminal proceedings, with court rules for different jurors, witnesses, general rules of practice, etc., and also information on interpreters and voir dire, a jury trial guide, tips for working with interpreters in the courtroom and a code of ethics. They also have bench cards that are quick reference guides for judges to refer to, in a quick and efficient manner, if they should have questions about how to work with an interpreter in the courtroom or by videoconferencing (Minnesota Judicial Branch, nd).

⁸For further information on interpreting for languages of lesser diffusion see (Giambruno, C. (Ed.), 2014), Chapter 6. For extensive information on video-mediated interpreting, see (Braun, nd).

⁹A transcript of her speech, in Spanish, can be found at <http://www.juecesdemocracia.es/congresos/xxvcongreso/ponencias/ElinterpreteJudicial.PilarLuna.pdf>.

References

- Australian Human Rights Commission, (n.d.). Human Rights: Discrimination in Employment on Basis of Criminal Record. <https://www.humanrights.gov.au/human-rights-discrimination-employment-basis-criminal-record-toc5.3>. Accessed 17 March 2016.
- Braun, S. (n.d.). Video-Mediated Interpreting: Home of the Avidicus Projects. <http://www.videoconference-interpreting.net/>. Accessed 27 March 2016.
- Civil Service Bureau, Hong Kong, (n.d.). Government Vacancies Enquiry System. Online, available at http://www.csb.gov.hk/english/recruit/application/33520_en.pdf, last accessed 9 December 2016.
- European Commission, (n.d.). EU Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. <http://eur.lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF>. Accessed 15 January 2016.
- Giambruno, C. (Ed.), (2014). *Assessing Legal Interpreter Quality through Testing and Certification: The Qualitas Project*. Alicante: University of Alicante Press.
- Goldsmith, J. (n.d.). TRAINAC: Assessment, good practices and recommendations on the right of interpretation and translation, the right to information and the right of access to a lawyer in criminal proceedings. Published electronically by the Council of Bars and Law Societies of Europe and the European Lawyers Foundation. http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/TRAINAC_Final_Report1_1460987001.pdf. Accessed 22 June 2016.
- Luna Jiménez de Parga, Pilar, (2010). Ponencia para el Congreso Jueces para la Democracia, Bilbao. <http://www.juecesdemocracia.es/congresos/xxvcongreso/ponencias/ElinterpreteJudicial.PilarLuna.pdf>. Accessed 29 March 2016.
- Ministry of the Attorney General, Ontario, Canada, (n.d.). How to Apply to be a Freelance Interpreter. Online, available at <https://www.attorneygeneral.jus.gov.on.ca/english/courts/interpreters/faqs.php#11>, last accessed 9 December 2016.
- Minnesota Judicial Branch, (n.d.). Court interpreter program. <http://www.mncourts.gov/Help-Topics/Court-Interpreter-Program.aspx>. Accessed 29 March 2016.
- NAATI, (n.d.). NAATI Strategic Plan 2015-2017 and annual reports. <https://www.naati.com.au/about/who-we-are/>. Accessed 17 March 2016.
- NYLAT, (n.d.). New York Lawyer Assistance Trust. <http://www.nylat.org/publications/brochures/documents/characterandfitnessbrochure09.pdf>. Accessed 17 March 2016.
- Ortega, J. M., Sandrelli, A. and Townsley, B. (2014). Interpreting test format. In C. Giambruno, Ed., *Assessing Legal Interpreter Quality through Testing and Certification: The Qualitas Project*. Alicante: University of Alicante Press.
- Pérez, T. E. (2010). Letter from the assistant attorney general for the civil rights division, department of justice. http://www.lep.gov/final_courts_ltr_081610.pdf. Accessed 22 March 2016.
- Qualitas Project, (n.d.). Assessing Legal Interpreting Quality through Testing and Certification. Member State Profiles. Online, available at <http://www.qualitas-project.eu/country-profiles>, last accessed 8 December 2016.
- TMKG, (2014). Independent Review of Quality Arrangements under the Ministry of Justice Language Services Framework Agreement. <https://www.gov.uk/government/>

uploads/system/uploads/attachment_data/file/388333/matrix-report.pdf. Accessed 28 March 2016.

U.S. Department of Justice. Civil Right Division, (2004). Executive Order 13166. Limited English Proficiency Resource Document: Tips and Tools from the Field. Online, available at https://www.lep.gov/guidance/tips_and_tools-9-21-04.htm, last accessed 9 December 2016.

US President, (2000). Executive Order 13166, issued by President Bill Clinton. <https://www.justice.gov/crt/executive-order-13166>. Accessed 25 March 2016.

Annex I: Select Index of Translation and Interpreting Associations

The following is a brief list of associations that address issues related to legal or court interpreting such as training, certification, qualifications, and good practice. The list is a sampling of many other organizations that exists in countries around the world. The short descriptions that are given for each organization or association are taken from their official webpage.

International (names in English):

International Federation of Translators (FIT) is an international federation of both professional and non-professional translation and interpreting associations which includes a task force on Legal Translation and Interpreting. <http://www.fit-ift.org/>

International Association of Conference Interpreters (AIIC), a global association of conference interpreters, has a Court and Legal Interpreting Committee to provide a platform for networking and learning. <http://aiic.net/node/2689/court-interpreting>

EU Legal Interpreting and Translating Association (EULITA) is a pan-European organization that is committed to promoting quality through the recognition of the professional status of legal interpreters and translators and by promoting cooperation with legal services and other legal professions. <http://www.eulita.eu>

International Association for Translation and Intercultural Studies (IATIS) is a non-profit organization that provides an intellectual forum where scholars from different regional and disciplinary backgrounds can debate issues relating to translation, interpreting and other forms of cross-cultural communication.

International Permanent Conference of University Institutes of Translators and Interpreters (CIUTI - *Conférence Internationale Permanente D'Instituts Universitaires de Traducteurs et Intépretes*) is the oldest international association of university institutes with translation and interpretation programmes and is devoted to excellence in T&I training and research. <http://www.ciuti.org/>

National:

Australia Institute of Translators and Interpreters (AUSIT) is the Australian national association for the translating and interpreting profession and is committed to providing a forum for exchange and fostering relationships between interpreters and government departments, tertiary institutions, industry stakeholders and other professionals and service users. <https://www.ausit.org/>

National Association for Australian Translators and Interpreters (NAATI) is a company jointly owned by the nine governments of Australia with the mission of setting and maintaining high national standards in translating and interpreting to enable the existence of a pool of accredited professionals in this field. <https://www.naati.com.au/>

Austrian Association of Certified Court Interpreters (ACCI - Österreichische Verband der Allgemein Beeideten und Gerichtlich Zertifizierten Dolmetscher) is a non-political, non-profit organization existing since 1920 with the declared objective of furthering the professional and business interests of sworn and certified court interpreters in Austria. The Association participates actively in the accreditation process for legal interpreters. <http://www.gerichtsdolmetscher.at/index.php?lang=en>

Brazilian Association of Translators and Interpreters (ABRATES, Associação Brasileira de Tradutores e Intérpretes) is a non-profit association managed by volunteer translators and interpreters to encourage the exchange of information and contacts between colleagues and/or institutions. <http://www.abrates.com.br>

Canadian Translators, Terminologists and Interpreteters Council (CTIC) is recognized in Canada as the national body representing professional translators, interpreters and terminologists and contributes to high quality inter-language and intercultural communication. It promotes professional standards in translation, interpretation and terminology, and certifies translators, terminologists, conference interpreters and court interpreters. <http://www.cttic.org/mission.asp>

The Irish Traslators and Intepreters Association (ITIA *Cumann Aistritheoirí agus Teangairí na hEireann*) is a non-profit organization that endeavours to foster an understanding among translation and interpretation clients of the highly-skilled and exacting nature of the professions and acts in an advisory capacity to government bodies, NGOs, the media and others involved in the provision of T&I services. <http://www.translatorsassociation.ie/>

Dutch Court Interpreters and Legal Translators Association (SIGV – Stichting Instituut van Gerechtstolken en Vertalers The Netherlands) is an association dedicated to furthering the interests of its members. It provides training courses for court interpreter certification that have been approved by the Ministry of Justice. <http://www.sigv.nl/>

The Norwegian National Register of Interpreters (*Nasjonalt tolkeregister*) is owned and managed by the Norwegian Directorate of Integration and Diversity (IMDi), the national authority on interpreting in the public sector. <https://www.tolkeportalen.no>

The Polish Society of Sworn and Specialized Translators (TEPIS, Polskie Towarzystwo Tłumaczy Przysięgłych I Specjalistycznych), founded in 1990, aims to enrich and disseminate the knowledge of translating and interpreting in cooperation with the Polish government. <http://www.tepis.org.pl>

Professional Association of Judicial Interpreters and Translators (APTIJ, Asociación Profesional de Traductores e Intérpretes Judiciales – Spain) is an association of interpreters and translators who help the judiciary in Spanish courts in order to create increase awareness and acknowledge the role of translators and interpreters in the judicial system. <http://www.aptij.es/index.php?l=en>

Association of Sworn Court Interpreters and Legal Translators of Slovenia (Združenja stalnih sodnih tolmačev in pravnih prevajalcev Slovenije) is a relatively new organization, founded in 2012, and has as its stated objective to represent the interests of sworn court interpreters and provide continuing education of court interpreters and legal translators. <http://www.sodni-tolmaci.si/?lang=en>

National Register of Public Service Interpreters (UK) is the UK's independent voluntary regulator of professional interpreters specialising in public service. The register provides information on professional, qualified and accountable interpreters and states as its core role to ensure that good standards with the profession are consistently maintained for the benefit of society and interpreters. <http://www.nrpsi.org.uk/>

National Association of Judiciary Interpreters and Translators (NAJIT – USA) was founded in 1978 to promote quality services in the field of court and legal interpreting and translating. <http://www.najit.org/>

Annex 2: Selected list of research projects related specifically to legal interpreting

This list focuses on the research done within the scope of the European Union, and includes projects that were partially sponsored and funded by the DG Justice of the EU Commission. They focus mainly on criminal justice, although civil justice is addressed in at least one major project. They are listed by date, starting with the most recent.

2015 - 2016 **TRAINAC: Assessment, good practices and recommendations on the right to interpretation and translation, the right to information and the right of access to a lawyer in criminal proceedings**. Project carried out jointly by the Council of Bars and Law Societies of Europe and the European Lawyers Foundation in order to

provide information from legal practitioners about the implementation of EU directives related to the rights of limited language-proficient individuals in legal proceedings.

2013 - 2015 **LIT Search: Pilot project for an EU database of legal interpreters and translators** worked on creating a roadmap for procedural safeguards and the creation of a EU database of legal interpreters and translators. This pilot project was designed to consider the practical features of a European-wide database and to provide structures for the eventual linking up of EU countries.

2013 - 2016 **JustiSigns**, carried out under the EU's Lifelong Learning Programme, examined sign language interpreting in legal settings with emphasis on identifying competencies and providing training for signed language interpreters. Target groups for the project included interpreters, deaf individuals, and legal professionals.

2013 - 2015 **Understanding Justice** looked at interpreting in the civil sphere, specifically addressing mediation as a commonly used approach to Alternative Dispute Resolution. It sought to adapt the extensive corpus of knowledge regarding legal interpreting in criminal cases to the civil justice domain and to provide self-assessment tools for practicing interpreters contemplating work in the civil justice arena.

2013 - 2015 **TraiLLD: Training in languages of lesser diffusion** tackled training for interpreters for languages of lesser diffusion and tested a framework of best practices in training methodology in order to develop recommendations for the training of LLD interpreters.

2013 - 2014 **Co-Minor-IN/QUEST** focused on vulnerable victims, suspects and witnesses under the age of 18 in order to determine how best to provide the information and support that they need during the pre-trial questioning period.

2012 - 2014 **SOS-VICS: Speak Our for Support** addressed the specific issues related to interpreting for victims of gender violence, with one of its specific goals being to raise awareness of the need for hiring qualified, professional interpreters.

2011- 2014 **Qualitas: Assessing Legal Interpreter Quality through Testing and Certification** was dedicated to providing guidelines on how to assess the quality of individuals interested in working in the judicial system as interpreters. An EU-wide survey of the state of affairs as regards certification and testing was carried out and detailed indications for proper certification instruments were presented. (A parallel project called **Qualetra** looked at quality assessment in legal translating.)

2011 - 2012 **TRAFUT: Training for the future** organized a series of workshops that brought together members of the judiciary, government officials, and professional asso-

ciations from a number of EU member states in order to explore the various aspects of Directive 2010/64/EU.

2011 - 2012 **ImPLI: Improving Police and Legal Interpreting** had a two-fold objective: to provide interpreter trainers with a better understanding of the techniques used by police when interviewing detainees and victims, and to raise awareness among police and prosecution services about how to properly work with LIs.

2007 – 2016 **Avidicus 1, 2 and 3 on video-mediated interpreting** studied remote video-mediated interpreting, beginning with examining if VCI was a suitable alternative for criminal proceedings (Avidicus 1), then studying how combining technological mediation and linguistic-cultural mediation through an interpreter affects legal communication (Avidicus 2), and finally conducting a comprehensive assessment of how VCI was being used in legal institutions across Europe and developing a method for using VC to deliver training in VCI (Avidicus 3).

2007 – 2013 **Building Mutual Trust I and II** provided six continuous years examining issues related to standards and training. In BMT I, benchmark criteria for standards of legal interpreting were developed and an open-access database of training program templates was created. In BMT II, a series of inter-linked training videos with learning points designed for legal personnel was developed.

2008-2010 **EULITA: European Legal Interpreters and Translators Association**, created a pan-European association of professional associations of legal interpreters and translators in the EU with interpreters and translators among their members. EULITA's goals include representing the interests of legal interpreters, promoting close cooperation among members and other stakeholders, and promoting quality of LITs through recognition of professional status.

2006 – 2008 **Status Questionis: Questionnaire on the Provision of Legal Interpreting and Translation in the EU** undertook a study of the state of affairs in the EU through an extensive questionnaire process.

Early projects (full reports available on line <http://www.eulita.eu/european-projects>)

2003 – 2006 **Aequilibrium: Instruments for lifting language barriers in intercultural legal proceedings**

2001 – 2003 **Aequalitas: Equal Access to Justice across Language and Culture in the EU**

1998 – 2001 **Aequitas: Access to Justice across Language and Culture in the EU**