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Guest Editor's Introduction

Malcolm Coulthard & Sandra Hale

Universidade Federal de Santa Catarina, Brasil & UNSW, Australia

Two years ago we planned to publish a Special Issue on *Translating and Interpreting in Legal Contexts*, however, the area is now so important and has become a major research focus in so many countries, that we were able to produce not one but two volumes, of which this is the second – the first, Volume 3.1, on Legal Translation guest-edited by Luciane Fröhlich, appeared in June 2016.

The authors come from five continents and from jurisdictions with very different kinds of interpreting provision. They discuss the problems of face-to-face interpreting in both police stations and courtrooms and the difficulties introduced by cost-saving audio- and video-link technology, which may be used to link an interpreter located at a distance to a face-to-face interview between a police officer and a suspect, or to link an interpreter located in a court-room along with the lawyers to an accused confined in prison. The topics of the articles range from provision – the question of who decides whether there is a need for an interpreter and then whether interpretation should be provided for all of the proceedings or only for the spells the accused spends in the witness box and crucially if the interpreter is provided free – to: the training, evaluation and accreditation of interpreters, the need for interpreters to work in teams for real-time quality control and the advisability of compulsory audio-recording to order to facilitate later checking of accuracy.

As we write large numbers of people are fleeing from Aleppo, many going to Turkey and a million refugees are struggling to settle into living in Germany. The need for legal interpreters is increasing exponentially, which makes this issue of the journal not only timely but of even greater importance. The articles identify problems that all countries need to address, but at the same time the authors provide examples of successes and proposals for improvements which we can use to evaluate the quality of the provision of interpreting services in our own countries.

We hope you enjoy reading these papers as much as we did when editing them.

Malcolm Coulthard & Sandra Hale
Universidade Federal de Santa Catarina, Brazil & UNSW, Australia

Nota Introdutória

Malcolm Coulthard & Sandra Hale

Universidade Federal de Santa Catarina, Brasil & UNSW, Austrália

Há dois anos, planeámos um número especial da revista sobre *Tradução e Interpretação em Contextos Jurídicos*, mas este tema, que se revelou um dos principais temas de investigação em diversos países, possui atualmente uma importância tal que consideramos relevante produzir, não um, mas dois números; o primeiro, sobre Tradução Jurídica, coordenado por Luciane Fröhlich, foi publicado em junho de 2016.

Os autores, de cinco continentes e de ordenamentos jurídicos com disposições legais distintas, discutem os problemas subjacentes à interpretação face a face, quer em esquadras de polícia, quer nos tribunais, e as dificuldades introduzidas pela tecnologia de telecomunicações de áudio e vídeo – implementada como mecanismo de redução de custos – que permite estabelecer a ligação remota de intérpretes a um interrogatório policial face a face com um polícia e um suspeito, ou a uma sala de audiências com advogados e intérprete a um acusado na prisão. Os temas dos artigos vão desde a questão sobre de quem parte a decisão relativa à necessidade de recorrer a intérprete e se é necessário garantir a interpretação do acusado durante todo o processo, até à formação, avaliação, acreditação e aprovisionamento de intérpretes, passando pela necessidade de os intérpretes trabalharem em equipa de modo a permitir um controlo de qualidade em tempo real, bem como pela necessidade de realizar gravações de áudio para permitir posterior verificação.

Neste momento, um grande número de pessoas foge de Aleppo, muitas em direção à Turquia, e um milhão de refugiados tenta ser acolhido na Alemanha. A necessidade de intérpretes jurídicos a nível mundial está a aumentar exponencialmente, o que torna este número da revista, não só oportuno, como também ainda mais importante. Os artigos identificam problemas que todos os países necessitam de ter em consideração, ao mesmo tempo que os autores fornecem exemplos de sucesso e propostas de melhoria que poderão ser utilizadas para avaliar a qualidade da prestação de serviços de interpretação nos nossos próprios países.

Esperamos que esta seleção de artigos lhe proporcione uma leitura frutífera.

Malcolm Coulthard & Sandra Hale
Universidade Federal de Santa Catarina, Brasil & UNSW, Austrália

Addressing Linguistic and Cultural Issues in American Criminal Cases

Michael O'Laughlin

Boston University, USA

Abstract. *This article traces the development of court interpreting in the United States. It is now a profession, with training and certification available. Nevertheless, there is a clear unevenness in the quality and availability of interpreters, especially for rare languages. This article provides some sense of what interpreting is – and isn't – and which tasks interpreters find most difficult. The author relates how he began to work as an interpreter in the 1970s, and he explains his current work as an expert witness. A person who needs an interpreter sometimes also needs an expert, either to explain foreign words, customs and attitudes, to challenge substandard police interpreting, or to establish that the defendant was unable to say in English what he or she allegedly said. Evidence is now often in languages other than English, and an expert is needed if warnings were not understood or statements were not properly translated.*

Keywords: *Interpreter, Profession, Expert, Language, Culture.*

Resumo. *Este artigo acompanha o desenvolvimento da interpretação nos tribunais nos Estados Unidos que hoje em dia constitui uma profissão, com formação e certifição disponíveis. No entanto, há um claro desequilíbrio na qualidade e disponibilidade dos intérpretes, especialmente no que diz respeito a intérpretes de línguas raras. Este artigo fornece uma noção do que é – e não é – a interpretação e quais as tarefas que os intérpretes consideram mais difíceis. O autor relata como começou a trabalhar como intérprete nos anos 70 e explica o seu trabalho atual como perito. A pessoa que precisa de intérprete precisa também, por vezes, de um perito, seja para explicar palavras, costumes, ou atitudes estrangeiras, para impugnar uma interpretação de qualidade inferior, ou para demonstrar que essa pessoa seria incapaz de dizer em inglês o que ela supostamente disse. Atualmente as provas são frequentemente apresentadas noutra língua que não o inglês, sendo necessário um perito, caso cientificações não tenham sido entendidas ou declarações não tenham sido traduzidas adequadamente.*

Palavras-chave: *Intérprete, Profissão, Perito, Língua, Cultura.*

Two evolutions

This article will describe briefly the evolution and current practice of court interpreting in the United States, and then note several types of criminal cases in which the defen-

dant required more than an interpreter, cases in which an expert witness was needed to explain a cultural difference, a misunderstanding, or to make it clear that the defendant could not have participated in an alleged conversation, due to his or her lack of English proficiency. As I briefly tell the story of American court interpreting, I will also make a few references to my own experiences in the legal system, my own evolution. I began to work in the courts as a Spanish interpreter in the 1970s. I then started teaching legal interpretation to others in the 1990s. I eventually became the director of an interpreter training program at a university. Finally, I combined my scholarly training with my interpreting experience to offer my services as an expert witness regarding language and cultural issues. The cases I will be referring to at the end of this article are ones in which I participated in personally.

Changing demographics

The time in which we live has been called an "Age of Migration" (Castles and Miller, 2009). Western Europe in particular is now in a state of crisis as it attempts to absorb some – and repel other – refugees and migrants from the Middle East, Africa and elsewhere. London is now composed of 40% international residents, as are several other major capitals. Large numbers of people are on the move all over the globe. Climate change will cause these shifts in population to increase further.

Although not currently in a state of crisis, the United States is also being transformed by a considerable increase in immigration. In the US these changes began when immigration laws were modified in 1966. Most immigrants to the US now come from Latin America and the Orient, not Europe, as formerly. Because it is difficult to immigrate to the United States, many of today's immigrants have entered the country illegally. The United States is also home to large numbers of refugees. The contribution of immigrants to the US economy is considerable, and their place in American culture is growing.

Because the largest numbers of immigrants today come from Latin America and Asia, linguistic diversity has exploded in the US. The number of languages spoken in homes in the United States is now over 350 (Castillo, 2015), and as much as 21 percent of the US population now speaks a language other than English when at home, according to the October (2014) Report of the US Census Bureau.

Slowly growing awareness

Over the past 50 years the US legal system has slowly taken steps to respond to the growing presence of so many newcomers to American society. The initial concern of the justice system was to provide non-English-speaking immigrants who were witnesses or defendants in a criminal case with qualified interpreters. Although interpreters are needed in all types of cases, criminal cases were given priority.

One may ask, why do immigrants need interpreters in court cases? There are four fundamental reasons:

1. Conventional wisdom holds that US immigration is shaped like an hourglass, with a fairly large number of people at the top of the income scale, and an even greater number at the bottom. The smallest number of immigrants falls in the middle-class category.[1] In practical terms, this means that the largest group of immigrants (i.e., the ones at the bottom of the hourglass) do not have the educational background, nor the time, to study English once they arrive, because their primary concern is their immediate financial survival.

2. A second reason that court interpreters are so widely needed is because adolescent and adult immigrants, especially those with less education, do not – or cannot – automatically learn English from their environment. According to the Critical Period Hypothesis, the older a person is, the more difficult it is to learn a new language (Gass and Selinker, 2001: 335-344) and most immigrants come as adults. Older children and adults learn second languages in a manner that is completely different from young children and almost never achieve the same fluency as they have in their first language. Adult learning is deliberate and normally painstaking.
3. Entering a new language-world is not easy for adolescents or adults. It is normally stressful and challenging. Language inability and errors must be slowly ameliorated over many years of effort. Migration itself brings with it many psychic burdens, as one's assumptions are challenged and replaced, and one's ability to function and one's self esteem are undermined. To feel "foreign" and "unwelcome" is to lose one's self confidence and self-esteem. Even if one is willing to engage with the new culture and new language, migration is a process that lasts for the rest of one's life, and requires not only considerable effort, but ego strength, self-confidence, risk-taking ability and motivation.
4. After the initial optimism wears off and migrants realize how difficult it is to learn a second language, increasingly conscious of social distance and even xenophobia in the host country, many stop trying and their second language becomes fossilized. Thus, there are migrants all over the world that never learn to speak properly the language of the country in which they live, and others that never really try to learn the language at all. This is a common, even normative phenomenon for lower-skilled migrants.
(Machleidt, 2015)

Even if less-educated immigrants are, after a certain period, able to learn the rudiments of communication needed at their workplace, or achieve some surface fluency in English, they find that the complex linguistic environment of an American courtroom is much too challenging to navigate without assistance. Thus, court interpreters are needed, even by some who manage to move around in the everyday English-speaking environment without too much difficulty. In recognition of this reality, the term used for someone in need of an interpreter in the US is not "immigrant," or "non-English speaker," but "Limited English Proficient" person, or LEP. This is the term used by the federal government, and there is even a government website outlining their rights called lep.gov. Is there a clear division or cut-off line be made between those who are LEP and those who are not? No, indeed; the LEP phenomenon should be viewed as a continuum, according to Muneer Ahmad:

> Limited English proficiency is best understood along a spectrum rather than in binary terms of proficiency and non-proficiency, as individuals may possess varying degrees of proficiency in English without reaching the threshold necessary to interact effectively with service providers.
> (2007: 1001)

Many millions of people living in the United States are LEP, and most of them need interpreters in court. According to Census figures, between 1990 and 2014 the number of LEP persons expanded almost 100%, from nearly 14 million to 25.3 million (U.S. Census

Bureau, 2014). As noted previously, across the United States, 21 percent of the population now speaks some language other than English at home, although not all of these persons are LEP. In some states, that percentage is much higher. It is 30 percent in New York, and 40 percent in California (Davis, 2016: 2).

First steps

Until the 1970s there was no general law providing LEP persons in the United States access to justice (Cronheim and Schwartz, 1976). In court the decision to appoint an interpreter rested with individual judges, and most had little knowledge of, or interest in, language matters. A precedent had been established in 1907, when the Supreme Court had ruled, in *Perovich v. U.S.*, that the fact that a judge did not appoint an interpreter for a defendant in a murder trial was not an error, not an "abuse of the judge's discretion." Lower courts afterwards followed the precedent set by this case: interpreters were not required. Only in 1970 was there a case which pointed the way towards a more just and enlightened practice. This was *U.S. ex rel. Negrón v. New York*, the appeal of a New-York-state murder case to the federal district court. The grounds for the appeal was that no interpreter was provided for the defendant at his trial. The federal judge's decision on *Negrón* – that this was indeed a serious error – invoked the Sixth and the Fourteenth Amendments to the Constitution, i.e., the rights to a trial, to confront one's accusers, and to due process. The *Negrón* case established new standards. Without using the precise terminology, it established the principle of "linguistic presence," a corollary of the principle that a defendant had the right to be present in court for his or her own trial. If one cannot understand one's trial, then, although one might be physically present, one is linguistically and mentally absent, just as in the case of a mentally-incompetent defendant. The first state court case to follow the same line of reasoning regarding "linguistic presence" was *Arizona v. Navidad*, in 1974 (González *et al.*, 2012: 159–163).

Later in that same decade, in 1978, the US Congress enacted the Court Interpreter's Act, which established the right to a certified or otherwise-qualified interpreter in federal court. Because there was no process to certify interpreters, a Federal Court Interpreter Certification Examination program was also created by the act. This great step forward was due, in part, to the fact that in 1974 the Supreme Court had determined that discrimination on the basis of *national origin* included not providing meaningful access for LEP individuals to federally-funded services (*Lau v. Nichols*, 414 US 563 (1974)). The fundamental law invoked was Title VI, the 1964 Civil Rights legislation, which established that no one can be discriminated against due to race, color or national origin (42 United States Code § 2000d).

The growth of interpreter services in court systems across the US which began in the 1970s was steady during the 1980s and 90s. Unfortunately, the federal certification of interpreters did not live up to expectations: the examination was so difficult that almost all interpreters failed, and the number of languages in which testing was available never got beyond three: Spanish, Haitian Creole, and Navajo. However, at the state level, certification expanded significantly. President Clinton then signed Executive Order 13166 in 2000, endorsing the *Lau v. Nichols* interpretation of the national-origin prong of the Civil Rights legislation and requiring all federal agencies to comply. In 2002 the US Department of Justice issued *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Pro-*

ficient Persons (67 Federal Regulations 41455 (2002)). Federal law was evolving in favor of LEP persons.

My own beginnings

I am well aware of how court interpreting began in the US, because I took a minor part in it. My first real job after leaving the university was as a court interpreter. In fact, I was the first interpreter hired as a full-time employee by the County of Santa Cruz in California. When I applied and was interviewed for this newly-created position, the only real qualification which concerned the administrators who interviewed me was whether I could speak Spanish. I was told that when I was not needed in the courtroom, I would be working in the clerk's office, typing traffic citations.

The year was 1978, and courts in California were just beginning to address the need for interpretation in the courts. The federal Court Interpreter Act had been passed that same year. Before I was hired in Santa Cruz it had been the practice in the courts of that county to ask an employee who spoke Spanish to "help out" in the courtroom. I remember there was also an older woman who was sometimes paid to go over and interpret in court, but no one seemed particularly happy with her work. Little or no provision was made for persons who spoke a language other than Spanish, other than to find some volunteer locally who spoke the language.

When I first began that job I was sent to Watsonville, an agricultural town in the southern part of Santa Cruz County where the majority of the inhabitants were Mexican fieldworkers who cultivated and picked the strawberries, lettuce, mushrooms and other produce grown there. The court in Watsonville was a simple affair, and the judge a former policeman. He liked to get to the bottom of the cases before him as quickly as possible, so he would ask the defendants at arraignment, "How do you plead, guilty or not guilty?" – This was a question that judges were no longer permitted to ask, since it played upon the ignorance of unprepared defendants. When someone pled guilty at arraignment, which was what generally happened, the judge would simply give them a fine, or send them off to jail. No lawyers, no trials, no delays – his system was quick and efficient, if not very fair. My "training" as an interpreter in his court consisted of watching Mary, one of my coworkers in the clerk's office, as she interpreted in the courtroom. I think I watched her for a week, maybe two; then it was my turn.

It was simply assumed in those days that there was nothing complicated about court interpreting. The only requirement was speaking the language, and it was assumed that almost any educated person could do it. My own ability to speak Spanish, I must say, was not very good in 1978, and, by today's standards, I was a terrible interpreter. I did not know the techniques of interpreting, and I was desperately trying to learn legal vocabulary "on the job." I didn't know back then how bad I really was, but it was still embarrassing for me to stand up and interpret in a predominantly Mexican town like Watsonville, where I assumed everybody spoke Spanish better than me. I once asked Mary, "Why me? Why doesn't somebody else do this?" She told me, "Nobody else has the confidence." Mary was alluding to the fact that I had a university degree, and that made a big difference in Watsonville. Luckily, the County of Monterey, the next county over from Santa Cruz, started a program that year to train and certify court interpreters, so I did get some training. Oddly enough, Monterey was one of the few places in the United States where interpreting was taught, at both the Monterey Institute of International

Studies and the Defense Language Institute, which taught foreign languages, and trained military interpreters. However, not much of that knowledge must have crossed over into legal interpreting in Monterey, because the course I attended at the courthouse was pretty basic.

Everywhere it was the same. Across the country, as the number of LEP persons increased, the use of more professional, trained interpreters did as well, albeit very slowly. Several centers of court interpreter training were established, the most famous being the National Center for Interpretation at the University of Arizona, founded in 1979. From the same circles in Arizona later emerged the basic text of the profession, a magisterial volume now in its second edition, *The Fundamentals of Court Interpretation* (González *et al.*, 2012). The National Center for State Courts, also founded in the 1970s, became an important resource for state court systems which were attempting to improve interpreter services. On their part, the interpreters created a professional organization, the National Association of Judicial Interpreters and Translators, which certifies interpreters, holds an annual conference, facilitates communication between court interpreters, and produces position papers on matters of importance to interpreters and the courts.

What is, and what is not interpreting

So what is interpreting? It has always existed in some form. However, what is considered modern professional interpreting debuted on the world stage at the Nuremburg trials in Germany after World War II, where the proceedings were interpreted simultaneously, using microphones and headsets (Baigorri-Jálon, 2014). Although most bilingual people grow up occasionally interpreting for those around them, this kind of casual "interpreting" is not at all what a trained interpreter does. What a person without interpreter training does, when asked to interpret, is to speak to each person in their own language. The "interpreter" speaks to Person A, and then speaks to Person B. Then the interpreter turns to speak again to Person A. Communication proceeds in the form of parallel conversations in two different languages.

I explain to my students that this is not interpreting, but brokering. A broker is a go-between, someone who not only communicates between two people or groups, but perhaps leads them to agreement. Interpreting is not brokering. A trained interpreter is not having two parallel conversations (O'Laughlin, 2011: 182–184). An interpreter listens intently to an utterance, committing it to memory, and then repeats exactly what was just said, but in the other language. Rather than functioning as a broker, the interpreter is more mechanical, more like a telephone, allowing Person A to have a direct conversation with Person B (Berk-Seligson, 2002a: 210). If the interpreter is able to interpret simultaneously, then that conversation proceeds at the same speed as any other conversation. However, if the person doing the "interpreting" is not trained, what usually happens is that the "interpreter" does not merely repeat, but brokers and summarizes as needed. Instead of hearing what everyone has been saying in a court hearing, for example, a LEP litigant using an untrained, ad-hoc interpreter may only hear a summary, such as, "Well, the attorneys have been discussing your situation, and the judge really thinks you should move out of that house."

Paradoxically, to interpret properly one must *not* do many things, while doing others at a very high level. At the top of the list of things not to do is to take sides or do anything other than repeat what has been said. Court interpreters, unlike community interpreters,

carefully avoid becoming involved in the cases they work on, or even speaking to the LEP participants at any length. They must be neutral, and be seen to be neutral and disengaged. What is at the top of the list of things that must be done, and done well? The three basic skills of the court interpreter are consecutive interpretation, simultaneous interpretation, and sight translation. Many might suppose that the most difficult task of the court interpreter is to interpret for someone on the witness stand, when consecutive interpretation is employed. This is the moment when the interpreter is most visible. Although interpreting for a witness is difficult, and involves more memory work, I do not believe it is the hardest task, because any testimony given using an interpreter must slow to the interpreter's pace. The interpreter is actually in a position of greater control when interpreting for a witness, because everything goes through the interpreter.

The most difficult task for the interpreter is actually to interpret simultaneously for the defendant when there are legal discussions between the judge and the attorneys, or when there is a witness on the witness stand who uses a great deal of specialized terminology. In these circumstances, the interpreter has no control over the pace of the proceedings, or over the technical nature of the arguments, or the heights of the rhetoric. Everything said in the courtroom must be 1) heard, 2) understood, and 3) interpreted. The speed of the average courtroom proceeding, and of speech in general, is 160 words per minute, and it is actually very difficult to simultaneously follow and comprehend a proceeding, while at the same time one is producing an interpretation in another language. Just *hearing* all that is being said is hard for someone who is speaking at the same time. The fact that legal language and technical references are constantly being used compounds the problem. Nevertheless, it is common for interpreters to be called upon to repeat all that is said for hours at a time. As fatigue sets in, this difficult job can become almost impossible.

One researcher had this to say about simultaneous interpretation:

> The task is extremely complex: though simultaneous listening and speaking rarely occurs in every day verbal behavior, simultaneous interpreters managed not only to listen and speak simultaneously for reasonable lengths of time, but also to carry out complex transformations on the source-language message while uttering their translation in the target language. From the point of view of cognitive psychologists the task is a complex form of human information processing involving the perception, storage, retrieval transformation, and transmission of verbal information. Furthermore, linguistic, motivational, situational, and a host of other factors cannot be ignored.
> (Gerver, 1976: 166-167)

This is, then, an extremely difficult task, because courtroom exchanges can be highly technical and filled with legal jargon, and the exchanges can also take place very quickly. The interpreter normally does not know who will speak next, or what they might say. If the content of the case being discussed is unknown, it is usually difficult for an onlooker to follow and comprehend a discussion taking place between a judge and the attorneys, let alone interpret it simultaneously into another language, yet that is what an interpreter is required to do.

Another problem the interpreter must resolve is the differences between legal traditions: once he or she has understood the legal concept just mentioned – for example, "perjury", "continuance without a finding", "indictment", or anything else – then

an equivalent must be found in the target language. If there is no equivalent concept, then the interpreter must paraphrase. All this takes quick thinking and considerable familiarity with the two legal systems and their respective vocabularies. When the target language is another Western language, the search for an equivalent legal term is usually not impossible, but if the target language is not part of the Western tradition, then an equivalent term may not exist.

I also mentioned a third activity above which is part of the interpreter's basic skills: this is sight translation. Sight translation is the reading of a document, and interpreting it as one reads. One might be handed a birth certificate, or a decree of divorce, or any other document and be asked to read it – or rather to translate it – out loud. Sometimes interpreters must decline to immediately produce a sight translation. If a document is too long or complex, or if the material is a video or sound recording, then an interpreter should not attempt to render a translation of it on the spot.

Language mixing

Because the task of court interpreting is so daunting, it is not error free. Errors are made by court interpreters all the time, simply because an interpreter is making split-second decisions about the meaning of complex speech. (Many mistakes are simply errors of omission. This normally happens when speech is so complex that the interpreter cannot follow some idea, and therefore leaves it out.) However, no matter how often an interpreter makes errors, when interpreting fast-paced arguments or complex legalese, these are not the errors that interpreters themselves remember. The most memorable errors, and the most humorous, arise when one is interpreting for an LEP person and that person throws in English words or phrases. These English words, in the mouths of the LEP community, have usually changed their pronunciation to conform to the phonetics of the community's native language. It is not uncommon for an interpreter to interpret for a LEP person for a considerable length of time without any difficulty, and then suddenly have no idea what was said, because the person has spoken in their version of English.

I will give a few examples concerning Spanish-speaking LEP persons: I once interpreted for a Puerto Rican who had filed a suit against his employer, claiming that he had been discriminated against on the job because he was Hispanic. One of the examples of mistreatment which he offered was that he was assigned to work outside in the winter, when others were not. In a deposition he was asked what clothes he wore outside, and he explained that at work he wore overalls, but in the winter he put on "*ropa* warmer", which I took to be a combination of Spanish and English and translated as "warmer clothes". (Please note that this does make sense.) However, as the discussion about his clothing continued, I realized that he had not said "*ropa* warmer", but "*ropa warmar*" i.e., "clothes from Wal-Mart". His point was that he had had to go out to buy heavy clothing in order to stay warm on the job.

Here is another example: a Spanish interpreter moved to my state, Massachusetts, and she began working in the courts before she had fully mastered the local lingo. One day she consulted the other interpreters in the courthouse about why so many people there were talking about not eating. "What is this about *no como*?" she asked. "Why do people here say, *Yo vivo no como*?" (I am alive, but I do not eat.) All the other interpreters had a good laugh when they heard this, because, in that particular city, many of the Hispanics lived on North Common St., and after much repetition and distortion in Spanish,

"North Common" had come to be pronounced "*No' Como*"'. The correct translation of *Yo vivo no como* is "I live on North Common".

Because immigrants living in the US are surrounded by English words and names, they all add or mix English into their speech (Cabral, 1985; Stavans, 2003). The resulting mixed speech can be mispronounced English, such as the two examples given above, or loan words, i.e., English words taken up into the other language. Some Portuguese speakers in the US, for example, often speak of being *bizado*, which means "busy", sometimes "very busy", and will prefer *aparcar* or *parquear* to *estacionar* when speaking about parking a car. Pidgin English is also heard, and codeswitching, which is to go back and forth between two languages. An experienced interpreter will generally know the most common loan words and how other words have been transformed, to the point that he or she does not give the mixture of English and the other language any thought. However, a change of mentality is sometimes needed, because one must learn to accept that one is often interpreting immigrant English into mainstream English. I tell my students, "If you simply cannot understand what someone is saying, it is probably English".

Problems in the current era

There have been many advances in the creation and maintenance of a corps of capable court interpreters in the United States. Nevertheless, as one looks back over the developments of the nearly 50 years since the *Negrón* decision, the results are still mixed. In some places court interpreting is functioning at a respectable level, but in others, it is not. A few states in particular have moved much too slowly to recognize the LEP's right to an interpreter in court. The Georgia Supreme Court, for example, did not rule until 2010 that a criminal defendant had a right to an interpreter (Davis, 2016: 4) and, according to the National Center for Access to Justice in New York, ten states—Alaska, California, Illinois, Nevada, New Hampshire, North Carolina, Oklahoma, South Dakota, Vermont and Wyoming – do not mandate interpreters in all criminal and civil cases (Davis, 2016: 2).

It can be said that, despite the evolution of court interpreting in the United States into a profession, progress in one language does not necessarily transfer over into other languages, and progress in one region or group of courts does not necessarily transfer over into all courts. Interpretation in Spanish is more common, more studied, and more supported than interpretation in other languages. When an interpreter is needed in the United States, 70% of the time the LEP person speaks Spanish. For this reason, the norms of court interpretation have focused on this language. In other languages, the resources can be much fewer, and the standards lower.

Because the United States welcomes immigrants from all over the world, it is inevitably the case that interpreters are needed for some very rare languages. In the case of a rare language, sometimes the "interpreter" is simply the person in the ethnic group who has been in the United States the longest or who has learned the most English, but otherwise has few qualifications, academic or otherwise. When using an interpreter for a rare language of this sort, special preparation is required by the court, as well as greater awareness and flexibility on the part of the professionals who are working with the interpreter (National Association of Judicial Interpreters and Translators, 2006).

In essence, the level of achievement in the field of court interpreting is inevitably uneven, because of variations in language and locality.

Pressure from two directions

When the current US Secretary of Labor, Thomas Perez, was in charge of the Civil Rights Division of the Department of Justice, he began a program of enforcement to assure greater LEP access in state courts. In 2010 he wrote a pointed letter to administrators in all state courts. In this letter he recognized that some states were making progress with LEP issues, while others needed to make improvements (U.S. Department of Justice, Civil Rights Division, 2010). The Department of Justice has continued to investigate conditions in state courts and to urge courts to achieve greater compliance since then. The Department prefers to work in collaboration with the states which are not in compliance, rather than take more aggressive actions, such as filing a lawsuit against them. If a state is ready to make needed improvements, then a Technical Assistance Agreement may be drawn up, as happened in 2015 with the State of Hawaii (U.S. Department of Justice, Civil Rights Division, 2015). A more punitive measure would be to issue a Letter of Finding, which the Civil Rights division did in the case of North Carolina (U.S. Department of Justice, Civil Rights Division, 2012). In the letter mentioned above, then-Assistant Attorney General Perez made it clear that LEP persons needed greater access and more services, not only in the courtroom itself, but at all stages of litigation and criminal process.

At the same time that the Department of Justice began insisting on greater access to justice for LEP persons, the numbers of persons needing assistance, and the number of languages they speak, has continued to increase. Some states now find themselves in a budgetary bind over the procurement of interpreters. In 2014 an article appeared in the *New York Times* regarding problems in the state of New Mexico and elsewhere: "As the Demand for Court Interpreters Climbs, State Budget Conflicts Grow as Well" (Santos, 2014). Particularly in those states with a high number of LEP residents, like New Mexico, where one in three residents speak another language at home, state budgets have repeatedly failed to cover the costs of interpreters. Supplying interpreters seems to be a growing problem, even in areas of the country which traditionally did not have a significant immigrant population.

In California, the state with the greatest number of LEP persons, and where the greatest number of languages is spoken, interpreter problems have become acute (Davis, 2016: 6-8). Interpretation for civil cases has only been provided by the state government in California since 2015, and interpreters in California are fighting just to be adequately paid (Interpreters Guild of America, 2016). The Massachusetts Trial Court, facing an increasing need for interpretation and federal demands for greater access, is trying to somehow reduce the cost of meeting these needs. To that end, it has taken steps to downsize interpreter services and to pay interpreters less than the state's own standards provide. The administration is also assigning fewer interpreters to do the same amount of work. All of these measures have reduced the availability of interpreters. The interpreters responded by filing a complaint with the US Department of Justice and a lawsuit before the courts of Massachusetts (Feathers, 2015; Massachusetts Association of Court Interpreters, 2016).

As the number of LEP persons grows, and the cost of providing interpreters services becomes more burdensome, many courts have considered "technological solutions", namely Video Remote Interpreting or telephonic interpreting. Since interpreters must normally travel to a court, and then wait before being used, the expectation is

that using this technology would vastly reduce the cost of providing interpreter services. However, the implementation of these measures is controversial, for two reasons: the interpreters who provide video or telephonic interpreting are usually paid less than in-person interpreters, may have much lower abilities, and are typically not certified legal interpreters. Therefore, they do not have the skills, technical vocabulary and local knowledge which is needed to render proper service. The second problem is that court interpretation is very tasking and complex work, as detailed above, and hearing and understanding all that is said is difficult for someone who is actually present in the courtroom. The likelihood that court interpreting could be done adequately by someone who is not even in the room is slim. For these two reasons, remote interpreting, either by phone or by video, normally equates to a considerable reduction in quality. In the legal context, this is a very serious issue. There may be situations where remote interpreting is warranted; it may be fine for simpler exchanges, such as a deposition, with its question/answer, question/answer format. It also is adequate for basic communication, or as a last resort when no interpreter is available. However, until better guidelines emerge on the use, and the limitations, of remote interpreters, their usage in court will remain controversial (González *et al.*, 2012: 1059–1090).

Beyond the courtroom

Despite the problems mentioned, court interpreting is nevertheless now a normal, standardized feature of civil and criminal justice in most of the United States. How it will be paid for, or how it will evolve in the current era of advancing technology, is not clear, but foreign-language interpretation is established in the United States as a criminal defendant's right and a normative feature of justice. Now there is a new aspect to consider: the federal government has been pushing steadily for more attention to the language rights of LEP persons, both in civil proceedings and in earlier and later stages of criminal cases, meaning at police stations, in probation offices, and other venues. In the field of legal interpreting, this seems to be the new frontier, the area where expansion and adaptation of services can be expected. In particular, I believe that in the future there will be more and more attention paid to interpretation issues at the time of an arrest, when evidence is being gathered by the police.

My work as an expert

I have evolved from being a court interpreter and interpreter trainer to working primarily as an expert. For this work I am almost always hired by a defense attorney, and almost always for a criminal case in which the defendant is either an immigrant or is LEP. My work as an expert is usually concerned with what happened in an encounter with the police, or with police evidence, such as a wiretap or a statement made during interrogation.

A small handful of my cases concern what has taken place in a courtroom, usually in the context of an appeal. For example, I testified in the case of a man who was freed from jail after 19 years for a murder he did not commit. The defendant was from the Dominican Republic, and the evidence was clear that the actual killer had spoken with a Puerto Rican accent. I testified about the differences between the two accents and how readily these differences would be apparent to the witness, given his background. These language issues in this case were not explored in the original trial, so the motion for a new trial were allowed due to ineffective assistance of counsel. I was pleased that my

testimony led to the release of an innocent man (*Commonwealth v. Echavarria* ESCR 1994-2407). I have also worked on cases on appeal over the interpretation provided, or not provided, to a defendant or a witness during a trial.

Procedure under intense focus

However, most of my cases concern encounters with, or actions taken by the police. After the criminal justice system was reformed by the Warren Court (i.e., when Justice Warren was Chief Justice of the Supreme Court in the 1960s), one primary concern of criminal defense attorneys in the United States has been police procedure. The reforms made by the Warren Court stemmed from the recognition, after decades of observation, that black and poor defendants, especially in the South, were afforded little in the way of due process. Even in death-penalty cases, a defense attorney might be appointed only for the day of trial, and a police official might extract a confession from a suspect using any means at his disposal. The eventual reaction to these abuses in the Supreme Court was a reformulation of criminal law to focus on procedural rights found, or rooted, in the Constitution, such as the right to remain silent, or the right to not be subjected to unreasonable searches or seizures (Stunz, 2011: 196–215). These reforms have had a broad impact on the courts, shifting much of the focus in criminal cases onto the actions taken by the police in obtaining evidence and deciding to prosecute. If, for example, a kilo of cocaine is discovered by the police, the defense attorney must try to show that the steps leading to its discovery were procedurally improper. If a defendant gives a statement, then the defense attorney will try to have the statement suppressed, since one has a Constitutional right to remain silent.

For this reason, my work as an expert also focuses on police procedure and equal protection. To return to the example above, involving the discovery of cocaine, if the police maintain that the defendant gave them permission to search his vehicle, I might verify whether the defendant knows enough English to have given the police that permission without the assistance of an interpreter. For example, in one recent case of mine, a man with drugs in his car supposedly had a conversation with the police and answered such questions as, "Is there any contraband in the vehicle?" My testing showed he spoke very little English, not enough to have a conversation, and did not know the meaning of words such as "contraband". Of course, I take several measures to ensure that the subject is not underperforming on the tests I give, knowing that he would have every interest in so doing. For example, in this case one of the things I did to make sure the client was not faking a lower proficiency in English was to show up at his house speaking only in English, since nothing about my appearance would suggest that I speak Spanish. I quickly verified that he could not have a conversation in English (*Commonwealth v. Peguero*, ESCR2014-434) Another example of this type of English proficiency case would be that most common of crimes, the DWI, or Driving While Intoxicated. Did the police give the testing instructions and options in English? If they did, then how could the defendant have understood them, if his English is rudimentary or nonexistent? There are many cases of this sort in our courts, and I have worked on over a hundred of them.

Cultural differences

Sometimes I am called upon to explain the cultural background of a defendant. Cultural commentary is seldom needed in the case of someone from Latin America or Europe, because the culture of these places is somewhat familiar, and is often not that different from

the culture of the US. However, if the defendant is from the other side of the world, or comes from a remote or underdeveloped area, then an awareness of that person's culture or background is usually not part of the experience of the average American. Cultural issues should be presented and considered as part of criminal cases involving foreigners or immigrants, in part because otherwise judgments will be made based entirely on the dominant culture's assumptions. To be fair, a finder of fact must be informed regarding any cultural matter that is beyond his or her experience. In this way, any member of a minority or foreign culture before the court receives the same treatment as does someone whose culture is well-known to the finder of fact (Renteln, 2004: 6). In fact, I have found that an expert report or testimony regarding cultural issues can be not only illuminating, it can become central to the case. Through the expert, an attorney can lead a judge or jury to see the extremely different mindset of the defendant, or that a lack of education and sophistication make him or her less culpable. In many cases there are misunderstandings due to the differences of culture or language, and these can be corrected by the expert (Moore, 1999). For example, I worked on a case of an African high school student charged with Indecent Assault and Battery. There were many misunderstandings in that case. For example, the victim and her father had not made clear that the two high school students who met in the public library were romantically involved. Because of an error on the defendant's passport, the police also thought that he was older than he really was. I detailed the many problems in the case, including issues with the Miranda Warning and the statement of the defendant, and it was simply dismissed once the district attorney read my report (*Commonwealth v. Nyanquor*, 1134 CR 3244).

In some cases where the culture of the defendant is quite different, the defense can even invoke the "cultural defense", which is the proposition that, although the actions taken may have been illegal in the United States, there was no mens rea, no criminal intent, because of a different cultural mindset (Renteln, 2004). I have had several cases like this, such as that of the Cape Verdean who faced deportation because of having used corporal punishment on his children (*Commonwealth v. Mendes*, 1407 CR 3160), or the Chinese student who went to the campus police to confess to rape (*Commonwealth v. Wang*, HSCR2013-00077).

This student was involved in a complicated love triangle: his girlfriend had another boyfriend in China. He and the girl had sexual relations, and the other boyfriend soon found this out. Such a revelation could have huge consequences for her. A girl who has had sexual experiences with other boys will not be regarded as very marriageable in China. In fact, she may be seen as completely compromised. Just as in traditional Western societies, in China there is a double standard for men and women, and a boy, by contrast, would not suffer any stigma or social consequences himself if it were known that he had had sexual experiences with more than one girl.

To learn more about this case, please see Appendix A.

I will now turn to cases involving language issues.

Multilingual police officers

Most times the solution police use to overcome a language barrier is to find a police officer who can speak the same language as the witness or the defendant. One of the reasons they do this is because they know that another officer will automatically be "on their side" (González *et al.*, 2012: 471). I am called to examine many cases like this,

and I often discover that the officer in question does not speak the other language well enough to use it on the job. Typically, these bilingual officers are what is known as "heritage speakers", that is, they are not immigrants, but the children of immigrants. They themselves have grown up and gone to school in the United States, where instruction is in English. However, the language used in the family, especially by the parents, is not English, but their native language. Heritage speakers usually speak English perfectly, but speak their parent's language imperfectly. Although their pronunciation is usually very good, their vocabulary can be quite limited (Velásquez, 2015: 156; Hislope, 2003: 14). Most of them have never lived, as a teenager or an adult, in a country where their parent's language is spoken, nor have they ever read a book in their parent's language. Most bilingual people, including interpreters, speak one language better than the other, and heritage speakers are no exception. Their primary language is English, and they cannot express themselves fully in their parent's language (Portes and Schauffler, 1996).

There are many cases involving this issue. Independent interpreters are seldom used by the police, and there is little awareness of problems of bias and language competence of police officers (Berk-Seligson, 2002b, 2009). In fact, this has been called the most serious problem that LEP persons caught up in the criminal justice system face:

> The increased tendency for law enforcement agencies to use officers who possess only minimal proficiency in the language in which they interrogate or interpret during custodial interrogations, in combination with their conflicting adversarial role, is the most significant barrier to equal access in the criminal justice system for LEP populations.
> (González *et al.*, 2012: 471)

I would like to illustrate what can happen when a policeman is the interpreter by excerpting from the report from one of my cases, *Commonwealth v. Torres*, 1434 CR 3814. This concerned a man from Honduras who was in Massachusetts temporarily, while working on a job site. He was staying at a Days Inn motel, and this motel was also used as temporary housing for some poor families with children. Some of these children were in the habit of invading his room, where they would talk to him, lie on the bed and watch TV. Some mornings when he was not working he would cook eggs and feed them, because he had a fondness for children. One morning the fact that he let the children into his room got him into trouble: a five-year-old girl was about to fall off the bed, so he grabbed her to prevent the fall. As he did so, she turned her head and her lips brushed against his. This made her feel uncomfortable. She was learning to distinguish where people could and could not kiss each other, and had been told that she could not kiss anybody on the mouth. She went to tell her mother what had just happened, and the mother became alarmed and feared the worse – that the man had purposely kissed the girl, and put his tongue into her mouth (in the same way that he had in fact kissed the mother!). The police were called, and the man was later interrogated, using a police interpreter.

This interrogation was carried out by a detective, who perhaps believed himself capable of getting a confession out of even a very cunning pedophile. To arrive at an admission, he exploited every nuance of what he was hearing, and used a number of manipulative tricks to overwhelm the suspect. Unfortunately, the police interpreter, although considered to be the best in that area, did not have the interpreter skills nor the basic language ability to convey all of what was being said by the suspect or the

detective. In the end, there was indeed a confession, but it may have been the interpreter, rather than the suspect, who made the confession.

I testified at a motion hearing to suppress this statement, which focused not only on the errors detailed here, but on the Miranda Warning, which was similarly flawed. The police interpreter also testified, and freely admitted that his Spanish and his interpreting were not error free. The result of the hearing was that the statement was suppressed. Later, at trial, the suspect was found not guilty. Although this case ended in acquittal, the suspect was not released from custody because he was a transient; he spent many months in jail awaiting trial on the serious charge of Indecent Assault and Battery on a Child under 14. Of course, this positive outcome was due to there being a recording of the interrogation. Recordings are now required for interrogations in serious cases in Massachusetts.

To learn more about this case, please see Appendix B.

The Miranda warning

The Miranda Warning and the linguistic and psychological concerns that come to bear when an uneducated, mentally challenged, or LEP person is warned have been extensively studied (Dearborn, 2011) with the greatest contribution being made by a group of scholars led by Richard Rogers. The work of the "Rogers Team", as it is known, has now been gathered and summarized in a book called *Mirandized Statements* (Rogers and Drogin, 2014).

In addition, the many problems and complexities of the language used in Miranda Warnings, including the use of legalese, grammatically-complex sentences, words with multiple meanings, passive constructions, abstract nouns, conditional clauses, and unfamiliar vocabulary has recently been outlined in a most helpful list of recommendations entitled, *Guidelines for Communicating Rights to Non-native Speakers of English in Australia, England and Wales, and the USA*. This was created by an international group of concerned scholars and professionals, the Communication of Rights Group, and it represents the distilled results of a generation of research. I make use of all this scholarly material when I write a report about a LEP person's ability to speak and understand English and to comprehend the specific language of the Miranda warning.

When the Miranda warning is given in a language other than English, another set of issues arises, and it usually concerns the written translation of the Miranda warning, or the ability of the policeman reading the warning to actually pronounce the words and to convey the content of the warning (Shuy, 1998: 52–54). There is no required language for the Miranda Warning, either in English or in any translation. I sometimes find that the written translation of the Miranda Warning contains serious errors, because the translation was done by a person with no training in translation, and often with limited literacy. More often, I find that the police officers reading or speaking the warning have not said it properly. This happens because the police officers in question are heritage speakers and have a limited vocabulary in their parent's language. When such persons attempt to read a Miranda Warning, they find many words that are not part of their everyday vocabulary, and they cannot pronounce them.

For an example of a Miranda case, please see Appendix C.

What did the suspect say?

I have had cases in which the words constituting the evidence of the case were in a language other than English. The critical words might be found in a confession or a statement, or they might be recorded in a text message, or the wiretap of a phone call. Whether a statement is taken by the police from a suspect, or a phone is being tapped, if the conversation is not in English, disputes often arise over the meaning of what has been recorded. In cases like this, the only solution is to create what is called a Forensic Transcription and Translation (FTT) (González *et al.*, 2012: 999–1042; National Association of Judicial Interpreters and Translators, 2009). An FTT is a document with three columns. In the first column are the names of the speakers and any notes about extraneous noises, movements or gestures seen in a video, or periods of silence. In the second column is the language found on the recording; this is the transcript. In the third column one creates a translation of the words in the second column, if they are not in English. An FTT is a very powerful tool, because the original words can be seen and easily compared with the translation. Although time consuming to create, an FTT can lead quickly to the resolution of the case, because everyone can see exactly what was said, and also what it means.

In 2014 I worked on a very large case involving a Colombian drug trafficking circle, *Commonwealth v. Areiza*, WOCR2011-00765. This drug distribution network was being closely monitored by the federal authorities and by the state police. The police had placed hidden GPS devices on the dealers' vehicles, and the dealers' phones were being tapped. In order to obtain extensions on the court orders required to tap the dealer's phones, the police wrote long and detailed affidavits which included translations of some of the phone calls they were recording. (Regarding the reliability and acceptability of this practice, see Berk-Seligson, 2000). The police reported that the dealers were speaking in some unusual dialect which they could not identify, and the police admitted in their affidavits that they did not understand all of the words they were hearing.

When this case went to court, the police analysis of the recorded phone calls was immediately called into question by the defense attorneys, who pointed out that the police could not be sure of what was being said in the supposedly unknown dialect. The police had also left out parts of the conversations which they considered irrelevant. This was true: the police translations were clearly inaccurate and speculative. To resolve these problems, I was hired by the defense to determine what was actually on these wiretap recordings. Because the words were often indistinct and sometimes purposely vague or coded, transcribing and understanding the conversations was not an easy task. However, I realized that the speakers were *paisas*, and were speaking an urban dialect from Medellín called Parlache. The dealers may have felt confident that few would understand their conversations, because Parlache is little understood outside of the slums in which it originated (Castañeda Naranjo and Henao Salazar, 2001, 2006). I was only able to determine the precise meaning of everything the *paisa* drug dealers were saying because one of my students at the time was from Medellin, and she reviewed the entire FTT.

To learn more about this case, see Appendix D.

Conclusion

Because we live in an increasingly globalized, multilingual, multicultural world, efforts must be made to include everyone and treat everyone fairly. In the courts of the United

States, equal access to justice for linguistic minorities is a matter of law since 1978, and progress has been made in supplying qualified interpreters to litigants in the courts, and even beyond the courtroom. The provision of interpreters to LEP persons in the courts of the United States is necessary to the administration of justice and is also a matter of public safety. There has been steady progress in improving the quality of court interpreters. Nevertheless, today the results are still uneven, because the number of people needing interpreters continues to increase, and the money allotted to pay for more interpreters is inadequate. The number of languages in which interpretation is needed is also quite high and is increasing. More resources are needed to meet the new demographic realities. Interpretation is a matter of fundamental fairness. In addition, immigrants make an enormous contribution to the American economy, and the least that should be done for them in return is to provide them with interpreters if they need to appear before a court.

If the evidence in the case is in a foreign language, if the Miranda warning was delivered in a foreign language (or in English to someone who speaks very little English), if a non-professional interpreter was used to extract a confession, or if there are major cultural differences that figure in a case, then something more than an interpreter is required. Because there are more and more immigrants, and more and more cases involving misunderstandings, inaccuracies, cultural differences, and the like, experts in language and culture like myself are sometimes needed to ensure accuracy, fair treatment and "equal justice for all". In the four examples which I have given above, an expert report or expert testimony was essential to a basic understanding of the evidence and to a proper resolution of the case. If the LEP litigant in each of these cases had merely been provided with an interpreter, they would have understood their trials, but they may have nevertheless lost their cases. As I explained in the first half of this article, an interpreter's job is to repeat what has been said by someone else. If a case contains important evidence in a foreign language, or there is a considerable cultural difference, or if the interpreter used was incompetent, then only an expert in foreign languages and cultures can do the research, write the reports, testify and clarify these matters.

Notes

[1]This assumption has been challenged by a recent study which found that since 2000, at least if one considers the jobs that immigrants are doing, rather than their socio-economic status upon arrival, the fastest growth has been in the middle-income sector. The "hourglass" shows some signs of filling in through the midsection. However, the same study confirmed that most immigrant jobs were in the lower sector, and that the new middle-income jobs went to those immigrants able to speak English (Capps *et al.*, 2010).

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Appendix A

The students thought that going to the campus police and saying that the girl was raped would save her reputation, and they assumed the police would handle the matter quickly and informally, as is done in China (McConville, 2011: 504). Although the charge of rape in China can be punished by death, what the police do in most cases with someone who has committed this crime, or a similar offense, is more like Western-style mediation and moral instruction than it is a meting out of punishment. Based on the belief that people are generally good, though corruptible, and that the best tool is education, the Chinese system of informal justice focuses on reformation and the restoration of harmony. Confucian teachings are the basis of moral reasoning in China (Yum, 1991) and the Confucian underpinnings of this approach to crime are evident:

> The history of mediation in China can be traced back two thousand years to when the principles of Confucianism reformed the Chinese people's behavior. The Confucians believed that criminal punishment could not bring people to awareness of high morals in human society; educating the offenders and the general public in moral principles, on the other hand, could assure knowledge of the correct way to behave. Therefore, only the most serious offenses would be left for the formal justice authority to deal with by punishment. The vast majority of civil disputes and less serious criminal offenses were disposed of locally, most of them through mediation that was regarded as a form of moral education.
> (Situ and Liu, 1996: 132-133)

This moral education was part of a policeman's responsibility. A local policeman in China is considered a community leader and organizer, as much as having a purely police function. In fact, police stations are called Public Safety Bureaus, and they usually employ social workers, as well as police, to deal with matters such as this. When intervening in a civil matter or a minor criminal matter, the focus is on gathering all the relevant information, self-criticism (what we might call a confession) and correction by a police officer. That officer has complete discretion in terms of punishment, which might range from a warning, a $50 fine, or a short detention at the police station (Wang, 1996: 162–163).

With this concept of law enforcement in mind, the two Chinese students went to the campus police and the male student told them, "I want to, to warn and make sure this thing will not happen again". He was asking them for a warning. When I later asked him what he expected would happen when he contacted the campus police, the defendant told me that he expected to be given a lecture. In China such a scolding might last several hours.

The police were very surprised by his appearance before them and by his voluntary admission to a felony. They did not merely give him a warning, but questioned him and then passed the matter to the district attorney, who indicted him for rape. He was dismissed from the university, and found that he could not apply to any other university. I testified at a hearing held to request the suppression of his statement. I said in court that I did not think he understood the Miranda Warning and did not understand that making this confession to the police could have serious consequences. I explained the very different way that this matter would be handled in China. The judge thought this over, and said that although it was a difficult decision, in the end he would allow the

student's statement, his confession, to be used as evidence. Later the student went to trial and was fortunately found not guilty. This case may not have gone to trial if the female student had not gone back to her other boyfriend and decided to maintain the fiction that she had been raped. This is a very good example of a case with important cultural aspects.

Appendix B

I will excerpt several pages from my report which summarize 30 minutes of this very interesting interview, in the hope that the way in which the confession came out can be better appreciated. In the report several of the most important sections are in italics. I have removed the names of the speakers from this excerpt.

The "confession" of a suspected pedophile

> Beginning at 28:03 – After continued questioning, the suspect admits, by saying the word *sí*, that he possibly "kissed" the child by accident. However, the suspect never uses the word "kiss". He says this happened due to her moving her head as he held her.
>
> 28:09 – So you did kiss her on the lips?
>
> 28:17 – It was like an accident. Poorly translated into English.
>
> 28:36 – It was not intentional.
>
> This is followed by several questions seeking to establish that he did kiss her on the lips, accidently or on purpose.
>
> 29:36 – The suspect describes an accidental brushing of her mouth when she turned her head. Not translated into English.
>
> 29:59 – He did not stick his tongue out, accidently or otherwise.
>
> 30:14 – The detective announces that they are making progress, and starting to get to the truth.
>
> 30:01 – The detective spends several minutes establishing that the suspect now feels better, having admitted that he kissed the child. This does not make him a child molester. He just likes kids, especially the kids at the Days Inn. The suspect says yes at several points.
>
> 31:39 – A series of questions now begins about the hotel stay and whether he feels lonely.
>
> 35:02 – What does the suspect think should happen to people who kiss little girls? This question is not understood.
>
> 35:52 – The suspect answers that he does not know, after first clarifying that he has not molested any child.
>
> 36:30 – When asked, he also says he does not know why someone would do this.
>
> 36:49 – Denies having thoughts (or been tempted) to kiss a child with his tongue.

37:03 – Asked why he would not kiss a child in this manner, the suspect answers that to do so intentionally is wrong.

37:06 – *The police interpreter makes a serious translation error while interpreting the last answer, saying, "if I had done it intentionally, it is not right". The suspect had merely said that if it was done intentionally, then it would be wrong.*

37:21 – The suspect is then asked, even if he does not know what the punishment should be, would a person who did this deserve a second chance? Because the police interpreter uses the Spanglish word "chance", this question is not immediately understood.

37:56 – The suspect says that if it is done intentionally, then the person does not deserve a second chance.

38:17 – The suspect says that if it happens accidently, then the person does deserve a second chance.

38:26 – The suspect adds that everyone makes mistakes. No one is perfect.

38:44 – The detective announces that the reason this happened is because of "his feelings for the girl". This is translated into Spanish awkwardly. The English: "And, and, and I believe that his feelings for the girl is the reason why he kissed her on the lips". The Spanish: "*Dice que el piensa que el motivo fue, eh, la manera que Usted aprecia a esa nena fue la razón que Usted la besó en los labios*". (He says that he thinks that the motive was, uh, the way that you like that little girl was the reason that you kissed her on the lips.)

39:13 – The suspect tries to place the event within the context of simple friendliness and affection.

39:27 – The suspect says that he likes kids. He likes kids a lot. This is mistranslated into English as "he wants children". (The error is hard to understand: the verb *querer*, which can mean to want and to love, was not used. The suspect said, "Aprecio a los niños. Los aprecio mucho.")

40:14 – The suspect returns to a description of the underlying event, explaining again that the child was about to fall and that he may have brushed her lips when he picked her up and she turned her head.

41:24 – *The police interpreter commits another major translation error. Instead of saying that the suspect brushed against her lips when she turned, he says "in the process of her moving from cheek to cheek was probably when I kissed her."*

42:00 – Focusing on the side-to-side movement, the detective asks if his original intention was merely to hug the child. "So, it was initially going to be a hug?" In the questions that follow, the detective attempts to establish that this is a major contradiction, since he had originally said that he picked up the child and intentionally kissed her on the cheek.

43:24 – Although the suspect speaks unguardedly at this point about both kissing and hugging the child, the detective announces "his story's changed at least two or three times."

44:35 – Unable to make the suspect see or acknowledge any contradiction, the detective switches topics and asks what his feelings are towards the mother, and whether he is attracted to her. He establishes that the suspect has kissed the mother in the past.

46:14 – The detective now begins a monologue about the fact that the way that the suspect has kissed both mother and daughter is the same, his wanting to know why he wanted to kiss the child like that, and his belief that he is not a molester, and that God knows, as the detective knows, what really happened.

48:06 – The detective says that this was not an accidental kiss.

49:12 – The suspect says his only motivation was his fondness for children.

50:43 – The detective returns to his conviction that he knows this happened because he tried to kiss the mother in the same way.

51:55 – *The suspect finally says, if this was a mistake, if what I did is wrong, then I would like to apologize with all my heart.*

51:59 – *The police interpreter commits another major translation error, eliminating all the qualifiers, but not the apology: "Says with all my heart, I would, I would, uh, ask for forgiveness."*

52:02 – The detective offers the suspect his forgiveness.

52:22 – The suspect reiterates his love for children.

52:37 – *The suspect says I know it's not right. At least I know it now.*

52:39 – *The police interpreter commits another major translation error, eliminating the qualifier. "He knows it's not right."*

53:20 – The suspect continues to focus on the innocent nature of his actions, which was just eating with the kids and enjoying their company.

53:27 – The detective characterizes what happened as something unusual for the suspect, because he doesn't normally try to kiss children on the mouth with his tongue. It was a mistake, and people make mistakes.

54:08 – Told that he made a mistake, the suspect agrees.

54:13 – The detective tells the suspect that he is basically a good person, but that he has made a mistake. However, he must feel better having confessed his mistake. He does not prey on children. Again, he must feel better.

55:21 – The suspect agrees.

55:28 – The detective announces that he has violated the law and will be arrested.

58:54 – Some 3.5 minutes later the suspect finally realizes that he is about to be arrested and asks "for what?" He asks, *¿Cómo?* This word could be translated more fully, as "how did we get to this point?"

After many denials and plausible explanations, at 51:55 we arrive at the suspect's "confession." However, what he says is hedged with qualifiers: *if* this was a mistake, *if* what I did is wrong, then I would like to apologize with all my heart. However, these qualifiers are absent from the English translation. In the English translation he merely asks for forgiveness. The same thing happens moments later, when he says that he knows it's not right, at least he knows it now. This is perhaps the most incriminating thing that he has said in the entire interrogation, but again he qualifies what he is saying, "At least I know it now." The police interpreter leaves out the last phrase, so the suspect appears here to make another unqualified confession.

Appendix C

These problems are compounded when a policeman tries to deliver a Miranda Warning in a language that is not his parent's language, but a related language. For example, let us look at a Miranda Warning given in Spanish by someone who was raised in a Portuguese-speaking household: This Warning was part of the case, *Commonwealth v. Ramirez*, BRCR2014-0175.

In this excerpt from my affidavit the standard English Miranda Warning is given in Bold type, followed by the officer's Spanish version, and then my translation. If the officer mispronounced a word, I deliberately misspelled the corresponding word in the translation, so an English speaker can see that the word was not clearly pronounced. Words in Portuguese are marked with a [P]. In my translation, if I thought a word would be incomprehensible to a Spanish speaker, I left that word in Portuguese. The numbers correspond to the comments that follow each section, or "prong."

1. Introduction

Le vol, le vol…la bena…voy a ler para usted. Antes que usted a fala alguna pregunta, usted tiene que entender que le vo' decir para usted.

I goan, I goan[1]—the gooda[2] I am going to [P]red[3] for you. Before you to [P](*fala*)][4] any question, you have to understand what I am going to say for[5] you.

Comment:

1. ***Le vol* for *Le voy.*** I have misspelled *going*, because the word *voy* was mispronounced.

2. ***La bena***. This word does not exist in Spanish or Portuguese. I represent it with "the gooda" since *bem* is Portuguese for "good" and the equivalent word in Spanish is *bien*.

3. ***Ler* for *leer.*** "to read" Here a Portuguese word is substituted for a Spanish word.

4. ***Fala.*** "speak" A Spanish speaker would have little notion what *fala* means, unless that person also spoke some Portuguese. The Spanish is an unrelated word, *hable*.

5. ***Para* for *a.*** "for" This error is due to Portuguese interference. The meaning is changed from "read to you" to "read for you."

2. First Prong: YOU HAVE THE RIGHT TO REMAIN SILENT.

Usted tene el direito de parmanicer en silencio.

You habe[1] the [P]ret[2] to ramen[3] silent.

Comment:

1. ***Tene* for *tiene.*** This verb is mispronounced.

2. ***Direito* for *derecho.*** The Spanish word is replaced by the Portuguese equivalent. Because of pronunciation differences this word would probably not be understood by a Spanish speaker.

3. ***Parmanicer* for *permanecer.*** The key word, "remain," is also mispronounced.

3. Second Prong: ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.

Qualquer coisa que usted dizer pode ser usada contra usted en la corte.

[P]Eeny [P]thang[1] that you [P]sea[2] [P]kin[3] be used against you in the court.

Comment:

1. ***Qualquer coisa* for *cualquier cosa.*** "anything" Portuguese is substituted for Spanish, but both sound fairly similar.

2. ***Dizer* for *diga.*** "say" Here the infinitive in Portuguese is substituted for the present subjunctive—employing both bad grammar and the wrong language.

3. ***Pode* for *puede.*** "can" Portuguese word substituted for Spanish.

4. Third Prong: YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.

Usted tiene el dereito de hablar con un abogado para, para conselhos antes de hacer nós alguna pregunta.

You have the [P]ret[1] to speak to an attorney for, for [P](conselhos)][2] before asking us[3] any question.

Comment:

1. ***Dereito* for *derecho.*** "right" Here a mispronounced Portuguese word is substituted for a Spanish word.

2. ***Conselhos* for *consejo.*** "advice" A very different-sounding Portuguese word here is substituted for the Spanish. This would likely not be understood by a Spanish speaker.

3. ***Nós* or *nos*?** "We" or "us" *Nós* is the Portuguese pronoun used for the first person plural (= we). The equivalent in Spanish is "nosotros." However, no Spanish speaker would understand "hacernos" as "we ask." It could only be understood as "ask us." Here the one about to ask the questions, therefore, is the suspect.

4. The idea of the attorney being present during the interrogation is not communicated.

5. Fourth Prong: IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONS IF YOU WISH.

Si usted no tem un abogado, un abogado estará apuntado para usted.

[1] If you do not [P]habe[2] an attorney, an attorney will[3] be aimed[4] at you.

Repetition:

Ah, ¿dónde estaba? Espera, eh…pero un abogado será pre—si usted querer contratar un abogado, un abogado será presentado para usted. Ah, estará pronto hacer, ah, si usted tevera una pregunta. ¿Usted entende sus dereches?

Where was I? Hold on, um, but an attorney will be int–, if you want[5] to hire[6] an attorney, an attorney will be introduced for you. Uh, it will be [P] soon to do[7] ah, if you hive[8] a question. Do you [P]anderstan[9] your rets?[10]

Comment:

1. Apart from issues of pronunciation and the substitution of Portuguese for Spanish, there is a fundamental flaw in the fourth prong: The suspect is not told that consultation with a lawyer is free. Instead he is told that a lawyer will be pointed at him if he wants to *hire* one.

2. ***Tem* for *tiene.*** "have" Here a Portuguese verb is substituted for a Spanish one.

3. ***Estará* for *será.*** "will be" Here the wrong Spanish verb is used. This error would not prevent comprehension.
4. ***Apuntado.*** "pointed" Here the officer is apparently attempting to find a Spanish equivalent for the English word, "appointed." However, the word "apuntado" is a false cognate, meaning that it has a similar form, but a different meaning. Note this explanation in the *NTC Dictionary of Spanish False Cognates*:

   > **Apuntar** does not mean "to appoint": it means to note, write down, aim at, point, score (in sports) dawn, sprout, prompt (in theater)…**Apuntó** al corazón y lo mató. He **aimed** at its heart and killed it.
   > (Prado, 1993: 14–15)

5. ***Si usted querer* for *Si usted quiere.*** "if you want" This is a grammatical mistake in Spanish, substituting the infinitive for the present indicative. This error is due to interference from Portuguese, compare: "se você quiser."

6. ***Contratar.*** "hire" Again, the fourth prong has been delivered incorrectly by removing the notion of a free attorney, and replacing it with references to a paid attorney.

7. ***Estará pronto hacer.*** This phrase does not make sense. Although "pronto" can mean "ready" in Portuguese, it does not have this meaning in Spanish, only "soon" or "promptly."

8. ***Tevera.*** "would have" (?) This verb is either a mispronounced form of the Portuguese pluperfect indicative, "tivera," or a mispronounced form of the Spanish imperfect subjunctive, "tuviera." A Spanish speaker would struggle to understand this mispronounced verb.

9. ***Entende* for *Entiende.*** "understand" Here a Portuguese verb is substituted for a Spanish one.

10. ***Dereches* for *derechos.*** "rights" Here the Spanish word is badly mispronounced.

5. So-Called Fifth Prong: YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

Not given.

Conclusion as to the Miranda Warning

Most of the errors on the part of the officer are mispronounced words in Spanish or the substitution of Portuguese words and syntax for Spanish. These mispronunciations and substitutions are so frequent in the four prongs given that I believe the Miranda is not understandable, on this basis alone. However, there are also two problems of erroneous information: 1) The suspect is told as part of Prong Three that *he* will be questioning the police officers, not that they will be questioning him and it is implied that he can only talk to the lawyer before the questions, not that the lawyer can be present for the whole interview, and 2) in the Fourth Prong the suspect is not told that he can have a free attorney, rather that if he wants to *hire* one, one will be "pointed" at him in court.

This statement was suppressed because of the faulty Miranda Warning, as are many statements in the cases that I examine. The Miranda Warning is often handled incorrectly in cases with LEP defendants.

Appendix D

To illustrate the nature of the work on this case, I will excerpt here a conversation between two of the drug dealers. This was the first call that the police included in their affidavits, and they note that the conversation was held in Spanish, so that the police would be less able to understand it. They also claimed that this call was proof that one of the dealers, Héctor P., had a higher rank in the organization than previously supposed. They surmised this because of the use of certain terms, such as "mijo" (a contraction of "mi hijo"), which literally means "my son" but in Colombian usage is closer to the sense of the British "old son." "Mijo" is an interjection that is used by virtually everyone to address virtually everyone. I chose to translate "mijo" as "old son" because in English the term "my son" sounds stilted and is very seldom used in everyday speech. "Old son" is used in several countries, and expresses nothing more than affection. In my report I made a list of all such terms of endearment and what their meaning is to *paisa* Colombians. This is found below. In this case the police had not interpreted the term correctly.

Here is an excerpt from the police affidavit, then their translation call—which has several of these terms—followed by my FTT and my comments, which are preceded by the sign "»". [UI] in my FTT means "unintelligible".

> **Police Affidavit:**
> On Wednesday, May 25, 2011 at approximately 1:33 PM Darney G. received an incoming telephone call from Hector P. utilizing telephone numbered (774) 641-3543. During the conversation the two parties conducted their conversation exclusively in Spanish. It should be noted from my training and experience I know individuals engaged in illegal activities will often use languages other than English if at all possible as a means to shield their activities from police scrutiny. During the conversation Darney G. referred to Hector P. as "Papito". Additionally, Hector P. called Darney G. "My Son" and "My Brother". It is my opinion that Darney G. and Hector P. were arranging a meeting, confirmed through surveillance the following day (as described below). The conversation was translated and transcribed by Trooper N. Trooper N.'s undercover activities as they relate to the Areiza Cocaine Distribution Organization are detailed at length in the affidavit dated May 24, 2011. Trooper N. has predominantly used Spanish in speaking directly with Darney G. Based on the context of the conversation it is Trooper N.'s opinion that Darney G. is accommodating and deferential to the elder Hispanic male. It is the opinion of this officer, Trooper N. as well as my direct supervisor Sergeant S. that Hector P. now occupies a higher position within the Areiza Cocaine Distribution Organization than Darney G. Hector P.'s involvement in the Areiza Cocaine Distribution Organization is detailed in the May 24, 2001 affidavit and it should be noted that according to the Registry of Motor Vehicles, he is approximately sixteen years older than Darney G. Furthermore, this conversation is an indication that Hector P. has advanced to a higher position within the organization then he was previously thought to hold. The following is a translation of this conversation.

HECTOR P.	My son.
DARNEY G.	My old man.
HECTOR P.	How are you doing?
DARNEY G.	Good and You Papa.
HECTOR P.	Good. Are you resting?

DARNEY G. Yes my son. What else is there to do?
HECTOR P. Aah that's good my brother.
DARNEY G. Are we going to eat later on or will we go out to breakfast tomorrow Papito?
HECTOR P. Will you have enough time?
DARNEY G. Papito we will communicate tomorrow. Will tomorrow be easier?
HECTOR P. Perfect my son, perfect.
DARNEY G. Well then Papito we will meet at ten-thirty or eleven. Will you be ready?
HECTOR P. I will be ready. Call me when you get out of work so I will be sure.
DARNEY G. Ah Papito everything is good.
HECTOR P. (Inaudible)
DARNEY G. God Bless. Ciao.
HECTOR P. Ciao.

My FTT of the same conversation:

5-25-11 at 1:33 PM

Speaker	**Transcript**	**English Translation**
Héctor P.	[UI], mijo.	[UI], old son.
Darney G.	¿Qué va, mi viejo, cómo está?	What's happening, my old man, how you doing?
Héctor P.	Bien, ¿Y tú, Papá?	Fine, and you, Pops?
Darney G.	Bien, descansándolo, ¿o qué?	Fine, taking it slow, you know?
Héctor P.	Sí, mijo, ¿qué más se hace pa'aquí?	Right, old son, how else would you do things around here?
Darney G.	Ah, está bien, hermano.	Ah, fine then, bro.
Héctor P.	¿Qué más pasa, hijo?	What else is happening, son?
Darney G.	Allí, mijo. ¿Qué te iba a decir? Eh, allí que nos vamos a comer ahorita más tarde, o desayunamos mañana?	There [you have it,] old son. What was I going to say? Oh, so, are we getting together over there to eat later on, or shall we have breakfast tomorrow?
Héctor P.	Papito…	Handsome…
Darney G.	¿Cómo está de tiempo, mijo?	How are you doing for time, old son?
Héctor P.	Papito, nos comunicamos que mañana a la mañana le queda fácil, ¿o qué?	Handsome, let's be in touch about tomorrow morning, if that works for you, or?
Darney G.	Perfecto, mijo, perfecto.	That's perfect, old son, that's perfect.
Héctor P.	Hágale, pues, Papito. Mañana nos vemos por allá a las 10:30-11:00, ¿listo?	Good enough, then, Handsome. We'll see each other over there at 10:30-11:00, okay?
Darney G.	Listo, mijo. ¿Me pega la llamadita, pues, apenas, apenas, apenas salga, este, o ya cuando llegue del trabajo, para que estemos seguros que si…?	Okay, old son. Can you give me a jingle, then, as soon, or as soon, as soon as you get there after work, so that we can be sure if we're…?
Héctor P.	Hágale, pues, Papito. Todo bien.	Good enough, then, Handsome. Everything's good.
Darney G.	Bueno, pues, la Virgen te acompañe.	Well, then, may the Virgin go with you.
Héctor P.	Que Dios te bendiga. Chau.	God bless you. Bye.
Darney G.	Chau.	Bye.

[1:00]

Analysis of Call 1 on 5-25-11 between Héctor P. and Darney G.

Detective L. makes the following claims relative to this phone call:

1. Spanish (and other languages) are used by criminals instead of English to shield activities from police surveillance.

   »While law enforcement personnel might think this may be true generally, Héctor P. and Darney G. are both Colombians, and they would naturally speak to each other in Spanish, not in English. Indeed, it would be highly unusual for them to speak to each other in English.

2. Darney G. refers to Héctor P. as "Papito." Hector P. calls Darney G., "My Son," or "My Brother."

   »As mentioned above, these terms do not tell us much in terms of the relative subordination or hierarchy of the two speakers. They are terms of endearment, and indicate a certain level of intimacy or trust. However, there is a basic problem of attribution in this call: the police transcriber switched the names and voices for this dialog. [The audio of this conversation is attached.] He does this the first time when Darney G. speaks. He believes that when Darney G. says, "How are you doing?" on the third line of his translation, that this is Héctor P. taking a turn and speaking, but it is not. [Determining this does not require any sophisticated analysis of voice patterns. It is simply a matter of careful listening.] Therefore, the entire dialog in the affidavit has the wrong names before the turns. It is Héctor P. who refers to Darney G. as Papito, which means Handsome, and Darney G. who refers to Héctor P. as "my/old son" or "brother."

3. A meeting is being planned for the next day.

   »Apparently true.

4. Darney G. is being "accommodating and deferential" in his dealings with Héctor P., who, according to the Registry of Motor Vehicles records, is 16 years older than he is. Apparently Héctor P. now occupies a more senior position in the cocaine distribution organization. "[T]his conversation is an indication that Héctor P. has advanced to a higher position within the organization than he was previously thought to hold."

   » The word, "*mijo*," literally "my son," among Colombians is not a marker for subordination, as the police transcriber seems to suppose. In any case, the word "son" is used a total of seven times in the dialog and is used by both figures. There are few signs of any subordination, and the tone overall is simply familiar and affectionate. It appears to be a very mutual relationship. The only sign of possible subordination or deference is when Darney G. *asks* Héctor P. if he wants to meet for a meal that day or the next morning. There is nothing in this dialog to indicate that Héctor P. has advanced to a higher position in any organization.

An independent analyst

My analysis of this call was very helpful to the attorney representing Héctor P., who was in fact *not* a leader in the organization, and therefore received a lesser sentence.

Once the content and meaning of the most important of months of conversations was laid out in the FTT, I then moved to an analysis indicating which conversations were most incriminating and why. Before the FTT was created, everyone was relying on translations made by police officers, which were inaccurate, speculative and incomplete. Once my report was made available, the case moved quickly to resolution. There was no need for a trial once the linguistic evidence was clear.

I played an unusually central role in this case because, although the police knew they had broken up a large-scale cocaine distribution ring, they admittedly could not understand the strange Spanish used in the telephone calls which were their primary evidence. I *could* understand the calls (after some serious study), and I was able to take the position that I was acting as a neutral, independent agent who could be trusted by both sides. To establish this, I supplied a missing piece, which was a scholarly description of the Parlache dialect (found below), and I also made much of the fact that I never interviewed, or even met any of the defendants. In the end, the police and all the attorneys did indeed use my assessment of the evidence as the basis of a negotiated resolution of the case.

In this and in many similar cases, the first step for me as an expert is to determine what exactly was said, and translate that into English. The only way to do this properly in most cases is to create an FTT. An FTT can be a difficult undertaking, and I happily engage an assistant, as well as consultants who are from the countries in question. Such voice recordings can be very indistinct and highly colloquial, and many heads are better than one when trying to determine their meaning.

An Excerpt from my Report Identifying and Explaining the Parlache Dialect

Trooper L. addresses the dialectical issue in his second affidavit:

> A significant amount of the conversations occurring over telephones numbered (508) 287-4912 and (508) 232-9140 involve parties of Hispanic descent. As a result the conversations are, in most cases, in Spanish language. The difficulties associated with the foreign language intercepts are exacerbated by the use of Colombian specific dialect used between Jorge A., Darney G., Alejandra G. and others. Although the root language is still Spanish, there are numerous terms and meanings that are specific to not only Colombians but Colombians involved in the narcotics trade.

Trooper L. then goes on to list the five members of the translation team and makes some observations about the language being used, such as the fact that references to money in the conversations can be camouflaged as statements about time. He says that this is noticeable especially if the time reference does not fit the rest of the conversation. He also notes the meaning of certain unusual terms, such as "pelado" for "youth," or "boleticas" for "dollars."

In fact, the language being spoken in these intercepts is one specific to a particular city and a social class: it is, or was originally, a social dialect spoken by marginalized and

drug- or crime-involved young people in Medellín, Colombia. I base this identification on the accent, as well as the presence of the following 25 terms, and the distinctive way that they are used. These terms have all been identified by scholars as typical of this dialect:

> abrirse, billete, camellar, carechimba, cerdo, chacho, a la fija (*or* a la f), guaro, güevón, harina, hermano, man, marica, nieve, nos vidrios, ome, papá, parcero, pelado, peludo, primo, sisas, socio, trabajar, viejo.

The speakers in the intercepts also employ many terms that are common to Colombian speech in general, but the way that they use the 25 terms listed above is typical specifically of the social dialect in question. This dialect is referred to by scholars and many others as "*Parlache*" (PAR-LA-CHAY). (References omitted.) In its original form the *Parlache* dialect was not generally understood by other Colombians, so that when a seminal book about the Medellín slum dwellers was published in Colombia in 1990, it needed to include a glossary of their *Parlache* vocabulary.
(Salazar, 1990)

The identification of the dialect used in these phone calls makes it possible to properly translate many obscure passages. For example, when Jorge A. says to Darney G., "mañana nos vidrios," this is translated by the police as "tomorrow to the mirrors," which makes little sense. In fact, it means, "I'll see you tomorrow." As to the question of whether the defendants are using this dialect to further camouflage their operation, or whether this is the exclusive argot of drug dealers, meaning that the fact that they speak in Parlache is thus prejudicial, let me say that the use of any dialect such as this is a social statement: Someone who speaks the language of the *comunas*, the slums of Medellín, is communicating to others what city he or she is from, and what strata of society he or she belongs to. This is an argot that is not intended to be understood by outsiders. *Parlache* is a social statement that manages to combine and overlap poverty, criminality and cool, just as we see in the United States with regard to hip-hop or a gangsta rap-inspired vocabulary. While *Parlache* is the language of the Medellín *traquetos* (the drug traffickers), speaking Parlache does not make someone a *traqueto*. Indeed, the latest summary statements regarding Parlache, such as that on Wikipaisa, portray *Parlache* as now becoming a more neutral cultural expression that certainly began among the disenfranchised or the criminal element of Medellín, but which then was taken up by Colombian youth culture and now is used as a mark of protest by young people of all classes of society and in other parts of the country.

Terms of Endearment

One distinctive aspect of these conversations that is also typical of *Parlache* is the constant use of terms of endearment. These intercepted calls are studded with terms such as "pops, old son, buddy, esteemed sir," etc. Since one of the most important issues in this case is to determine the hierarchy of the drug operation, and whether anyone is being addressed in a deferential manner, the terms require investigation and explanation. I put the terms into tables showing frequency of use, and then I explained the terms in order of prominence, with the most-used terms coming first. The first table below concerns Jorge A.'s conversations with Darney G.:

Term	Speakers		
	Jorge A.	**< >**	**Darney G.**
Güevón	12		13
Hermano (or Mano)	27		15
Mijo	4		13
Hombre (or Ome)	6		2
Licenciado	10		0
Papá	20		22
Papi	2		6
Papito	1		29
Parcero	2		28
Socio	1		0
Tío	1		0
Mi viejo	1		15

Jorge A. and Darney G.

16, or half, of the 32 Spanish-language calls are calls between Jorge A. and Darney G. In these calls, the terms most used are ***hermano***, ***parcero*** and papito. *Hermano* is Jorge A.'s favorite term for Darney G., and *parcero* and *papito* are Darney G.'s favorite terms when addressing Jorge A. *Parcero* is used 28 times by Darney G., and *papito* 29 times. *Hermano* is used 27 times by Jorge A.. In addition, Darney G. calls Jorge A. *hermano* 15 times, and both *parcero* and *papito* are also used by Jorge A.

Meaning of the Terms:

Hermano (brother) is a common term of address in *Parlache*, and means buddy. I have translated it throughout as "bro."

Parcero (cell mate) is a prison term that crossed over into general usage. In *Parlache* it also means buddy.

Papito is a term of endearment used in many countries to address men. It means "handsome" or "dear," especially when used by women. *Papito* is sometimes used as a nickname, and can be used by adults to address male children in an affectionate manner (Asociación de Academias de la Lengua Española, 2010: 1595). When one is addressing one's own father, it can also function as the diminutive of papá, and means "dear father." I have translated it throughout as "handsome," as this clearly fits the context. Darney G. uses this term 29 times when addressing Jorge A, as noted above.

Papá (father) is used 40 (19 +21) times by both speakers. In *Parlache papá* is used to address friends and acquaintances, and simply means buddy or dude. I have translated it throughout as "pops." *Papi* is a shortened form of *Papá*.

Güevón is an obscenity which can be used as a term of address in a more intimate friendship. It is derived from *huevos* (eggs) and refers to the testicles. It is used in these conversations 11 times by Jorge A. and 12 times by Darney G. In the third person *güevón* means "idiot" or "dumb fucker." This word was translated by the police as "Big Balls," which I believe is too literal. I have translated it throughout as "man," because equivalent English terms with a vulgar undertone, such as "you bastard," are too strong.

Licenciado is a favorite term of endearment of Jorge A. He uses it with Darney G. 10 times. This term is used throughout Latin America to respectfully address a person holding a university degree, such as an engineer, or especially an attorney. In Colombia it is used differently. There it is used as a term of respect, but the exaggerated title is also used jokingly. This means that the term can be used in an inflated manner to elevate the social status of the person addressed. (This is the way it is being used here.) In British English the equivalent would be "guv'nor," or in American English, "sir." I have translated it throughout as "esteemed sir."

Mi Viejo (my old man) in *Parlache* means friend, without regard to age. This is a favorite term of Darney G., who addresses Jorge A. 15 times as *mi viejo*.
I have translated it almost always throughout as "old man."

Mijo (my son) is a Colombianism with little specific meaning, and is often added as a filler. Darney G. uses the term 13 times with Jorge A. I have translated it throughout as "old son."

Socio (partner) is used once by Jorge A. In *Parlache* this term means buddy.

Hombre (man) is used throughout Spain and Latin America to mean man, just as in English.

Tío (uncle) is a term of affection which Jorge A. uses once.

Jorge A. and Alejandra G.

The next largest group of calls is the four calls between Jorge A. and Alejandra G. These are the terms found there:

Term	**Speakers**		
	Jorge A.	**< >**	**Alejandra G.**
Doctor	0		5
Licenciada	3		0
Mi Amor	2		0
Mijo	0		2
Niño	0		2
Señorita	3		0

The exchanges between Jorge A. and Alejandra Gómez are more respectful than those with Darney G. Jorge A. is also more gallant with her because she is a woman.

Meaning of the Terms:

Doctor is a term of respect like *licenciado*, but indicates a slightly higher rank. Like *licenciado*, it is also used jokingly in Colombian speech.

Licenciada, see above.

Mi Amor (my love) is a gallantry.

Señorita (miss) is a very common term of respect throughout the Spanish-speaking world.

Jorge A. and the Unknown Hispanic Male

The next largest group of calls take place between Jorge A. and an "unknown Hispanic male:" These are Calls 10 and 13. The Unknown Hispanic Male's phone number was (857) 389-0568.

Term	**Speakers**		
	Jorge A.	**< >**	**The Unknown Hispanic Male**
Caballero	0		1
Güevón	7		4
Hermano	17		5
Hombre	1		1
Licenciado	1		2
Papá	2		0
Parce	1		0
Mi viejo	1		0

This list of words used in these three calls is strikingly similar to that for the Jorge A.-Darney G. conversations. *Hermano* is the term used most frequently – 22 times in all, and six other words of the eleven terms found in the Jorge A.-G. conversations are also employed here, even the vulgar *güevón*.

Meaning of the Terms:

Caballero (gentleman) is a term of respect equivalent to our "sir."

Doctor, see above.

Güevón, see above.

Hermano, see above.

Hombre, see above.

Licenciado, see above.

Papá, see above.

Parce, short for *Parcero*, see above.

Mi Viejo, see above.

Jorge A. and Wbeimar G.

There are two calls that take place between Jorge A. and Wbeimar G., the brother of Alejandra G.. Here are the terms they use:

Term	**Speakers**		
	Jorge A.	**< >**	**Wbeimar G.**
Güevón	1		4
Hombre	0		1
Papá	2		0
Parcero	0		3
Mi viejo	1		1

These terms are quite similar to those used when Jorge A. speaks with Darney G. or the Unknown Hispanic Male. I will not discuss their meaning, as all the terms have already been considered.

Jorge A. and Héctor P.

There is one call between Jorge A. and Héctor Puerta. Here are the terms they used:

Term	**Speakers**		
	Jorge A.	**< >**	**Héctor Puerta**
Man	0		1
Mijo	0		1
Mister	0		1
Papá	1		1

One call is a very small sample, and all that is apparent here is that "papá" is employed by both speakers. Two of the other words used, "man" and "mister," are both English. *Parlache* contains a number of English loan words.

Jorge A. and the Revere Dealer

There was one call between Jorge A. and a person that is referred to as the "Revere Dealer." Here are the words they used:

Term	Speakers		
	Jorge A.	< >	The Revere Dealer
Hermano	1		1
Hombre	1		0
Licenciado	1		0
Papá	1		0
Mi viejo	1		0

As noted regarding the previous calls, the vocabulary is quite similar.

Darney G. and Héctor P.

Finally, there is a call between Darney G. and Héctor P, the only call that does not involve Jorge A. Here are the words they used:

Term	Speakers		
	Darney G.	< >	Héctor Puerta
Hermano	1		0
Mijo	4		3
Papá	0		1
Papito	0		3

In this call Darney G. uses *mijo* four times, a term that he had used with Jorge A. 13 times. Héctor P. uses the term *papito* for Darney G. three times.

Conclusion Regarding Terms of Endearment

When one counts up and compares the terms that are used in these conversations, it would appear that Jorge A. uses roughly the same terms with all four men. He favors a few terms, such as "*hermano*," used 45 times, "*papá*," used 26 times, "*güevón*," used 20 times, and "*licenciado*," used 15 times. He addresses Alejandra G. somewhat differently because she is a woman. In general, the same terms are used by those speaking to Jorge A. as he uses with them. Alejandra G. calls Jorge A. "*doctor*," and even asks how his patients are doing, but otherwise the vocabulary appears to be uniform and shows little sign of distinction or hierarchy.

The largest speech sample after that of Jorge A. is that of Darney G. When one considers his choice of terms, most of which were directed at Jorge A., we see that his favorite term was *Papito*, which he used 29 times. This was closely followed by *parcero*, used 28 times. *Papá* follows, used 22 times, and then *mi viejo* and *hermano*, both used 15 times. These are all part of the standard egalitarian vocabulary of *Parlache*. There is

nothing in these terms of respect or endearment that give me a sense of a clear hierarchy or rank. What emerges is a surprisingly informal, very familiar tone, and not one that someone would normally use to address a boss or a superior.

Appendix E

Click here to listen to the call:
http://llld.linguisticaforense.pt/Files/Appendix_E-Call.wav

Translating Research into Policy: New Guidelines for Communicating Rights to Non-Native Speakers

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Abstract. *The purpose of this article is to introduce the Guidelines for communicating rights to non-native speakers of English in Australia, England and Wales, and the USA. The guidelines were authored by the international Communication of Rights group (CoRG) that brought together 21 linguists, psychologists, lawyers, lawyer-linguists and interpreters. The intention was to "translate" research on the communication of rights to non-native speakers in police interviews for practitioners and policy makers. Drawing on linguistic and psychological research, as well as our collective experience of working with specific cases, CoRG produced a 2000-word guidelines document with seven recommendations, an explanation accessible for police officers, lawyers, judges and justice administrators, and a bibliography of relevant research. The article explains why this project was restricted to three common law countries, and encourages others to consider using the document, following this article, as a starting point for a similar development in their own country or jurisdiction.*

Keywords: *Right to silence, non-native speakers, Miranda rights, cautions, police interviews.*

Resumo. *Este artigo apresenta as Orientações para comunicação de direitos a falantes não nativos de inglês na Austrália, Inglaterra e País de Gales, e Estados Unidos da América. As orientações são da autoria do grupo internacional Communication of Rights (CoRG), que agrega 21 linguistas, psicólogos, juristas, jurilinguistas e intérpretes, e procuram "traduzir" investigação realizada sobre comunicação de direitos a falantes não nativos em interrogatórios policiais para profissionais e decisores políticos. Baseando-se em investigação em linguística e psicologia, bem como na própria experiência coletiva com casos específicos, o CoRG produziu um documento de 2000 palavras com sete recomendações, uma explicação acessível para agentes policiais, juristas, juízes e oficiais de justiça, e uma bibliografia relevante. O artigo explica a delimitação do projeto a três países da tradição "common law" e incentiva outros investigadores a utilizar o documento (no final do artigo) como ponto de partida para o desenvolvimento de trabalho idêntico no seu próprio país ou jurisdição.*

Palavras-chave: *Direito ao silêncio, falantes não nativos, direitos* Miranda, cautions, *interrogatórios policiais.*

Introduction: the right to silence in police interviews

In 1948, the United Nations (UN) General Assembly in Paris adopted the Universal Declaration of Human Rights as a common standard of achievements for all peoples and all nations. Article 11, part (1) of the Declaration states: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense". This fundamental human right has been further elaborated in the International Covenant on Civil and Political Rights (ICCPR) adopted by the UN General Assembly in 1966 and signed, ratified, and enforced by 168 states. Article 14 of the ICCPR restates the right to be presumed innocent and outlines several concomitant rights, including the right to be informed about the charges in "a language which [the suspect] understands" and the right "not to be compelled to testify against himself or to confess guilt." In many legal systems around the world, this right against self-incrimination, commonly known as the right to silence, is communicated to suspects at the beginning of the police interview. In the US this communication is referred to as the Miranda Rights, and in Australia, England and Wales, it is known as the Caution. The exact wording varies across jurisdictions, but here is an example from Australia:

> You are not obliged to answer any questions.
> Anything you do say may be recorded and later given in evidence.[1]

Research shows that even native speakers of English do not always understand their rights: their comprehension is affected by individual factors, such as their level of education and cognitive abilities, by the wording of the rights, and by situational factors, including stress and trivialization strategies used by the police (e.g. Rogers *et al.*, 2010, 2011; Scherr and Madon, 2013; for further references see the Guidelines). The difficulties persist even in jurisdictions where the communication of the rights is less formulaic and more interactional, yet suspects still fail to understand the consequences of choosing to answer police questions (Rock, 2007).

The problems are even greater among vulnerable populations, including juveniles, people with mental disorders, and speakers with limited English proficiency who may be able to conduct basic transactions, but do not understand legal terms, such as "waiver", or complex sentences, such as "Everything you say can and will be used against you in a court of law." (e.g. Pavlenko, 2008; for further references see the Guidelines). The common means of ensuring understanding in police interviews is a direct question "Do you understand?", but many suspects may say "yes" out of fear or deference to authority, even when they have not understood what was said to them. If, at the subsequent hearing, the defense shows that the rights were not properly communicated and understood by the suspect, the evidence produced during such interrogation may be suppressed or ruled as inadmissible by the judge.

The scope of the Guidelines document

Widespread concerns about the communication of rights – such as the right to silence – to non-native speakers of English in police interviews have led to the development and release of the Guidelines for Communication of Rights to Non-Native Speakers of

English (see following this article or http://www.aaal.org/?page=CommunicationRights) by the international Communication of Rights Group (CoRG). This group, co-convened by the authors of this article, comprises 21 linguists, psychologists, lawyers, lawyer-linguists and interpreters in Australia, England and Wales and the United States. Grounded in relevant research, but written for a non-specialist audience, the Guidelines provide workable recommendations for best practices in the delivery of the right to silence. Most of the recommendations are also relevant, to some extent, to native speakers and to administration of other rights.

From the outset, we realised the formidable challenge involved in writing a document which is specific enough to provide law enforcement and judicial officers with practical guidelines, while remaining sufficiently general to embrace the differences in law and practice. Despite the very wide occurrence of rights delivery in police interviews, there is considerable jurisdictional variation in mandatory rights, their wording, and regulations governing their usage. For example, the right to a lawyer, while mandatory in the United States, is not mandatory in every jurisdiction in Australia. Furthermore, rights are mandated by statute (written law) in some jurisdictions and by judge-made law (written judgments which act as legal precedents) in others. The resulting document takes this variation into account. The main limitation of the document is the focus on specific English-speaking countries. This limitation stems from the fact that most of the linguistic and psycholinguistic research on the communication of rights to native and non-native speakers, involves studies and cases in Australia, England and Wales, and the United States. In order to produce a document that could inform actual practice, rather than a general declaration, we decided to limit the scope of the Guidelines to these countries and to non-native speakers of English.

In the next three sections of this article we outline the content of the Guidelines. Readers are encouraged to read the full (2000 word) document which follows this article. The final sections of the article detail responses to the document from professional associations in the fields of linguistics, interpreting and law and invite scholars and practitioners to use the Guidelines in their own work and develop similar documents specific to their own legal and linguistic situations.

Misconceptions about second language proficiency

One of the challenges faced by the group in creating a set of short, non-technical guidelines for adoption by law enforcement was the extensive variation in English proficiency among non-native speakers. It was important to go beyond suspects with basic proficiency and include the needs of speakers who have good conversational skills, but are not familiar with legal terms and cannot easily process syntactically complex sentences. The preamble in the Guidelines addresses the misconception held by many monolingual English speakers that, if a person can speak English conversationally, then they must be able to understand the sentences about their rights (see also Pavlenko, 2008; Northern Territory Law Society, 2015):

> Psycholinguistic research, (including studies listed in the Appendix), shows that people who have learned another language later in life, process information differently in this second language than in their native language. This processing difference compounds their linguistic and cultural difficulties in communicating in English. Even speakers who can maintain a conversation in English may not

> have sufficient proficiency to understand complex sentences used to communicate rights/cautions, legal terms, or English spoken at fast conversational rates. They also may not be familiar with assumptions made in the adversarial legal system.

The wording of the rights

The first two recommendations deal with the wording of the rights/cautions. Recommendation #1 outlines linguistic principles to follow in producing a Plain English (or clear English) version (http://plainlanguagenetwork.org). While the document provides examples, it also makes clear that there is no wording that works equally well for all jurisdictions. Rather, each jurisdiction needs to undertake a collaborative effort, involving police officers, defense lawyers, and experts in linguistics, to produce a standardized version in Plain English that can be used with native and non-native speakers alike.

Recommendation #2 calls for standardized translations of the rights/cautions (and indeed all vital documents) into other languages. It also makes general recommendations about the development and use of these cautions in the first language of non-native speakers of English. In England and Wales, translations are available in more than 50 languages (https://www.gov.uk/notice-of-rights-and-entitlements-a-persons-rights-in-police-detention). And in the Northern Territory of Australia translations are being introduced for the 18 most commonly used Aboriginal languages (http://www.pfes.nt.gov.au/Media-Centre/Media-releases/2015/December/21/Caution-App-Wins-Award.aspx). The need for standardized translations is also highlighted in the USA by the work of Rogers and associates (2009) who show that the adequacy of numerous translations of the Miranda Rights into Spanish varies dramatically, from minor omissions to substantive errors.

Communicating the rights

The inadequacy of the existing translations and procedures reminds us that comprehension of rights by non-native speakers is intrinsically linked to language access, which, in the case of a police interview, involves access to an interpreter. Thus Recommendation #3 states that "at the beginning of the interview all non-native English-speaking suspects should be provided with the opportunity to request the services of a professional interpreter for the police interview". However, situations can arise where suspects who originally declined an interpreter realise during the interview that it is harder than they had thought to understand the rights, follow the questions, or express what they wish to say. Consequently, we recommend that "it should be made clear that an interpreter is available at any time when a suspect no longer feels confident to continue in English without one."

In some jurisdictions there is no right to an interpreter in a police interview. For example, in the USA there is no equivalent for police investigative interviews to the *Court Interpreters Act* 1978, which mandates the provision of an interpreter in court. However, Executive Order 13166 "Improving access to services for persons with limited English proficiency", signed by President Clinton in 2000, serves as a legal framework for a wide range of language access accommodations. The Guidelines therefore recommend "developing or clarifying the right to a professional interpreter as a matter of law reform" in "jurisdictions that do not have an unambiguous right to an interpreter".

But even where interpreter provision is mandated for police interviews (e.g. Western Australia, *Criminal Investigation Act* s138.2), police have been criticised for their failure to recognise the need for an interpreter (e.g. *WA v Gibson 2014 WASC* 240). Police do not have the training or expertise to determine independently when a suspect can "understand or communicate in spoken English sufficiently" and when they require an interpreter to understand their rights. As Judge Hall commented in the *Gibson* case (#77):

> What the police need to consider is not whether the person can make themselves understood in English in casual conversation, but whether they have the capacity to understand their rights and the types of questions that will be put to them in the police interview. And also, whether the person has the ability to express themselves in English such that they are able to fairly and accurately give their own account if they wish to do so.

Related to this issue, Recommendation #5 states that understanding cannot be determined by means of a yes-no question, such as *Do you understand?*. This applies to any communication with second language speakers, including the right to silence, and entitlement or arrangements concerning availability of an interpreter. The document explains that "there are many reasons why suspects may say yes, regardless of whether they actually understand their rights".

Furthermore, the suspect should not be burdened with assessing the need for an interpreter, as they may be unable to accurately assess their own needs. Thus, a central goal of the Guidelines is to provide some expert guidance about what is involved in understanding or communicating in spoken English sufficiently to understand the rights. It would be unrealistic to expect that people without linguistic training, such as police officers, could make this judgment accurately, on the basis of their brief interaction with suspects. Instead, the Guidelines propose what is sometimes referred to as the paraphrase test, explained in Recommendation #6, which calls for police to adopt an in-your own words requirement:

> After each right has been presented, police officers should ask suspects to explain in their own words their understanding of that right and of the risks of waiving this right, as explained by the police officer. If suspects have difficulties restating the rights in their own words in English (e.g., if they repeat the words just read to them or if they remain silent), the interview should be terminated until a professional interpreter, with expertise in legal interpreting, is brought in. This should be done even if a suspect had earlier declined the offer of interpreting services.

The remaining two recommendations are clearly relevant to police interviews with any suspect, not just non-native speakers. Recommendation #4 advises facilitating the comprehension process by presenting each right individually (for example, not advising about the right to a lawyer, until after the right to silence has been fully communicated). Recommendation #7 advises that "the communication of the rights and the suspect's restatement should be video-recorded, capturing all of the participants". This already occurs routinely in Australia, and England and Wales, while the USA currently lags behind. As the document explains, such recording "is crucial to the court's ability to determine whether the rights were properly communicated and understood by the suspect".

Although this article has discussed the recommendations in the order which best explains the linguistic issues involved, the Guidelines document presents them in a slightly different order, to facilitate a police officer's easy understanding of their application to the police interview process.

Responses to the Guidelines from the law

As of December 2016, the Guidelines have been featured on the websites of the following professional associations:

Australian Lawyers' Alliance (online newsletter *Opinion*)

(https://www.lawyersalliance.com.au/opinion/communicating-rights-to-non-native-speakers-of-english)

The Advocate's Gateway (UK group which "gives free access to practical, evidence-based guidance on vulnerable witnesses and defendants")

(http://theadvocatesgateway.org/resources\#procedure)

Champion (the USA magazine for the National Association of Criminal Defense Lawyers)

(https://www.nacdl.org/Champion.aspx)

Clarity (an international association promoting plain legal language)

(http://www.clarity-international.net)

Washington State Coalition for Language Access

(https://www.wascla.org/)

The month after the Guidelines were released they were cited in a judgment in the Northern Territory Supreme Court (Australia): *The Queen v BL* NTSC 2015. In this case, Justice Jenny Blokland ruled that a police interview with an Aboriginal partial speaker of English (*BL*) was inadmissible, because the defendant spoke English as his second language, but not well enough to be interviewed without an interpreter. The judge said that "the fact that there was no 'in your own words' explanation of the caution does not generate any confidence that BL's English was at a satisfactory level to participate without error" in the recorded police interview, (see *The Queen v BL* #54; also #42, #56 and the conclusion on this point in #77-78).

What is particularly important here is that the judgement cites the Guidelines, even though they were not introduced as evidence in this case. That is, the judge's reference to this document did not result from expert evidence, and thus the document was not the subject of any cross-examination. Rather the judge cited the Guidelines as a standalone document helpful in reinforcing 1974 Australian judicial guidelines for police interviews with Aboriginal suspects, and in showing that an 'in your own words' explanation is now a "widely accepted form of language testing in respect of whether a person understands their rights" (*The Queen v BL* #54). Such a judicial reference, drawing directly on the doc-

ument, rather than expert evidence, marks an important development in the translation of applied linguistic research into legal practice.

Responses to the Guidelines from linguistics and interpreting

By December 2016, the Guidelines have received endorsement from the following professional associations in linguistics and language teaching: American Association for Applied Linguistics, Australian Linguistics Society, British Association for Applied Linguistics, International Linguistic Association, International Research Foundation for English Language Education, Linguistic Society of America, and the international association of Teachers of English to Speakers of Other Languages.

They also have been endorsed by executive boards of the following associations that will, in addition, be presenting them to the membership at upcoming business meetings: Applied Linguistics Association of Australia, and the International Association of Forensic Linguists.

In addition, the Guidelines have been featured on the websites of the following professional interpreting and translating associations:

National Association of Judiciary Interpreters and Translators (NAJIT)
(http://www.najit.org/documents/Communication%20of%20rights%20for%20distribution.pdf)

The Australian Institute of Interpreters and Translators Inc (AUSIT)
(http://www.ausit.org/AUSIT/Home/Practitioners_Resources.aspx?WebsiteKey=ad2123cf-3ad2-4bfd-a396-6d4a71297fbf)

British Association for Applied Linguistics (BAAL)
(http://www.baal.org.uk)

Beyond this document

The document is not copyrighted. Our hope is that it could become a starting point for concerned scholars and practitioners in other countries who are interested in taking up this issue and producing guidelines specific to their legal and linguistic situations. There is an obvious advantage in the production of different guidelines which can speak directly to police, lawyers and judges in the countries in context, using the name of the dominant language, (as in "Mesmo os falantes capazes de manter uma conversa em português poderão não conseguir compreender ... o Português falado a alta velocidade"). This clearly results in a document that is more immediate and easier to read than one that uses a more abstract term such as "dominant language of the law" in order to accommodate a wide range of linguistic situations. We look forward to the development of similar documents around the world.

Notes

[1]Since 1994, the caution in England and Wales has included a third element "It may harm your defence if you fail to mention something now that you later rely on at trial". Since 2013, this is also the case in the Australian state of NSW in the investigation of some serious crimes. It has been suggested (e.g. Stokoe

et al., 2016: 312) that the addition of this element can be seen as a "weakening or even removal" of the right to silence, an issue not dealt with in this article.

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Guidelines for communicating rights to non-native speakers of English in Australia, England and Wales, and the USA

Communication of Rights Group

(an international group of linguists, psychologists, lawyers and interpreters, whose names appear at the end of the document)

November 2015

PREAMBLE

Suspects' interview rights, referred to as Miranda Rights in the United States and as police cautions in Australia, England and Wales, are country-specific mechanisms for protecting due process in criminal investigations and trials. These rights include the right not to incriminate oneself. They are protected in various national and state criminal justice systems through legislation, common law or constitutional interpretation and are considered fundamental in much of the international community. The purpose of the requirement to communicate these rights/cautions to suspects is to ensure that those in criminal proceedings know their fundamental rights under the law. A failure to protect the rights of individuals during interviews risks the integrity of any investigation.

Current research shows that even native speakers of English do not always understand the rights delivered to them (see Appendix for studies of comprehension of rights by native and non-native speakers of English). The ability of native speakers of English to understand their rights is affected by their level of education, their cognitive abilities, the context and manner of communication of the rights and the wording used to express individual rights. The problems are even greater among vulnerable populations, including juveniles and people with mental disorders. The focus of the present guidelines is on a different vulnerable population, non-native speakers of English.

Psycholinguistic research (including studies listed in the Appendix) shows that people who have learned another language later in life process information differently in this second language than in their native language. This processing difference compounds their linguistic and cultural difficulties in communicating in English. Even speakers who can maintain a conversation in English may not have sufficient proficiency to understand complex sentences used to communicate rights/cautions, legal terms, or English spoken at fast conversational rates. They also may not be familiar with assumptions made in the adversarial legal system. Yet, like other vulnerable populations, non-native speakers of English have the right to equal treatment. Therefore, if they do not have mastery of English, it is crucial that their rights be delivered to them in the language they can understand.

The purpose of these guidelines, prepared by linguistic and legal experts from Australia, England and Wales, and the United States, is to articulate recommendations in terms of (a) wording of the rights/cautions (Part A) and (b) communication of the rights/cautions to non-native speakers of English (Part B). These recommendations are grounded in linguistic and psychological research on the comprehension of rights (listed in the Appendix) and in our collective experience of working with cases involving the understanding of rights by non-native speakers of English. Our focus is on the right to silence, as this is the only right shared across jurisdictions in our respective countries, but the same principles apply to the communication of other rights. We recognize that some of the recommendations below apply to all suspects, not only those who do not speak English as their main language. However, the focus of this document is on non-native speakers of English. We also recognize that non-native speakers of English experience difficulties in invoking their rights but this issue is beyond the scope of this document.

A. THE WORDING OF THE RIGHTS/CAUTIONS

RECOMMENDATION 1: USE STANDARDIZED VERSION IN PLAIN ENGLISH (CLEAR ENGLISH)

To enhance understanding by non-native and native speakers of English alike, we recommend that traditional formulas, such as *You have the right to remain silent, anything you say can be used against you in a court of law*, should be re-worded in clear English (also known as Plain English). Revisions should be made in consultation with police officers, defense lawyers, and experts in linguistics. They should be based on the following linguistic principles that derive from the research listed in the Appendix:

Avoid

- words with multiple meanings and homophones, such as *waive*;
- technical language (i.e., legal jargon), such as *waiver, evidence, or matter*;
- low-frequency words and other expressions that are likely to be unfamiliar to speakers with limited English proficiency, such as *remain silent*;
- abstract nouns and expressions, such as *anything you say*;
- derived nouns, such as *failure* in the expression *failure to do so*;
- passive and agentless constructions, such as *may be used as evidence*;
- grammatically complex sentences and sentences with multiple clauses;
- sentences with conditional clauses introduced by *unless* and *if*, because these terms do not have exact translations in many languages and, as a result, may be misunderstood by non-native speakers of English.

Whenever possible, use:

- frequently-used English words, e.g., *speak, talk*;
- short sentences with single clauses (one idea, one sentence), e.g., *You do not have to talk to anyone*;
- active voice that clearly indicates the agent of the action, e.g. *I will ask you some questions. You do not have to answer*.

RECOMMENDATION 2: DEVELOP STANDARDIZED STATEMENTS IN OTHER LANGUAGES

All vital documents must be made available in a language the suspect can understand. These documents include, but are not limited to, the following: (a) information about the rights of the suspect, (b) information about restrictions on the suspect's liberties, (c) information about language assistance, and (d) documents that require response from the suspect (including signature). We recommend that all jurisdictions develop standardized statements of rights/cautions in languages other than English.

These statements should be prepared in consultation with bilingual lawyers, linguistic experts, and professional interpreters and translators with expertise in legal interpreting and the varieties of the languages involved[1]. They should then be tested in relevant populations to make sure that they are generally understood. These translations should be made available to all suspects alongside the English version both in writing and via audiorecording. Sign language users should have access to an interpreter and a videorecorded version of rights in their own sign language.

[1] *In England and Wales, translations are available at https://www.gov.uk/notice-of-rights-and-entitlements-a-persons-rights-in-police-detention*

B. COMMUNICATING THE RIGHTS/CAUTIONS

Having made recommendations # 1 and # 2, we recognize that there is no one formulation of rights/cautions that would be immediately understandable to all. Our next set of recommendations deals with communication of rights/cautions. The purpose of these recommendations is to enable legal systems to meet minimal due process standards for affording rights to non-native speakers of English who enter the criminal justice system. We recognize that some of these recommendations (e.g., #6 and #7) may be seen as extending procedural rights beyond those currently afforded by some jurisdictions. We suggest that even if some of these procedures are not considered to be constitutionally or statutorily mandated, they should be adopted by law enforcement agencies as best practices, in order to ensure the integrity of the criminal justice process.

RECOMMENDATION 3: INFORM SUSPECTS ABOUT ACCESS TO AN INTERPRETER AT THE BEGINNING OF THE INTERVIEW

It is vital that all suspects are afforded due process, even if they do not speak English as their native language. Therefore, we recommend that at the beginning of the interview all non-native English-speaking suspects should be provided with the opportunity to request the services of a professional interpreter for the police interview. Police are not trained in assessing language proficiency and may be unaware of communication difficulties faced by non-native English speakers. As a result, the choice of whether to proceed with or without an interpreter should not be solely a matter of police discretion. Many jurisdictions have a clear right to an interpreter for non-native English speaking suspects. For jurisdictions that do not have an unambiguous right to an interpreter, we recommend developing or clarifying the right to a professional interpreter as a matter of law reform. If a suspect initially declines the services of an interpreter, it should be made clear that an interpreter is available at any time when a suspect no longer feels confident to continue in English without one.

When rights/cautions are communicated via an interpreter or through standardized translations, suspects should restate their understanding of the rights/cautions in their own words in their preferred language (see Recommendation # 6). Both the interpretation (or the delivery of the standardized written translation) and the restatement should be recorded because there remains the possibility of misinterpretation and misunderstanding, e.g., due to low quality of interpretation or translation, or differences between the suspect's and the interpreter's dialects.

RECOMMENDATION 4: PRESENT EACH RIGHT INDIVIDUALLY

Stress, confusion and noise reduce the ability to process information effectively in a second language. We recommend that each right be presented individually, clearly, at a slow pace, and repeated if needed. The speaker's face should be clearly visible to the suspect and background noise minimized. Suspects who can read should be given sufficient time to read each right. All suspects should be given an opportunity to ask follow-up questions about words and sentences they did not understand.

RECOMMENDATION 5: DO NOT DETERMINE UNDERSTANDING BY USING YES OR NO QUESTIONS

Just because a person can answer simple questions in English, this does not mean that the person can communicate effectively about more complex matters, such as legal concepts, terms and processes. Positive answers to yes/no questions, such as *Do you understand English?,* do not constitute evidence of language proficiency sufficient to understand legal rights/cautions. Non-native speakers of English may say *yes* out of fear or deference to authority, even if their proficiency is very limited and they are unable to understand their rights. The same argument applies to the use of questions, such as *Do you understand*?, after delivery of each right. There are many reasons why suspects may say *yes*, regardless of whether they actually understand their rights.

RECOMMENDATION 6: ADOPT AN IN-YOUR-OWN-WORDS REQUIREMENT

Jurisdictions vary with regard to the administration of rights/cautions. Some require the prosecution to show evidence of suspect understanding. Other jurisdictions treat the administration of the legally correct statement of rights as presumptive evidence of suspect understanding. We recommend that the legal standard should be 'demonstrated understanding by the suspect'. To demonstrate such understanding, we recommend the adoption of an in-your-own words requirement that is already used in some jurisdictions. After each right has been presented, police officers should ask suspects to explain in their own words their understanding of that right and of the risks of waiving this right, as explained by the police officer. If suspects have difficulties restating the rights in their own words in English (e.g., if they repeat the words just read to them or if they remain silent), the interview should be terminated until a professional interpreter, with expertise in legal interpreting, is brought in. This should be done even if a suspect had earlier declined the offer of interpreting services.

RECOMMENDATION 7: VIDEORECORD THE INTERVIEW

The communication of the rights and the suspect's restatement should be videorecorded, capturing all of the participants. Such recording is crucial to the court's ability to determine whether the rights were properly communicated and understood by the suspect and, in the US, whether they were waived knowingly, intelligently, and voluntarily.

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Appendix

Communication of rights/cautions to non-native and native speakers of English: Bibliography

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Table of contents

1. Books and articles on communication of rights to non-native speakers (NNSs) of English

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Conflict or convergence? Interpreters' and police officers' perceptions of the role of the public service interpreter

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Abstract. *This paper presents the findings of a research project investigating perceptions of public service interpreting among police officers and practising interpreters in the legal system of England and Wales. The data were secured from both groups responding to six instances of interpreting practice where the interpreter involved had to make an ethics-related choice. The results suggest that despite the markedly different professional cultures there are in fact few points of actual professional conflict, with the police officers showing an understanding of the interpreters' agenda. It is argued this is because both groups ultimately pursue the same aim, namely effective communication.*

Keywords: *Public Service interpreting, interpreter roles, investigative interviewing, professional conflict.*

Resumo. *Este artigo apresenta os resultados de um projeto de investigação das perceções sobre interpretação em serviços públicos entre agentes policiais e intérpretes no sistema jurídico de Inglaterra e do País de Gales. Os dados foram obtidos junto dos dois grupos através da resposta a seis exemplos de interpretação em que o intérprete se viu obrigado a tomar decisões de natureza ética. Os resultados indicam que, apesar das culturas profissionais marcadamente diferentes, na realidade existem poucos aspetos de verdadeiro conflito profissional, enquanto os agentes policiais revelam uma compreensão da motivação dos intérpretes. Defende-se que tal se deve ao facto de, em última instância, os dois grupos procurarem alcançar o mesmo objetivo: uma comunicação eficaz.*

Palavras-chave: *Interpretação em serviços públicos, papéis de intérprete, interrogatório de investigação, conflito profissional.*

Introduction

As noted by Jacobsen (2009: 156), research in public service interpreting (or, in her paper, 'community interpreting') 'has traditionally focused on role perceptions and expectations among users of interpreting services and interpreting practitioners'. However, only a handful of the studies investigating interpreter roles are based on input provided

by more than one group of the triadic setting (service provider – interpreter – service user). Meant to help redress the balance, this paper presents and discusses the findings of a study comparing interpreters' and service providers' (police officers' in this case) perceptions of the role of the public service interpreter. Rather than role issues themselves, however, its focus is on areas of potential professional conflict and its implications for interpreting practice in police contexts. When it comes to public service interpreting, interpreter roles are among the most topical issues of scholarly interest and, unlike the kinds of questions that require specialised linguistic knowledge (for example to do with semantic or pragmatic transfer between languages), they can serve as a common ground to generate findings based on input from both interpreting practitioners and service providers.

In England and Wales, which share a legal system, interpreters work with the police mostly to provide assistance in investigative interviews with crime victims, witnesses and suspects. Until 2012, police investigators were able to book individual interpreters directly and used recommended registers with admission criteria ensuring professionalization. In January 2012, however, the UK Ministry of Justice, in an attempt to cut costs, outsourced interpreting provision to a private company, a move that meant a proportion of the trained interpreters who had been until then working in the justice system on a freelance basis decided to opt out. A number of reports (see in particular Justice Committee, 2013) have since indicated that the use of unqualified or underqualified individuals working as interpreters led to operational difficulties in the administration of justice. In May 2016 a different language services company won the Ministry of Justice's four-year contract. It has been an eventful few years for the interpreting profession but, with the recent socio-political changes in the world and the resulting increase in immigration into Britain leading to superdiversity (Vertovec, 2007), police forces, too, face new challenges. It is against this background that it is important to find out how the two professions can best work together to ensure an equal access to justice for those who cannot communicate in English.

Research background

Previous multi-perspective studies

Research on interpreter roles is quite substantial but, given the focus of this paper, it is not presented here in detail [1]. What is important to note is the fact that the discussion of roles in public service interpreting (PSI) seems to be situated in at least three conceptual and/or descriptive domains. The first pertains to the role with arguably the most currency among PSI professionals, that of the 'faithful renderer of others' utterances' (Hale, 2008: 114). The main concerns here are with pragmatic or socio-pragmatic equivalence issues. The second domain is linked to the changing economic and political landscape where PSI functions and the *emerging* roles of interpreters as e.g. cultural mediators or social workers (cf. Schaeffner *et al*'s (2013) collection). Finally, roles can arise spontaneously in any PSI setting; the interpreter can become, often unwittingly, a confidant, an expert witness (Martin and Herraez, 2013), an ally (Altano, 1990) or even a messenger (cf. Kredens and Morris' (2010) discussion of prison interpreting), and this list is by no means exhaustive.

These three domains are inextricably linked as a matter of course and clear-cut role distinctions are notoriously difficult to make. A further difficulty arises because of the

sheer variety of contextually delineated norms and practices; as a result discussions of PSI roles should not be divorced from the actual social contexts where they occur. As Eades (2010: 5) points out, for example, '[t]o understand language usage in any specific legal context is impossible without an examination of structural institutional aspects of the legal system'. Jurisdictions have their own laws governing PSI provision, but regulations at the level of a jurisdiction's institutions are equally important. Such regulations can in some cases differ quite significantly across the various public sector institutions, which is why research into role issues should arguably begin at this basic community-of-practice level, take into account the workings of the professional culture in question, and be informed by as many of the stakeholder groups as possible.

This kind of triangulation is by no means lacking in PSI research and a lot of the studies have court interpreting as their focus. Kelly (2000) for example, in trying to obtain data for her study on the interpreter as a 'cultural bridge' in Massachusetts (2000: 132) cast her net quite widely and secured input from a variety of court actors. The judges, attorneys, interpreters and interpreter trainers in her study were in the main of the opinion that 'there are instances where the interpreter may need to interject relevant information' (2000: 147). Similarly, Fowler (this issue, 2013 and personal communication), in her study sought to investigate the effectiveness of interpreting via video link in an English magistrates' court by interviewing an array of court actors involved in remand hearings: interpreters, a district judge, magistrates, crown prosecutors, defence advocates and court clerks. There was almost unanimous agreement that prison video link was inferior to face-to-face communication, but the responses also revealed how the different roles seemed to foreground different aspects of the technology, with the court clerks, for example, mentioning its cost-effectiveness. Finally, in Australia, Lee (2009) secured the participation of an impressive 226 legal professionals as well as 36 court interpreters to investigate role and quality issues and identified some significant differences between the groups' perceptions.

Another recent study benefiting from a multi-perspective approach is Baixauli-Olmos' (2013) investigation of interpreting in Spanish prisons, which uses input obtained from interpreters, prison managers, inmates and prison workers. The four groups of respondents were all asked about the same general issues, although the questions were formulated in different ways. The author used the responses to establish how the role of the interpreter is affected by the relevant constraints germane to the prison setting and found that it 'develops and evolves, being constantly constructed, (re)negotiated and asserted, in accordance with the changing nature of its surroundings' (2013: 59).

Mendoza (2012), focusing on PSI outside of the criminal justice system, identified differences in the ways novice and experienced American Sign Language interpreters made decisions when faced with ethical dilemmas. She used five scenarios involving ethically complex choices and found that novice interpreters 'looked for clear-cut ethical issues and based their decisions on the overt ethical dilemma', whereas the experienced interpreters 'were able to distinguish more subtle ethical issues embedded in the ethical dilemma' (2012: 67). Finally, Dragoje and Ellam's (2007) study of PSI in a medical setting was based on responses from all three groups involved in interpreted communication. The service providers (health professionals working for the Hunter New England health service), service users (patients) and interpreters were all asked questions related to a number of professional and ethical tenets (e.g. professional conduct, confidentiality and

competence). One of the most interesting findings was that while 'health professionals and interpreters agreed on which tenets were most important for both areas, the feelings seem[ed] to be much stronger for the health professionals than the interpreters' (2007: 22); for example 72% of the health professionals saw a breach of confidentiality as unethical behaviour compared to only 38% of the interpreters.

If there is one finding that the studies *supra* have in common (with the exception of Lee's (2009) study to a certain extent), it is that the attitudes of interpreters, service providers and service users, to the various aspects of interpreting provision and practice, are in the main convergent. Also of note is the fact that the two latter groups' awareness of just what it is they can expect from interpreters is quite good, or in any case not a major cause for concern. However, there seem to be no studies that take a multi-perspective approach to interpreter roles in police interviews.

Interpreting in police interviews

As Mulayim *et al.* (2015: 21) note, '[t]he basic premise of investigative interviewing is to elicit as much information as possible from an interviewee without resorting to coercion or deception'. Investigative interviewing in law enforcement contexts has traditionally been of interest to psychologists (cf. Milne and Bull, 1999; Memon and Bull, 1999), but the last decade has brought a number of studies with a linguistic focus (Heydon and Lai, 2013; Carter, 2011; Oxburgh *et al.*, 2016). In England and Wales the police interview is a highly regulated stage of the evidence-gathering process [2]; importantly, all interviews with suspects are routinely audio-recorded and can be played back in court, although in practice sections of transcribed records are normally read out for the benefit of the jury. This raises interesting questions regarding the evidential status and, by extension, the discursive practices of the police interview. As Haworth's (2009: 9) research suggests, 'the existence of the future audiences and purposes affects the interaction in the interview room itself, adding a further level of unacknowledged influence over the evidence'. Haworth (2006) also shows how the discourse of the police interview can be affected by the institutional status of the participants, their contextually assigned discursive roles and their knowledge. Other empirically-based studies such as Haworth (2015), MacLeod (2016) and Oxburgh *et al.* (2010) provide a good reference platform for research into aspects of *interpreting* in police interviews. What happens when the interpreter is added to the already linguistically complex communicative event?

An attempt at answering that question was made in Wadensjö's (1998) seminal work, in which using data from *inter alia* police immigration interviews, she demonstrated that the interpreter's prescribed role as an essentially non-participating 'conduit' is a myth, and suggested a dialogic, discourse-based approach to making sense of interpreter-mediated interaction. Interpreted-mediated police interviews have since received extensive treatment in monographs by Berk-Seligson (2009), Nakane (2014) and Mulayim *et al.* (2015).

A recent study echoing Wadensjö's and based on data from police interviews is Gallai (2013), who argues that 'the unrealistic institutional demands for verbatim translations by invisible interpreters should be abandoned and the coordinating role of interpreters as co-participants and co-constructors of meaning should be fully integrated into Interpreters' and Police authorities' Codes of Practice' (2013: 69). A similar recommendation for collaboration between the stakeholders was made in Heydon and Lai (2013), which used eight English-foreign language combinations in mock police interviews and

indicated that a common feature of cognitive interviews, a free-form narrative by the interviewee, posed a serious problem vis-a-vis the cognitive requirements and linguistic transfer germane to interpreting as such.

The need for more collaboration was identified also in Nakane (2007), where what can be interpreted as some evidence of professional conflict can be found. Nakane investigated the practice of communicating the suspect's rights in interpreter-mediated police interviews, using data from two drug-trafficking cases in Australia and found that the 'superficially simple procedure of [police] caution delivery is susceptible to the potential violation of suspects' rights, especially when mediated by an interpreter' (2007: 107). Among the reasons why this should be the case, Nakane listed: the delivery of the caution in long segments and the strain this causes for interpreters[3]; police officers' arbitrary decisions on turn boundaries; and their 'lack of awareness of the difficulties involved in transforming a written text into dialogic speech mode' (2007: 107–108). The sources of the implicit conflict are thus not linked to the differing institutional cultures, but rather seem to stem from the service providers' limited understanding of the nature of the interpreting process.

Research on aspects of interpreting in police interviews with input from both interpreters and service providers was attempted by Ortega Herráez and Foulquié Rubio (2008) but they obtained no responses from the latter. Indeed they report on having been treated with the 'utmost contempt' (2008: 132) on one occasion at a police station when trying to collect data. What they did find was that apart from the most typical scenario of the police interview, interpreters in Spain get involved also in other translation-related activities, for example transcription of tapped telephone conversations, translation of documents, making international telephone calls and helping foreigners with immigration bureaucracy. The authors note this can lead to situations of conflict with the prescribed role but an equally important issue seems to be the potential of the wide role remit to engender professional conflict of various kinds between interpreters and police officers.

Data and method

The data for this study were obtained from two groups of informants, PSI interpreters with experience of working in police interviews in England, and police interviewers based in England or Wales who have used interpreters in their work. In order to generate discussion of interpreter roles it was decided that, similar to Mendoza (2012), a number of vignettes would be used as points of departure. Vignettes have a rich tradition in social science research; they 'can elicit perceptions, opinions, beliefs and attitudes from responses or comments to stories depicting scenarios and situations' (Barter and Renold, 1999, online). They are at times associated with certain limitations, too, chief amongst which has to do with the difference between beliefs and actions, the 'distance between the vignette and social reality, what people believe they would do in a given situation is not necessarily how they would behave in actuality' (Barter and Renold, 1999: 311). However, as the focus of the study is a comparison of perceptions between two groups of respondents, the limitation is not a major concern (although it was anticipated that the interpreters in particular would, as a matter of course, be in a position to rely on their own professional practice and contribute real examples).

The scenarios (see 1 – 6 below for details) were situated in a variety of PSI contexts, each of which involved a potentially difficult ethical choice invoking considerations of role, and were created on the basis of the author's own experience of working as a public service interpreter in a variety of settings, but also anecdotal evidence gathered informally from PSI colleagues. Both informant groups were asked to adopt the perspective of the interpreter facing the particular challenge. The discussions were moderated and semi-structured. The moderators' role was to introduce each of the scenarios in turn and encourage the participants to share their views, but also to intervene in cases where the discussion seemed to be diverging from the particular ethical dilemma discussed.

Input from the interpreters was obtained in June 2009 during a meeting of the Aston Interpreter Network, an initiative run at Aston University's Centre for Forensic Linguistics and intended to provide a forum for the exchange of ideas and best practice between academics and practitioners. The informants were emailed a set of eleven scenarios to consider before the meeting, seven of which were discussed. Twenty-three interpreters contributed to the moderator-led digitally-recorded discussion. All of them had received formal training in PSI at post-graduate level. The police informants were participants in a two-week course for specialist interviewers in England and Wales responsible for interviewing in serious or complex categories of crime. The input for this project was secured during three three-hour sessions devoted specifically to interviewing through interpreters in February and April 2011. Approximately forty minutes of each of these sessions were devoted to discussing six of the scenarios mentioned above. In total, twenty-two police officers contributed to the moderator-led digitally-recorded discussion. The moderator explained in detail the principles of accuracy, impartiality and neutrality in PSI before the scenarios were introduced.

The digital recordings were played back and responses from participants in both groups were noted down for each scenario. A simple coding system was used whereby individual contributions to the discussion were isolated and classified as advocating one of the solutions advanced within each group. The classification provided two intersubjective perspectives for each scenario, the interpreters' and the police officers', which were then analysed qualitatively with a view to identifying points of agreement and/or disagreement.

Findings

This section presents the vignettes and the responses to the scenarios provided by the two professional groups and identifies areas of agreement and/or disagreement in the perception of interpreter roles.

Scenario 1

> *A man suspected of murder is being interviewed by the police. He denies any involvement in the crime. The interviewing police officer leaves the room for two minutes. The man becomes agitated and tells you, "Look, it was an accident. I only wanted to scare her. I'm not guilty". The officer comes back with his coffee. What do you do?*

This scenario led to a discussion of the consequences of unsolicited confidences and ways of dealing with these. The police officers' responses centred on the legal status of the interpreter following the suspect's admission of guilt. The general feeling here was that the interpreter should volunteer the unsolicited information to the interviewing police

officer after he came back into the room; the interpreter's status would then change to that of a witness and a new interpreter would have to be secured. The interpreters' discussion in contrast focused on the logistics of the situation. The dominant opinion was that the interpreter in question should have followed the police interviewer outside thus pre-emptying the suspect's confession. They also stressed the general need for a pre-interview brief explaining the role of the interpreter to suspects.

Scenario 2

> *A French woman originally from Lyon is seeking a divorce from her English husband, who had cheated on her and wouldn't let her work. A County Court judge grants her the divorce, but has to decide on the amount of financial settlement she is to receive from the husband. During the hearing the judge asks her about the market value of the house she has kept in Lyon. She says it's worth £30,000 but, a native of Lyon, you know that this kind of property is in fact worth at least ten times more. What do you do?*

In this scenario the professional groups appeared to be in agreement: the apparent lie should be interpreted unchanged. The moderators challenged both groups on the grounds that general familiarity with property prices is an inherent part of cultural competence and conveying erroneous information to a party lacking the relevant cultural grounding would therefore mean putting him at a disadvantage. This 'cultural broker' role was nevertheless rejected with the argument that it was the judge's responsibility to verify the information provided by the applicant in the case. An interpreter also noted that although some of the answers suspects provide can sound 'outrageous', they may at the same time be a true reflection of what had happened and it was not the interpreter's responsibility to adjudicate on what constituted the truth. Another interpreter informant also raised the question of the interpreter in this scenario potentially acting as an 'expert witness' offering knowledge of the property market, a role also strongly rejected by her colleagues.

Scenario 3

> *A male interpreter, you arrive at a hospital for an assignment and it turns out that you are supposed to translate for a young woman about to undergo a gynaecological examination. There clearly has been a mistake as a female interpreter should have been booked. The woman says she is in two minds about your presence in the surgery but says she doesn't want to miss the appointment and suggests that you go ahead. What do you do?*

This scenario produced a number of responses that varied within, rather than between, the groups. Interestingly, the police interviewers displayed a more pro-active attitude in trying to solve the dilemma, looking for impromptu solutions that could help the interpreter protect himself against the potential legal repercussions, while still proceeding with the interpreting task. They suggested that a written agreement should be produced and signed by all concerned before the examination. The interpreters displayed some awareness of the problems with the procurement of female interpreters for particular pairs of languages. Some suggested that the examination could be carried out behind a screen but said they would still feel uncomfortable even if the patient was willing to proceed.

Scenario 4

> *You arrive at a psychiatric hospital to interpret at an assessment interview with a young man detained under the Mental Health Act. The doctor is late. A nurse tells you the young man "has been feeling lonely" and asks you to talk to him and "cheer him up" in the interview room until the doctor arrives. What do you do?*

There was unanimous agreement the interpreter should not step out of role by talking to the patient with the doctor absent. The moderator working with the police informants pointed out that the conversation could provide valuable contextual information for the subsequent interpreting task, but that did not lead them to change their response, although one police officer showed a remarkably high level of apparent metalinguistic awareness by remarking the conversation could be used by the interpreter to make sure the patient's accent was comprehensible.

Scenario 5

> *At a police station in an Eastern European country a young man on a stag-night trip from England is being interviewed following a street brawl which he had apparently initiated. A police officer tells him that he faces a prison sentence, but adds that 'there's another way of dealing with this situation' and leaves the room for a short time. You are aware that the young man has just been invited to offer a bribe, but he has no idea this is the case. What do you do?*

Similar to Scenario 3, this one generated a number of proposed solutions that varied within rather than between the groups. After much discussion leading to a variety of solutions, respondents in both groups seemed content with one whereby the propositional meaning would be conveyed in the target language, with the pragmatic meaning mentioned as a possible interpretation given the context of culture. Interestingly, some of the discussion in the police group suggested the officers' tacit recognition of the interpreter as an active (or even pro-active) participant in the interaction. For example, the officers suggested the interpreter should 'seek clarification' or make informed guesses ('I'd tell the suspect what the police officer meant if there were a general culture of bribery in that country, but there'd be danger of misinterpretation').

Scenario 6

> *You are the interpreter during a hearing in a case of unfair dismissal. The applicant is an attractive young man/woman and you quickly establish a friendly connection with him/her. The hearing is adjourned until the following week. Outside the court building the man/woman asks you out for coffee. What do you do?*

This was a scenario where the solutions differed between the groups, with the police interviewers suggesting that accepting the client's offer would not be in breach of professional conduct and advancing a number of solutions that could be used to ensure this was not actually the case. A parallel was drawn in the police group with 'solicitors giving their clients a lift home'. Almost all of the interpreters were adamant the offer should be rejected (or 'politely declined'). A few would accept it, but only if accompanied by a third party (e.g. a solicitor working on the case) as a 'witness'. The interpreters also suggested it was important 'to control the signs of friendliness' and ensure emotional detachment in their job.

Discussion

Interpreters and police officers operate in professional cultures that are different in many ways. A key difference is that, unlike police officers, interpreters tend to work on their own, typically have no recourse to institutional support and are often left to deal intuitively with ethical dilemmas related, for example, to role issues. It is in this context that perhaps the most interesting finding of the present study is the extent to which both groups' responses to the scenarios are similar, or in any case suggest the lack of any fundamental professional conflict. What is important to note is the fact that both groups rejected the roles of interpreter as confidant and cultural broker, but also that of indifferent participant. While this is not particularly surprising coming from practising interpreters, the fact the police officers effectively rejected that last role goes counter to the 'conduit' model still widespread in some corners of the criminal justice system. That said, it must be borne in mind that the police informants were relatively senior in terms of their rank and have had considerable experience working with interpreters so, in a process of inter-professional educational osmosis, may have been sensitised to the complexity of the issues inherent in interpreting.

Arguably the most obvious point of conflict was that between interpreters' duty to maintain confidentiality and police officers' expectation that the former should volunteer information of relevance to the inquiry. As indicated above, the police informants seemed to put the relevant criminal procedure rules before considering confidentiality, which nevertheless is one of the basic tenets enshrined in any PSI code of conduct. This does not mean that the officers were insensitive to the interpreter's predicament nor were they reluctant to consider alternative solutions; for example, the hypothetical notion of legal professional privilege for interpreter-service user exchanges was discussed at some length. Although the interpreter informants, perhaps not unsurprisingly, did not refer to any legal regulations at all, but rather focused on pre-emptive solutions instead, it seems that this particular conflict is not so much about role expectations, but the interpreter's legal status. In the eyes of the law, and contrary to what some service users may assume, interpreters in England and Wales do not in fact enjoy any kind of status that would protect their off-the-record interactions with a suspect or defendant as privileged but equally, just like other citizens, they are under no obligation to report a crime. Also the National Register of Public Service Interpreters Code of Professional Conduct is not explicit about whether interpreters should be pro-active in flagging up unwanted confidences to the police [4]. One way or another, it seems that statutory regulation of the status of the PSI interpreter (on top of existing certification schemes) would go a long way in protecting both service users and interpreters themselves, and result in a better working relationship between interpreters and service providers. A radical solution sometimes proposed for interpreters working in legal contexts is to accord them the status of expert witnesses. Fenton (1995: 33), for example, writing about the situation in New Zealand, argued that 'recognising the interpreter as an expert witness instead of perpetuating the unrealistic role prescription of a mere conduit would (...) seem a logical step'[5].

The other area of some disagreement was the extent to which interpreters can enter a non-professional, personal relationship with service users. The interpreters argued any such relationship could potentially be detrimental to impartiality, which, interestingly, did not feature in the police officers' discussions of the 'personal relationship' scenario,

possibly betraying a lack of awareness of the significance of what is essentially another basic tenet of PSI.

It seems that most of the problems to do with role confusion can be avoided by spelling out the relevant interaction rules either prior to the interview or as part of the 'Preparation and planning' stage within the PEACE model (where the subsequent stages reflected in the acronym are Engage and Explain; Account, Clarify and Challenge; Closure; and Evaluation; see e.g. Shepherd and Griffiths 2013). While students taking the law track on Public Service Interpreting courses are taught about aspects of police interviewing as a matter of course (for example the Law option on DPSI courses), trainee police officers do not routinely receive instruction in how to work through interpreters. On a positive note, such instruction has been incorporated into continuing professional development courses in some police forces in recent years. Perez and Wilson (2007), for example, have reported on their work since 2000 as trainers in, *inter alia*, Scotland's National Police College, while members of Aston University's Centre for Forensic Linguistics have been involved in training police interviewers from several forces in England and Wales since 2008. Mention must also be made of the very active role of the Interpreting and Translation Services Unit at Cambridgeshire Constabulary in raising awareness of interpreting-related issues through a series of initiatives including a recent one-day conference bringing together police officers, interpreters and academic scholars[6]. However, no centrally managed solutions seem to exist and the individual forces have been sourcing the training sessions pretty much of their own accord, in response to the growing volume of interviews where interpreters are required and/or as a result of the increasing social presence of forensic linguistics. In any case, there can be no doubt that managing interpreter-mediated interviews, or any other communicative events with members of the public for that matter, should be an integral part of police training.

Conclusions

This paper has sought to identify points of conflict and/or agreement between interpreters and police officers responding to instances of interpreting practice where the interpreter involved had to make an ethics-related choice. Making such choices often means a transgressive shift in the role performed by the interpreter, and it was hoped the individual scenarios would generate a discussion of the potential transgressions and thus give an insight into the professional groups' perceptions of aspects of interpreting practice. It was found that despite conceivable conflict of interest, there were in fact few points of actual *professional* conflict, with the police officers showing an understanding of the interpreters' agenda. This is not in itself surprising when one considers the fact that, when working together, interpreters and police officers have ultimately the same aim, namely successful communication. There may of course be differences in what they take that concept to mean, but both groups' professional practice is ultimately geared towards effective administration of justice. As well as actual practice, interpreter roles emerge in a complex interplay of stakeholders' needs and expectations and prescribed codes – the law and codes of conduct – and, to work together effectively, interpreters and police officers have to develop a comprehensive understanding of the professional and statutory factors at play on both sides.

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Notes

[1]For in-depth discussions of interpreter roles see in particular Colin and Morris (1996), Hale (2008), Laster and Taylor (1994) and Lee (2009).

[2]The main piece of legislation laying down the rules for the police interview is the 1984 Police and Criminal Evidence Act.

[3]Cf. Russell (2002: 116): 'Arbitrary chunking of text in one language can leave the interpreter unable to even begin her interpretation into another, since a vital syntactic or contextual element may be missing from the first chunk'.

[4]Cf. 'The duty of confidentiality shall not apply where disclosure is required by law', NRPSI Code of Conduct, 3.14, http://www.nrpsi.org.uk/for-clients-of-interpreters/code-of-professional-conduct.html, retrieved on 21 February 2016.

[5]For an interpreter's perspective on confidentiality see Leschen, 2016.

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A Justiça moçambicana e as questões de interpretação forense: Um longo caminho a percorrer

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Abstract. *Mozambique is a very diverse country sociolinguistically. The language of justice, Portuguese, is not known to most Mozambicans but the police use it in legal documents. Hence there arises the question: does the Mozambican justice system give any weight to interpreting in forensic contexts? There is certainly a need for interpreters in police interviews to convert not only from bantu languages into Portuguese, but also from sign language. This article sets out to discuss the relevance of forensic interpreters in interviews, to explain the complexity of the link between language and culture and to reflect on the importance of forensic linguistic interpreting. The research concluded that there is a need to train police officers to interpret and translate because at the moment many case aspects linked to language are omitted by officials, due to their lack of knowledge of the language of the suspect accused.*

Keywords: *Language, law, forensic interpreting, police.*

Resumo. *Moçambique é um país sociolinguisticamente vasto. A língua da Justiça, o português, é desconhecida pela maioria dos moçambicanos e a polícia a usa na elaboração dos documentos legais. Daí se levanta a seguinte questão: a justiça moçambicana tem valorizado a interpretação em contextos forenses? Entende-se que há necessidade da presença de um intérprete nas oitivas policiais, não só para converter de línguas bantu para português, mas também para língua de sinais. A pesquisa tem por objetivo discutir a relevância do intérprete forense nas oitivas, explicar a complexidade da ligação entre a língua e a cultura e refletir sobre a importância da linguística forense na interpretação do significado. Da pesquisa se concluiu que há necessidade de formação de agentes de polícia em interpretação e tradução como resposta às preocupações concretas da polícia. Muitos aspectos inerentes à língua não são descritos pelos oficiais devido à falta de conhecimentos da língua do suspeito/acusado.*

Palavras-chave: *Linguagem, lei, interpretação forense, polícia.*

Introdução

A sede pela justiça é constante em todas as sociedades do mundo. O ser humano sempre procurou a justiça (tradicional ou moderna) como sendo o espaço de resolução dos seus

problemas, dos seus conflitos de toda ordem. No caso da justiça moderna, a polícia é sempre o garante da lei e da ordem públicas e, assim, há uma necessidade constante de aperfeiçoamento. As instituições de formação policial constituem um espaço adequado para a troca de conhecimentos que visam o melhoramento da atividade policial.

Por outro lado, Moçambique é um país com muitas línguas e cada região tem a sua língua. A maioria da população moçambicana é analfabeta e não conhece a língua oficial. Mesmo os poucos alfabetizados não possuem conhecimentos linguísticos suficientes que lhes permitam discutir profundamente em português. Na justiça tradicional, a língua oficial é uma das línguas bantu moçambicanas e na justiça moderna a língua oficial é apenas português.

Sabe-se, também, que a linguagem é complexa, quer dizer, está carregada de significantes e significados que diferem de cultura para cultura. Possui nuances, significados semânticos e pragmáticos complexos e que muitas vezes só podem ser entendidos dentro do contexto sociocultural. Há quem possa entender que a investigação criminal, por exemplo, não tem necessidade de intérprete uma vez que a "unidade nacional" permite que nos entendamos e compreendamos mutuamente. A justiça valoriza a interpretação no julgamento porque está estipulado na lei (art.235, do Código do Processo Penal, 2015), mas não no nível da esquadra. Se todo o processo inicia na esquadra com o Oficial de permanência quando anota a queixa/denúncia, se a língua está intimamente ligada à cultura do sujeito, então como o suspeito/acusado consegue se defender em situação da justiça utilizando uma língua diferente? Avança-se a hipótese de que os suspeitos/acusados não percebem o perigo que incorrem ao tentarem se explicar ou esclarecerem fatos à polícia utilizando uma língua desconhecida. O artigo tem como objetivos:

a) Discutir a relevância da interpretação em contextos forenses;
b) Explicar a complexidade de ligação entre a língua e cultura;
c) Refletir sobre a importância da linguística forense no uso do trabalho da polícia e da justiça;
d) Contribuir para a melhoria da qualidade dos serviços prestados pela polícia no que diz respeito à fidelidade das informações colhidas por meio da tradução e da interpretação.

A pesquisa utilizou como instrumento de coleta de dados a entrevista e a observação em quatro delegacias ou esquadras localizadas na província de Maputo, abrangendo interrogatórios de quatro suspeitos: uma mulher e três homens.

Na primeira seção discute-se a situação sociolinguística de Moçambique, apontando a origem das línguas bantu moçambicanas. Na segunda seção discute-se a linguagem e a lei como alicerces fundamentais para a justiça. Mostra-se a importância desta interligação no sucesso da justiça. Nesta parte ainda se discute a relação entre a justiça tradicional (Direito Costumeiro) e a justiça moderna. As discussões mostram uma separação clara entre a justiça moderna e tradicional, uma vez que estas formas jurídicas têm bases empíricas diferentes. Os debates sobre a tradução e interpretação em contextos forenses são importantes porque evitam ambiguidades terminológicas ao longo da pesquisa. A interferência da língua bantu moçambicana na justiça merece um apontamento prático e estes fatos podem influenciar o tradutor/intérprete nas escolhas lexicais e de sentido. Esta seção termina com breves considerações sobre a justiça brasileira e portuguesa no que toca à interpretação forense. A comparação permite observar a diferença nas ati-

tudes linguísticas dos intervenientes. Na terceira seção apresenta-se a metodologia e os resultados da pesquisa. O trabalho termina com a apresentação de considerações finais.

A situação sociolinguística de Moçambique

Torna-se impossível discutir as questões de interpretação forense sem situar sociolinguisticamente o país, uma vez que estes aspectos estão intimamente interligados e, inclusivamente, influenciam a interpretação. Está-se falando da interligação entre a linguagem e a cultura. O panorama sociolinguístico, que discutirei nesta seção, permitirá a compreensão dos fatos da realidade moçambicana que, a meu ver, diferem dos outros países da lusofonia e do mundo. Entendo que cada país é apenas um e apresenta características socioculturais e sociolinguísticas particulares.

O continente africano tem cerca de 2035 línguas, mas existem muitas outras por investigar e por descobrir, o que faz com que muitas línguas não tenham gramáticas escritas nem dicionários impressos ou em formato eletrônico (Heine e Nurse, 2000). Heine e Nurse mostram que existem várias famílias de línguas: (a) a família Níger-congo, onde existem 1436 línguas; (b) a família afroasiática, onde se fala cerca de 371 línguas; (c) a família Nilo-sahariana, que é estimada em 196 línguas; e, finalmente (d) a família khoisan, que possui cerca de 35 línguas. É importante realçar que estes números vão aumentando e/ou reduzindo à medida que as pesquisas avançam e se desenvolvem pelo continente.

As línguas faladas em Moçambique pertencem à família Níger-Congo e são do grupo bantu. As línguas do grupo bantu apresentam características comuns: (a) têm um sistema de gêneros gramaticais não inferior a cinco; (b) têm um vocabulário comum a outras línguas, a partir do qual se pode formular uma hipótese sobre a possível existência de uma língua ancestral comum; (c) têm um conjunto de radicais invariáveis a partir dos quais a maior parte de palavras se forma por aglutinação de afixos (Ngunga, 2014: 57–58).

As línguas faladas em Moçambique pertencem a quatro zonas territoriais, nomeadamente: G, P, N e S. (Ngunga, 2014; Nurse e Philippson, 2003). Baseando-se nos dados do 3º Recenseamento Geral da População e Habitação realizado em 2007, Ngunga (2014) e Ngunga e Faquir (2011) identificam vinte e duas línguas bantu, incluindo a Língua Moçambicana de Sinais (LMS). A 23ª língua moçambicana é o português, a língua oficial de Moçambique, segundo a Constituição da República de Moçambique (CRM) aprovada em 2004, no seu artigo 10º. O português é uma língua moçambicana de origem europeia e já é falada como língua materna por cerca de 11% da população de um universo de mais de 24 milhões de moçambicanos, e é utilizada em todas as províncias moçambicanas, principalmente nas zonas urbanas e suburbanas. As populações rurais resistem à Língua Portuguesa (LP), embora o número de falantes como língua segunda tende a aumentar devido à educação massiva e gratuita promovida pelo Governo e ainda pela obrigatoriedade de uso desta nos documentos burocráticos. A língua materna mais falada é o emakhuwa, utilizada por cerca de 26% dos cidadãos localizados geograficamente nas províncias de Cabo Delgado, Nampula, Niassa, Sofala e Zambézia (Ngunga, 2014).

É importante referir que as línguas bantu moçambicanas estão devidamente cadastradas e classificadas em estudos desenvolvidos por Guthrie, um cientista americano que desenvolveu pesquisas profundas em muitas línguas africanas, no século XIX. Essas pesquisas classificaram que Moçambique é abrangido por oito grupos linguísticos, a saber: Swahili, Yao, Makuwa-Lomwe, Nyanja, Nsenga-Sena, Shona, Copi e Tswa-Ronga (Ngunga, 2014: 54).

A LP é a única e exclusiva língua oficial, desempenhando todas as funções burocráticas do Estado. Quem não domina esta língua fica privado dos seus direitos fundamentais e o Estado pouco tolera aos indivíduos que não dominam a língua oficial. Um caso excepcional é do artigo 49, do Decreto-Lei 30/2001 de 15 de outubro, que versa sobre as Normas de Funcionamento de Instituições Públicas, que estipula o seguinte: "o cidadão que não saiba ou não possa escrever na língua oficial pode utilizar gratuitamente os serviços dum funcionário ou de qualquer outra pessoa para formular a sua sugestão ou reclamação por escrito". Esse aspecto pára por aqui e não há outros desenvolvimentos por forma a melhorar a comunicação de indivíduos que não conhecem a privilegiada língua portuguesa. Em muitas leis e decretos moçambicanos pouco se faz alusão às línguas bantu moçambicanas faladas pela maioria da população, incluindo a LMS.

Segundo a Constituição da República de Moçambique, "o Estado valoriza as línguas nacionais como patrimônio cultural e educacional e promove o seu desenvolvimento e utilização crescente como línguas veiculares da nossa identidade" (art.9, Moçambique, 2004). Entendo que "valorizar" sem dar o devido valor prático parece uma falácia e esse verbo torna a questão das línguas um assunto meramente passivo. A ideia de que a oficialização das outras línguas traria divisionismo entre os moçambicanos ficou derrubada já há bastante tempo, pois países como África do Sul[1], Zimbábue[2], Quênia[3], Malawi e outros deram uma lição às colônias portuguesas pelo facto de terem oficializado as suas línguas locais de origem africana.

Estas decisões políticas têm tido influência na justiça, ne medida em que é difícil e complicado ser interrogado ou ser julgado numa língua desconhecida e sem tradutor. Sabendo que Moçambique é um país onde a maioria dos cidadãos falam duas ou mais línguas, a ideia de uma língua única para a justiça é uma falácia. A mesma dificuldade linguística é enfrentada pelos policiais quando trabalham em províncias cuja língua bantu moçambicana local lhes é desconhecida. A dificuldade é mais notável quando a polícia aborda cidadãos analfabetos. Sendo assim, é importante discutir como a linguagem é importante na lei.

A Linguagem e a Lei vs a Justiça: conceitos fundamentais

A linguagem e a lei estão intimamente ligadas. A lei não pode existir sem que haja algum meio de comunicação – a linguagem. É de extrema importância a integração da linguagem na justiça como instrumento de comunicação, de interpretação e de compreensão de mensagens orais e escritas. Os estudos em Linguagem e Lei aplicam conhecimentos teóricos e práticos da linguística na área do Direito. Sardinha (2009: 69) define a Linguística Forense como sendo a ciência que "se ocupa da análise da linguagem jurídica, de um lado, e do fornecimento de evidências linguísticas em processos judiciais, de outro". O autor salienta que a linguagem jurídica descreve linguisticamente o valor das palavras, das frases e dos discursos em contextos do Direito desde as leis, decretos, estatutos regulamentos e outros. As evidências linguísticas surgem quando peritos são convidados pela justiça para decifrar e explicar as nuances de sentido linguístico de trechos, a autoria de voz, de discurso ou ainda características do idioleto de um suspeito ou acusado. No mundo atual, a justiça não dispensa os conhecimentos da linguística no levantamento de evidências em casos criminais. Peritos como Jan Svartvik e recentemente Malcolm Coulthard, Roger Shuy, Georgina Heydon e muitos outros foram solicitados pela justiça como peritos para desfazer nuances linguísticos em casos criminais (Timbane, 2015).

O agente da polícia precavido utiliza conhecimentos da linguística para interrogar, para redigir documentos legais (autos, relatórios, inquéritos, etc.) no sentido de mostrar as evidências positivas ou negativas de um caso suspeito ou de acusação. Esta concepção se baseia na ideia de que "…a pessoa que adquiriu conhecimento de uma língua interiorizou um sistema de regras que relaciona som e significado de determinada maneira" (Chomsky, 2009: 63). Mas não basta saber falar a língua; trata-se, sobretudo, de conhecer profundamente as nuances linguísticas. Há um tabu segundo o qual quem fala uma língua (nem que seja a sua língua materna) pode ser professor dessa língua. Outro tabu muito frequente em Moçambique é o de que, se ensinarmos uma criança a falar português em casa, terá mais sucesso na disciplina de português na escola. Esses dois "mitos" mostram claramente que a aquisição e a aprendizagem são conceitos e realidades práticas diferentes. Mesmo tendo o português como primeira língua, os alunos não aprovam com vinte (20) valores, também porque a língua falada em casa é diferente da língua usada na escola. Pesquisas de Bortoni-Ricardo (2005), Mattos e Silva (2004), Bagno (2013) e Timbane (2014) defendem a tese de que não basta saber falar, mas precisa conhecer a funcionalidade interna da língua e isso se aprende na escola com o professor.

Quando a língua do cidadão for diferente da língua da justiça, surge a necessidade de intervir um intérprete. Ora, a Declaração Universal dos Direitos Humanos determina que "todo ser humano tem direito, em plena igualdade, a uma audiência justa e pública por parte de um tribunal independente e imparcial, para decidir sobre seus direitos e deveres ou do fundamento de qualquer acusação criminal contra ele" (art. 10, UNESCO, 1998. No contexto moçambicano, o direito a um intérprete é garantido apenas a nível do julgamento e não a nível das esquadras (delegacias). O processo inicia nas esquadras e a polícia não possui intérpretes para lidar com esta necessidade básica. Por outro lado, "os direitos humanos e liberdades fundamentais devem ser garantidos e, se forem violados, pode ser tomada uma ação legal contra o Estado. Quando os direitos são incorporados nas leis nacionais e na Constituição dos países, existe a obrigação legal de os fazer cumprir" (Thompson e Almeida, 2006: 54). A partir deste fio de pensamento, entende-se que há uma necessidade urgente de formação de polícia-intérprete por forma a responder às necessidades práticas dos cidadãos. É claro que existem muitos cidadãos que precisam dos serviços do intérprete e que não conseguem expressar suas idéias e pensamentos. A falta do domínio da língua nas suas diversas faces limita a aplicação da justiça esperada. O mero conhecimento da expressão oral de uma língua não pode ser sinônimo do domínio da sua interpretação ou tradução. Incluo aqui intérpretes nas diversas Línguas bantu moçambicanas, na língua moçambicana de sinais e nas línguas estrangeiras em geral. A presença destes profissionais traria mais segurança e fidelidade das evidências, das declarações prestadas pelos cidadãos no interrogatório, na denúncia e em outros documentos legais que são redigidos ao nível da polícia.

Conforme referido anteriormente (Timbane, 2015), a língua está intimamente ligada à cultura. As palavras só tomam sentido quando inseridas na cultura e no contexto. Em xichangana, por exemplo, utiliza-se a palavra *masangò* (esteiras) para designar "relações sexuais". Quem fala esta língua, mas não conhece as nuances socioculturais, poderá ter dificuldades em interpretar por que *masangò* equivale a "relações sexuais". Também xichangana usa a metáfora mais comum para falantes do português de "dormir" para manter relações. Portanto, advogados, juízes, policiais e outros intervenientes na área do Direito precisam conhecer profundamente a língua na qual a comunidade está inserida,

incluindo os valores socioculturais que esta carrega. A palavra "Homem" tem várias interpretações, conforme a cultura. Por exemplo: "Homem" pode ser aquele que tem filhos; ou pode ser aquele que passou pelos ritos de iniciação, ainda que tenha 10 anos; ou aquele que fez circuncisão; ou aquele que tem mulher e pagou dote; ou aquele que tem mais de uma esposa (polígamo); ou ainda aquele que, pelo menos, já trabalhou nas minas da África do Sul, e por aí em diante. Vejamos a seguir como a linguagem interage na justiça tradicional (Direito Costumeiro).

A linguagem na justiça tradicional e na justiça moderna

A tradição cultural moçambicana tem desempenhado um papel preponderante na justiça social dentro das comunidades. A sociedade rural respeita o poder dos régulos (*madoda*) como autoridade e como espaço da justiça social. Para além da figura do régulo, a sociedade rural respeita o poder das "pessoas mais velhas" (anciãos) da aldeia ou da comunidade como conselheiros e orientadores da vida em sociedade. São estes os juízes que resolvem, em primeira instância, todas as contendas da comunidade. Muitos casos não chegam até à polícia (esquadra) porque são resolvidos a nível familiar, através da intervenção dos pais, dos tios e de outros intervenientes tradicionais (régulos e anciãos). Neste âmbito, as pessoas usam a língua local e têm a oportunidade de se expressarem sem limitações linguísticas.

Constata-se uma luta constante entre a justiça moderna (do Estado) e a justiça tradicional. Uma das prováveis razões que faz com que as pessoas prefiram resolver suas contendas na justiça tradicional reside no fato de que esta utiliza a língua local (uma Língua bantu moçambicana), não leva anos até ao julgamento, senão algumas horas, está perto da comunidade e é orientada por pessoas com idoneidade reconhecida pelo grupo social. A justiça moderna é feita em português (língua desconhecida para muitos moçambicanos), o seu julgamento dura muitos anos e localiza-se nas grandes cidades ou distritos. Por isso é que "o Estado reconhece os vários sistemas normativos e de resolução de conflitos que coexistem na sociedade moçambicana, na medida em que não contrariem os valores e os princípios fundamentais da Constituição" (Art.4, CRM, 2004).

Esta afirmação da Constituição (Moçambique, 2004) cria ambiguidades, pois as leis modernas sempre estão em contradição com as leis tradicionais. Por exemplo, a noção de "adulto" é contraditória. Como já mencionado, uma criança de 10 ou 12 anos após a sua participação nos ritos de iniciação é considerada "adulta" e passa a ser membro da sociedade com direito a voto, à palavra e até a casar – características que diferem da lei moderna, que considera adulto aquele que tem idade igual ou superior a 18 (Art. 25, CRM, 2004).

As comunidades rurais (que são a maioria) têm hábitos e costumes culturais. Quando ocorre uma infração da ordem e tranquilidade da comunidade, o régulo ou os anciãos locais formam júri e julgam sob ponto de vista tradicional. As multas vão desde a prestação de serviços na lavoura do ofendido até ao pagamento por animais (galinha, pato, cabrito, boi) segundo a infração. No caso de violência doméstica, os régulos reúnem as famílias e julgam, mas sempre defendendo a união da família e os costumes locais, que se contradizem com os costumes modernos, embora o Art. 25 da Moçambique (2004) defende a harmonia. Esse é o Direito costumeiro.

Neste tipo de julgamento a língua da comunidade é o instrumento de comunicação. Nesse âmbito, percebe-se que o cidadão consegue responder às perguntas, podendo ter

a possibilidade de se defender e argumentar em sua língua materna. A capacidade de comunicar em língua materna é crucial, pois, quem não domina a língua, pode estar limitado na compreensão e expressão oral e escrita.

Nas legislação moçambicana, e em especial na CRM, poucas são as leis que dão valor às mais de vinte línguas bantu faladas pela maioria da população. Um caso excepcional ocorre no art. 49 das "Normas de funcionamento dos serviços de administração pública", que defende que "o cidadão que não saiba ou não possa escrever na língua oficial pode utilizar gratuitamente os serviços dum funcionário ou de qualquer outra pessoa para formular a sua sugestão ou reclamação por escrito" (Moçambique, 2001). Este artigo dá valor às diversas Línguas bantu moçambicanas faladas pelos cidadãos, pois, caso contrário, o cidadão estaria privado de usufruir dos seus direitos e até deveres.

A justiça tradicional valoriza a língua local, mas não comunga com as ideias da justiça moderna, pois o conceito "vida em sociedade" é bem diferente. Os preceitos tradicionais sempre entram em choque com os preceitos da justiça moderna, facto que perturba de certa forma as regras de convivência e da manutenção das tradições locais.

Diferença entre a tradução e a interpretação

Inicio esta seção evocando Orlandi, que discute a questão da interpretação de forma mais contundente. A autora afirma que "o gesto de interpretação, fora da história, não é formulação (é fórmula), não é re-significado (é rearranjo). Isto não quer dizer que não haja produção de autoria. Há. Mas de outra qualidade, de outra natureza" (Orlandi, 2012: 17). Na verdade, qualquer interpretação que é feita fora do contexto sociocultural tem maiores chances de ser errôneo, pois entende-se que o rearranjo é uma obrigação para que a mensagem passe na sua plenitude.

Tanto a tradução, quanto a interpretação lidam com a passagem (transferência) de uma língua "A" para outra "B". Na passagem da língua "A" para "B", é necessário o domínio dos conhecimentos linguísticos e extralinguísticos. Aspectos linguísticos envolvem o domínio da fonética e da fonologia, da sintaxe, da morfologia, do léxico, da semântica e da pragmática. Os aspectos extralinguísticos envolvem o conhecimento da história, da geografia, da cultura, dos hábitos e costumes do povo. Exigem, ainda, a atualização constante das regras comunicativas das línguas "A" e "B", pois as línguas mudam com o tempo.

Muitos desavisados confundem a interpretação e a tradução. Parece que são termos iguais semanticamente, mas diferem, tal como veremos a seguir. Trago ao debate conceitos gerais. Mais adiante mostrarei o conceito de tradução forense, que é mais específico.

Entendamos por intérprete o profissional que se dedica a converter de uma língua "A" para uma língua "B" de forma oral e instantânea. Trabalha ouvindo simultaneamente a língua "A" e convertendo para a língua "B" no exato momento em que ouve. Por isso, este exercício exige habilidade de memória, excelente rapidez e atuação, simultaneamente. No caso de tradução, o profissional trabalha com o texto escrito, podendo ter a possibilidades de consultar o dicionário ou os falantes nativos. Por isso, o tradutor possui mais tempo para reflexão sobre o que está escrito, se compararmos com o intérprete. Segundo Matos,

> a formação dos tradutores e intérpretes é fundamental, pois não basta dominar as línguas necessárias à tradução e/ou interpretação. Além disso, um bom tradutor pode não ser um bom intérprete e vice-versa. Para isso, os tradutores e

> intérpretes devem possuir competências linguísticas, quer da língua de partida, quer da língua de chegada, grande capacidade de comunicação, factor que se aplica essencialmente aos intérpretes, e conhecerem os ordenamentos jurídicos nos quais se movem, tarefa nada fácil, uma vez que a formação dos tradutores não é jurídica. (Matos, 2013: 5)

Deixo claro que, no presente trabalho, não discutirei a tradução, porque pouco se escreve em língua bantu moçambicana, embora a "padronização da ortografia de línguas moçambicanas" tenha sido aprovada (Ngunga e Faquir, 2011). A tradução que se esperava seria de uma língua bantu moçambicana para português, mas este trabalho irá concentrar suas atenções na interpretação, tal como a definição apresentada nos parágrafos anteriores. Entendo que "muitos aspectos da interpretação semântica permanecem bastante obscuros, é ainda bem possível efectuar uma interpretação direta . . . da teoria das estruturas profundas e de sua interpretação, e certas propriedades do componente semântico parecem razoavelmente claras" (Chomsky, 2009: 225).

O importante a notar é que, tanto o intérprete, quanto o tradutor trabalham com as mesmas bases teóricas e os mesmos princípios. A diferença se centra no facto de que o primeiro trabalha o oral, passando para oral, e o segundo muda da mensagem escrita para a mensagem escrita. Só que as vantagens que tem o tradutor não são equiparadas com as do intérprete. O intérprete enfrenta o problema de falta de tempo para refletir e pensar na conversão, enfrenta problemas de compreensão da mensagem (pois, se a mensagem chega com ruídos, pode impedir a interpretação), enfrenta problemas de volume da voz, das variações fonéticas e da pressão do tempo para pensar, converter e falar. Em congressos, palestras, etc., os intérpretes trabalham em grupos de pelo menos duas pessoas. O resultado por eles alcançado é observado pela reação da plateia, facto que não acontece com o tradutor. Chomsky disserta que

> tendo dominado uma língua, uma pessoa é capaz de entender um número indefinido de expressões novas para a sua experiência, que não têm semelhança física e não são, de modo algum, simples análogas às expressões que constituem sua experiência linguística; e a pessoa é capaz, com maior ou menor facilidade, de produzir tais expressões na ocasião apropriada, apesar da sua novidade e independentemente de configurações detectáveis de estímulo, e de ser entendida por outras que compartilham essa ainda misteriosa capacidade. (Chomsky, 2009: 171)

Sendo assim, o conhecimento da língua como falante nativo parece uma vantagem para o intérprete, mas este precisa conhecer profundamente a gramática e os valores semânticos das palavras e das expressões. Por que questiono o domínio de competências linguísticas? Segundo Cao (2010) (apud Fröhlich e Gonçalves, 2015: 86) a tradução forense é "um tipo de tradução especializada ou técnica, uma espécie de atividade translacional que envolve uso especial da linguagem, ou seja, a linguagem com um propósito especial, no contexto do Direito, ou a linguagem com fins legais". Entendo por tradução ou interpretação a atividade de converter uma língua em outra, com o objetivo de trazer maior celeridade na compreensão, respeitando, assim, as particularidades individuais dos seres humanos. A tradução forense favorece maior entendimento e aceleração dos trabalhos da justiça, desde a instrução processual até ao veredito final. É uma atividade prevista na lei, mas que na prática só ocorre na justiça e não nas esquadras, local onde tudo começa. Para Frohlich e Gonçalves,

> o tradutor/intérprete necessita de alto nível de competência (linguística, cultural, discursiva…, etc.); o tradutor/intérprete precisa de suporte para ter uma performance adequada; o tradutor/intérprete deve ser incentivado a treinamentos especializados em linguagem forense; os profissionais jurídicos precisam trabalhar em conjunto com tradutores/intérpretes para que o objetivo final seja alcançado; os tradutores/intérprete jurídicos precisam ser reconhecidos como "peritos" e não apenas como "máquinas de tradução". (Fröhlich e Gonçalves, 2015: 107)

O domínio de termos jurídicos é de extrema importância, pois a tradução jurídica é especializada, tal como se viu anteriormente. Conhecer o português é uma questão. Conhecer os termos jurídicos (terminologia jurídica) é outro assunto, mais complexo e mais profundo. Conhecer a terminologia jurídica em língua xichangana e conhecer a terminologia jurídica em língua portuguesa é outra coisa ainda. Daí a necessidade de uma formação especializada nesta área, porque interpretar é muito complexo, como veremos a seguir.

Complexidade de interpretação das línguas bantu moçambicanas

Antes de mais, seria importante trazer ao debate o conceito de "pragmática". Entende-se por pragmática a subárea da linguística que "estuda a maneira pela qual a gramática, como um todo, pode ser usada em situações comunicativas concretas" (Cançado, 2005: 17). Engloba-se a norma-padrão e não-padrão discutida com propriedade por Bagno (2013). A língua está intimamente ligada à cultura. O significado da palavra e da frase está sempre ligado aos contextos e aos significados que a sociedade atribui. Por isso é difícil interpretar ou traduzir uma língua que não se conhece bem. O verbo "dormir", por exemplo, têm vários significados: (1) significa "morrer", (2) significa "deitar-se na cama", (3) significa "descansar em estado de sono", (4) significa "fazer relações sexuais", (5) significa "ser vagaroso, menos esperto". Tradução de uma língua para outra parece uma tarefa fácil. Mas é difícil, pois a linguagem se camufla na cultura, na homonímia e na polissemia, nos implícitos, nas posições vazias, nas ambiguidades, etc. (Possenti, 2009).

Os agentes da polícia usam o método *sinkorswim*, que significa literalmente "afogue-se ou nade", nas suas atividades diárias nas delegacias/esquadras de Moçambique. Este método era usado nos anos 40 antes do surgimento das primeiras escolas/faculdades de formação de intérpretes e tradutores. Nessa época, "os intérpretes simultâneos eram colocados na cabine para interpretar sem que recebessem previamente qualquer treinamento formal" (Pagura, 2003). Infelizmente este método ainda é usado nas delegacias/esquadras de Moçambique, pois não existe nenhum intérprete formado e os agentes fazem um grande esforço para compreender o que o cidadão fala para poder redigir um auto ou relatório de inquérito policial. O caso mais gritante é com relação aos surdo-mudos. Os agentes são, na verdade, "superdotados" e esforçados, pois executam uma tarefa complexa e árdua, uma vez que a população moçambicana, na sua maioria, não está alfabetizada e fala as diversas línguas bantu moçambicanas espalhadas pelo vasto território.

Outro problema camuflado se verifica quando um falante de português como segunda língua torna-se um auto-intérprete, pois passa os seus conhecimentos da língua bantu moçambicana para português durante a denúncia. Entendo por auto-intérprete aquele que reflete, pensa e organiza seu pensamento e discurso com base numa outra

língua e passa literalmente dessa língua "A" para "B" sem o uso das técnicas exigidas. Pagura defende que "o estudo da tradução exige que se levem em consideração não apenas a competência linguística do indivíduo que compreende e fala, mas também sua bagagem cognitiva e suas capacidades lógicas" (Pagura, 2003). Se isso não acontece, incorre-se o risco de se fazer uma tradução literal. É esta a problemática, pois os Oficiais de Permanência são meros agentes com formação básica (Escola Prática de Polícia) e por vezes superior (Academia de Ciências Policiais), formações que nem integram a linguística forense como disciplina dos cursos. Os exemplos a seguir ilustram de forma prática até que ponto a interpretação pode ficar comprometida se o intérprete apenas conhece a língua sem dominar os nuances profundos da língua:

a) A questão do tom

Muitas línguas bantu moçambicanas são tonais, isto é, "a altura do núcleo de sílabas de algumas palavras pode servir para distinguir significados diferentes. Portanto, nas línguas moçambicanas podem encontrar-se duas ou mais palavras com a mesma sequência de segmentos (consoantes e vogais) cujos significados diferem somente devido à variação de altura de algumas sílabas ou algumas moras" (Ngunga, 2014: 96). Segundo Cagliari, mora é a "unidade de percepção da duração ou dos segmentos chamados unidades" (2007: 127). Mora é uma unidade de som usada em fonologia que determina o peso silábico (que por sua vez determina o acento tônico e a tipologia rítmica) em algumas línguas. A mora mede a extensão das pulsações torácicas, baseada no fenômeno da própria acepção ou cinestesia, mas também mede o intervalo existente entre duas proeminências vocálicas, ou mais exatamente, entre dois inícios vocálicos na fala contínua. A mora também mede pausas breves que correspondem aproximadamente à realização de uma silaba ou de uma unidade (Cagliari, 2012). Desta forma, a mora é uma característica das línguas bantu faladas em Moçambique e ela é importante na interpretação do significado. Vejamos alguns exemplos das línguas xichangana e yao:

Ex. 1: Na língua xichangana, *màv**é**lé* (seios) vs *màv**è**lé* (milho)

Ex. 2: Na língua yao, *cìt**ù**úndù* (cesto) vs *cèt**ú**úndù* (capoeira).

A falta do domínio destes conceitos pode prejudicar de certa forma a interpretação. Por isso é importante que o intérprete tenha esse conhecimento em mente. Essa bagagem de conhecimento facilita a compreensão e a respectiva interpretação.

b) A questão do tom lexical

As variações melódicas da fala, segundo Cagliari (2007), devem ser encaradas como medidas de variação do fundamental do som e não em termos absolutos. E essas variações podem ser descendentes, ascendentes, niveladas ou complexas. Ora, nas línguas bantu moçambicanas ocorre quando o léxico "é portador do significado lexical ou seja, quando duas palavras podem ser incluídas no dicionário (com sentidos diferentes evidentemente) só porque se distinguem a nível suprassegmental embora sejam iguais a nível segmental" (Ngunga, 2014: 99). Ngunga dá exemplos das línguas yao (Ex. 3 e 4) e do xichangana (Ex. 5 e 6):

Ex. 3: *katúundu* (bagagem) vs *katuúndu* (cesto pequeno)

Ex. 4: *cipaáta* (espaço entre) vs *cippáátá* (doença venérea)

Ex. 5: *kukhona* (atar) vs *kukhòná* (introduzir)

Ex. 6: *kukhapà* (transbordar) vs *kukhàpà* (acompanhar)

Na grafia se percebe alguma diferença, mas na forma oral a diferença é pouco nítida ou perceptiva. Parece uma diferença ligeira, mas sob ponto de vista prático do uso entre os falantes é crítica demais. É uma diferença considerável do ponto de vista do significado, pois todas estas palavras têm de ser alistadas no dicionário das respectivas línguas da maneira como estão aqui escritas, caso contrário "o leitor pode ser induzido a fazer uma interpretação incorreta dos membros de cada um dos pares uma vez que nenhum dos significados é predizível sem a marcação do tom" (Ngunga, 2014: 99). Concluindo, o tom lexical deve ser conhecido pelo intérprete por forma a evitar confusões e incompreensões.

c) A questão do tom gramatical

O tom gramatical, segundo Ngunga "é aquele que aparece na gramática da língua, e não no dicionário. Por outras palavras, o tom gramatical é aquele que serve para transmitir informação gramatical da língua" (2014: 100). Os exemplos a seguir ilustram a variação semântica, apesar de a grafia ser semelhante.

Língua makonde:

Ex. 7: *ápali* (ele não está) vs *apali* (está)

Ex. 8: *álota* (ele não vai querer) vs *alota* (ele quer)

Língua yao:

Ex. 9: *citúkayíce* (iremos chegar) vs *citúkáyíce* (que nós vamos chegar)

Ex. 10: *nganindya* (não comeste) vs *nganíndya* (que não comas)

d) A reduplicação

A reduplicação é um fenômeno frequente nas línguas bantu moçambicanas. A reduplicação consiste na repetição do tema ou uma parte dele, o que gera uma estrutura composta reduplicada (Ngunga, 2014; Ngunga e Simbine, 2012; Ngunga e Faquir, 2011). A reduplicação pode ser parcial ou total. Não vou aprofundar este aspecto, pois o trabalho pode-se estender. O importante é mostrar como as línguas bantu moçambicanas podem trazer inúmeras dificuldades na interpretação de unidades lexicais constituintes de uma frase ou discurso. Vejamos alguns exemplos de Ngunga (2014):

Ex. 11: *ovira-vira* "passar frequentemente" (Língua emakhuwa)

Ex. 12: *kupata-pata* "pegar repetidas vezes" (Língua sena)

Ex. 13: *kufamba-famba* "andar repetidas vezes" (Língua xichangana)

Ex. 14: *kupita-pita* "passar muitas vezes" (Língua nyanja)

Concluindo, a problemática da interpretação é complexa e exige entrega pessoal de quem desempenha a profissão. "Em todas as línguas, as palavras podem ser organizadas de modo a formar sentenças, e o significado dessas sentenças depende do significado das palavras nelas contidas" (Cançado, 2005: 21). Não se está a afirmar que a interpretação deva ser de 100%, mas também é bem verdade que não existe tradução perfeita, do mesmo modo que não existe comunicação perfeita, ou absoluta. "Toda comunicação humana é limitada, mas normalmente é satisfatória para atingir seus objetivos. Comunicação limitada, parcial, não significa, contudo, comunicação ilusória ou falsa. Do mesmo modo, também não pode haver tradução perfeita" (Sousa, 1998: 53). Quando Sousa (1998) afirma que "toda comunicação humana é limitada", entende-se que ela se torna limitada devido ao "não-dito", "ao silêncio", devido à semântica, à pragmática e à lexicultura que molda

as formas linguísticas de cada comunidade linguística. Estes aspectos devem ser tidos em conta na arte de "interpretar".

A justiça moçambicana e as questões de interpretação

A polícia trabalha bastante com a linguagem. Até se pode afirmar categoricamente que a linguagem é que comanda o trabalho da polícia. Por exemplo, os agentes interpelam cidadãos e fazem um conjunto de perguntas por forma a averiguar um/a suspeito/a. Nessa atividade entra em jogo a importância da linguagem. Desta forma, pelas suas funções, "os agentes têm também a responsabilidade de zelar e de denunciar todos os atos e situações em que os direitos humanos de qualquer cidadão são violados" (Thompson e Almeida, 2006: 48). Em nenhum momento a atuação da polícia deve-se basear em conhecimento popular. A investigação deve se centrar na base legal que são os diversos instrumentos existentes, como é o caso da Constituição da República, o Código do Processo Penal e o Código Penal, entre outros, mas sempre valorizando a linguagem como meio de comunicação. Cançado defende que

> Os falantes nativos de uma língua têm algumas intuições sobre as propriedades de sentenças e de palavras e as maneiras como essas sentenças e palavras se relacionam. Por exemplo, se um falante sabe o significado de uma determinada sentença, intuitivamente, sabe deduzir várias outras sentenças verdadeiras a partir da primeira. Essas intuições parecem refletir o conhecimento semântico que o falante tem. Esse comportamento linguístico é mais uma prova de que seu conhecimento sobre o significado não é uma lista de sentenças, mas um sistema complexo. Ou seja, o falante de uma língua, mesmo sem ter consciência, tem um conhecimento sistemático da língua que lhe permite fazer operações de natureza bastante complexa. (Cançado, 2005: 23)

Além desse conhecimento linguístico, porém, o leitor precisa possuir conhecimentos extralinguísticos, tais como as atitudes com relação ao comportamento social ou moral das pessoas, de tal modo que "falar a verdade" seja normalmente considerado uma ação digna de louvor (Sousa, 1998). Muitas questões da interpretação nas línguas bantu moçambicanas estão intimamente ligadas à "linguagem proibida" (Preti, 1984). A linguagem proibida (grosseira e obscena), segundo Preti são

> todos vocábulos que contêm ideia ofensiva (injúria ou blasfêmia), comumente conhecidos por "palavrões"; os que representam tabus sexuais ou escatológicos de forma mais direta, através de termos e expressões de uso popular ou imagens de fácil compreensão; aqueles que aludem às partes pudendas, aos órgãos sexuais, aos atos e coisas tidos como grosseiros; os que se referem diretamente ao ato sexual nos seus aspectos mais degradantes, particularmente os vícios ou comportamentos sexuais de exceção; os que pressupõem, também, quase sempre, contextos ou situações igualmente grosseiros ou obscenos. (Preti, 1984: 83)

A forma como cada falante organiza o seu discurso (escrito ou falado), como faz as escolhas lexicais e os valores semânticos e pragmáticos, depende da forma como a mente está moldada e que, muitas vezes, reflete as experiências acumuladas dentro da comunidade linguística, bem como da cultura. Esse conjunto de traços particulariza a fala/escrita das pessoas formando o que se designa por idioleto. É através desses "rastos" particulares que a Linguística Forense aprofunda e identifica a autoria das ideias, incluindo o plágio. Por isso que se afirma que a fala/escrita é como uma **impressão digital**, daí a necessidade de um estudo mais aprofundado, ideia essa defendida por Shuy (2005), Coulthard (2002, 2004), Heydon (2005) e outros pesquisadores.

Pesquisas de Sousa (1998) mostram claramente que é quase impossível se obter a equivalência total entre duas línguas no nível da forma, mas existe equivalência no nível do conteúdo comunicativo. Os exemplos 13 e 14 (*kufamba-famba* "andar repetidas vezes" e *pita-pita* "passar muitas vezes") mostram essa equivalência total. É o conteúdo comunicativo que nos permite dizer "andar repetidas vezes" ou "passar muitas vezes". Em outras palavras, "cada língua é um sistema *sui generis*, um código próprio, com suas próprias formas e regras, mas é também, ao mesmo tempo, um sistema de comunicação, o que torna possível a tradução" (Sousa, 1998: 53). A ideia lançada por Sousa (1998) leva-nos a concluir que o intérprete forense tem a função de trabalhar aspectos do código linguístico e suas ambiguidades de forma mais profunda.

Breve comparação com contexto brasileiro e português

Esta comparação visa mostrar como o fenômeno da interpretação na justiça é tratado fora do contexto moçambicano e, neste caso, escolheu-se estes dois países. Considero importante observar o que os outros países fazem em matéria de interpretação forense, por forma a colher experiências positivas que possam alavancar o contexto moçambicano. A questão da tradução forense é polémica, por vezes, pois algumas leis não valorizam a interpretação como se a presença de um intérprete prejudicasse o processo. Mas, em contrapartida, há países "evoluídos" pela sua forma de enxergar o "outro", dão o direito de ser julgado, interrogado, realizar denúncia ou queixa na sua língua materna, ou melhor, na sua língua mais dominante. Se tomarmos em conta a ideia de que a linguagem é produzida na mente, então a língua materna (muitas vezes dominante) permite ao sujeito explicar-se e expressar verbalmente as suas ideias, emoções, angústias e preocupações. Parece um favor, mas na verdade não é, pois é um direito que os cidadãos têm.

Segundo Fröhlich e Gonçalves, o Código de Processo Penal Brasileiro determina que "o juiz nomeará intérprete toda vez que o repute necessário para: 1. Analisar documentos de entendimento duvidoso, redigido em língua estrangeira; 2. Verter em português as declarações das partes e das testemunhas que não conhecerem o idioma nacional; 3. Traduzir a linguagem mímica dos surdos-mudos, que não puderem transmitir a sua vontade por escrito" (Art.151, seção IV, do Código de Processo Penal do Brasil) (2015: 85).

Este artigo (Art. 151) valoriza apenas o português, esquecendo as mais de 100 línguas do grupo Tupi-Guarani faladas pelas comunidades de índios espalhados pelo país. Esquece ainda mais de 4 línguas faladas pelas comunidades asiáticas e europeias, distribuídas de forma desigual pelo território brasileiro. É uma autêntica violação dos direitos linguísticos. Enquanto a Constituição Federativa defende que "a língua portuguesa é o idioma oficial da República Federativa do Brasil" (Art 13, Brasil, 2008), deixa-se de parte muitas outras línguas. A consequência desta atitude é a redução de falantes das línguas indígenas brasileiras, e até mesmo o risco de extinção de muitas delas.

Em Portugal, a situação com relação ao intérprete e a valorização das línguas existentes na União Europeia é bem diferente. O art. 2 do Jornal Oficial da União Europeia (2010) determina que os Estados-Membros da União Europeia devem assegurar que os suspeitos ou acusados que não falam ou que não compreendem a língua do processo penal em causa beneficiem, sem demora, de interpretação durante a tramitação penal perante as autoridades de investigação e as autoridades judiciais, inclusive durante os interrogatórios policiais, as audiências no tribunal e as audiências intercalares que se revelem necessárias. Este artigo revela, de facto, a importância do intérprete e da sua

necessidade no acompanhamento dos processos judiciais. Esta lei determina a "não demora", isto é, o acusado ou suspeito não pode assinar nenhum documento sem que tenha compreendido o teor do documento.

O artigo 3 determina que "os Estados-Membros asseguram que aos suspeitos ou acusados que não compreendem a língua do processo penal em causa seja facultada, num lapso de tempo razoável, uma tradução escrita de todos os documentos essenciais à salvaguarda da possibilidade de exercerem o seu direito de defesa e à garantia da equidade do processo" (Parlamento Europeu, 2010). Uma questão interessante em Portugal é que o Tribunal tem no seu elenco de funcionários especialistas em tradução judicial. Eles realizam o trabalho de tradução sendo pagos pelo sistema português de pagamento de funcionários públicos. Qualquer arguido pode solicitar a tradução dos seus documentos de forma gratuita. Esta medida visa tornar o processo judicial justo e equitativo, pois está previsto no Código Penal. A falta de intérprete, segundo o Art.93 do Código Penal Português (2007: 48), "implica o adiamento da deligência". O mesmo artigo legaliza o atendimento de cidadãos portadores de deficiências auditiva e fala. Estas comparações aqui apresentadas diferem grandemente da realidade moçambicana, embora se saiba que o Código Penal Moçambicano foi embasado no Código Penal Português.

Metodologia e análise dos dados

Sendo assim, a pesquisa foi realizada em 4 esquadras/delegacias da província de Maputo. Por questões de ética em pesquisa, não citarei os nomes das esquadras e designarei desde já as mesmas de Esquadra 1, 2, 3 e 4. É importante deixar claro o conceito de Oficial de Permanência (OP), pois pode ser confundido uma vez que cada país apresenta suas designações. Um OP é o agente que se responsabiliza pela esquadra, coordena actividades, a patrulha, recepção das queixas, questões administrativas, busca e captura, quando o tribunal faz mandato de busca-captura. Ele/a lida diretamente ao comandante e com o Chefe das Operações. Os dados da pesquisa, resultantes das entrevistas feitas com os OP, ilustram que estes se encontram desgastados pela forma como lidam com questões de interpretação forense, pois nenhuma formação específica já tiveram. Por motivo profissional da função policial, não foi possível gravar as entrevistas, aspecto que considero como o principal constrangimento da presente pesquisa. Com os dados gravados e transcritos, poderia aprofundar mais as análises e trazer outros aspectos que provavelmente me escaparam aquando das entrevistas. Os OP são todos oficiais e possuem mais de 5 anos na profissão, o que significa um período considerável de experiência e de prática profissional. Para pesquisa aplicou-se o método de observacional, que consistiu na observação de 4 interrogatórios policiais nos departamentos da Protecção à Mulher e à Criança nas 4 esquadras visitadas, todas localizadas na província de Maputo. As observações seguiram um "guia de observação" previamente construído/elaborado para o efeito. Os interrogados tinham o seguinte perfil:

Esquadra	Idade/anos	Escolaridade	Língua materna	Sexo	Morada (fixa)
1	54	4ª classe	emakhuwa	masculino	Matola-Gare
2	35	6ª classe	xichangana	feminino	Machava
3	20	5ª classe	xironga	masculino	Marracuene
4	43	5ª classe	xichangana	masculino	Mulotane

Tabela 1. Distribuição dos interrogados.

Pelos objetivos da pesquisa, escolheu-se interrogatórios em que o falante tinha baixo nível de escolaridade ou que não falava português fluentemente. Infelizmente, não encontramos um caso concreto de um surdo-mudo. Nas instituições visitadas não havia casos semelhantes, mas as entrevistas com os OP facultaram a análise de dados que consideramos de maior importância. Por questões metodológicas, irei apresentar os dados e as análises em simultâneo, por forma a criar mais coesão nas ideias e nos argumentos. Apresentarei os dados de cada esquadra:

Esquadra 1: O OP lamenta o facto de a polícia não possuir uma formação específica para atender cidadãos deficientes. Segundo o entrevistado, quando surge uma denúncia de um cidadão que não fala português, a atitude é de procurar um colega da mesma esquadra ou outra para interpretar. Só que "esse colega" também não está formado linguisticamente para lidar com essas particularidades, o que significa que predomina o conhecimento empírico. Esta questão é problemática porque qualquer falha incorre na acusação ou não do suspeito. No caso de cidadão surdo-mudo, solicita-se alguém (não especializado) para interpretar em língua de sinais. Segundo o informante, poucos surdos-mudos sabem escrever, e a interação oral vs escrita em simultâneo tem as suas desvantagens. Geralmente a escrita disserta menos que a oral e, neste caso, a descrição dos suspeitos fica limitada. Se não tiver um policial que fala, procura-se compreender empiricamente, procurando ideias e o sentido do contexto. Esta forma é criticada e desencorajada nesta pesquisa.

Esquadra 2: O informante revela a questão língua de sinais como dado novo na sua jurisdição, embora sabendo que existem deficientes desse tipo. O que significa que indivíduos com esse tipo de deficiência nem comparecem na esquadra. Na área da sua jurisdição ainda não se deparou com nenhum caso de surdo-mudo, mesmo possuindo 5 anos na profissão. Caso isso aconteça, o informante argumentou que poderia recorrer a colegas policiais para ajudar na interpretação. O OP afirma ainda que nenhum policial está preparado profissionalmente para lidar com este tipo de impasse. Na esquadra existem alguns colegas que podem interpretar de inglês ou de francês para português e vice-versa, mas nenhum tem formação na área. Mais uma vez, esqueceu-se do valor das línguas bantu moçambicanas que são faladas pela maioria dos moçambicanos, principalmente nas zonas rurais.

Entendo que o surdo-mudo é um sujeito como qualquer outro considerado como "normal". Assim, levanto as seguintes perguntas: O/A surdo/a-mudo/a não pode cometer algum crime ou delito? Ele/ela não pode ser acusado? Ele/ela não pode ser privado/a dos seus direitos cívicos? Não pode ser violado/a moral ou sexualmente? Onde deverá

fazer a queixa? Existe em Moçambique uma esquadra específica? As respostas a estas perguntas conduzem a uma reflexão profunda: a Polícia da República de Moçambique e o Ministério da Justiça precisam considerar esta questão, tomando-a como séria. Acredito que os surdos-mudos não comparecem às esquadras pelo facto de que ninguém poderá ouvi-los nem compreende-los, até porque a nossa sociedade ainda é preconceituosa com relação ao diferente.

Esquadra 3: O OP concorda com a temática em discussão neste artigo, mas salienta que poderiam ser casos pouquíssimos de necessidade de intérprete e, sendo assim, não haveria necessidade de se formar mais polícias nesta área. Mas também concorda com as limitações linguísticas que se verificam em alguns casos. Citou o caso de estrangeiros falantes de diversas línguas africanas, europeias, asiáticas, e citou a presença massiva de cidadãos de nacionalidade chinesa, que, em muitas ocasiões, não falam português; apenas balbuciam algumas palavras isoladas. Este exemplo mostra claramente a fragilidade da nossa polícia no que toca ao intérprete forense, aspecto que mancha o trabalho subsequente nos tribunais. Ainda existe a mentalidade de que qualquer moçambicano, independentemente do grupo linguístico de origem, é capaz de entender as outras línguas. Há inteligibilidade em algumas línguas e não em todas. Por exemplo, os falantes de xichangana, xitswa e xironga entendem-se perfeitamente. Mas entre os falantes de xichangana e de emakhuwa, não há inteligibilidade. Como um OP falante de xichangana poderá entender falantes de emakhuwa quando destacado para trabalhar em Nampula, província onde se fala emakhuwa? A presença de um intérprete forense na sua esquadra não ajudaria? Estas perguntas não precisam ser respondidas, pois a resposta é obvia: os autos e relatórios podem não refletir exatamente o que o cidadão (suspeito ou acusado) desejava dizer/exprimir. Como nem todo cidadão saber ler em língua oficial (português) tudo parece legal. Além disso, a ideia não está apoiando o regionalismo; apenas está defendendo os direitos linguísticos que os moçambicanos estão sofrendo a nível do que consideraria de "justiça". A justiça não pode ser injusta, pelo contrário.

Esquadra 4: Finalmente, na esquadra 4, o oficial não critica a inexistência do intérprete a nível da esquadra, mas acrescenta um dado novo: a necessidade de interação com líderes comunitários para a interpretação nas esquadras. Este dado é importante, pois considera-se o líder comunitário aquele indivíduo que é natural da região, é de maior respeito e domina claramente as nuances linguísticas que a sua comunidade usa. Isso significa que os "não ditos", as ambiguidades e outros problemas inerentes à interpretação podem ser desvendados pelo líder. Esta ligação comunidade-população é fraca, embora apareçam muitas vozes nos mídia reclamando a falta de interação polícia-comunidade. Senão vejamos, o polícia só vai ter com a população quando for solicitado, quando houver alguma denúncia/queixa. Jamais a polícia tem realizado visitas constantes junto às populações por forma a colher os principais problemas que aquela comunidade tem. Essa atitude traria mais confiança e confiabilidade aos cidadãos, culminando com as denúncias ou queixas que muitas vezes só terminam junto ao régulo, tal como mostrei anteriormente. A polícia deve deixar de ser um ser "estranho" junto às populações, pois o maior vigilante/guarda da sua comunidade é a população. Este aspecto faz com que a população faça "justiça pelas suas próprias mãos", atitude condenada pelo art. 40, da CRM que de-

termina que "todo o cidadão tem direito à vida e à integridade física e moral e não pode ser sujeito à tortura ou tratamentos cruéis ou desumanos".

Outro aspecto importante a considerar é o analfabetismo e a pobreza absoluta que afetam a sociedade moçambicana. Se o acusado ou o suspeito for interrogado sem advogado e sem saber ler e escrever em português, como consegue assinar esses documentos legais? Em muitas situações, cidadãos suspeitos ou acusados assinam sem poder ler e compreender o documento em causa, aspecto que viola em grande parte os direitos do cidadão. Thompson e Almeida defendem que "só quem conhece os seus direitos tem consciência, quer das vantagens e dos bens que pode usufruir com o seu exercício ou com a sua efectivação, quer das desvantagens e dos prejuízos que sofre por não os poder exercer ou efectivar ou por eles serem violados" (2006: 48). Então para a maioria da população que desconhece os seus deveres e muito mais seus direitos, o sofrimento é muito maior, pois a justiça nunca difundiu essas informações junto às populações. Nos Estados Unidos, segundo Ainsworth (2010), todos conhecem a advertência Miranda, pois as informações foram bem difundidas junto aos americanos e não só, através dos mídia, facto que nunca se verificou em Moçambique. A justiça não tem dinheiro para custear essas propagandas, mas, em consequência, os sistemas vigentes prejudicam e fazem sofrer o cidadão mais pacato, pobre e sem recursos para contratar um advogado. Uma frase simples do tipo: "O/a senhor/a tem o direito de permanecer calado" (Ainsworth, 2010) pode trazer muitas complicações diante de um intérprete. O que significa "permanecer calado" para aquele cidadão campesino? Seria apenas "não abrir a boca"? E a linguagem não verbal (gestos, mímica, etc.) não é instrumento de comunicação? Não pode transmitir nenhuma mensagem? Todo o silêncio é realmente silêncio? Na cultura daquele acusado, qual é o significado cultural? Na cultura do Tsonga no sul de Moçambique, "permanecer calado" quando alguém fala (principalmente uma pessoa mais velha ou autoridade) é sinônimo de consentimento, reconhecimento de culpa, etc. Todos estes aspectos (e muitos outros) devem ser tomados em conta quando se interpreta, exemplo que mostra claramente a complexidade desta área.

Conclusões e recomendação

Chegamos ao fim do debate, mas precisamos apontar alguns aspectos de maior relevância. Esta pesquisa levanta aspectos novos pouco discutidos no seio dos moçambicanos. Há muita literatura sobre a interpretação forense pelo mundo fora, mas em Moçambique existem raros relatos. Foi pertinente discutir este aspecto por várias razões. Primeiro, pelo facto de que o preconceito com relação ao "diferente" é real no seio dos moçambicanos. Segundo, as instituições da justiça pouco fazem para a valorização do cidadão "diferente". Terceiro, porque as políticas vigentes estão munidos de uma ideia segregacionista e de exclusão. Esta pesquisa levantou uma série de questões básicas ou fundamentais que, quando respondidas de forma plena, podem reduzir de forma considerável as injustiças na justiça moçambicana.

O português, sendo a única língua da justiça moçambicana, inibe e bloqueia a expressividade do acusado ou do suspeito, que fica limitado nos seus argumentos na defesa ou na acusação. As esquadras deveriam respeitar estas diferenças linguísticas e procurar formas de colmatar estes problemas, convocando um intérprete ou tradutor, segundo o caso. Este trabalho poderia ser coordenado com o Ministério da Justiça. A justiça deveria ter no quadro dos funcionários efetivos intérpretes e tradutores especializados, que poderiam eventualmente servir as esquadras do país. Não parece justo um cidadão ser

interrogado ou ouvido numa língua estranha. A riqueza linguística moçambicana não é um problema para a nossa sociedade, mas o que preocupa é a forma como os cidadãos enfrentam a linguagem forense. Não existe uma língua melhor do que a outra. O português, apesar de ser falado em quase todas as províncias, não pode ser considerado a melhor língua.

Voltando à questão de partida, se constata que os cidadãos acusados ou suspeitos não são capazes de se defender de acusações linguísticas imputadas pela polícia, pois a língua da justiça é diferente da sua língua de reflexão mental, que é uma língua bantu moçambicana. Pelo fraco domínio do português, acabam assinando um documento cujo teor não está claro, pois as esquadras não dispõem de intérpretes forenses ao serviço dos cidadãos. O caso mais gritante é com relação à língua moçambicana de sinais. Os surdos-mudos nem chegam a trazer suas queixas nas esquadras, pois a nossa sociedade (incluindo a justiça) estigmatizam este grupo social. Um exemplo prático da estigmatização dos surdos-mudos se verifica na condução de veículos; as leis moçambicanas não protegem a formação de condutores surdo-mudos, por isso as auto-escolas não possuem condições humanas e materiais para o atendimento de cidadãos portadores deste tipo de deficiência. A hipótese apresentada na introdução deste artigo ficou comprovada, pois as questões linguísticas no Direito são fundamentais e cruciais. São a base para a condenação ou absolvição, daí que se recomende a introdução de formações específicas nesta área nas escolas de formação policial em todos os níveis (básico e superior), por forma a responder às necessidades básicas da comunicação. A existência de pelo menos cinco intérpretes (de diferentes línguas) em cada esquadra seria um bom início para que a polícia possa realizar um trabalho credível e persistente. A Polícia da República de Moçambique, na formação dos seus quadros na Escola Pratica de Matalane, poderia incluir nas suas disciplinas noções básicas da língua de sinais por forma a incluir este grupo alvo e especifico que tem vindo a sofrer consequências graves. As instituições da justiça também precisam ter, no quadro geral de funcionários, tradutores e intérpretes efetivos por forma a responder às necessidades básicas da profissão. Isso significa que a contratação a tempo limitado de um profissional especializado pode acarretar custos enormes, enquanto que se tivéssemos profissionais efetivos ou do quadro reduziria os custos, para além de trazer mais garantia de qualidade do trabalho prestado.

A tradução geral é complicada e pior ainda se for uma tradução forense, que é muito específica. Os exemplos mostrados na segunda seção ilustram essa complexidade linguística que, de certa forma, precisa de um profissional qualificado para o efeito. Não basta apenas falar a língua, mas também é necessário conhecer profundamente aspectos internos e externos à língua.

Como se pode depreender nesta pesquisa, Moçambique e os moçambicanos têm um longo caminho a percorrer se compararmos com o Brasil e Portugal, tal como vimos na fundamentação teórica desta pesquisa. Este aspecto não pode ser desprezado e relegado para último plano, pois a interpretação forense influi nos resultados que recaem no cidadão. Não existe justiça num espaço onde não há direitos e deveres. O Estado moçambicano poderia cumprir a sua parte, pois recursos existem desde que haja essa vontade política. Como pudemos constatar nos debates, o tom lexical, gramatical e outros têm grande peso nas línguas bantu moçambicanas quando confrontados com a interpretação forense. Sem o domínio dessas competências, dificilmente se pode atingir os objetivos desejados nos artigos 250, 252, 253, 254 e 255 que versam sobre "as perguntas", no Código

do Processo Penal de Moçambique (2014). Ao privilegiarmos o intérprete na interpretação forense, estamos respeitando o artigo 235, plasmado no Código do Processo Penal de Moçambique (2014). Esta atitude positiva pode trazer mais qualidade aos serviços prestados pela polícia e pela Justiça.

Notas

[1]A África do Sul possui 11 línguas oficiais

[2]Segundo a Constituição da República do Zimbabwe (2013), existem 16 línguas oficiais (Cap. 1, nº 6, p. 22).

[3]Este país é uma língua oficial: swahili, uma língua do grupo bantu.

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The long road to effective court interpreting: international perspectives

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Abstract. *While judicial systems and processes differ significantly around the world, providing effective language services has faced very similar obstacles across different jurisdictions. Whether judicial authority is based on constitutional interpretation, or common law or codified systems, interpreting services in most jurisdictions are still poorly developed and coordinated. Provision of interpreting through such mechanisms as the Court Interpreters Act in the US are examined, as well as in common law systems without legislative basis, and the European attempt to standardise provision of legal interpreting in the EU member states. Improvements have been brought about by different actors – at times magistrates and judicial efforts, at times interpreter activism, at times more general political moves, or even the consequences of wider provision of language services not originating from the legal systems. It is important to foster alliances between interpreting interests and champions within the legal system to bring about meaningful change.*

Keywords: *Legal interpreting, court interpreting, EU Directive 2010/64/EU, common law, language services, right to an interpreter.*

Resumo. *Embora os sistemas e processos judiciais variem significativamente em todo o mundo, a prestação de serviços linguísticos eficazes tem-se defrontado com obstáculos muito distintos em diferentes ordenamentos jurídicos. Independentemente de a autoridade judicial se basear na interpretação constitucional, na "common law" ou em sistemas codificados, na maioria dos ordenamentos os serviços de interpretação ainda se encontram subdesenvolvidos e mal coordenados. Neste trabalho, analisa-se a oferta de interpretação através de mecanismos como o Court Interpreters Act, nos EUA, bem como em sistemas de "common law" sem base legislativa e a tentativa europeia para normalizar o aprovisionamento de interpretação jurídica nos Estados-membros da UE. Diferentes atores têm proporcionado melhorias – por vezes, através dos esforços judiciais e de magistrados, outras através do ativismo de intérpretes, outras vezes ainda através de ações políticas mais genéricas, ou inclusivamente como consequência de uma oferta mais alargada de serviços linguísticos não decorrentes dos sistemas jurídicos. Para proporcionar mudanças significativas, é importante incentivar alianças entre os interesses da*

interpretação e os decisores no sistema jurídico.

Palavras-chave: *Interpretação jurídica, interpretação em tribunal, Diretiva Comunitária 2010/64/EU, "common law", serviços linguísticos, direito a um intérprete.*

> *'the success of reforms in this sphere depends on influence being brought to bear rather than on intrinsic worth.' (Morris, 1999: 247)*

Introduction

The ambition of bringing effective interpreting to legal encounters, in court or in related legal proceedings, still remains an unrealised one in most countries. Now more than 35 years after the passing of the Federal Court Interpreters Act in the USA, and a similar time since issues of providing certified interpreters were addressed in countries as far apart as Sweden and Australia, jurisdictions still struggle to find adequate interpreting in many legal encounters. And in many other countries awareness of this issue has only come with rapidly rising numbers of asylum seekers and other immigrants who are now turning almost every country into a multilingual entity. Legal jurisdictions, still often mired in 19th century practices and monolingual mindsets, need to adapt to multilingual needs, in situations of radical linguistic diversity.

A number of intersecting issues have been covered in a by now burgeoning literature on legal and court interpreting (see Berk-Seligson, 2002; Laster and Taylor, 1994; Colin and Morris, 1996; Hale, 2004; Townsley, 2011; Giambruno, 2014; Hertog, 2015). Questions such as the right to an interpreter, the jurisprudential status of interpreting, and legal strategies in the use and non-use of interpreters, mix with the seemingly more prosaic, but no less fundamental, issue of provision – how interpreters are recruited, trained, certified and remunerated. Behind this are deeper and sometimes darker issues of language policy and social and systemic attitudes towards those without the majority language – whether immigrant, regional, indigenous or deaf.

This article casts a birds-eye view on the progress – or lack of it – made by many jurisdictions, and attempts to identify some of the features that can drive success in achieving recognition of the need for legal interpreting, and some of the still extant barriers in many jurisdictions to such progress.

The right an interpreter; the right to be present at one's own trial

Securing a constitutional or jurisprudential right to an interpreter is an issue confronted very quickly in all writing on legal and especially court interpreting (e.g. Morris, 1999. To some extent it can be viewed as the holy grail – the gold standard of what should be expected and aimed for in securing access to interpreters for those whose liberty is at stake – defendants in criminal trials, and those witnesses whose testimony may determine this liberty. Constitutional or authoritative superior court judgments then provide a bedrock of legal authority that all inferior courts must obey. Yet several points need to be made here that may take some of the gloss off this aim; moreover there may be other factors more important than this right in establishing effective legal interpreting.

Minimal compliance

First, constitutional guarantees can fall victim to the phenomenon, or even strategy, of minimal compliance. For example, the case of the USA Federal Court Interpreters Act of 1978, an enormous breakthrough in response to many catastrophic prior interpreting experiences (Mikkelson, 2000), has been highly restricted in its actual implementation. It has managed to see the certification of only one major language – Spanish – with attempts at providing certification in other languages – Navajo and Haitian Creole – being very limited. No other languages have been certified at this level.

The high-stakes certification test, with its high failure rate, has produced a cadre of high-level Spanish-English court interpreters. Fortunately, this collectivity has drawn together into a highly active professional association NAJIT, which promotes legal interpreting and its expansion into other areas – for example, by bringing standards of interpreting into other aspects of legal procedures.

A second way in which the Court Interpreters Act shows minimal compliance is in its emphasis on *courts* – thus, the police, other legal personnel and corrective and parole services are not covered by the Act, and will often use *ad hoc* interpreting arrangements, establishing a permanent disjunction between the high standards (at least in one language), required in Federal courts and the unregulated use of interpreters in pre- and post- trial procedures.

The minimal compliance phenomenon is also apparent in the mechanism adopted to implement the legal requirement to provide interpreters – a one-off test. The high failure rate and psychometric aspects of this test have been commented on elsewhere (Schweda-Nicholson, 1986; Matthew, 2013); more significantly, perhaps, preparation for the test was entirely up to the individual, and there was no attention to what interpreters need most of all in order to reach a competent level of interpreting – training. Indeed, ever since the Act, and despite other developments at State level to provide testing in interpreting, the actual training has been poorly developed, with few opportunities in more than a handful of languages in only a handful of institutions (Benmanan, 1999).

The above is not to denigrate the Court Interpreters Act. Its adoption has spurred most States in the USA to set about regulating interpreting – again focusing on courts, but sometimes mandating wider attention to legal procedures in State jurisdictions. Mindful of the complexities of federalism, however, it is significant that provision has varied dramatically between States from exemplary attention to continuing neglect (Schweda-Nicholson, 1989). For example, the USA's Consortium for Language Access in the Courts, part of the National Center for State Courts [NCSC], has established its own tests and assisted States in developing standards for court interpreters, but even so with enormous discrepancies between individual States, from those with extensive testing and quality control in a wide range of languages, to those with no requirements to use certified interpreters and no infrastructure to monitor interpreter use (State Justice Institute and National Center for State Courts, 2012; Abel, 2009).

New York State, for example, has instituted its own tests for court interpreters including both written and oral examination. For Spanish, still the most in-demand languages, interpreters can become permanent employees of the court system, chosen on a competitive basis (https://www.nycourts.gov/courtinterpreter/careers.shtml). A number of other languages also have both written and oral tests, which can lead to non-competitive positions appointed according to the needs of the court; these are:

> Albanian, Arabic, BCS (Bosnian/Croatian/Serbian), Bengali, Cantonese, French, Greek, Haitian Creole, Hebrew, Hindi, Italian, Japanese, Korean, Mandarin, Polish, Portuguese, Punjabi, Russian, Urdu, Vietnamese and Wolof.
> (http://www.nycourts.gov/courtinterpreter/examinformation.shtml)

For ASL interpreters the New York Courts recognise qualifications from RID. Interpreters in other languages may register with the court system based on professional references.

Similarly New Jersey has extensive testing and organised provision, for example New Jersey has full-time staff interpreters in ASL, Korean, Polish, Portuguese and Spanish, and a public Registry of variously qualified interpreters; the Superior and tax courts must use interpreters from this Registry. Municipal courts are encouraged to do so (http://www.judiciary.state.nj.us/interpreters/findwork.html). And in an important adjunct regarding compensation for court interpreters, the New Jersey Courts ensure that

> Salary ranges for staff court interpreters in the Superior Court are determined as a function of collective bargaining agreements with appropriate unions. Rates of pay for contract interpreters are set through collective bargaining with Communication Workers of America (CWA).
> (http://www.judiciary.state.nj.us/interpreters/findwork.html)

New Jersey has developed its own hierarchy and nomenclature of court interpreters, from Level 1, Conditionally Approved/Trainee Court Interpreter, to Level 2 Journeyman, to Level 3 Master, with Level 3 interpreters engaging in mentoring, counseling and quality control (see http://www.judiciary.state.nj.us/interpreters/jobspecs.pdf).

At the other end of the spectrum, many Southern and smaller states have only lately begun to upgrade their court interpreter qualifications and provision. Berk (2015) reports that a 2009 survey by the Southern Poverty Law Center found that 46% of the LEP people surveyed who had had dealings with the justice system had not been provided with interpreting services. This long-standing neglect in numerous states resulted in renewed efforts by the NCSC and the State Justice Institute to bring all states into the their purview of language services, culminating in a significant Summit on Language Access in the Courts, gathering representatives from 49 States and three territories (State Justice Institute and National Center for State Courts, 2012). This had a positive effect on several states.

In Louisiana, with a significant LEP influx since Hurricane Katrina, "no state laws exclude unqualified interpreters from being employed by or otherwise used in courts" and significant issues of provision dog the system:

> In the entire state of Louisiana, for example, only one person is currently listed as a registered interpreter for the Vietnamese language and only one for Mandarin. No other Asian languages are represented at all, despite the latest census data showing an Asian population of well over 69,000.
> (Berk, 2015)

Significantly, the Summit provided a circuit breaker in getting this State to move, providing the first level of infrastructure for interpreter registration and provision:

> In 2012, Louisiana partnered with the NCSC, created a position for a Language Access Coordinator in the state's Supreme Court, and adopted their first code of ethics for interpreters. Louisiana's language access progress so far has mostly been in the area of training, improving the program in place for registration, and offering the oral exams required for certification locally for the first time in 2015.
> (Berk, 2015)

However, once again the focus on testing dominates in an environment where training is rare or minimal. In a perhaps ironic twist to this, Romberger (2007) conducted research for the National Center in four States, which had introduced some minimal pre-test training for interpreters, and found that training sessions of as little as 16 hours improved pass rates for candidates; sadly, training rarely extends beyond 40 hours, and the use of 'otherwise qualified' interpreters – which can in practice actually mean completely unqualified interpreters (Matthew, 2013) – is ubiquitous.

As an example of how constitutional considerations can both enhance and restrict the provision of effective language services, it should be noted that constitutional requirements are not matters settled once and for all – certainly not in the American federal system. Seeing poor or uneven provision of language services in many areas of government administration, not simply in the courts, President Clinton in August 2000 issued his *Executive Order 13166* "Improving Access to Services for Persons with Limited English Proficiency". Based on Title VI of the Civil Rights Act of 1964, this Order charged all federally supported agencies and government services, including State courts, to ensure adequate language services. Significantly, this Order had an impact on areas other than the legal, for example in health interpreting – a far larger province than legal interpreting, affecting many more people – which had hitherto not been given the same constitutional impetus as court interpreting. A notable feature of this requirement also is that it applies to civil cases as well as criminal cases. Yet for the State courts in particular, the poor implementation of Clinton's order caused the Federal Attorney General to write to them a decade later, reminding them of their obligations, leading to an extended correspondence as some State courts were clearly reluctant to comply with these requests (Office of the Attorney-General, 2010).

This instance is a sobering example of how slow the implementation of constitutional processes can be, processes that can always also be constitutionally challenged. Using a 1964 legislative basis (in this case the Civil Rights Act) to underline a constitutional entitlement and still needing to repeat reminders nearly half a century later, shows just how long the process can be from formal acknowledgement of discrimination and of the need to remedy it, to the actual implementation of such remedies using constitutional processes.

While a number of countries have some legislative or constitutional enshrinement of the right an interpreter, this is often not realised in practice, and such provision rarely extends beyond the few most needed languages. In the next sections we show that constitutional guarantees are not the only way to obtain provision of language services.

Common law systems. Can rights to an interpreter be found, implied, discovered or simply assumed?

In common law systems, precedent rather than legislation and constitutional interpretation holds sway (Morris, 1999). In the British system, which extends into virtually all former Empire/Commonwealth countries, the precedent for the necessity to provide an interpreter is found in *R v Lee Kun* 1916, where the judgment declared

> The reason why the accused should be present at the trial is that he may hear the case made against him, and have the opportunity, having heard it, of answering it. The presence of the accused means not merely that he must be physically in attendance, but also that he must be capable of understanding the nature of the proceedings. *Lee Kun* (1916) 299-300

A crucial aspect of this judgment, however, is that rather than establishing the right to an interpreter, the ruling is based on the more restrictive question of whether a trial can be fair, if an interpreter is not provided in certain circumstances, but this must be decided in each case by the judicial officer – for example, a judge may decide him/herself whether an accused speaks and understands enough of the majority language to warrant the use of an interpreter. Moreover, even if an interpreter is provided, the question arises as to what is the extent of their role – to interpret evidence as presented by the accused to the court only, or to provide continual interpreting to the minority speaker when other witnesses give evidence and when lawyers and judges engage?

The role of the interpreter is always seen through jurisprudential filters: is an interpreter necessary to ensure a fair trial, or a fair pre-trial process? On what basis can interpreting be challenged? What parts of a trial need to be interpreted? What standards should apply to the interpreting performed in court, in interactions with the police, in other pre-trial processes? In all cases judgments are made not necessarily on the basis of linguistic criteria alone, but on the part that interpreting has played or not played in the overall conduct of a case. Even in jurisdictions where legislation provides for the right to an interpreter, judgments on the adequacy of interpreting are usually made on wider jurisprudential grounds. Thus, both Benmanan in the USA (2000) and Hayes & Hale in Australia (2010), examining appeals on the grounds of inadequate interpreting, found that courts looked at the overall issue of evidence and the components of the trial to come to conclusions about whether any deficiency in interpreting was material to the eventual verdict. Overwhelmingly, interpreting flaws, if there were any, are not seen to have determined the overall decisions and generally a very high bar is set before a decision is made to accept that interpreter or translator error warrants the revision of a decision, or even a retrial.

A perspective that can be useful in understanding this is provided by one iconic Australian case, from an interpreted trial in Papua New-Guinea, where the High Court was asked to judge whether evidence given through an interpreter was hearsay evidence, and hence inadmissible (*Gaio v The Queen* 1960). The Court overwhelmingly decided such interpreted evidence was not hearsay, but this obliged them to define how interpreter renditions fit into jurisprudential views of evidence. The court resorted to a series of analogies comparing an interpreter to a conduit, or a transmission machine whose only function was to convey an accurate translation from one language into another, not affecting the evidence in any way (Roberts-Smith, 2009). Such views of an interpreter have no doubt helped to foster the view of an impersonal interpreter being a mere cipher in the judicial process, and have underpinned legal personnel's frequent insistence to have verbatim or word for word interpreting, or to consider an interpreter's (or perhaps any bilingual's) task as simply to transform words from one language into another. On the other hand, the concern for the unaltered transmission of evidence does allow for the possibility of appeal if the interpreting is indeed not accurate, but as we have seen above this objection is again treated in the entire jurisprudential context of a fair trial, and overall judgments made as to what extent anything less than perfect transmission in interpreting has or has not affected the outcome of a trial.

In some cases however the lack or poor quality of interpreting has been of vital importance, for example in a British case with tragic outcomes, the case of Begum, where a 1981 conviction was successfully appealed in 1985. This was a charge of murder against

a wife. No interpreters were used in pre-trial questioning and the interpreter employed in the initial trial was another client of the defence counsel, not a qualified interpreter, and although he spoke a number of Indian languages he did not actually speak Punjabi, Begum's native language. This led to Begum pleading guilty, but maintaining silence when questioned both in court and in other, pre-court, interviews. The Appeal court opined that

> It is beyond the understanding of this court that it did not occur to someone from the time she was taken into custody until she stood arraigned that the reason for her silence, in the face of many questions over a number of interviews upon the day of the hearing and upon many days previously at various times, was simply because she was not being spoken to in a language which she understood.
> (*Begum* 1991, cited in Roberts-Smith, 2009: 19)

The defendant, through a competent interpreter, changed her plea to guilty of manslaughter. She was released, but took her own life soon after. This case however did have far-reaching consequences: the justice system responded, set up a Trial Issues Group, which consulted widely, including with the Institute of Linguists, which had long pointed out interpreting deficiencies, eventually beginning the process of establishing the National Register for Public Service Interpreters; it is regrettable but significant that it took a miscarriage of justice to change the system http://www.nrpsi.org.uk).

Better definitions of interpreting quality, albeit still constrained by legal norms, have been produced. A significant improvement to such understandings as were described in *Gaio* above, are found in another Commonwealth country, Canada, in the *Tran* judgment, where the judge opined

> The constitutionally guaranteed standard of interpretation is not one of perfection; however, it is one of continuity, precision, impartiality, competency and contemporaneousness.
> (*R v Tran* 1994, 999)

Such a view provides a dynamic rather than a static view of interpreting in the court setting, or other legal process, importantly combining issues of ethics (impartiality) and procedural and process considerations (continuity and contemporaneousness) with transmission (precision and competency).

Focus on provision: avoiding issues of rights

Relying upon legal or constitutional rulings or even legislation to improve court interpreting conditions addresses one aspect of the demand side of court interpreting. However, without attention to processes and personnel down the line – court clerks, attorneys, public prosecutors, police, legal aid workers – the prospect for understanding interpreting needs and seeing issues of quality remains dim. As Morris argues:

> The moral is clear: gains achieved through legal rulings, legislation and policy on the highest level must constantly be monitored and reinforced on the practical level. "Client education" is a never-ending mission.
> (1999: 254).

No less important, however, is the supply side – a reliable supply of quality interpreters. Some jurisdictions have been active in addressing the provision side, but with little regard to arguments over the right to an interpreter.

Within the specific court sector, Singapore has resorted to a functionary provision of court interpreting, a provision stretching back a century to early British colonialism in the former Malay area, and continued now in independent Singapore (Basalamah, 2015). Court administration has always been conducted in English, and Singapore's multilingual mix has three other official languages – Chinese (Mandarin), Malay and Tamil. Interpreting in courts in these languages is provided by a cadre of civil servant interpreters, who did not have previous interpreting qualifications, but who are bilinguals tested for their language skills (also in a range of Chinese and Indian varieties beyond the official varieties), and who then undergo on-the-job training. They provide consecutive and *chuchotage* interpreting; high levels of bilingualism among court staff and other participants, and a constant supervision process ensures quality; Basalamah reports that complaints about the quality of interpreting are very rare. By contrast, when some lesser-used languages are involved, the Singapore jurisdictions face the same problems as all others in ensuring adequate standards where full-time interpreters cannot be used (Purchase, nd).

However, jurisdictions with full-time paid interpreters as employees are few. Some other countries have taken a supply-side approach to interpreter provision, not driven primarily by considerations of court or legal interpreting.

Australia's accreditation system for interpreters and translators starts from a generic rather than a field-specific view of interpreting; rather than accrediting court interpreters or health interpreters, the National Accreditation Authority for Translators and Interpreters established in 1978 accredits practitioners in over 60 languages at various generic levels (http://www.naati.com.au). Accreditation is gained through a one–off test (typically with high failure rates) or by passing a NAATI-approved course at a university or polytechnic, where interpreters of over 30 languages have received language-specific training at one time or another, though there are relatively continual courses only in major languages (Chinese, Arabic, Vietnamese, Japanese and Spanish among others). Small and emerging languages, where no testing can be provided, have a system of Recognition where candidates simply supply references of work done and do an online test of interpreting skills and ethics. The NAATI system is comprehensive, in that it covers all languages (including Sign Language and indigenous languages) and covers conference interpreting as well as liaison interpreting. The question of whether the generic nature of the system should be supplemented by any specialization, such as for legal interpreting, has been the subject of ongoing debate.

Two assumptions underpin this approach: first, that interpreting skills are basically generic; that is, that interpreters display an overall level of language transfer and testing this generic level gives the best indicator of interpreter quality; adaptation of these skills to any specific context (health, law, business interpreting etc) can be more readily accomplished if there is a high level of generic skills. Secondly, within the relatively small Australian market, the prospects for specialisation in a particular field of interpreting are small, with most interpreters working across sectors. While in training courses, areas such as health and legal interpreting receive particular coverage, the stand-alone tests may at any particular time not cover either of these areas, due to their generic nature.

Generic certification is also followed in Sweden (with a follow-up specialist certification in legal interpreting) and in Norway (Giambruno, 2014). The Register of Interpreters for the Deaf [RID] in the USA also provides a generic level of certification, followed by

specialisms (http://www.rid.org). Meanwhile, the British system of a Diploma and a Register of Public Service Interpreting sits between the stools of generic and specialist skill certification – candidates must take a compulsory general module on "Professional Conduct in Public Service Interpreting" and then choose one of four specialist areas – law, Scottish law, health and local government (which is largely welfare and social security) – with many candidates actually choosing several in their Diploma and test. Meanwhile, the National Register records all those who have passed the Diploma and the various tests they have passed, but also lists interpreters with varying degrees of qualification.

While these examples show the context of legal interpreting occupying a place among a range of certification practices, or being subsumed in generic certification, some systems follow the American practice of carving out court interpreting for particular status. This is characteristic of Austria, for example, where court interpreters have separate certification processes and a professional association distinct from those for other liaison or community interpreters (Pöchhacker, 1997). A survey of European provisions (see Giambruno, 2014, chapter 9, for profiles of all EU member states, plus Norway), identified a category of sworn interpreter (or sworn translator) as having some official status – particularly in Eastern, Central and Southern Europe – but the criteria for achieving this status differed radically, all the way from highly structured examinations to no requirements at all for registration, other than an oath. It was partly the historically entrenched extreme variety in status – and the subsequent problems of practice in interpreting in these varied regimes – that led to European attempts to standardise approaches to legal interpreting, described immediately below.

An overview of certification and other aspects of provision in a number of countries around the world, and the degree to which legal interpreting is referenced, is given in Ozolins (2010).

Attempting a multinational approach to rights and provision: EU Directive 2010/64/EU

European Union Directive 2010/64/EU, concerned with the right to interpreting and translation in criminal proceedings, constitutes perhaps the most dramatic step seen to bring about system-wide change in legal interpreting, and to provide the necessary infrastructure to realise such an aim. This is an ambitious undertaking, considering the very wide diversity of practice among the EU member states, and their degree of readiness to implement its requirements.

As often in this area, the Directive had a long and legally much contested gestation. Hertog's (2015) careful history traces the EU concern with justice as arising after the Maastrich Treaty of 1992, when issues of justice, relating to a number of social and human rights issues, gained greater prominence in EU affairs. The EU adopted a series of measures, including the European Convention for the Protection of Human Rights and Fundamental Freedoms [ECHR], which *inter alia* stipulated the requirements for a fair trial, and fair process, including the right to be informed, in a language one understood, of charges, and the right to a free interpreter in a criminal court. Other initiatives included the framework decision for the introduction of a common European Arrest Warrant, which simplified extradition procedures, and the language issue of the recognition of this by other member states. Meanwhile, concerns over a range of issues, including

drug and human trafficking and terrorism, made attention to justice issues ever more urgent.

A significant issue for the EU is that of trust between member states, in the first instance trust that nationals of one state charged with any criminal offence in another state will be treated according to common standards. With over 20 million EU citizens residing in states other than their own, this was an increasingly salient issue (Hertog, 2015: 77). Trust in each other's criminal process mechanisms became, thus, a significant objective, and a major factor in convincing member states to adopt common measures.

Beyond that, there were significant numbers of non-EU nationals in the criminal system, which created strains for all EU member states as they sought individually to meet needs, a phenomenon also seen as needing a coordinated response.

Early drafts of the directive included the reiteration of the right to interpreting at all stages of criminal proceedings, the translation of relevant documents, and the audio-recording of all significant criminal processes. Importantly, provisions also attended to the quality of interpreting, by outlining requirements for the training of interpreters and also of those working with interpreters, establishing a national register of qualified interpreters and translators, and the drawing up of guidelines for good practice. A series of projects beginning with the Grotius project of 1999 looked at the required legal interpreting and translating competences and how they might be achieved, as well as training and how to instil good practice.

The European Commission's project on 'Procedural Safeguards in Criminal Proceedings' in 2002, a subsequent Green Paper and a series of framework agreements, picked up legal interpreting and translation issues as one of a number of areas that states needed to work on in order to ensure such safeguards. However, there were a number of objections from several states that certain requirements, such as the recording of all court cases and interviews, or the monitoring and producing of data on all interpreted cases, were too onerous, and the costs would be too high, with costs already high, especially for translation. Training regimes for interpreters and translators across the EU were also very diverse, resulting in pushback on this item. There were also broader arguments that the details of provision of language services should be left to each individual member state.

These provisions, and objections to them, have been traced in some detail, as many of the issues that were controversial *between* EU states in other contexts, have been objections, spoken or unspoken, to attempts to improve provision of language services *within* many countries.

Significantly, the right to interpreting and translation was only one of a number of intended procedural safeguards, but the EU Commission saw a chance to push the language issue despite these objections. Such an opportunity came after the groundbreaking 2009 Lisbon Treaty, which gave greater emphasis to social justice, accepted the ECHR as an EU-wide measure with the force of law, and gave the European Parliament and the Council greater legislative authority in both criminal and civil law. It was then decided to rework earlier frameworks into a directive, that was binding on all member states. Controversial items, such as the demand for recording and the training of interpreters, were omitted, but other requirements of the eventual Directive are worth detailing.

Directive 2010/64/EU (http://eur-lex.europa.eu) on legal interpreting and translating was the first such Directive in the justice field, with the following significant provisions:

- First, the right to an interpreter obtains from the moment someone is made aware they are suspects, likely to be accused of a criminal charge, until the court decision. All stages of the criminal process must ensure the provision of interpreting if needed, including communication between a suspect and their legal counsel, if they do not share a common language. Not providing an interpreter can be grounds for appeal. However, it does not deal with language issues in prison or when on parole, nor with the non-criminal processes of mediation or alternative dispute resolutions or civil cases, nor in such matters as asylum hearings.
- There is also the right to the translation of essential basic documents. And the costs must be borne by the member state where the process takes place, whatever the outcome of the proceedings.
- The Directive stipulates that quality must be ensured, and that it is possible to complain if the interpreting or translating is not up to the required standard, with Article 2.9 stipulating that "Interpretation shall be of a quality sufficient to safeguard the fairness of the proceedings", this being reinforced in a number of other articles.
- A register should be established of qualified interpreters (Article 5.2): "In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified."

As Hertog comments, 'endeavour to establish' is vague, but it does indicate that member states must have some way of showing that the quality of interpreting has been considered when providing language services. However, the Directive says nothing about what these quality standards should be, nor what training might be involved. And 'independent' is equally unclear.

- On the other side of the issue of training, the Directive does prescribe in Article 6 that member states shall request that "those responsible for the training of judges, prosecutors and judicial staff who are involved in criminal proceedings pay special attention to the particularities of communicating with the assistance of an interpreter, so as to ensure efficient and effective communication." Records must be kept of interpreting and translation assignments.
- Turning to the question of how the Directive can be implemented ('transposed' to each member state in EU terminology), member states needed to adapt any necessary local legislation by October 2013, and report back by October 2014, with reports available on a public site http://old.eur-lex.europa.eu. Significantly, the stipulations for I&T in Directive 2010/64/EU have been repeated in other subsequent Directives reinforcing procedural fairness, for example that for the victims of crime (Directive 2012/29/EU).

Hertog recommends an ideal 8-step route to transposition, and, while this references the requirements and indeed shortcomings of the EU Directive, the steps are those that can also highlight what needs to be done in other jurisdictions. We detail the suggested steps here, before returning, in the final part of this paper, to some other concrete cases of implementation of effective language services in other legal jurisdictions.

Hertog recommends the following 8 steps for successful transposition:

- Establish a working group of all relevant stakeholders, primarily to set baseline data and engage in planning. Later to monitor incremental progress;
- Develop an overall strategy and quality chain, ensuring appropriate training, registration and professional development;
- Implement available good practice information;
- Establish training (commented on further below);
- Provide interpreting by videoconferencing, and ensure training for interpreters in this medium;
- Establish a register;
- Manage the costs of language services, including guarding against the false economies of outsourcing;
- Involve all relevant legal professions in training and in good practice working arrangements.

On training, Hertog takes seriously the disjunctions between present academic courses, whether in languages per se or in I&T, and actual language needs in legal interpreting and translation "given that any top ten of languages (which will almost certainly not be the ones taught in higher education) covers roughly 80% of the needs in criminal proceedings" (2015: 93–4). Rather than hoping for training to be covered by present universities, Hertog posits the alternative of professional/vocational education, within or outside current courses, which provides a gateway to certification and inclusion on the register for legal interpreters or translators in languages of high demand which are not taught in universities:

> Such programmes are usually evening and weekend classes, increasingly making additional use of distance learning and range on average between 120 and 220 hours.
> (Hertog, 2015: 93)

Such programmes should also have the active involvement of representatives of the legal profession and other stakeholders.

Further European developments can be followed on the very copious website of EULITA – the European Legal Interpreters and Translators Association – established to lobby for changes to European practices in this field, and monitor progress. A raft of initiatives on technology, training, registers, and the link between Directive 20110/64/EU and other policy, can be accessed here (http://www.eulita.eu).

For those who have struggled for years in difficult circumstances to promote legal interpreting, the EU Directive is a cause for optimism: Blasco Mayor and Pozo Triviño (2015) see this Directive as significantly enhancing prospects in their country. However, the success of having such powerful legislation guide language services should not blind us to the difficulties of actual implementation, and the very real problems of motivation to change current practices.

Conclusion: Slow grinding through hard boards: champions of interpreting and where to find them

From our survey of international practice, it is clear that in each country attention must be paid to the political and social structure in order to draw attention to interpreting in the legal system. In the USA, it is the constitution and its legal underpinnings, without

which nothing else can move, which imposes its own limits: moving beyond minimal compliance is a difficult but necessary step. In common law countries and others where constitutional matters and rights figure less strongly, a more amorphous system must be tackled. And this necessitates finding champions who can work together with interpreting interests to promote issues that broader structures may not be sensitive to.

In the UK it was Ann Corsellis, working from within the magistracy, with the help of an authoritative language body, the Institute of Linguists. Specifically in the legal area Corsellis, herself a magistrate, recounts that

> We have started by training the magistracy in what is needed, so that the chairman of the court can monitor and protect communication.
> (2004: 123)

We will see below the importance of training front-line workers, such as the police, to be able to work with interpreters; supervision from the top of the legal food chain, in Corsellis' view, is also crucial. Further, she stresses the importance of gathering data and record keeping: judicial administrators will often not initially know the extent of interpreter use, or their financing, hence the need for monitoring at this administrative level. Beyond that, a national register is needed, so that information about the qualifications of interpreters can be found and judgments about the suitability of particular legal work can be judged.

It is important, at the same time, to understand the difficulties of such training of legal personnel, and in particular those who are at the furthest reach from the judiciary: those doing initial criminal investigations or apprehensions (often done under extreme pressure and in less than ideal circumstances for all involved), and in follow-up investigations, when complexities and involved personnel multiply. In commenting on Corsellis' suggestions, Wiersinga warns that in many cases

> the guidance of police officers has proven to be virtually impossible in practice [...] police officers – who must do their work in the 'heat of battle' and therefore under great pressure and often with insufficient capacity – have a kind of natural tendency to think insufficiently along procedural lines and to explore the (lower) limits of the 'proper administration of justice'. Things that are only just permissible are often good enough in the eyes of the police officer.
> (Wiersinga, 2004: 136)

In Wiersinga's view this can lead to the misuse of interpreters. Further problems arise when Police and prosecutors have a poor working relationship (Wiersinga is talking of the Dutch situation, but this can be a wider phenomenon), where even arguments over the translation of essential documents (a large and controversial expense in present European systems), can impact on interpreters.

In a quite startling recent article, Spanish interpreter Ortiz Soriano (2015) gives a harrowing account of her experience in police interviews, which will be instantly recognised by any interpreter who has worked with police who were not trained in working with interpreters. In Soriano's case, she gives relentless examples of how police officers treat both suspects and the interpreter with equal intolerance and insistence – almost always addressing the interpreter rather than the suspect, interrupting, expressing impatience. Soriano analyses her own performance as an interpreter under these conditions, measuring this against various canons of impartiality:

- Should an interpreter ever actively intervene in a situation (beyond normal clarifications. . . .)? Soriano recounts instances of where a police officer does not themselves read out the rights of an arrested person, expecting the interpreter to explain, when it turns out there is no written text; if the interpreter does not do so, thereby stepping outside their professional role, the suspect will never know their rights.
- Can an interpreter interpret everything? Side conversations are ubiquitous, and often there are interruptions as third or fourth parties come into the interrogation, again causing overlapping of speech. On occasions police or lawyers ask the interpreter to do certain administrative things or give advice outside the conversation taking place.
- Can the interpreter use the first person, acting as the 'voice' of the speaker, when almost all questioning and answering is done using the third person, forcing the interpreter to continually rephrase; both police and suspect address the interpreter, and when a lawyer is present then a multiparty situation develops of overlapping speech, and continual loss of message, requiring constant identification of speakers and reporting.
- Conversations should take place between the participants and not with the interpreter, but in the third-person rich environment, both police and suspect talk to as well as through the interpreter, as one suspect related: "I have to tell you what happened, you are the only one who understands me" (Ortiz Soriano, 2015: 14trans).
- Omissions, modifications and additions are, in this context, legion.

In such a context, the moves an interpreter makes seem to be not only a conveying of a message, but also a kind of self-defence. Soriano remarks that these police interviews took place after Spain had accepted the European Directive and legislated the necessary elements of it into its own domestic law.

Soriano sees that an urgent need in these situations is training – training for those personnel in the various levels of the legal system who work with interpreters, so that reasonable processes can be developed and expectations set. Significantly, although the training of interpreters is not mentioned in the European directive, the training of legal personnel to work with interpreters is stipulated.

Measures such as the recording of all interviews and the judicial oversight of translations are important yet distinct areas, where improvements of practice would benefit not only interpreters, and hence open the prospect of legal personnel working with interpreter interests in mind, in order to promote change in these processes; interpreters may well need the help of champions within the law on these matters. However, even for interpreters to raise these issues effectively they themselves need a strong professional body, which is often lacking; much policy-making is *about* interpreters but with, at times, little consultation *with* them.

Another factor in finding champions in some jurisdictions has been the work of charities and foundations in doing some of the spadework of basic data gathering, getting working groups together and even helping to initiate basic interpreting services. Thus, for example, in Britain the Nuffield Foundation financed early work on improving nascent interpreting services, and helped establish Britain's first telephone interpreting service LanguageLine. In the USA, Foundations have been prominent in legal interpret-

ing, for example supporting basic research on juror impressions of interpreted evidence (Berk-Seligson, 1988) and establishing the National Center for State Courts – perhaps surprisingly, this is not a government agency but a non-government organisation.

One reason for the importance of non-government organisations is that they not only bring in perspectives from outside the legal systems that identify points of change, but also bring necessary financing for research or implementation in areas where legal administration itself is highly constrained: although one image of the legal system might be of judges receiving high salaries and lawyers charging exorbitant fees, in fact much of the judicial administration is run very parsimoniously. As just one point here, neither judges not court officials nor police chiefs can easily influence the remuneration of interpreters. Who determines remuneration will vary enormously in different systems and often seems mired in past poor practices: Giambruno's (2014) survey of the European system identifies several jurisdictions where fees are set at low levels in rarely updated legislation or regulations, discouraging quality interpreters from working in the legal system.

The mention of research also alerts us to the importance of academic contributions, particularly where they are linked to established connections with the legal system. In both Italy and Spain, countries with hitherto poorly developed legal services, and where experiences such as Ortiz Soriano's above are not uncommon, a group of academics has produced striking work and made connections with judicial administration (Rudvin, 2014; Valero Garcés, 2014; Giambruno, 2014). Similarly in Australia, its leading author on legal interpreting, Sandra Hale, has worked tirelessly with judicial administration, providing training for countless magistrates, identifying judges and court officials who see the need for improvement and better processes, thus finding champions within the legal system itself, and bringing about a major report on improving language services in courts (Hale, 2011).

Some interpreting issues are helped by developments in outside policy areas. Sign Language interpreting has gained in prominence through disability legislation increasing around the world. In another sphere, indigenous interests have gained a louder voice: the inclusion of Navajo, for example, among the languages catered for under the Court Interpreters Act in the USA – despite its stalled implementation – shows this influence at the highest level. In many other jurisdictions, however, indigenous interests must still battle to be heard – and for their languages to be heard: where judges and lawyers have no clear guidance on language issues, or where statutes governing certain rights are ignored or side-stepped, arbitrary decisions are likely to be the result. The Brazilian trial of *Veron* is a case in point, where a judge refused to allow indigenous witnesses an interpreter to enable them to use their native languages, because they were judged to be able to speak Portuguese, leading to a standoff (Vitorelli, 2014). Champions need to be found, within the judiciary or police force or non-government organisations, to alert the broader system to indigenous needs, as they have been at least partly in Australia, where indigenous languages are now recognised and for interpreting purposes are covered by the NAATI system, and judicial officers are increasingly aware of the issues of collecting evidence from indigenous participants (Cooke, 2009).

While each legal system sees itself as unique and jealous of its own processes and ideologies, the issue of the need for interpreters and obstacles to implementation of effective language services are remarkably similar around the world. Interpreters themselves

may have little influence on changing the system or having their importance recognised. It will take the building of many coalitions to alter this state of affairs, which may be based on different principles and points of access in different jurisdictions, from constitutional challenges to training police recruits and many points in between. Finding champions outside the world of interpreting will be as important as the ceaseless work of those within the interpreting profession itself to bring about change.

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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 Australia[2] 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 videoconferencing, 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

[1]See 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 intereresting report prepared by the Council of Bars and Law Societies of Europe and the European Lawyers Foundation (Goldsmith, nd).

[2]Australia has one federal parliament, 6 state parliaments and 2 territorial parliaments for a total of 9 "governments".

[3]Except 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 Projet, nd). Information was provided by informants in each of the EU member states.

[4]For 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.

[5]For 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.

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

[7]A 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).

[8]For 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).

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

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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 exits 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 - *Conference Internationale Permanente D'Instituts Universitaires de Traducteurs et Intepretes*) is the oldest international association of university institutes with translation and interpretation programmes and is devoted to excellene in T&I training and research. http://www.ciuti.org/

National:

Australia Institute of Translators and Interpreters (AUSIT) is the Austrialian 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 goverentments 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 Interprteters 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 Aistritheorirí 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 Speicalized Translators (TEPIS, *Polskie Towarzystwo Tłumaczy Przysiegęłych 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 trasnlators 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 Socieities 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 inteviewing 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 taining 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 interestes 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 Providion 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 **Aequlibrium: 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 Langauge and Culture in the EU**

Court Interpreting in England: what works? (and for whom)? How Interpreted Prison Video Link impacts upon courtroom interaction[1]

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Abstract. *All defendants who do not speak the language of the court are at a disadvantage. This article considers how the impact of two factors upon the quality of interpreting in our courts might confer additional disadvantage. Firstly it considers the contracting out of interpreting services to private companies, whose main consideration is profit rather than competent interpreting or justice for the defendant, a political dimension often ignored by interpreting scholars. Secondly it explores differing viewpoints and perceptions of interpreted court hearings by five groups of participating court actors where prisoners appear in court via video link from prison. Using in-depth interviews, audio-recordings of court hearings and ethnographic observation, these differing perceptions will be used to provide vignettes of court hearings and prisoners as they appear remotely, dependent upon the interpreter's renditions to orientate themselves to court proceedings. Finally, training and a best practice protocol for court actors and interpreters is suggested.*

Keywords: *Court interpreting, prison video link, videoconferencing, whispered simultaneous interpreting, chuchotage, consecutive interpreting.*

Resumo. *Todos os constituintes que não falam a mesma língua que o tribunal se encontram em desvantagem. Este artigo investiga de que modo o impacto de dois fatores na qualidade da interpretação nos nossos tribunais poderá contribuir para uma desvantagem adicional. Considera-se, em primeiro lugar, a contratação de serviços de interpretação a empresas privadas, cujo principal enfoque são os lucros, em detrimento de uma interpretação competente ou da justiça para o constituinte, uma dimensão política tantas vezes ignorada pelos investigadores em estudos de interpretação. Em segundo lugar, este artigo explora as perspetivas e as perceções divergentes de cinco grupos de atores intervenientes no tribunal relativamente à audiência com recurso à interpretação, em casos nos quais os detidos são presentes a tribunal a partir da prisão, através de "video link". Com recurso a entrevistas estruturadas, a gravações de áudio de audiências e a observação etnográfica, estas diferentes perceções serão utilizadas para fornecer vinhetas das audiências e dos*

detidos de acordo com a sua apresentação, remotamente, apoiando-se no trabalho de orientação pessoal do/a intérprete na audiência. O presente trabalho termina com uma proposta de atividades de formação e um protocolo de boas práticas para intervenientes judiciais e intérpretes.

Palavras-chave: *Interpretação jurídica, "prison video link", videoconferência, interpretação simultânea sussurrada,* chuchotage*, interpretação consecutiva.*

Introduction

There are two dimensions which are often ignored or sidelined in court interpreting research. Firstly there is sometimes a failure to take into account the wider geo-political context within which the criminal justice system operates (notable exceptions are Barsky, 2000; Camayd-Freixas, 2013; Blasco Mayor and Pozo Triviño, 2015; and Wallace, 2015). Changes in criminal justice are frequently political ones; politicians and governments respond to media rhetoric, make decisions based on perceived economic circumstances and act according to the prevailing political ideology. The negative attitude of successive governments in the UK towards adequate funding provision for criminal defence services, public alarm about the rising cost of legal interpreting services as a result of increased migration, media rhetoric concerning super-diversity (a term coined by Vertovec, 2007) and the impact of outsourcing public services to commercial companies, are bound to exert an influence upon the quality of interpreted communication within our court system. If we want to study prison video link technology and its effect upon interpreters, defendants and court personnel, then, these court actors need to be seen as firmly situated within these wider contexts. Such considerations will tend to show more clearly how these decisions affect the quality of interpreting and will highlight the wider complexity of the interaction in court.

Secondly, interpreting where there are three people present in the room (interpreter, service user, service provider) means that there are at least three different perceptions of the interpreting process (Wadensjö, 1998). However, in a typical courtroom there could be as many as nine or more participating court actors, all of whom use institutional language in different ways to achieve different goals. Add to this various members of the public, relatives of the defendant in the public gallery and other advocates and defendants awaiting the hearing of their cases and it is easy to see how complex courtroom communication can be. This article attempts to show how experiences of the court process will depend upon the seating position of different court actors relative to the "well" of the court, their status, their audibility, and whether they are present in court in person or appearing remotely via video link. Rather than three different perceptions of the same interpreted event, then, there are at least six (defendants, whether remote or present in court, defence advocates (DA), crown prosecutors (CP), magistrates, legal advisers/court clerks, interpreters). If these different perceptions are not taken into account, we are in danger of ignoring some of the most important actors in the criminal justice process: the defendants, and "what works best" for them in terms of communication rather than "what works best" for the court.

This article is a distillation of a much longer study (Fowler, 2012) which considers the viewpoints of five of the above categories of court actors, using in-depth interviews and ethnographic observation, and with the aim of devising a best practice protocol and training programmes for court personnel and interpreters, so that the particular

needs of non-English speaking defendants can be best served. I first describe the background to the current crisis, then provide a short introduction to the criminal justice system in England and Wales, then explain briefly how and why prison video link (PVL) was implemented by the government of the day in 1999, and then survey the literature about proceedings where defendants use PVL and about how the architecture of the court can influence communicative relationships and interaction within the bilingual court. Finally, I describe how defendants can appear remotely in court for interpreted interim non-evidential hearings in magistrates courts, provide a best practice protocol for interpreters and the judiciary (see appendix 11), and consider whether or not non-English-speaking defendants are disadvantaged by not appearing in person in court. The article does not provide contrastive analyses of speaker utterances and their renditions by interpreters into a target language or vice versa, as this area of interpreting studies has been extensively explored (Berk-Seligson, 1990; Wadensjö, 1998; Hale and Gibbons, 1999) amongst many others. The focus in this paper will rather be upon a selection of the evidence provided by audio-recordings and ethnographic observations of 10 face-to-face cases and 11 prison video link cases (see Fowler, 2012 for the original study, including accounts of in-depth interviews with court actors). The research upon which this article is based focuses only on magistrates courts, and not on crown courts, since the majority of criminal cases start and end there (see appendix 1 for a brief overview of the Criminal Justice System in England and Wales).

The impact of the outsourcing of court services

As a result of the deficit reduction programme which the United Kingdom government has in place, a series of deep cuts to public spending have been implemented, intended to shrink the welfare state. The legal system has been particularly badly affected; courts are being closed, and entitlement to Legal Aid reduced (many defendants now have to represent themselves). More cuts are promised. In 2012 as part of this austerity programme, the Ministry of Justice handed over control of the supply and management of court interpreters to a global for-profit organisation, Capita – purportedly to save on costs, although evidence for this has not been forthcoming (Parliament Public Accounts Committee/Interpreters for Justice 2014). This has resulted in an immediate decline in the quality of interpreting; many experienced, trained and qualified interpreters have boycotted the company because of the low rates of pay. Many of those who are now mediating justice in our courtrooms up and down the country are untrained (or poorly trained) non-professionals. Evidence of the consequent poor quality of service comes, on an almost daily basis, from legal professionals, members of the judiciary and interpreters themselves (see Linguist Lounge, nd, and Unite the Union, nd).

The demand for quality public service interpreters has always outstripped the supply, but advances made in PSI, in the UK, over the past twenty years or so, such as the National Agreement – a voluntary agreement entered into by the courts, the Law Society, the Probation Service and the Police in 1997 to use only interpreters appearing on the National Register of Public Service Interpreters – seem to have been swept away overnight, because of the contracting-out of interpreting services. The National Register of Public Service Interpreters (2016), although still in existence, has been bypassed and the number of registered interpreters is dwindling. Anti-migrant rhetoric in the media has increased, too (Nagarajan, nd). It is against this unremitting ideological and geo-

political backdrop that interpreters, campaigners, academics and interpreter educators are struggling to promote the benefits of quality public service interpreting.

The introduction of Prison Video Link in the UK

In 1999, as a result of Section 57 of the Crime and Disorder Act (1998), the UK government installed PVL in Magistrates and Crown Courts, and, more recently, in all Immigration Detention Centres. Remand prisoners, who are awaiting disposal of their cases, now frequently appear in the courtroom not in person, but from prison via PVL, a very common procedure which takes place almost daily. The main reason for the use of PVL is (purportedly) cost, as it is considered unnecessarily expensive to transport prisoners to court for short remand and such non-evidential hearings as are permitted to be held via prison video link. Not much thought was given to the interpreters, nor even indeed whether they should sit with defendants in prison or remain in the courtroom, although on the whole, the latter practice prevails.

The relative status of court and conference interpreters

When comparing diplomatic, business escort or conference interpreters with public service interpreters, there is no doubt that the latter occupy a much lower status, a fact which is reflected by low pay, often difficult working conditions and particularly lack of equipment. By contrast, conference interpreters generally work from sound-proof booths, often in teams to prevent fatigue, with electronic simultaneous interpreting equipment. Conference interpreters often have prior access to the speeches of the presenters, and are able to prepare material to anticipate vocabulary and other discourse problems (considered pre-requisites for quality interpreting by Kirchhoff (1976) Gile (1995) and Chernov (1979)), whereas court interpreters are often denied, or at best have restricted access to, documents before a case hearing. Conference interpreters tend to interpret unilaterally, whereas court and other public service interpreters interpret bilaterally. Morris, an experienced conference and public service interpreter, attests to the "denigratory way in which the court treats foreigners" where the interpreter is seen as a necessary evil (Morris, 1995: 28).

The ECHR and the European Directive 2010/64/EU

Article 6 of the European Convention on Human Rights guarantees the right to an interpreter in legal proceedings (European Court of Human Rights, 2002), but since the use of the title of "interpreter" is not legally protected (or even defined) in English/Welsh, or indeed, European law, there is no legal impediment to anyone trading as a public service interpreter. According to Hertog "it is difficult to overestimate the importance of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings" (2015: 73). By October 2013, all member states were supposed to show the EU how they had implemented the Directive. However, one of the ways in which the UK government claims to have complied with the Directive is by the very outsourcing of the supply and management of court interpreters, which, as mentioned above, has resulted in the decline in quality interpreting. Outsourcing is common in many other European and non-European countries such as Spain, Denmark, Ireland and the US (Blasco Mayor and Pozo Triviño, 2015; Angelelli, 2015). Indeed a few EU member countries have not implemented the Directive at all.

Interpreting via video link: a review of the literature

The evaluation of video conferencing (VC) in the courtroom has been undertaken in two main academic disciplines: interpreting studies and law (but these studies are mostly in the US where PVL is used for a wider range of proceedings than in the UK, and do not involve interpreters).

The recommendations of the Assessment of Video-Mediated Interpreting in Criminal and Civil Justice (AVIDICUS), a project funded by the European Commission, are based upon a comprehensive review of video-mediated interpreted legal events in Europe and other parts of the world, and include a survey of interpreters to determine their views of VC, a survey of judicial institutions to determine the extent of the use of VC, as well as field observations of VC in practice in the courtroom.

Comparative simulated studies were carried out to determine the quality and viability of the interpreting (Braun and Taylor, 2011b). Braun's early studies of interpreters using video conferencing in business settings (Braun, 2004, 2007) showed how interlocutors were observed to speak more loudly, to overelaborate and to seem less coherent than in traditional face-to-face communication. These findings are backed up by Miler-Cassino and Rybinska (2011) and a study by Braun and Taylor (2011a) which also showed that VC sessions required greater concentration, were longer, and that miscommunication problems took longer to resolve. Listening comprehension problems due to poor sound quality created difficulties, as did the two-dimensional view of the site provided by the screen and the consequent loss of visual signals from participants, including eye contact. VC interpreting was found to be more tiring, with more turn-taking problems arising than in face-to-face communication. Interpreting errors increased after a twenty-minute period, a finding which coincides with that of Moser Mercer's (2003) study (see below). Braun (2011) recommends that VC interpreting should be introduced incrementally, with pilot phases leading to adjustments, before moving on to the next stage and that it be used solely for low-impact crime and short hearings employing trained, qualified and experienced interpreters. The AVIDICUS recommendations are targeted at three groups: public/judicial services, interpreters and legal practitioners/police officers. They are necessarily generic in their application, with only one set of recommendations and guidelines, whatever the camera configuration, jurisdiction, numbers of interlocutors, camera positions, settings or contexts. The report refers to "legal practitioners" as a group (Braun, 2011: 265) and includes police officers, prosecutors, solicitors and judges. It is important to note that all the findings in these studies are based on simulated, rather than authentic data. However, in the English and Welsh court context, different interlocutors have different legal, communicative and practical goals, and these goals determine particular views of the role of the court interpreter, which in turn affect the behaviour of all court actors in a PVL court. The aim of my study was to avoid considering court actors as an undifferentiated group, which might imply a misleading unanimity of perspective. My objective was to discover the extent to which the non-English-speaking *defendant* might be disadvantaged, or even advantaged, by appearing in court remotely via PVL.

Research into video conferencing in conference interpreting

Moser Mercer's (2003) study into non-verbal cues in the conference interpreting context is a useful guide to the part played by these cues in message comprehension. Moser

Mercer asserts that information from the face improves the comprehension of the message and that non-verbal behaviour complements auditory information. This appears to have a crucial relevance for PVL, and what she discovered is backed up by the interview responses of the court interpreters in my original study. In PVL interpreting the courtroom-based interpreter is deprived of many of the sensory cues considered necessary by Moser Mercer – cues which would normally be available, if the non-English speaking prisoner were sitting beside her. The applicability of Moser Mercer's research to court interpreting has only partial relevance, however. The speakers whose utterances are being interpreted for the remote defendant are co-present in the courtroom with the interpreter. The court interpreter does not sit in a soundproof booth, and competes with the distractions and extraneous noise of the courtroom. PVL hearings are relatively short and sometimes time-limited (lasting from a few to thirty minutes), whereas conference interpreters usually work in pairs for stretches of 20 or 30 minutes at a time. The person at whom the interpreting is being directed, the remote defendant in custody, rarely speaks, and is mostly an observer of the court proceedings. Worryingly, the defendant is dependent upon pre-selected video shots, and if the court clerk/legal adviser, whose task it is to track the speakers, fails to track accurately, the defendant may be looking, for example, at an image of the magistrates, when it is the advocate who is actually speaking.

Napier's Australian study

Included in the AVIDICUS report is an article by Napier (2011: 207–211) based on data obtained from Deaf "defendants" through simulated hearings in a courtroom in Australia. Five different configurations were tested for this study. A series of scripts based on actual transcripts of court hearings were used in the five different configurations. Participants were interviewed about the experience, and the data was analysed resulting in a summary of the issues, which were grouped together under the headings of technological, linguistic, environmental and logistical. The issues were then incorporated into a series of six recommendations, a summary of which follows:

1. The system as it is should not be used for Auslan/English interpreting services as there are too many technological, linguistic, environmental and logistical issues to ensure equitable access to good communication. This recommendation was rejected but the following four were accepted by the authorities who commissioned the report.
2. If it has to be used, it should only be used for certain procedures, and with provisos.
3. If the system has to be used, hearing should last no longer than 30 minutes.
4. If the system has to be used then technological guidelines must be developed to ensure that technological constraints are addressed.
5. If the current technology were ever to be upgraded, the findings of the research should be considered in determining the best course of action.
6. If the current system has to be used, guidelines must be developed for all court personnel who encounter the system. (Napier, 2011: 207–211)

(See appendix 2).

Research into courtroom interpreting in the wider field of interpreting studies

There is a small number of studies of the use of VC by conference interpreters, which shed some light on the VC process. Research undertaken by the European Parliament (2001) and the European Commission (2000) in the field of RCI has resulted in the AIIC (Association Internationale des Interprètes de Conférence), devising minimum standards of audio-visual quality (2002), and in their placing limits upon the duration of the conference interpreter's time in the interpreting booth. Mouzourakis (2003) sums up the research to date, which appears to show that, despite an excellent quality of vision and sound, conference interpreters involved in remote conference interpreting (RCI) experience greater levels of stress, physical discomfort and fatigue, together with a concomitant drop in the self-perceived quality of their output. Citing the work of Dennett (1992), Marr (1982), Zeki (1999) and Solomon (2002), Mouzourakis highlights the crucial role of vision in the interpreting process; the eye does not merely reflect what it sees, but actively searches for aspects of objects which are relevant to the viewer at the time. Thus vision is not passive, but active; it is this individualised, selective activity which is denied to the interpreter because the framing of the speaker and its subsequent transmission is beyond her control.

Critiques of prison video link: non-interpreter-mediated cases

Studies which have been very critical of PVL in the US courts have mostly been conducted by legal academics and others at the Federal Judicial Center in Washington. Thaxton (1993) sees electronic production of a defendant as a clear violation of both the Fifth and Sixth Amendments of the US Constitution (the right to due process, and the right to confront witnesses and to have the assistance of counsel respectively). Johnson and Wiggins (2006) claim that the right of a defendant to confront witnesses is "arguably compromised" (2006: 218). Poulin (2004), like Thaxton, claims that VC may violate the Sixth Amendment, since it separates defender from defendant and may inhibit counsel's ability to fully grasp the details of the case, thus potentially interfering with the taking of instructions before, during and after the proceedings. When defendants are physically present they are no longer under the control of prison officials, but of the judge in the courtroom as a neutral convenor, and defendants need to be aware of this (Borman, 2001). Because of the limits of the technology a judge may have fewer opportunities to observe non-verbal behaviour on which s/he may have to base decisions about the immediate future of the prisoner (Poulin, 2004: 10). Although not from the field of law, Scherer's (1986) psychological study, demonstrating how the higher acoustic frequencies carry information about the emotional state of the speaker, is cited by Johnson and Wiggins. They claim that the low and high frequencies of the voice are cut off in VC, and that this may affect the court's perception of the emotional state of the speaker. Poulin (2004), Johnson and Wiggins (2006) and Raburn-Remfry (1994) all see an urgent need for the evaluation of the technology and recommend that information obtained should be made available to the courts, and that until this information is available VC should be used with caution. No reference is made to interpreting or to other court actors in interpreter-mediated hearings in these studies.

Poulin is by far the most comprehensive study of VC in criminal proceedings to date. She draws upon a wide range of her own experiences as a lawyer, and research

in the fields of communication studies and social psychology, which appear to demonstrate multiple negative effects of VC in court. She cites studies which demonstrate how camera shots and the angles at which defendants appear in the frame, are likely to influence decision makers in the courtroom and believes that non-verbal cues such as eye contact, gesture and facial expression cannot be fully captured and may become subject to misinterpretation. She posits that viewer expectations of what they might see on the screen might affect decision makers and their perception of the defendant's credibility and demeanour. No reference is made to interpreting in her article.

Haas (2006) carried out a study into the use of videoconferencing in immigration proceedings in the US. He deplores the separation by distance of interpreters from defendants and worse, the fact that many non-English speaking defendants do not have access to an interpreter. His conclusions about the use of VC in court are negative; like Poulin (2004) and Johnson and Wiggins (2006) he views the physical absence of the accused and his/her right to confront his/her accuser as a violation of the defendant's constitutional right to due process.

By contrast, Bailenson *et al.* (2006) favour the use of VC in court and point to the way in which images can enhance the feeling of presence and provide a better understanding of the presentation of evidence to jurors. However, they admit the difficulty of achieving mutual gaze in the courtroom because of the relative positions of the camera and the monitor for the defendant. The defendant has only two options: either to look at the screen and thus appear to the court with gaze averted, or to gaze directly at the camera and not at what is going on in the courtroom. The defendant's unwitting averted gaze is a feature which I have commonly observed in the PVL courtroom; courtroom personnel in England are indeed acutely aware of the phenomenon and have highlighted this in interviews with me.

To summarize then, lawyers, conference and public service interpreting researchers have problematized video conference interpreting on grounds of audibility, fatigue, mutual gaze, the effect of VC upon the demeanour of the defendant, and the separation of defender from defendant. A more detailed survey of the literature on interpreting and videoconferencing can be found in my original study (Fowler, 2012).

Interpreting styles in the face-to-face bilingual courtroom

Usually court interpreters are trained (insofar as they are trained at all), to deploy two main interpreting techniques in the courtroom: consecutive interpreting, when a defendant is being directly addressed by one of the court actors (which can be heard by the whole court), or *chuchotage* (whispered almost simultaneously into the ear of the defendant) when a defendant is being spoken about, but not directly addressed. *Chuchotage* is largely inaudible to the court and is a time-saving technique used by interpreters in proceedings where the defendant is excluded from the interaction between the other court actors. Not only is considerable skill required by interpreters to use these two techniques, but skill is also required to be able to switch quickly and unpredictably from one technique to the other: from consecutive (at high volume) to *chuchotage* (low volume) and back again to consecutive.

The architecture of the court and its impact upon communication

The only difference between the appearance of a normal courtroom and a PVL courtroom is the presence of screens, usually two, one on each side of the Bench, in plain view of

those occupying the well of the court. Below are two contrasting diagrams of a typical magistrates courtroom in England and Wales, one showing two possible positions for the interpreter in a face-to-face case, and the second showing three possible positions for the interpreter in a PVL case, although there are variations on this model. The importance of the "well" of the court cannot be overemphasised, as it is the privileged area where the most important court actors face each other, and where there is maximum audibility and visibility.

In a non-PVL court (see Figure 1), the interpreter occupies a relatively obscure part of the courtroom away from the well of the court. She is positioned near, or next to, the defendant and by or inside the secure dock (a glass-fronted enclosed area where the defendant sits – sometimes with a security officer if appearing from custody). The main mode of interpreting for face-to-face cases is simultaneous, with consecutive interpreting only being used when the defendant is being directly addressed. However, in a PVL court case, interpreters have to change position (see Figure 2) and sit in the privileged area of the "well" of the court where the protagonists sit. The reason for this is to access the microphone connected to the sound system in the prison and to appear on camera. There is no dedicated microphone for the interpreter (which would be the ideal situation), so the micophone of the DA is usually shared by the interpreter. This has implications for the mode of interpreting which will be discussed in the following section on interpreter behaviours. The advantages of this new position beside the DA are evident; better acoustics and privileged sight lines between those in the court, and the possibility of greater *attentiveness* (Gobo *et al.*, 2008) generated by the interpreter's relative proximity to other court actors. In theory, it is easier for the interpreter to signal an intervention for clarification or repetition should she need to. The audibility and visibility of other speakers are greatly improved for the interpreter, but this works both ways: the interpreter herself becomes much more visible and audible to the other protagonists, since a change of interpreting mode from simultaneous whispering to consecutive mode at full volume directed into a shared microphone is required in order to be clearly heard by the remote defendant in the prison. Mistakes or hesitations by the interpreter will be noticed by other court actors as she occupies this position.

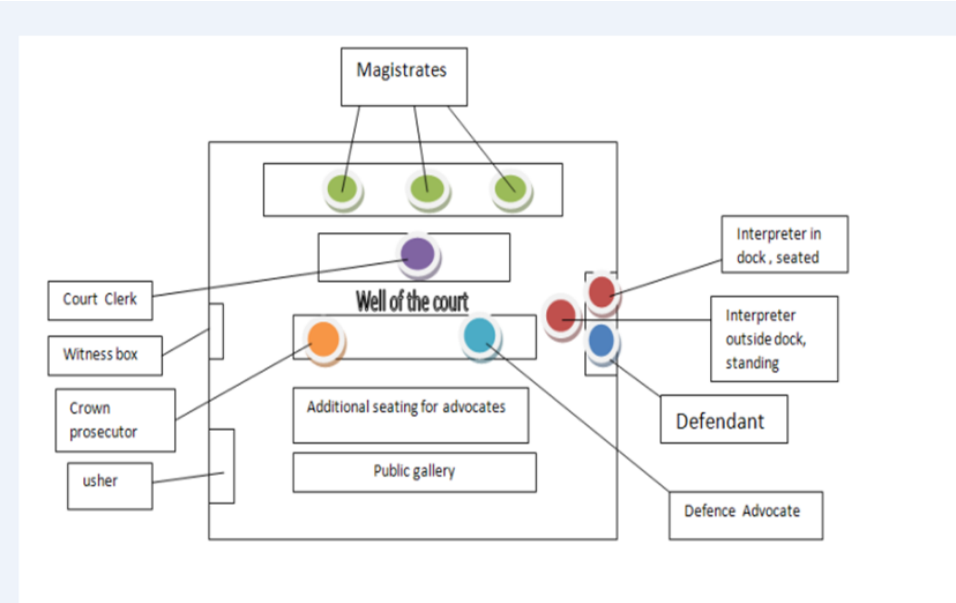

Figure 1. Two interpreter seating/standing positions in a typical face-to-face Magistrates Court.

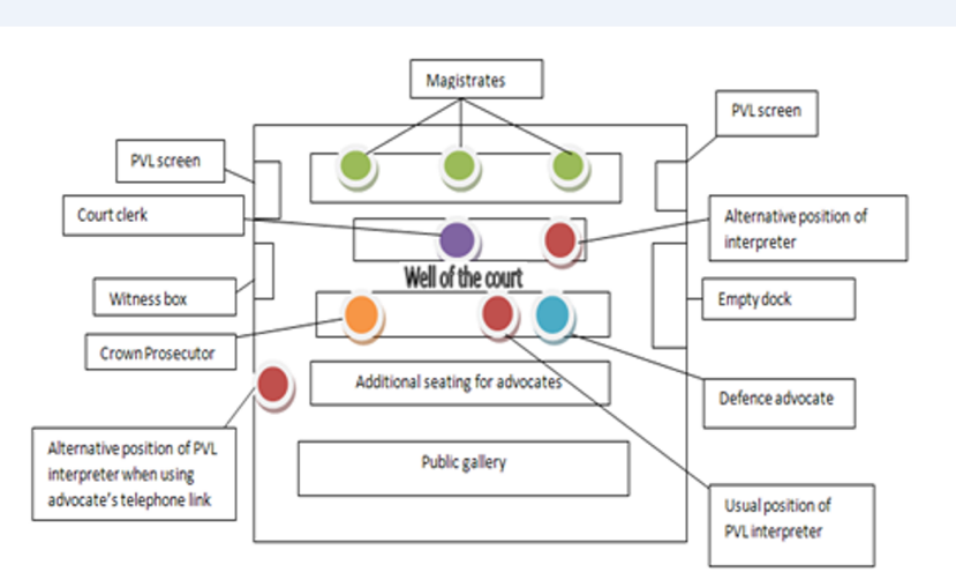

Figure 2. Three interpreter seating/standing positions in a typical PVL Magistrates Court.

Interpreter behaviours observed in the courtroom

The observations and audio-recordings of the ten face-to-face and the eleven PVL court cases referred to earlier provide interesting evidence of the use of a number of elaborations and refinements of the two techniques usually practised by interpreters in court (consecutive and simultaneous/*chuchotage*). Interpreter behaviours appeared to fall roughly into five different categories (see Figure below) which form part of a continuum with low visibility and audibility at one end and high visibility and audibility at

the other. In other words, the continuum is based upon the premise that the greater the voice volume of the interpreter, the more she draws attention to herself (Berk-Seligson, 1990) and the more prominent she becomes, and conversely, the lower her volume, the more invisible she becomes.

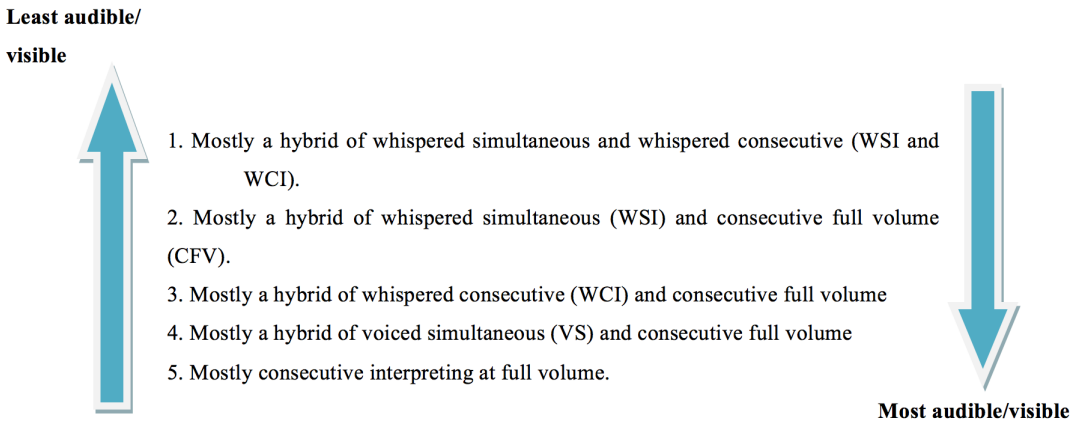

Figure 3. Court interpreter audibility and visibility continuum.

One possible reason why an interpreter might choose to whisper in court (category 1) is to minimise her presence and to avoid drawing attention to herself, either because she feels intimidated by the court, or because of a conception of her role as an "invisible" interpreter. Category 2, where simultaneous/*chuchotage* is normally used for non-defendant-focused interaction and consecutive for defendant-focused interaction, is the recommended and appropriate combination for face-to-face cases. As we move further along the continuum, we can see that the interpreter increases her audibility and visibility until at category 5 she is interpreting mostly at full volume, a phenomenon I observed in PVL cases. I queried this rather idiosyncratic permutation of interpreting techniques with interpreters themselves during the in-depth interviews I conducted with them. However, their responses (see appendix 3) appeared to demonstrate that these strategies were deployed randomly and unreflectively, without appreciating the communicative significance of those interactions that are defendant-focused (when the defendant is being directly addressed by the court) and those that are non-defendant-focused (when the defendant is not being directly addressed by the court). The strategies from 1 to 3 offer the interpreter some opportunity to keep a low profile and maintain low visibility in the courtroom. But, what about the range of strategies available to PVL interpreters? Because of the need to avoid overlapping speech in court, the only strategy available to them is category 5, since in theory at least, any overlapping speech (and this includes *chuchotage*) has to be avoided for the sake of the audibility and comprehension of the remote defendant.

In short then, PVL court interpreters have fewer choices of interpreting strategy than PVL court interpreters, and this difference is directly attributable to the fact that the defendant appears via video link. This in turn makes the PVL court interpreter more visible and audible to the other court actors and her change of seating position from relative obscurity to relative prominence (see figs. 1 and 2) means that her presence cannot be ignored.

Before and after interpreted court cases

Observers of court interpreters may not realise that there are crucial points of pre- and post-court contact for non-English-speaking defendants, DAs and court interpreters in PVL cases immediately outside as well as inside the courtroom itself. Pre-court video linked consultations are necessary for a number of reasons. There may have been too short a time gap between the arrest of the defendant and his/her first appearance in court. It may be that the defendant has previously given instructions to another member of the same law firm and the new advocate needs to confirm those instructions. There may also have been developments in the case since the original instructions were taken, and the advocate may need to take new instructions. In post-court contact an advocate will debrief the defendant as to the consequences of what has transpired during the hearing, and as to its acceptability in law; if appropriate the defendant will be advised as to any available remedies such as a review of a refusal of bail or the terms of the bail. The defendant may also be sentenced via video link without his/her consent and will need to be warned about this.

Throughout these interpreted pre- and post-court contact events, the advocate will want to assess how far the defendant has comprehended what has transpired in court and will have regard to any mental health problems the defendant may be experiencing. However, these interpreter-mediated events are often (but not always) conducted in cramped booths designed to accommodate only one person, the DA. Because there is usually no room in the booth for two people, one of the two is forced to remain outside with the door of the booth open, meaning that confidentiality is compromised, and that the main interlocutors (DAs and their clients), cannot see or hear each other and at worst can only communicate by dint of the advocate passing a simple telephone handset back and forth to the interpreter. My field notes attest to this (see appendix 4), and clearly show how technology, proxemics and layout combine to transmute the interpreter's role to that of an advocate (contrary to the interpreter's code of practice, 2016) with the interpreter communicating at length by herself with the remote prisoner and with the DA partly excluded from the interaction. The question arises of the fairness of such an encounter, and whether advocates who make use of these facilities are able to communicate with, and act appropriately on behalf of, their clients. (See a defence advocate's commentary in the following article).

Camera configurations and how they influence interaction

In a PVL courtroom it is the court clerk (also a legal adviser to the lay magistrates) who controls the camera and tracks the speakers by pressing a button on a remote control. There is a range of six possible shots: one is of the two/three magistrates sitting at the Bench, the second is of the court clerk, the third and fourth of the DA and the CP respectively, the fifth shows a wide shot of the courtroom, and the sixth shows the official crest behind the magistrates (used when there is a break in proceedings or for privacy).

In Figures 2 and 3 above it is possible to see the positions of the interpreter in two contrasting contexts, the face-to-face court and the PVL court. The diagrams highlight the change of the interpreter's position from the obscurity of the dock, for face-to-face interpreted proceedings, to the privileged area known as the well of the court, for PVL hearings; this is done to enable the interpreter to access the microphone of the DA – court personnel explained the questionable logic of this decision to me by saying that

the interpreter should not be seen to be aligned with the CP, but rather with the DA (see Appendix 5). The camera configurations described in the previous paragraph can work reasonably well for non-interpreted cases, provided that the operator is observant and alert, but when two people share a microphone, one of whom, the interpreter, is consecutively interpreting every court actor's turn, a dilemma arises. Should the camera operator focus on the speaker or the interpreter? Later in the article I will address recommendations for good practice, but for the moment, let us take a specific example to illustrate the problems of camera configurations in an interpreted case.

The impact of camera shots on communication in court

Imagine that the CP is explaining the background to the case for the court. As I have already emphasised, in a face-to-face courtroom during a non-defendant-focused Move (i.e. when the defendant is not being directly addressed, but being spoken about) the interpreter would normally use the whispered simultaneous mode of interpreting, as she sits beside or near the defendant in the dock. When the defendant is in a remote location and appears via PVL, the interpreter is forced to change from whispered simultaneous to consecutive full volume mode. The change is necessary because the remote defendant hears every sound in court indiscriminately and at a similar volume, including the interpreter, the rustling and movement of papers, coughing, and occasional electronic interference from mobile phones. If the interpreter were to use whispered simultaneous mode via PVL whilst other court actors are speaking, the remote defendant would receive an undifferentiated stream of sound which would make it difficult for him/her to follow proceedings (and court actors realise this). The result of the necessity to use consecutive at full volume is that court actors (in particular, CPs, magistrates and court clerks) fragment their speech in the belief that they are helping the interpreter.

At this point it might be useful to explore the phenomenon of speech fragmentation a little further. Hale considers that there are three possible approaches taken by interpreters depending on whether they consider the interpreting process to be a top-down (discourse) level or a bottom-up (word or sentence) level. Hale maintains that interpreting at discourse level is the most pragmatically accurate way of rendering utterances. Most interpreters, claims Hale, do not interpret "literally" (word level) or at discourse level, but take a middle approach, producing a rendition that may well be semantically and grammatically accurate, and may even appear to be superficially correct when taken out of context, but which "fails to capture the original intention, its illocutionary point and force" (Hale, 2007: 23). The practice of fragmenting speech by court actors is thus indicative of how court actors themselves perceive language, as words or sentences to be translated verbatim (Morris, 1995).

But the practice of fragmentation can present problems for the discourse level interpreter. It can be seen from the examples below that speakers fragment their speech in two ways; firstly by inserting unnatural pauses after short phrases, and secondly by inserting longer pauses as a signal to the interpreter that the speaker's turn is about to end and the interpreter's turn is to begin. In order to capture the pragmatic force of the speaker, an interpreter working at discourse level might find these pauses unhelpful, as, in order to provide a discourse level rendition, a longer stretch of speech is necessary in order to be able to orientate to the context and the pragmatic meaning of the utterance. It could be said that such fragmentation disorientates the interpreter and provides fewer opportunities for anticipating and predicting meaning. Anticipation (Kirchhoff, 1976)

and redundancy (Chernov, 1979) are essential cognitive processes in interpreting and the shorter and more fragmented the text, the more difficult it will be for the discourse level interpreter to operate effectively. The practice of speech fragmentation (whether conscious or unconscious), may be the result of habitually working with poorly trained interpreters, who cannot cope with long stretches of discourse (none of the interpreters I observed had an interpreter's notebook or pen, essential for accuracy in the rendition of longer turns).

Here are some examples of fragmentation[2]; more can be found in appendix 6. Short pauses are shown as (.) and slightly longer pauses (-). Interpreter's turns are identified by language only.

Transcript 1:

CP sir (.) this case concerns the importation (-)
I (.) *Latvian*
CP of two point four four kilograms (.)
INT (.) *Latvian*
CP of total powder (.)
INT (.)*Latvian*
CP with (.) one point zero seven kilograms(.)
INT (.)*Latvian*
CP of diamorphine at a hundred per cent(.)
INT *Latvian*
CP with an estimated street value(-)
INT *Latvian*
CP of ninety two thousand seven hundred and fifty one(.)pounds(.)
INT *Latvian*
CP the crown are in a position to commit the case today(.)
INT *Latvian*
CP and have handed up the original witness statements(.)
INT *Latvian*
CP we also make the application to retain(.)
INT *Latvian*
CP the original exhibits until trial(.)
INT *Latvian*
1CP and produce them at trial(.)

What follows are two examples where a long number is split into two turns, which could be confusing for the defendant (and of course, for the interpreter):

Transcript 2:

CP (-)these drugs have a street level value (.) of one hundred and forty thousand(.)
I *Igbo*
CP five hundred and fifteen pounds(.)fifteen pence
I five hundred and fifteen pence [rendered incorrectly in English]

Transcript 3:

CP these drugs have an estimated street level value(.)
INT *Russian*
CP of(.)two hundred (.) and forty four thousand(.)
INT *Russian*
CP two hundred and nine pounds(.)
INT *Russian*

Fragmented speech results in semantically odd or incomplete renditions for remote defendants (for example, the splitting of a number in transcripts 2 and 3 above appeared to result in interpreter confusion, since he went on to repeat the number incorrectly in English, probably because he could not think quickly enough to compose such a large number in Igbo and knew that the defendant could understand some English. Fragmentation can also have a knock-on effect on the defendant's visual perception of the courtroom. As each interlocutor takes a turn in the examples above, should the video camera track each speaker at each turn? Or should the camera operator focus solely on the court actor who is speaking or focus solely on the interpreter who is rendering those turns? Recommendations about camera configurations will be made later, but for the moment let us imagine the defendant sitting in the prison facing a screen showing firstly a shot of the CP as he speaks, then a shot of the interpreter who then renders that turn. From one of my vantage points in the prison courtroom, sitting next to prisoners, I observed the camera to veer from CP to interpreter and back to the CP as each fragmented turn was tracked. On other occasions the camera operator tracked only the CP, or only the interpreter. In the latter two cases the defendant and myself could see and hear – but not understand – the CP and only hear the interpreter, or see and hear the interpreter, but only hear the CP. If the CP and the interpreter were to share the same microphone, this problem could be somewhat alleviated, since there is little for the DA to say in an interim non-evidential hearing where the floor is occupied primarily by the CP. The constraints of the present outdated PVL technology do not allow for split screens in prison. Interestingly, DAs are aware that their lack of participation means that they do not appear on camera. In interview, one told me how she would say something merely to gain "camera time" (appendix 7). If the interpreter were to sit next to the CP then they would both appear in the same shot, at least for some of the time, and the defendant would have some kind of visual continuity.

My observations from the prison courtroom showed that visual continuity is vital to be able to orientate oneself to the architecture and layout of the main courtroom from a remote location. This visual continuity is usually initiated by the court clerk, who is supposed to conduct a virtual tour of the courtroom. In other words, court actors are supposed to be formally introduced to the remote defendant one by one, their status and role described as they are introduced, and each is supposed to greet the defendant and gaze at the camera as they do so. But, many court clerks/legal advisers omit this procedure, with the result that defendants are often confronted by a group of people most of whom they have never met or heard before and whose roles and functions they have to guess. Although it would be preferable for each court actor to look at the screen and greet the defendant as they are introduced (and occasionally when speaking) many

do not. It is even possible that defendants may not even have met their own defence lawyers prior to the hearing and so will not know who they are or what they look like.

One of the major findings, then, is that there are several possible configurations of camera shots in relation to the interpreter, all of them with negative consequences or disadvantages of one kind or another for either interpreters or defendants. In the following section, I shall briefly describe the view from the prison courtroom itself, from my vantage point sitting next to the remand prisoner, but out of shot of the main courtroom (extracts from field notes can be found at appendix 8).

The view from the prison

Contemporaneous field notes made by the author constitute a series of seven "vignettes" (a term used by Miles and Huberman (1994: 81)) of seven court hearings observed at Wormwood Scrubs prison whilst seated next to the prisoner (extracts from four of the vignettes can be found at appendix 8). Erickson suggests that vignettes are a "portrayal of the conduct of an event of everyday life in which the sights and sounds of what was being done are described in the natural sequence of their occurrence in real time" (1986: 149). The vignettes link up with other parts of the original study, and fill in some of the gaps left by the court recordings, the observations and the court actor interviews.

One of the greatest barriers to effective interpreter-mediated communication in the PVL court seems to be the out-dated technology. Image quality is sometimes poor, and audibility variable. The system seems to be prone to electronic interference, time delays and poor synchronisation of sound and image. Screens in the courts are often too small to be useful to an interpreter, and the Picture in Picture (showing the magistrates what the defendant can see) often obscures part of the defendant's face. Inadequate lighting may mean that the features of dark-skinned defendants cannot be made out at all (Ellis, 2004 also makes the same observation). My field note extract below describes how the system captures all sounds indiscriminately:

> At present when the microphones are switched on, the movements of the whole court can be heard.… movements of court actors…are magnified to an unacceptable level. These movements include writing and crossing things out, moving books and files, looking through large bundles of papers, standing up, sitting down and whispering.

The problem of tracking speakers at the expense of the interpreter is another source of confusion for an observer. If the camera remains on the crown prosecutor throughout a submission while the interpreter makes her renditions, the defendant is prevented from making use of any of her non-verbal signals to aid comprehension. Whatever the size of the screen, the defendant's head is often partially obscured by the picture in picture (PIP). Were the camera to focus on the interpreter throughout, defendants would be prevented from identifying speakers and where they sit in relation to the rest of the court. Allowing the camera to veer from crown prosecutors (when they are speaking) to interpreters (when they are making their renditions) is likely to be confusing and distracting for those watching, especially as the outdated technology means that images are jerky and blurred. Not allowing the defendant to choose where to look means that he can only look at the speaker that is chosen for him by the court clerk/legal adviser. However, defendants may not always want to gaze at speakers, but may rather wish to look at those whom they are addressing to see what effect their words are having on

them. The failure to track speakers accurately was highlighted as long ago as 2000 by Plotnikoff and Woolfson even though there is no reference to interpreters in their report.

My subjective perception of the PVL process from the prison end is that there is very little sense of being present in a courtroom. The fact that the camera focuses mostly on individuals in close-up and only rarely on the court as a whole means that the significance of different seating levels and the status and positions of various court actors relative to each other and which help to create the formality of the atmosphere are not apparent.

The factors described above, then, combine to produce a rather confusing picture for ethnographic observers (and by extension for defendants). In short, researchers who have not entered a prison courtroom to gain a non-English-speaking defendant's eye view of the court, are unlikely to be aware of the distractions which can interfere and distort communication between the remote defendant and the interpreter.

Conclusions

What emerges from the observations and the interviews is that interpreter-mediated PVL "works" much more effectively for those court actors who remain in the courtroom than it does for the remote PVL defendant. The goals of court actors are different from those of the defendant, since magistrates, CPs and court clerks/legal advisers want to process and dispose of cases quickly. Quality interpreted communication with PVL defendants often takes second place to these considerations. This is partly because of the type of hearing (defendants have little to say at this stage of the case and court actors do not need to interact with them very much) and partly because the technology seems out-dated and in some cases, obsolete (see Braun and Taylor, 2011a). The court, then, can honestly believe it is successfully carrying out its legal duty and progressing cases through the system, without having recourse to any feedback from defendants as to the audibility, comprehensibility or the coherence of the proceedings. Unless court actors or researchers go to a prison and sit next to defendants, they are, of course, unlikely ever to experience what it is like to be on the receiving end of PVL. Interviews with court actors show clearly that it is the DAs who are least likely to endorse it (Appendix 9). This finding concurs with most studies which have found that in the main court staff, magistrates, prosecutors and judges are in favour of video-conferencing but that DAs, refugee advisers and some interpreters are much less enthusiastic, sometimes even hostile (Wexler, 1993; Sontheimer, 2000; Ellis, 2004; Haas, 2006; Harvard Law School, 2009; Braun and Taylor, 2011b).

There is an urgent need for funding so that court personnel can be trained to work through interpreters and a parallel need for a supervised period of work-based training for aspiring court interpreters. Currently there is no examination in court interpreting, only a generic "legal interpreting" Diploma option[3]; a specific Court Interpreting Diploma should be devised and implemented urgently. The current arrangements for interpreter-mediated pre- and post-court consultations with defence advocates must be addressed by providing larger booths with microphones instead of handsets. Out of date camera equipment in courts in England and Wales should be replaced. Prisoners must be able to choose whether to look at any speaker in the courtroom whenever they wish. Van den Hoogen and van Rotterdam recommend that a constant image of the whole courtroom must be available for the prisoners so that they can understand the

significance of its layout and be able to see their friends, relatives and supporters in the public gallery. Picture and sound must be of optimal quality if miscommunication is to be avoided. Dedicated microphones for interpreters are essential. The microphones should be direction-sensitive and fitted with automatic volume control. There should be optimal lip synchronicity in the sound system (van Rotterdam and van den Hoogen, 2011: 215–226).

Video link could work well in short interpreted interim hearings, where all court actors are trained to be aware of the need to share responsibility for communication (see appendix 11 for a best practice protocol) and where interpreters are properly trained. Where there is more at stake in terms of the seriousness of the case, there is too great a risk that justice will not be served. We are living in an age of super diversity when quality interpreting will more than ever be needed for those parties who are not familiar with the language of the court. Interpreters are increasingly expected to communicate with non-English speaking defendants via video link (particularly for asylum claimants and appellants in courts and tribunals – a topic I have not explored in this article and where there can be a great deal more at stake than in the magistrate's courts). The interpreters working in our courts in England and Wales at present are, on the whole, poorly trained in court interpreting skills and the use of video link. It is unacceptable and discriminatory that political ideology and the fashion for outsourcing public services to large corporations should interfere with the judicial process, disadvantaging already disadvantaged defendants and putting justice in jeopardy.

Notes

[1]Interpreters will be referred to as "she" and defendants will be referred to as "he".

[2]Unfortunately the author does not have permission to make the court audio-recordings public.

[3]See the Chartered Institute of Linguists for details of the Legal Interpreting option: https://www.ciol.org.uk/

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Appendices

Appendix 1: The Criminal Justice System in England and Wales: a brief overview

Court procedures, layouts and proxemics play a vital part in determining communication, both monolingual and bilingual, in the courtroom. There are three levels of criminal court in England and Wales: the Magistrates Courts, the Youth Court and the Crown Court. All cases, even murder, start at the Magistrates Court and 97% of all cases are completed there. There are three categories of offences: "summary" only (can only be dealt with in the Magistrates Court), "either way" offences (can be heard in the Magistrates or the Crown Court), and "indictable only" (can only be dealt with in the Crown Court). Summary cases include less serious offences such as motoring offences, minor theft, and criminal damage. Magistrates are local unpaid volunteers who receive special training, hear each case in twos or threes, and pass sentence, or, in more serious cases, "transfer" or "send" cases to the Crown Court. Youth Courts are a branch of the Magistrates Courts also staffed by two or three specially trained magistrates sitting together. They handle alleged offences by young people aged 17 years and below. Cases in the Youth Court are heard in private, although it is possible to ask for permission to observe cases. Crown Courts are for more serious offences such as rape, burglary or

murder. These offences are heard by a judge, and a jury of twelve ordinary people will be convened if the defendant pleads not guilty. The jury decides whether the defendant is guilty or not, but the judge decides on the sentence and the punishment. In all courts described here, accused persons can be found not guilty and released without a criminal record, or they can be found guilty and sentenced.

Appendix 2: PVL with Deaf defendants

Napier's study was conducted with Deaf "defendants" in a simulated experiment in Australia. It is included here to show the range of possible permutations of locations and cameras, an experiment which was also conducted by Braun and Taylor (2011b). Each combination proved to be challenging in some way.

Location of deaf defendant	**Location of interpreter**	**Court appearance**
1. Deaf defendant in remote location	Interpreter in separate remote location	Both appearing in court via video link
2. Courtroom	Interpreter in separate remote location	Interpreter appears in courtroom via video link
3. Deaf defendant and interpreter together in remote location		Both appearing in court via video link
4. Deaf defendant in courtroom	Interpreter in courtroom	Both appearing in person in court with no video link
5. Deaf defendant in remote location	Interpreter in courtroom	Only defendant appears in court via video link

Table 1. Permutations of location, court and Deaf defendant (Napier, 2011).

Interestingly Napier recommends that the system should not be used at all for Auslan/English interpreting services in the courts. Napier claims that the system is not flexible enough for this unique form of communication, with breakdowns being a significant risk (2011). Although the recommendation was rejected by the authorities, it was agreed that it should be used only where it was impossible to obtain a face-to-face interpreter, and that this would be the preferred option. Interestingly configuration 5, which corresponds exactly to the PVL courtroom set-up in the UK context, is regarded as being the least suitable of all the possible permutations in the Australian/sign language court context. In line with Braun (2011) Napier further recommends that if the system is used at all, it should be for hearings of short duration, and that the technological shortcomings be addressed (such as the constraints of fixed cameras, also a problem in the Magistrates Courts where I made my own audio-recordings, see chapter 5). Napier's final recommendation stipulates the need for judicial guidelines for court staff who have to operate the system as well as for Deaf clients. At the time of writing the recommendations are being implemented in the New South Wales courts, but as a pilot over a period

of three to six months after which guidelines will be reviewed and updated; a review of the current system will be carried out after a year to evaluate its effectiveness. Like Braun then, Napier urges caution, but does point out some major weaknesses of her findings, linked to the fact that the data is simulated rather than authentic. The Deaf actors used in the simulations may not have been representative of Deaf users as a group, because they were fluent, well-educated and used to working through an interpreter. In addition, there were parts of typical legal proceedings that were omitted in the simulations, such as the taking of the oath/affirmation by the interpreter, and there were unorthodox seating arrangements for the Deaf defendant and interpreter necessitated by the angles of the fixed cameras, both issues that the author of this article have identified as significant.

Appendix 3: Extracts from interviews with interpreters

I wanted to find out from interpreters themselves how they justify using different interpreting techniques for the two different court interpreting settings (face-to-face cases and PVL cases). In extract 1 interpreter 1 (INT (i)) claims that the technique she uses depends on the clarity and audibility of the speakers rather than on the particular context in which she finds herself. It is not clear from her response which techniques she uses in the two different contexts nor why she uses them. If the interpreter were to use simultaneous technique for PVL, the implications of overlapping speech would present audibility problems for the defendant. All these extracts show the need for proper training for interpreters.

Transcript 4:

INT(i) So this [simultaneous interpreting] is what I do, if I am sitting near the defendant

YF And so when you're sitting at the front [for a PVL hearing] then, is that different?

INT(i) Er, yes because all of them are actually silent, not talking

YF Who, who are they?

INT(i) The defence, the barrister, the, the prosecution

YF Yes

INT(i) They only ask the question and they are waiting for the answer

YF Right, okay. So you tend to use consecutive when you're doing prison video link then?

INT(i) I wouldn't say as a rule but it is like er yes, because it's they are expecting the...answer to finish from the- from the defend- defendant. So I interpret what he says. But what happens when I talk to the defendant, it's about the dialogue which is happening between, like telling him, what are they saying and what they are doing, then I use the simultaneous, because I can't say to the judge or to the, or to the barrister, talk, stop, hold on, every two three sentences, for five minutes long. Of course if, if they are, if- they go on at very high speed, you know...

In Extract 2 interpreter 5 (INT(v)) claims that the reason she uses consecutive technique for PVL is because more precision is required, when in fact the real reason is to avoid overlapping speech:

Transcript 5:

YF	So what mode of interpreting did you use during this [PVL] hearing?
INT(v)	Erm not simultaneous much I don't think there was any simultaneous
YF	Why is that ?
INT(v)	Erm there was no need for it
YF	So if you had a live defendant and you were interpreting for a live defendant which mode of interpreting would you use then
INT(v)	The same as I did at that time
YF	And what was that
INT(v)	Every question that was asked I er translated as far as possible word for word idea for idea the idea counts not the words
YF	And so what mode did you use then
INT(v)	Consecutive, consecutive
YF	Was there any particular reason why you used consecutive and not simultaneous ?
INT(v)	Because usually in this kind of court of appeal the er things that are said are very precise and they have to be you know short ideas short sentences and they have to be perfectly understood by each side that's why
YF	OK and-
INT(v)	I think it was the preferred mode in that kind of court

In extract 3, it becomes alarmingly evident that the interpreter does not understand basic terms such as "interpreting techniques" and "simultaneous interpreting":

Transcript 6:

YF	Okay so, if you, you usually sit next to the defence advocate for a prison video link and you just talked about being, interpreting for a live defendant in an open dock, like when I saw you that time, you were doing that. Could you compare the two techniques that you use? when you're interpreting for a live defendant in an open dock, what kind of interpreting technique do you usually use?
INT(i)	right, what I do is, that I take it on my shoulder, that it's my responsibility to make sure that I deliver every word the defendant's saying and interpret every word I hear
YF	yes, so interpret in terms of technique, what would that involve?
INT(i)	what do you mean by technique?
YF	er
INT(i)	the language?
YF	well, I saw you use a particular interpreting technique when you were working with the defendant

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INT(i)  right, right
YF      when I sat behind you, when you were working with the defendant
INT(i)  yeah- what was it- I don't-because I haven't seen other interpreters
        working (laughter)
YF      well you seemed to be, you seemed to be using simultaneous
INT(i)  yes, oh I see what you mean, what I do, it depends on the clarity-yeah ?
        of the sound
YF      yeah
INT(i)  and if the clarity of the sound is clear, and you know, and I'm getting
        it all straight away, I do it all actually, er, er, simultaneously.
        Like while, while the person telling the defendant for example in the
        conference- yeah
YF      yes
INT(i)  -room, when you have a conference before the case starts, yeah,
        and if it's very clear and you know, I, I actually, I actually got
        distinguished in simultaneous [referring to her examination result],
        you know er
YF      yes
INT(i)  is it simultaneous is while one is talking you are interpreting?
YF      yes
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Appendix 4: Extracts from field notes made in consultation booths

This extract shows how the architecture of the court affects communication through an interpreter with a non-English-speaking defendant. The booths are too small to hold two people, so a decision has to be made as to who will use the telephone handset, who will take the floor and how communication is to be effected. Extract from field notes taken in the consultation booths (May 2012) show how this was done and what was the result:

Extract 1:

The interpreter was invited to take the only seat and given the telephone handset by the advocate, who remained standing. She (the interpreter) initiated the conversation with the prisoner herself. Because the only way of communicating with prisoners is through a single telephone handset, anyone *without* a handset cannot hear what the prisoner is saying or speak to him/her. The male Vietnamese defendant, on seeing the interpreter with the handset, began to speak animatedly to her, and appeared to be in some considerable distress. The interpreter conducted a conversation with him of her own accord, and, after some minutes and using reported speech, explained the reason for his distress to the defence advocate. It appeared that he had been unable to communicate with his family in Vietnam, since the telephone prepayment card the prison had given him did not work. He maintained (so the interpreter said) that his family did not know what had happened to him or where he was. Unfortunately for the defendant, his defence advocate told him there was little he could do to help. Not only could the defence advocate not speak directly to his client but he could not *hear* his client either. This meant that all communication with his client was conducted by directly addressing the interpreter. The only other way the defence advocate would have been able to hear the defendant would be to pass the handset between himself and the interpreter for each turn.

In 2012 I obtained permission to observe court cases from the courtroom at Wormwood Scrubs prison. The first defendant I was to observe was, once again, of Vietnamese nationality. A translation of the consent form into the Vietnamese language at such short notice had been impossible to obtain. On the advice of the prison officer in charge of the video link suite I obtained the assistance of the court interpreter to gain the prisoner's consent. The interpreter was sitting in a similar private consultation booth in an Outer London Magistrates Court together with the defendant's defence advocate, who was getting ready for his client's pre-court briefing. My field notes describe a rarely observed event which was the opposite of the one described above. My vantage point was the same as the prisoner's. I spoke to the interpreter via video link. Field notes how the interpreter conducts the conversation by herself without reference to the prisoner (in violation of the Interpreter's Code of Practice):

Extract 2:
I stood next to the defendant in the cramped prison court booth. From my vantage point I could see the interpreter sitting at the far left side of the screen. I could hear, but not see, the defence advocate, who was out of sight on the interpreter's left. The interpreter greeted the defendant in Vietnamese and I approached the screen but had to bend down to be seen by the interpreter. The interpreter spoke to me through a handset like a telephone, but there was no similar mechanism at the prison end. I asked to speak to the defendant's lawyer first, so the handset was passed to her. I explained to the lawyer that I was conducting research and sketched out its nature and purpose. I then spoke to the interpreter, to whom the handset had been passed by the lawyer, to ask her if she would mind interpreting the consent form to the defendant. She readily agreed. The lawyer took the opportunity to leave the booth to perform some administrative task. The interpreter (who had overheard my conversation with the lawyer) began to speak directly to the defendant about the purpose of my visit before I could even start to read out the consent form. I waited for her to pause, then began to read out the consent form to the interpreter in English. Before I had even completed the reading out, the interpreter said in English "Yes, he doesn't mind". I insisted on completing the reading out. The defendant then agreed and signed the consent form in full view of the interpreter and myself. I left the booth; the defendant then closed the door of the booth for a private consultation with his lawyer.

Appendix 5: Further examples of fragmented speech in court

Short pauses are shown thus (.) and longer pauses thus (-).

Transcript 7:

CP on the twenty fourth of May two thousand and ten(.)
INT *Bulgarian*
CP at terminal five Heathrow(.)
INT *Bulgarian*
CP the defendant was intercepted(.)
INT *Bulgarian*
CP arriving on a flight (.) from Buenos Aires Argentina(.)

Transcript 8:

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CP   he later admitted to swallowing ninety five packages of cocaine (.)
I    (.)Igbo
CP   (.)  he gave a no comment interview
I    /Igbo
CP   (.)  currently the defendant is remanded in custody(.)
I    Igbo
CP   on one ground (.)
I    Igbo
CP   (-) that there are fears that he may (.)  fail to surrender
I    Igbo
CP   (.)  the reasons for these fears (.)
INT  Igbo(.)
CP   (.)  are due to the nature and seriousness of the offence
INT  Igbo(.)
CP   (.)  the strength of the evidence
INT  Igbo
CP   (.)  the likely custodial sentence if convicted
INT  (.)  Igbo
CP   (.)  And the lack of community ties (.)
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Appendix 6: Interpreter seating positions in a PVL court: a defence advocate's view

Why are interpreters asked to sit next to DAs in PVL hearings? In these interim hearings DAs do not need to speak much, and therefore gain little "camera time". If the interpreter sits by the CP (who gets more camera time because she/e has more to say) it would be easier for the camera operator to track the CP and the interpreter within a single frame. Although I observed other seating positions for court interpreters in a PVL court (notably next to the legal adviser/court clerk) sharing the microphone of the DA was by far the most common. One defence advocate explored this idea with me in interview, but there seems to be no formal guidance in the matter:

Transcript 9:

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YF     it's usually been the arrangement whereby the interpreter sit next,
       sits next to you [emphasis], the defence advocate, and shares your
       microphone.  Is there a particular reason why they put them there ?
DA(i)  er I don't know.  I suppose it's the perception that they're part of
       the defence team, aren't they really, rather than being completely
       independent.  Because they've got to use somebody's microphone, there
       isn't one for an interpreter, maybe there should be.
YF     I have seen an interpreter sitting next to the court clerk, in (name of
       court).  Do you think that's a better place for the interpreter to sit?
DA(i)  er, I don't think it matters.  Does it matter?
YF     this is your, entirely your perception, that's an interesting-
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DA(i) Er, be best not to sit next to the prosecutor because most defendants would identify anybody sitting next to the prosecutor as being against them. Er, I mean the legal adviser's fine because she's neutral, he's neutral. Er, defence advocate obviously would be perceived by the defendant to be on their side so they wouldn't be alarmed by the interpreter being next to them. I presume that's why.

Appendix 7: Extract from interview with a DA about "camera time"

DA(ii) is well aware that if she does not say anything in court, the camera will not focus on her and the defendant may well think that his advocate has not turned up to court for his case. Although she herself has not conducted an *interpreter-mediated* case through video link, she says she would be concerned if the interpreter were not within the view of the defendant at all times. This is difficult to achieve and I did not witness this during any of my ethnographic observations.

Transcript 10:

DA(ii) Er, you're trying, you, I, I strive even when I don't actually have to say anything, I'm striving to say something just to reassure the client I actually understand what's going on, because he's seeing it in such a detached way, he's going what the hell's my solicitor doing, she hasn't said anything. Now sometimes I don't need to say anything, it's a foregone conclusion what's going, you know what is happening, and I've already told him that. But I, I feel that sometimes you say, Yes I agree with, it's a remand for seven days or fourteen, just to, just emphasise for him I know what's happening and I know that that's what's required. It's kind of reassurance

YF How would you do that?

DA(ii) well, some, sometimes it's, like the video I had there this morning. He's sitting there miles away; it's a foregone conclusion it's going to be adjourned, there's no bail application. So the prosecutor purely says er, Your Worships it's an adjournment for, till the 9th of February, the Clerk says yes, that's, that's fine. They look at me, I, I would normally, if it wasn't a videolink say nothing, but I actually said, I've got no observations on that, and looked at him so he understood that I was in the room, I knew who he was and I was actually his representative, it just has to be emphasised a bit more.

Interestingly, when I was observing court cases from the prison, I noticed one DA gazing at the defendant (her client) on the video link from the courtroom as she made a brief submission. This seems to re-inforce the notion of "camera time" introduced by DA (ii) during interview.

Appendix 8: The view from the prison: extracts from four vignettes

Below are extracts from field notes made during and after PVL court cases whilst sitting next to four prisoners (A,B,C, and D) at the prison:

> Defendant A was a Kurdish-speaking man, who had been resident in the UK for two years. It was impossible to hear clearly when the interpreter took the [interpreter's] oath. At this point the image of the magistrate appeared on the screen but not the interpreter. There was then some overlapping speech between the interpreter and another speaker, and the crown prosecutor intervened to ask the interpreter to use consecutive interpreting (the crown prosecutor actually said "wait until I've finished, then you can speak").

> Defendant B, a Russian, entered the [prison] court. There was a cursory virtual tour of the actual court ("magistrates", "legal adviser", "solicitor", "interpreter", "crown prosecutor" was all that the court clerk said). As the camera jerked backwards and forwards from speaker to speaker there was a blur of images. All court actors greeted him verbally but made no visual acknowledgement [eye contact] during the virtual tour: this included the interpreter. The defendant responded verbally to each greeting. The Russian interpreter sight translated the oath unprompted but did not interpret this to the remote defendant. There were mismatches of speaker and image throughout the hearing. At one point there was an interpreter request for a repetition of the defendant's name. There was also considerable feedback that sounded like electronic interference from a mobile phone.

> Defendant C: The legal adviser/court clerk looked at the defendant, but his virtual tour of the court was very perfunctory, simply switching the camera shots and saying "court clerk, magistrate, crown prosecutor, defence advocate" as he did so. In general, there was no visible or audible acknowledgement of the defendant during the virtual tour by the defence advocate or the crown prosecutor, who simply ignored the defendant and carried on what they were doing.

> Defendant D: When the crown prosecutor initiated whispered exchanges with other court actors sitting close to her, she leaned forward and only the top of her head could be seen; long hair completely hid her face. The interpreter stopped interpreting after the defendant-focused parts of the hearing were over, so the defendant was left out of the crown prosecution submissions and all the subsequent interaction. There was some overlapping speech, especially as far as the crown prosecutor was concerned. There was no obvious attempt of speakers to accommodate the interpreter after the transition to non-defendant-focused Moves, probably because by that time the interpreter had stopped interpreting altogether. The magistrate's decision to adjourn the case for half an hour was interpreted. The defendant appeared to understand the interpreted rendition of the magistrate's decision because he nodded. There were other instances of back-channelling from the defendant during the hearing. The interpreter's voice seemed to be much clearer than those of other speakers. Again, this was due to the fact that the interpreter leaned towards the microphone whereas the others did not. Books being moved and papers rustling made a constant background noise which meant that it was difficult for me to hear what the case was about or to hear the crown prosecutor, who spoke very indistinctly.

Appendix 9: Interviewing prisoners

The original intention of the study was to interview defendants in prison using interpreters to obtain their perceptions of the PVL experience. For a range of different reasons, this proved too problematic. The unpredictability of cases in the Magistrates Courts meant that there would be insufficient notice to arrange interpreters of the right language. The cost would have been beyond the scope of the project, and in addition I considered that it was not desirable to interview prisoners on ethical grounds; the anxiety of defendants might interfere with the information they might give to me as a researcher, bearing in mind that they would have to be interviewed by me in the presence of prison officers. There was also a danger that they would associate me with the prison establishment rather than as an independent researcher with a genuine interest in their experience. They had been deprived of their liberty and additionally, because they did not speak English, they were linguistically isolated in the prison and unable to communicate with other inmates. I concluded that the prisoners were a vulnerable group and regretfully decided not to interview them.

Appendix 10: Extracts from interviews with DAs about PVL

These extracts from my interviews with DAs back up research by US legal practitioners and academics in the literature review of this article. Asked if they would object to the extension of PVL for trials, they said:

Transcript 11:

DA(i) trials? I wouldn't be happy with that. I think a defendant coming to court and seeing exactly everything which is happening in court, not reliant on a camera showing him what's happening ...is important ...he'd want to know who was talking to who ...what was happening, who was walking around the court, what the magistrates were doing, whether they were paying attention, etc. I think ...that is important, for them to have an idea of a fair trial and things being done properly. I think if it was on camera, they might feel ...what's not being shown? ...[that] might be in the back of their minds. And also, as we've discussed, communication is not between defendant and solicitor, it's not just verbal, it's also lots of other actions like body language and you get that face-to-face but you don't get that over a camera, there is a watering down on that, I think, personally.

Transcript 12:

DA(ii) I mean it's just a ...hugely disadvantaged situation and it's done for the convenience of the court but not the convenience of the defendant ...
YF So ...do I gather that you wouldn't like to ...have it [PVL] extended
DA(ii) ...it's not access to justice, it's just a means of making it cheaper, and there's just no way it's fair...the whole essence of video link is they're done for speed and convenience, they're not done because it's fair ...and just and anybody who tells you that wouldn't be telling the truth ...

Transcript 13:

YF Er, so, should there come a day when somebody proposes the extension of, er, prison video link to include more contentious hearings like, er, you know trials, for example, what would you feel about that as a defence advocate? In relation to your client ?
DA(iii) It would be totally unacceptable. I mean at the end of the day, you know, numerous things happen during the course of a contested hearing, or trial especially, you know, something always crops up, you need to take further instructions from your client in private and video link just isn't suitable for that at all.

I have included the following extract even though the interviewee (DA(v)) is not talking about PVL but about the Virtual Court, an experiment implemented in 2008 at a magistrates court in London with the idea of saving on prisoner transportation costs. A pilot evaluation (Terry *et al.*, 2010) has shown that the Virtual Court actually costs more than it saves. Defendants are supposed to make their first appearance in court from a room at a police station equipped with a camera. The extract illustrates the hostility of this DA towards the expansion of video link to include proceedings other than interim non-evidential ones:

Transcript 14:

DA(v) I don't like it [the virtual court] I don't like what it does to the whole professionalism of the job, the values, I think there's a dumming down generally in many many ways, and civil servants in an effort to get the policy through which they think is going to save money- might save some money in some budgets but actually overall saves nothing, because if more people are being locked up and that's our main point about people getting better outcomes, better outcomes save public money instead of somebody being locked up for four weeks at incredible expense, they don't get locked up, or they get a community order which keeps them out of trouble or they get bail, and they should always get bail, it saves the cost of putting them on remand, that budget will not have any effect on the virtual court budget, we'll never know what the overall cost of any of this is, and in the meantime we will strip away all of the dignity- solemnity of the proceedings and make justice a mockery, and make it look no better than some bar room soap opera, and that's my biggest visceral emotion about it but I also recognise that in very straightforward cases when you know the client very well where communication is not that important it can be marvellously helpful and a quick way of doing- very quick things, so there are certain areas where it could be extremely useful.... anywhere where communication is key to the outcome of that hearing, or that process, often you lose more than you gain in terms of- you lose far more in- if you're doing your job professionally than you gain in terms of convenience, and that affects justice, I think we should be worried about that...

Appendix 11: A best practice protocol

This best practice protocol which follows is based upon from the findings of the original study. It should be backed up with in-court training for all court personnel and for interpreters.

(i) Ushers should announce and introduce interpreters to the court when calling cases. The *language* of the interpreter and the defendant should be included in this announcement. This alerts the court to the presence of the court interpreter and the need to accommodate to her professional needs.
(ii) The court interpreter should be formally ratified. This ratification involves the formal-swearing-in, or affirmation, using the wording of the interpreter's oath or affirmation.
(iii) The court should require the interpreter to take the oath or the affirmation in the witness box in full view of the court and of the defendant.
(iv) The court clerk should introduce each prominent court actor to the defendant by name and role.
(v) All courts should require the interpreter to sight translate the oath or affirmation to the defendant in the relevant language and should not proceed until this has been done to the satisfaction of the defendant.

(vi) Prosecution and defence advocates should be discouraged from fragmenting their submissions into incomplete units of meaning. Presiding judges/magistrates and interpreters should agree on a pre-arranged non-verbal signal when enough information has been received.
(vii) All sound systems should be switched on before the hearing starts. Court actors should be reminded to speak into microphones where these are provided.
(viii) Magistrates should watch the interpreter and intervene if necessary to make sure that court actors are speaking at a pace which accommodates the professional needs of the interpreter. This is especially important when there are court interactions of a purely administrative nature where formulaic language is used.
(ix) Interpreters should be addressed as 'Madam Interpreter' or 'Mr Interpreter'. This is part of the court interpreter's ratification process by the court.
(x) Like advocates, interpreters should be thanked by the court for their attendance at the end of the hearing. This provides a closing frame for the ratification process.
(xi) The court should expect interpreters to perform in consecutive mode for defendant-focused Moves and whispered simultaneous mode for non-defendant focused Moves. Any interpreter who has obvious difficulty with simultaneous interpreting should have this pointed out and the court should make an appropriate notification and convey it to the appropriate body.
(xii) Whether interpreters stand outside the dock to interpret or whether they sit inside a secure dock next to the defendant, there will be audibility problems. The court should remind court actors to modulate their voices accordingly to compensate for this.
(xiii) If the dock is an open one and there is no risk of threat from the defendant, the interpreter and the defendant should move to the well of the court where they can clearly hear and see the faces of all court actors.

The following additional items cover interpreter-mediated PVL hearings:

(i) Procedures (i) to (ix) should be followed.
(ii) PVL interpreters should always be located in the main courtroom and not at the prison.
(iii) A virtual tour of the court should be conducted by the court clerk, where each court actor is formally and carefully introduced to the defendant by name, and not just by role.
(iv) During the virtual tour of the court, court actors should verbally greet and acknowledge defendants on screen by making eye contact with them.
(v) When speaking, each court actor should look at the defendant on camera from time to time.
(vi) All PVL interpreters should be encouraged to lean into the microphone when interpreting to make sure the defendant hears properly.
(vii) Court clerks should ensure that microphones are in the correct position and that advocates lean into the microphone as they speak.
(viii) All court actors must be reminded to avoid overlapping speech.
(ix) To minimise confusion for the defendant, the interpreter should sit next to the court actor who has the most turns (usually the crown prosecutor), despite the fact that

this risks compromising the neutrality of the interpreter in the eyes of the court and the defendant.

(x) Interpreters should not use the advocates' handset facility at the side of the court for PVL hearings, since the defendant will have no visual contact with the interpreter.

A defence advocate's commentary

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Introduction

As a Solicitor and Higher Court Advocate I draw upon forty seven years of experience as a criminal defence practitioner and advocate at both Magistrates' and Crown Court levels. To an ever-increasing extent that experience has included both interpreted cases and those with prison video link. When PVL was first introduced, it was professed to have been for non-evidential intermediate hearings only; then that was changed to include sentencing hearings subject to the consent of the defendant; shortly afterwards it was extended again to include sentencing hearings with no consensual requirement. I should add that these developments soon came rigidly to be applied whether or not the hearing was to be through the medium of an interpreter.

I find PVL a dehumanising experience. Recently, a client of mine was sentenced by video link to seven years' imprisonment. The case did not call for an interpreter but no matter. An overnight late listing for an appearance and sentence at 10.00 a.m. at the Crown Court had after close of business for the day been retimed for a live hearing scheduled for 2.15 p.m. that same day. The defendant's extended family had been notified of the original 10.00 a.m. listing by my office, and had attended for the morning session only to have me inform them of the delay; I had been made aware of the listing change too late to have been able to notify them of it until the morning, when encountering them at court. In the event, through close and persistent enquiries of the Court office that same morning I established that the hearing was to take place, not "live" but by video link. The sentencing process involved two defendants, each with his own advocate and each with extended family in attendance. The "courtroom" at the prison was designed for one defendant to be sentenced at a time; clearly these two defendants had to be sentenced together. Accordingly, a further chair and a second defendant were produced, so that both were squeezed on to the screen like a quart into a pint pot. The families were present and as I imagine able to see and hear the defendants. However, I find it inconceivable that the defendants would have been able to see their respective family members; had I not confirmed the presence of the client's family at the commencement of my address to the court my client would have had no way of knowing of their presence and interest on his behalf. Both my fellow advocate and I were able to address the Judge in extenuation of sentence; clearly, the family and friends present would have been able to hear us both. Afterwards there was no opportunity afforded me for a post-sentencing conference. I had had a video link conference with the defendant immediately before the

hearing but my major undertaking during it was to persuade my sceptical client that the juggling over listing arrangements and their ultimate impersonal nature were scarcely at my instigation and, rather, much to my disapproval. From their attitude towards me afterwards it rapidly became plain that the family and friends believed that my fellow advocate and I had colluded in these demeaning arrangements for our own reasons or convenience whereas nothing could have been further from the truth.

I am quite satisfied that this coarsening and dehumanising of the court process has speedily become the accepted norm. As to the architecture of the court and the positioning of participants in interpreted cases by video link, an interpreter seated at the Judge's or Magistrates' Bench would, in the eyes of the defendant or of any member of the public present, tend to impugn the independence and thus the integrity of the interpreter, or in my view ought to do so. A position next to the crown prosecutor carries with it the same negative; as arguably would similar proximity to the legal adviser to the court. Of all available options, proximity to the defence advocate is the least objectionable from the defendant's point of view, whilst acknowledging the problems of speaker-image mismatch. This is a technical problem, which should be addressed. With regard to the rationales of pre-and post-court consultations, defence advocates often have to insist in order to secure post-hearing opportunities; indeed, quite frequently the video link time allotted to any given case may have expired on the conclusion of the hearing, thus precluding any post-hearing consultation. Well-meaning though under-informed Judges and Magistrates, legal advisers and advocates do indeed, in my experience, fragment their speech in an unnatural manner, which adds to the complexity of the interpreter's task and makes court hearings more time-consuming.

Appendix 4 (pre-court consultation) strikes a distinct chord of memory with me. Some years ago, in a West Midlands Magistrates' Court in England, the interpreter and I were in a tiny pre-court consultation booth, passing the telephone handset between us for each turn. In this way I asked my question of the client and then was forced to relinquish the handset to the interpreter, so that she could interpret the question and receive the Client's answer, then interpret it for me. We were forced to repeat the process turn by turn as many times as I had questions to pose, or advice to administer. The whole process might best be likened to passing the baton in a relay race. The booth would have been a snug fit for either interpreter or advocate though not both and so this demeaning process had to be conducted with the door to the booth held wide open. Demeaning it may have been, but, worse, all pretence of confidentiality was forfeit. The court manager had issued a directive for the video link to be employed for all intermediate hearings, whether or not interpreted. On the hearing immediately following upon this consultation hearing, I urged the Magistrates to direct the defendant's production at the next hearing citing the above dilemmas and shortcomings, only to have them direct otherwise. It was only by written representations to the Area Director that I was able to have the court's direction countermanded. It is my contention that this demonstrates wanton ignorance and certainly heedlessness on the part of senior court personnel and indeed some other tribunals. Indeed, I go further: their aim in my firm view was to render the defendant's role as secondary and subordinate to the court's process as possible.

I am often acutely aware of the indifference to and acquiescence in discriminatory practices in the court on the part of many of my fellow defence advocates, who could and should identify communication problems to the court and fail to do so. I concur with

the perceptions and conduct of the defence advocate interviewees in appendix 10 of the preceding article, and, moreover, it is my view that bringing communication issues to the attention of the court is an inherent and indispensable part of any defence advocate's role.

A further under-regarded feature of video link hearings generally is the entitlement of observers in the public gallery (including friends and relatives, whether of the alleged victim or of the defendant) to see and hear everything that is happening in the court-room. There are some courtrooms where family members who are present in the public gallery cannot even see the image of the defendant on the PVL. In addition, audibility is often poor. There is also inadequate or no sound equipment in the areas around the glass-screened docks. I frequently ask my client, the defendant, if s/he can hear, and, if not, I bring this to the attention of the court immediately. Equally, I complain if I become aware of the inability of those in the public gallery to hear what is transpiring in the name of their society. It is interesting to note that even in newly built courts audibility and visibility have not been taken into consideration, with some docks recessed deep into the rear walls of the courts and the public's direct view of the dock obstructed.

In my view, it is the clear duty of the defence advocate to ensure that all defendants can hear, see and understand legal proceedings, and this duty extends to bringing this to the attention of the court. Too many advocates do not enquire at the pre-hearing stage and later (if still necessary) in open court about an interpreter's suitability, qualifications and training, nor do they intervene when they see interpreters unable to cope with long stretches of discourse, or indeed, not interpreting at all. Defence advocates (alongside magistrates, judges and crown prosecutors) must accept that communication in court is a shared responsibility and they ought to be trained to work with interpreters so that justice can properly be done.

Do They Understand? English Trials Heard by Chinese Jurors in the Hong Kong Courtroom

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Abstract. *Trial by jury is a key institution in the common law system. The introduction of lay persons into the judicial process, however, gives cause for concern about jurors' comprehension of legal language. Studies conducted in America reveal that many jurors are unable to fully understand pattern jury instructions due to the linguistic features typical of legalese, which to some sounds like a foreign language. Now, what if these instructions and legal speeches are uttered in a language that is non-native to the jurors? This is common scenario in the Hong Kong courtroom, where trials conducted in English are typically heard by Chinese jurors. Until now, only one survey conducted in the early 1990s has shed light on this issue. Drawing on the recordings of two jury trials from the High Court, and one Appellate Court judgment quashing a jury verdict, the present study provides further empirical evidence supporting claims about jurors' comprehension problem. Failure to address this problem jeopardises not just the administration of justice, but the very survival of the jury system in Hong Kong. This paper proposes ways to improve jurors' access to legal speeches in particular and the entire trial in general in order to help them return a more soundly based verdict.*

Keywords: *Legalese, foreign language, jury comprehension, court interpreting, bilingual courtroom.*

Resumo. *Os julgamentos por tribunal de júri são uma instituição crucial no sistema de "common law". Contudo, a inclusão de leigos no processo judicial suscita algumas preocupações relativamente à compreensão da linguagem jurídica pelos jurados. Estudos realizados nos Estados Unidos mostram que muitos jurados não são capazes de compreender na íntegra as instruções de júri padronizadas devido a características linguísticas típicas do juridiquês, que, para muita gente, se assemelha a uma língua estrangeira. A questão que se coloca é: e se estas instruções e estes textos jurídicos forem enunciados numa língua diferente da língua materna dos jurados? Esta é uma situação comum nos tribunais de Hong Kong, onde os julgamentos realizados em inglês são, normalmente, ouvidos por jurados chineses. Até ao momento, apenas um inquérito realizado no início dos anos 90 abordou esta questão. Baseando-se nas gravações de dois tribunais de júri do*

Supremo Tribunal e de um julgamento de um tribunal de recurso que procurou reverter o veredicto de um júri, o presente estudo fornece provas empíricas adicionais que sustentam os argumentos relativos ao problema de compreensão dos jurados. A não resolução deste problema coloca em causa, não só a administração da justiça, mas também a própria sobrevivência do sistema de júri de Hong Kong. Este artigo propõe formas de melhorar o acesso dos jurados a discursos jurídicos, em particular, e ao julgamento integral, em geral, de modo a ajudar a proporcionar um veredicto mais sólido.

Palavras-chave: *Juridiquês, língua estrangeira, compreensão do júri, interpretação jurídica, tribunal bilingue.*

Introduction

The jury system, under which defendants are tried by their fellow members of the community, is an integral part of the common law legal system. The institution of trial by jury is enshrined in Chapter 39 of the Magna Carta (The Great Charter), which states that no free man shall be punished except by the lawful judgment of his peers (Magna Carta, 1215). Since jurors are drawn from the community at random to be "judges of fact" and jurors make decisions as a group, their decisions are believed to be broadly representative of different sectors of the community, which can avoid the potential bias in a decision produced by a single judge.

Concern about jury comprehension

The functioning of the jury system is based on the presumption that jurors understand and follow the legal instructions given by the judge, and apply them correctly to the evidence adduced during the proceedings. However, a defendant's right to a trial by his/her peers has little meaning if these "peers" do not understand the law that governs their decisions (Tiersma, 2009). The introduction of lay people into the judicial system as "judges of fact" gives cause for concern about these lay people's comprehension of the legal language used in court. This concern stems firstly from the nature of legal language, understandably because legal language has its origins in old English, French and Latin (Mellinkoff, 1963; Tiersma, 1999, 2008, 2010). Apparently legal language is intended for lawyers, not for ordinary lay people. The strategic use of language by lawyers in court is another reason for concern. The late Professor Peter Tiersma, who was both a linguist and a law professor, made very perceptive remarks about the use of language by lawyers as he notes, "'[o]ne of the great paradoxes about the legal profession is that lawyers are, on the one hand, among the most eloquent users of the English language while, on the other, they are perhaps its most notorious abusers" (Tiersma, nd). He points out that lawyers have developed some linguistic quirks or aspects of legal style that serve little communicative function besides marking them as members of the legal fraternity (Tiersma, 1999: 69). In his ethnographic study of spoken language in the courthouse of North Carolina in the United States, O'Barr (1982: 26) observes that many jury instructions are "mumbo jumbo" to even well-educated Americans. Indeed, the nature of legalese and the strategic use of language in court make jurors' access to the judicial process, especially to counsels' speeches and court instructions, highly dubious. This gives cause for concern as any comprehension problems matter considerably to the administration of justice and may even result in a miscarriage of justice. Indeed, in

capital cases, jurors' comprehension of the instructions is literally a matter of life and death.

Studies of juror comprehension in the United States

The juror comprehension problem has been researched almost exclusively in the US context since the Contempt of Court Act 1981 in England prohibits post-trial interviews with jurors or publication of any matter relating to the deliberation process (Duff *et al.*, 1992; Heffer, 2005). A pioneering study conducted by Charrow and Charrow (1979) investigated the comprehensibility of civil jury instructions from California. Their study shows that half of the prospective jurors in their experiment had problems understanding the pattern instructions. The study also identified a number of linguistic features typical of jury instructions as impeding jurors' comprehension. Such legalistic features include the use of "as to" in lieu of "about", "overuse of nominalisations", avoidance of modal verbs such as "must" and "should", "technical or legal lexical items", "use of double or triple negatives", "use of passives", "poor discourse structures" and "too many embeddings". The study also shows that a rewriting of the instructions using plain English led to a significant improvement in the subjects' understanding of the instructions. A later study using a similar methodology by Steele and Thornburg (1988) yielded more or less the same results. The juror comprehension problem has been addressed in later studies such as Dumas (2000), O'Barr (1982) and Tiersma (1993, 1999, 2009), which ultimately led to the rewriting of the pattern jury instructions in some of the states to improve their comprehensibility.

Ritter's (2004) study reviews a number of appellate courts' decisions in the United States and finds that the courts in general cling to the presumption that the jury understands and follows instructions. She argues that this presumption is built on nothing but the courts' subscription to the notion that the questioning of the validity of this presumption poses a threat to the survival of the whole justice system. For this reason, appellate courts are generally unreceptive to claims that the jury instructions are incomprehensible (Ritter, 2004: 163). Ritter argues that this presumption is ill founded and contends that "even the best-intentioned juror, desirous of fulfilling his or her oath, has little control over his/her ability to comprehend legalistic instructions" (2004: 197). Indeed, to lay persons, these legalistic instructions, as Frank puts it, "might as well be spoken in a foreign language" (1930: 195).

Now, what if indeed these words are uttered in what actually is a foreign language of the jurors? This happens to be the common scenario of the Hong Kong courtroom, where Chinese jurors sit in a trial conducted in English.

The present study

In the light of the findings of the US research on the juror comprehension problem, this study aims to investigate the problem in the courts in Hong Kong, a common law jurisdiction inherited from England. In the case of Hong Kong, the juror comprehension problem is understandably an even bigger issue, given the overwhelming Cantonese-speaking local population, which accounts for about 90% of the community (Census and Statistics Department, 2012). It follows that those serving in juries nowadays are mostly Cantonese-speaking with a bilingual knowledge of English. What faces these jurors then is not just the legal language, but the English language per se, which most of them speak only as a second or more frequently a foreign language. In other words, the

comprehension problem for jurors in the Hong Kong courtroom is much more than just the standard intra-lingual legal-lay communication problem, rather it is an inter-lingual communication gap between English-speaking legal professionals and jurors who are both lay participants and non-native-English speakers in the courtroom.

This paper seeks to complement the findings of an earlier survey study of the juries in Hong Kong. It draws on the court proceedings of two authentic jury trials from the Court of First Instance (CFI) of the High Court, and a judgment of the Court of Appeal (CA) quashing a jury verdict. The CA judgment expresses skepticism about the jury's comprehension of the lower court's instructions. Permission to access the recordings of the two jury trials was obtained from the High Court for academic purposes[1], while the CA judgment was downloaded from the website of the Judiciary of Hong Kong[2]. This paper demonstrates using authentic data that there is a genuine problem for jurors in Hong Kong to access not only the law and the legal language, but also some of the evidence presented during the court proceedings. It also discusses how the problems identified could be resolved. Ultimately, it is hoped that the findings of this study will alert the judiciary and the legal profession to the jury comprehension problem and to the solutions proposed.

The jury system in Hong Kong

The jury system was introduced to Hong Kong in 1845 (Duff *et al.*, 1992), soon after Hong Kong became a British colony, and is used in all criminal trials in the CFI of the High Court and in a few civil cases such as false imprisonment and defamation. To qualify as a juror, one must be a Hong Kong resident of good character, aged 21 or above but below 65, and not suffering from any physical disabilities such as blindness or deafness. A juror must also have "a sufficient knowledge of the language in which the proceedings are to be conducted to be able to understand the proceedings" (Jury Ordinance, 1999). Criminal trials in the CFI were conducted solely in English until 27 June 1997 when the first criminal trial was conducted in Chinese (Cantonese). Thereafter, the court can hear a trial in either English or Chinese as it sees fit (Provisional Legislative Council, 1997). However, as of 31 December 2014, 75% of the criminal trials in the CFI were still being conducted in English (Department of Justice, 2015). Jurors' English proficiency is therefore essential even to this day.

Because of the use of English in court and the requirement for jurors to possess a sufficient knowledge of the language in which trials are conducted, there has been a tendency for juries to consist of expatriate residents and well-educated middle class and professional people (Duff *et al.*, 1992: 22), especially in the early colonial days. Therefore, one of the criticisms levelled against the jury system of Hong Kong is its lack of randomness and representativeness of the community it purportedly serves (Chan, 1997; Duff *et al.*, 1992). For example, there were only 119 jurors on the jurors list of 1854 (Hong Kong Government. (1854, February 25. Jury List, 1854), 1854, February 25), representing only 0.2% of the total population of around 60,000 people then (Munn, 2001), and all of them were expatriate residents of Hong Kong. They certainly did not represent the predominantly-Chinese speaking community and could not be considered "peers" of the defendant. They were chosen obviously because of their proficiency in the English language. And those few Chinese who were included on the lists in later years were understandably people from the upper echelon of society, who were usually well educated professionals proficient in English.

Due to the difficulty in securing eligible persons to serve as jurors, obviously because of the English language requirement, unlike in England and in the United States, the jury in Hong Kong started with only 6 members and was later increased to 7 in 1864 and from 1986, the number of jurors in a jury can be increased to 9 in complex cases (Duff *et al.*, 1992). A valid verdict is either a unanimous or a majority verdict of 5 to 2 or 6 to 1 in a 7-member jury.

With the widening of the jury pool, which now represents roughly 10% of the total population (Legislative Council Panel on Administration of Justice and Legal Services. (2015, June 22), 2015, June 22), one is concerned less about the jury's randomness and representativeness of the community, but more about jurors' ability to hear trials conducted in English, which remain dominant in the CFI to this day as was noted above. Despite the requirement for jurors to have a sufficient knowledge of the trial language, the legislation is silent as to how that linguistic competence is to be measured, but the administrative practice has been to include in the jury pool only those with at least an educational attainment of Form 7, or its equivalent (Law Reform Commission of Hong Kong, Juries Sub-committee, 2008; Law Reform Commission of Hong Kong, 2010). As a matter of fact, many jurors selected for jury service put up a variety of reasons to get exempted from the service, with "poor English" being an oft-cited reason, which however is often regarded by the court as a mere excuse for exemption. Therefore, some judges, as will be demonstrated by my data, try to talk prospective jurors into accepting the service, for example, by telling them that the proceedings will be bilingual and that they have a chance to hear everything in two languages. That however is not in fact the case. This misconception about bilingual proceedings is obviously due to the obligatory presence of an interpreter in almost all trials conducted in English. The section below will explain why and how interpretation services are provided in proceedings conducted in English.

Interpretation in the Hong Kong Courtroom

Hong Kong has always been a predominantly Cantonese-speaking community. The census statistics for the years 2006 and 2011 show that about 90% of the population spoke Cantonese as their usual language; only about 3 to 4% of the local residents spoke English in their daily life, although about 40% of them claimed to speak English as another language (Census and Statistics Department, 2012). Therefore, over 90% of the litigants appearing in court as witnesses or defendants speak Cantonese as their first language (or as a lingua franca) and choose to testify in Cantonese, whether the proceedings are conducted in English or in Cantonese. In the former case, interpretation services cannot be dispensed with. Note that however interpretation in the Hong Kong courtroom is provided to cater for the needs of the Cantonese-speaking witnesses and defendants and not for those of the jurors, who are selected for jury service because they are supposed to have an adequate knowledge of the English language. Although jurors with a comprehension problem may benefit from the interpretation provided in open court, not all the interpretation provided is actually accessible to everybody in the courtroom because of the different modes of interpretation used and the need for the interpreter to shift from one mode to another throughout the trial. This will now be explained.

The usual mode of interpretation used for communication between judges/counsel and defendants/witnesses is *consecutive* interpretation (CI). In the consecutive mode, the source language (SL) speaker and the interpreter take turns to speak with the SL speaker

pausing at regular intervals to allow his/her utterance to be interpreted, and the interpretation is done in open court and is thus heard (though it may or may not be understood) by all those present in the courtroom. CI is mainly used in witness-examination, which involves the interaction between English-speaking counsel and Cantonese-speaking witnesses. Jurors having a problem with their understanding of a question asked in English may benefit from the Cantonese interpretation, albeit intended for the Cantonese-speaking witness in the witness box (and the defendant in the dock). For interactions between the judge and counsel, and monologues such as counsel's opening/closing speeches and the judge's instructions to the jury, whispered simultaneous interpretation (SI), professionally known as *chuchotage*, is commonly adopted. In *chuchotage*, the interpreter whispers simultaneously what is being said by the speaker into the ear of the defendant, but obviously the interpretation is accessible only to the defendant, not to anyone else in courtroom including the jury, who is nonetheless the direct addressee of these monologues.

In the rare cases where a witness, usually an expert witness such as a medical doctor, chooses to testify in English, no interpretation in the consecutive mode will be provided as the witness examination process itself does not require the mediation of an interpreter. However, *chuchotage* will be provided for the Cantonese-speaking defendant in the dock, but this, however, as explained above is not accessible to the jury members. Therefore, jurors who do not have a sufficient knowledge of English may have a serious problem accessing the expert evidence, often technical in nature. The rest of this paper will illustrate the Hong Kong juror comprehension problem.

The survey study by Duff *et al.* (1992)

In the late 1980's, Duff and his team carried out a jury project, to find out the extent to which jurors in Hong Kong understand the trial process, by means of a survey which invited people having served as jurors to report their jury experiences. The respondents were asked to fill out questionnaires and to send the completed questionnaire back to the researchers.

Background information about the respondents

Altogether 58 respondents with jury experience completed and returned their questionnaires. 80% of the respondents reported that they preferred to speak Cantonese at home and 27% of them answered in the negative the question "If you were to read an English newspaper, would you fully understand the content of it"; while 65% of them indicated that they were not able to understand an English television news broadcast (Duff *et al.*, 1992: 22).

Findings about their comprehension of the court proceedings

One third of the respondents admitted to experiencing varying degrees of difficulty in comprehending the evidence, the legal terminology and the language of the court. One of the respondents admitted, "I am quite innocent about the procedure, and my English standard is too poor to be a juror" (Duff *et al.*, 1992: 105). The written responses by some of the jurors indicate serious problems of their ability to express themselves in English. The following are two examples (Duff *et al.*, 1992: 70):

> The nature may involve many legal points. I cannot sure that I understand fully.

> It is because we had only keep waiting at the jury rooms for that three days and eventually jurors were dismissed due to the insufficient evidently.

One of the respondents was an expatriate and made the following comment:

> I am a native English speaker. I could not hold a simple English conversation with two of my fellow jurors. How much of the proceedings did they understand? (Duff *et al.*, 1992: 70)

Jurors may feel too embarrassed or intimidated to flag up a comprehension problem as expressed by one of the respondents in his/her comments below:

> The whole atmosphere prevented anyone raised questions. You'll make yourself a fool in front of everybody. If you spoke in Chinese, the question will be translated. You'll feel more stupid.
> (Duff *et al.*, 1992: 74)

The respondents' self-evaluation and the way in which the questionnaires were completed led the researchers to the conclusion that a "significant proportion of jurors have some difficulty in understanding the English language" (Duff *et al.*, 1992: 84) and may not have a sufficient knowledge of English "to understand the evidence of witnesses, the addresses of counsel and the judge's summing-up" (Duff *et al.*, 1992: 22).

Comprehension and verdicts

It is interesting, if not disturbing, to note that many of the jurors who expressed problems with their comprehension of the proceedings convicted the accused. Apparently they did not follow (or otherwise understand) the court's instructions about the benefit of doubt, which should go to the defendant. Despite the fact that they were not sure of what they had heard, they went on to convict rather than acquit the defendant. This is probably why, while in many other common law jurisdictions, jury trials tend to result in a lower conviction rate, in Hong Kong, the conviction rate of jury trials in the CFI has always been slightly higher than in bench trials in the District Court and magistracies where judges sit alone (Department of Justice, 2013; Duff *et al.*, 1992).

Suggestions from respondents

The respondents also made some suggestions for improving their comprehension, which *inter alia* include providing the jury with a precis of the judge's summing-up, getting an interpreter to interpret it for the jury, or else conducting the trial in Cantonese. This can also be regarded as evidence of the respondents' difficulty in accessing the trial talk in English without the help of the interpreter.

The following section presents some observations from the court data to support the findings of Duff *et al.*'s (1992) study and the concern about juror comprehension in the Hong Kong courtroom.

Observations from the authentic court proceedings

The two jury trials consist of one murder and one rape case, both conducted in 2007, each of which has a jury of seven members. With the exception of one juror in the murder trial, who appears to be Indian or Pakistani, judging from his name and his accent when he was heard taking the oath, all the other jurors have Chinese names and a typical Cantonese accent.

Request for exemption from jury service for reason of poor English

As was noted in Section 3 above, many prospective jurors selected for the service cite "poor English" as a reason for exemption. This happens also in the rape trial, as shown in Example 1 below (for the transcription symbols used in this paper see the Appendix).

Example 1: Prospective Juror addressing Judge through Interpreter, rape case (JR=juror J=judge; I=Interpreter)

Turn	Speaker	Utterances
1.	JR	<through Interpreter> Your Lordship, because I am a Chinese em language teacher. All along I have been em using (.) em Chinese as er teaching medium, and very seldom using em English. Now **I'm worried that during the whole process, em (.) I will not understand some of the questions**
2.	R	(1) Well, **you will hear them in both languages,** Madam
3.	I	<Interpretation in Cantonese in open court>
4.	JR	<through Interpreter> **In that case, I am willing to accept that.**
5.	J	And er, I will be summing up at the end of it. But er, (.) **that summing up will also be (.) interpreted. So, you have a chance to hear it in both languages again.**

In the above example, a prospective juror whose name has just been drawn from the ballot box is asking the judge in Cantonese for an exemption from serving on the jury because of her English inadequacy. The judge however succeeds in persuading her to accept the service by reassuring her that the trial would be bilingual with the assistance of an interpreter. The judge is right in so far as interpretation of testimony provided in the consecutive mode is concerned. As was noted above, testimony given in English and interactions between the court personnel throughout the trial, including jury instructions and the judge's summing-up are nonetheless interpreted in *chuchotage* audible only to the defendant and the interpretation is inaccessible to jurors. Apparently the judge is telling only part of the truth, certainly not the whole truth.

Witnesses testifying in English

As was noted above, not all the witnesses have to testify through an interpreter. In some cases, albeit rare, a witness may choose to testify in English without the mediation of an interpreter. Those who choose to give evidence in English are either expatriates with English as their native language, or English and Cantonese bilingual locals. The latter are usually expert witnesses, who might find it more prestigious to testify in English or because they might otherwise suffer a loss of face if, in their position as expert witnesses, they have to rely on the interpreter for interaction with the legal professionals.

For example, the murder case involves four expert witnesses, three medical doctors giving evidence about the medical treatment provided to the victim before his death, and one forensic pathologist explaining the post-mortem report of the deceased. All of them were local professionals, obviously with Cantonese as their first language. Two of the medical doctors and the forensic pathologist testified in English without the assistance

of the interpreter, who nonetheless had to assist the Cantonese-speaking defendant in the dock by providing him with *chuchotage*, which however was not accessible to the jury or any other persons in the court requiring interpreting services.

In fact, the two medical doctors testifying in English, one being a senior and the other a junior medical officer, displayed immense difficulties in their communication with counsel, both in understanding counsel's questions and in expressing their replies in English. Example 2 is one of the many:

Example 2: Cross-examination of the junior medical doctor, murder case (DC=defence counsel; Dr=doctor)

Turn	Speaker	Utterances
1.	DC	[Well, if your suturing is very effective, and that would then build up a pressure on the brain. The pressure would be excessive on the brain instead of escaping through the suture.
2.	Dr	**(2.5) I'm sorry? Can you:: repeat?**
3.	DC	If your suturing is highly effective, one hundred percent effective, but nevertheless below it, some further bleeding or pressure develops, if it can't es—- if that pressure can't escape through the suture holes, the pressure would be applied to the brain.
4.	Dr	**(2) Mmm. (1) A::nd (2) actually we er::: (.) actually I— (.) I er (2) I'm sorry, can you (.) can you—**
5.	DC	Well, in this case we hear that, eventually, when the head was opened up at some time after six a.m., the pressure was such that the brain was displaced slightly to one side—
6.	Dr	**Yes.**
7.	DC	Right? What I'm saying is that er, if there was no drain and the sutures were totally effective, any further development of pressure (.) beneath the sutures would have nowhere to escape.
8.	Dr	(6) Actually the su— the:: (.) the scalp was sutured in the full thickness, and the:: the— the— the bleeding was er (.) er:: (.) was stopped by that, **so er:: (.) you mean er (2) and (2.5) and er:: (2) actually I'm— I'm quite— I'm not quite understand your question. Can you er (.) er repeat it again?**
9.	DC	Well, did you— (1.5) you now know the sequence of events that led to the death of the accused <sic.: should be "deceased"> by reading the hospital notes, [don't you?
10.	Dr	**[Mm hmm. Yes. Yes. Yes.**
11.	DC	Right?
12.	Dr	**Yes.**
13.	DC	And— and— it's right, isn't it, that er (.) by the time the surgeon, as it were, got access to the brain, the patient was er (1.5) more or less brain dead, (5) (do) you agree?
14.	Dr	**Er:: (.) yes.**

15.	DC	Yeah. And so, with the benefit of hindsight, I'm not disputing everybody doing the best they could under these circumstances, but (.) it would have been better, would it not, having regard to what we now know, to have dealt with that subdural haemorrhage, as soon as possible after it was first known (to you)?
16.	Dr	**(8) <silence>**
17.	DC	Do you agree?
18.	Dr	**Erm (.) erm I'm sorry, can you…in=**
19.	DC	=Well, the subdural (.) haemorrhage was detected (1) in the first brain scan (.) at about one twenty a.m., right?
20.	Dr	**Yes.**
21.	DC	But— but nothing was done about it (.) until much later, after it had (.) enlarged
22.	Dr	**Mmm.**
23.	DC	Right?
24.	Dr	Er—

In this case, the defendant was charged with murder for hacking the head of the victim with a chopper twice, which lacerated the victim's scalp and fractured his skull. The victim died in hospital two days later. In Example 2 above, the defence counsel is cross-examining the junior doctor, who sutured the victim's wounds. He is suggesting to the doctor that it was improper medical treatment or negligence on the part of the hospital or more precisely of the doctors that was to blame for the death of the victim. In particular, the defence counsel is suggesting that the stitching up of the wounds on the deceased's scalp led to excessive pressure on the brain underneath the scalp and aggravated the subdural haemorrhage, which ultimately resulted in the death of the victim. In other words, he is arguing that the chop wounds themselves were not fatal.

The above example shows an evident communication problem between the defence counsel and the doctor, with the latter experiencing immense difficulties in his comprehension of the defence counsel's questions. It has most of the indicators of communication problems as identified by Gibbons (2002), i.e. overt statements of incomprehension (turn 8), responding with apologies (turns 2, 4 and 18), clarification requests (turns 2, 4, 8 and 18) and absent responses (turn 16). The back-channelling (such as "Mmm" in turns 4, 10 and 22), generally understood to be an acknowledgement of comprehension, in this case should rather be viewed as the doctor's tactic to mask his incomprehension in a failed attempt to avoid embarrassment. Similarly, the short response "yes" in turns 6, 12, 14 and 20 may not serve as a direct confirmation to the question asked as would be the case in most other situations, but a short response uttered by the doctor to feign his comprehension.

As was noted above, jurors do not have access to the *chuchotage* provided for the defendant and can only rely on their knowledge of English to access this examination process, in which technical medical knowledge and terminology are involved. Whether they understand the questions asked any better than the doctor himself and the evidence adduced during this process is anybody's guess. However, if professionals like medical doctors, who at the very least hold a bachelor degree in medicine and are thus well qualified for, (albeit under the law exempted from), jury service, experience such

immense difficulties in their communication with counsel in court, would this not pose an even a bigger problem for lay jurors, (non-lawyers and non-doctors in this case), with an average educational level of Form 7?

Jury instructions of the two trials with legalistic features identified – implications for Chinese jurors

Unlike in the United States, there are no pattern jury instructions in Hong Kong, although the Judiciary of Hong Kong does provide judges with Specimen Directions for Jury Trials. These directions are however for reference only and judges are free to refer to them or to improvise their instructions (Cheng *et al.*, 2015). Nevertheless, the jury instructions given at the beginning and towards the end of the two trials are observed to present features identified by Charrow and Charrow (1979) as impeding jury comprehension. Examples 3 and 4 are extracts of jury instructions given at the start of the two trials. For easy reference, the sentences in the two extracts are numbered and their legalistic features are identified in the rightmost column of each table.

Example 3: Extract from jury instructions in the murder case

No.	Utterances	Legalistic features
1.	Now, members of the jury, you've been chose as jurors to consider the facts of this case and eventually to return a verdict **as to** whether this defendant is guilty or not guilty of the offence of murder **with which he has been charged.**	The use of "as to" and a long sentence with embedding
2.	As judge and jury, **it's our task to** try the case together but we have different functions to perform during the trial.	The use of "it's our task to" to avoid the use of a modal verb "must" or "should"
3.	I act as the referee between the parties to ensure that the trial is conducted fairly and **in accordance with** the rules of procedure and the evidence	Formal expression – the use of "in accordance with" in lieu of "according to";
4.	At the end of the trial, I should sum the case up to you and remind you of such parts of the evidence **which I think might help you** to reach your verdict.	Double embeddings

Example 4: Extract from jury instructions in the rape case

No.	Utterances	Legalistic features
1.	Let me give you a general outline of the (.) procedure **that is usually followed** in a criminal trial.	the use of embeddings and passives
2.	Seven of you have been selected as the **judges of facts** in this case, and you are the sole **judges of facts.**	technical terms
3.	**It's your duty** to carefully, calmly and **dispassionately** consider the evidence **that you hear** and without the slightest trace of sympathy for or **prejudice** against any party involved in the trial, so the facts in the case are for you.	The use of "it is your duty" and a long sentence with embeddings and technical words

4.	If I give you any direction or make any ruling during the course of the trial, **you are required to** accept that ruling.	Avoidance of the use of a modal verb "must" by using "you are required to"
5.	On the other hand, I'm the **sole judge of the law.**	Technical terms (some students in the interpreting class understood the word "sole" as "soul")
6.	The system of justice **which we practise** is **adversarial in nature, which means** that the presentation and examination of witnesses is substantially in control of counsel for prosecution and counsel for the defence.	A long sentence with embeddings and technical terms such as "adversarial"
7.	**Subject to** certain rules, **which I enforce**, you and I as impartial judges sit and listen to what counsel say and what the witnesses have to say when they are giving their evidence	A syntactically complex sentence with embeddings and formal expressions such as "subject to"

Like the pattern jury instructions in the United States, the jury instructions used in these two jury trials present linguistic features similar to those identified by Charrow and Charrow (1979). These linguistic features are likely to cause comprehension difficulties for the jurors in Hong Kong too and the comprehension problem is more likely to be aggravated by the fact that the jurors are non-native speakers of English. The transcriptions of the audio recordings of the court proceedings by my local Chinese research assistants, all fresh graduates with a degree in Translation (and qualified for jury service), indicate that other non-technical aspects of the English language are equally problematic. For example, in her summing-up of the murder trial, at one stage the judge said, referring to the evidence of the eye-witness, "things got a little heated…". This was transcribed as "Thanks God (a little heat)" with the parenthesised words as possible hearings. The interpretation performance of the final-year Translation students in my Legal Interpreting class reinforces this observation. So, if the low accuracy rate in both the transcription and interpretation of these jury instructions is any indication of their comprehension by the jurors, one can reasonably conclude that most of the jurors would have a problem with their understanding of these particular jury instructions.

Mumbling and fast speech as aggravating factors

For listeners without a native command of the language, it is not just the words uttered by the speaker, but also the manner in which these words are uttered that has a direct bearing on comprehension. In the murder case, the judge speaks very fast and mumbles her words throughout the jury instructions and the summing-up. The transcriber and many students in the Legal Interpreting class had difficulty hearing ordinary, non-technical words including even the first part of sentence 1 in Example 3 – "Now, members of the jury" as these words were not articulated distinctly.

As questions from jurors are not encouraged, at least not in open court during the trial, there is no knowing to what extent those words uttered by the judge were accessible to the jurors. They might feel their face threatened for having to raise a comprehension

problem in court as reported by a respondent in Duff *et al.*'s (1992) study mentioned above. In this murder case, the judge started her long mumbling summing-up in the afternoon of Day 7 of the trial and carried onto the morning of Day 8. It was not until the judge was about to resume her summing-up in the morning of Day 8 that she was informed by the court clerk of the jury's request for her to speak more slowly and louder. The jury members must have had great difficulty in their understanding of the summing-up the day before, but didn't pluck up the courage to interrupt the judge. For the next few minutes or so after the court clerk had whispered the jury's request to her, the judge tended to raise her voice a little and to slow down a bit, but soon after she returned to her old self. Thereafter no more requests were heard from the jury, who might have deemed it too embarrassing or otherwise futile to make any more requests.

Reading of the jury oath/affirmation

Jurors are silent observers and rarely do they have to speak in court. When they do speak, for example to ask for an exemption from jury service, they usually choose to do so in Cantonese and to have their utterances interpreted into English by the court interpreter (as in Example 1). It is therefore not possible to assess their English proficiency from their spoken English. The foreman of the jury elected by his fellow members as their spokesperson is presumably the most competent English speaker of the jury. The only occasion on which all the jurors are heard speaking in English is when they take their jury oath or affirmation in English. The following is the English version of the jury oath/affirmation used in Hong Kong:

> I (name) **solemnly, sincerely** and truly **affirm**/swear by **Almighty** God that I will give a true **verdict** in this case **according** to the **evidence**.

The moment a juror takes his/her oath/affirmation is usually a moment of revelation about his/her English proficiency. Most of the jurors in the two jury trials in this study are found to struggle with their pronunciation of the words highlighted with boldface, which obviously do not exist in their vocabulary.

The above observations may serve as evidence from which one can infer jurors' "insufficient knowledge of English". However, unlike in a bench trial, where the judge has to give reasons for the verdict, the jury does not have to justify its decision. It would therefore be difficult to find concrete evidence of a comprehension problem leading to a problematic verdict, simply by observing a trial or reviewing the transcript. For the same reason, it would be equally difficult to appeal against a jury verdict on the grounds of a comprehension problem. Section 7 below presents a rare case where the Court of Appeal of Hong Kong quashed the verdict by a jury and expressed concern over the jury's ability to comprehend the directions given to it by the judge.

Appeal against a jury verdict

In *HKSAR v. Lai She Hung* (2004), the defendant was charged with one count of false imprisonment (count 1) and two counts of rape (counts 2 and 3). It was the prosecution's case that the complainant was forced to stay in the defendant's apartment (subject matter of count 1) and was later raped by the defendant twice (subject matter of counts 2 and 3) in the same apartment on the same day. Following a trial in the CFI before a judge and a jury of seven members, the defendant was acquitted of counts 1 and 2 but was convicted of count 3. The defendant appealed against the conviction based on the following grounds (*Lai She Hung v. HKSAR*, 2005).

Inconsistency of verdicts and CA's response

The complainant gave evidence in the CFI to the effect that the defendant imprisoned her in the apartment despite her pleas to leave and raped her as she hit him and shouted for help. The defendant then chatted to her through the night and later raped her for the second time despite her oral protest. In the Court of Appeal, counsel for the appellant (defendant in CFI) raises inconsistency of verdicts as the first ground of appeal and she argues:

> It is difficult, if not impossible, in the circumstances, to follow the jury's reasoning when they disbelieved the complainant in relation to Counts 1 and 2, which formed the gravamen of her complaint, but yet relied on the same witness in relation to Count 3 (*Lai She Hung v. HKSAR*, 2005).

The Court of Appeal accepts this ground and points out at the same time that the CFI judge had done his best by giving fair and clear directions to the jury in his summing-up, as expressed in the following remark:

> Our concern about the apparent inconsistency in the verdicts was something which the judge, in a summing up of paramount fairness and clarity, had anticipated and had sought to avoid with the following directions (*Lai She Hung v. HKSAR*, 2005).

The judgment of the Court of Appeal goes on to cite the trial judge's summing-up to support the above observation. The gist of the trial judge's summing-up with regard to the verdicts of the three counts is that in theory it is open to the jury to return different verdicts on the three different counts, but in practice, it may appear to be more reasonable for the jury to find the defendant guilty on all or on none of the charges. Whether this message got across to the jury is however anybody's guess. After all, the judge's directions worded in typical legalese (as shown in Example 5 below) are unlikely to be perceived as "of paramount clarity" by the jurors, but more likely as confusing and perplexing.

Example 5: Extract of judge's summing-up, HKSAR v. Lai She Hung (2004)

> All **permutations** are, **as a matter of law**, available to you. You decide in giving these three counts your separate consideration. But you may think – **and again this is entirely a matter for you – that as the case has been presented to you on the issues that are laid before you, and where the central issue in the case is one of consent** – 'Did this lady consent to what happened or did she not? Did she consent to remain in the flat? Did she or did she not consent to have sex with the defendant?' – then, in practice, you may think – **and it is entirely a matter for you** – that these three counts **stand or fall together**; guilty to all or not guilty to all.

Note the use of the formal word "permutations" (with its origin from Latin), the technical expressions "stand or fall together" and the overuse of embeddings (as in lines 2 to 4). All this can be problematic to the understanding of even jurors with English as their native language or at least as a lingua franca as in the case of American jurors, not to mention the predominantly Cantonese-speaking jurors in Hong Kong.

The Jury's confusion over the verdicts

While one can only speculate on the jury's comprehension of these directions, the jury's confusion over the meaning of a majority verdict may provide a glimpse of the jury's English knowledge, which also aggravates the Court of Appeal's concern about the jury's understanding of the directions as it observes:

> Whether or not the obvious wisdom of these directions fell on deaf ears because they were not fully comprehended by the jury is difficult to say. …What seems plain, whatever may have been the reason for it, is that this particular jury had the greatest difficulty in following explicit directions which had been given to them about the nature of majority verdicts, supplemented, as these directions were, by a written form setting out the questions they would be asked at the time they returned their verdicts (*Lai She Hung v. HKSAR*, 2005).

The Court of Appeal is referring to the transcript of the trial in the CFI which records the exchanges of the court clerk, the judge and the jury foreman, interspersed with the remarks of the defence counsel, when the jury was asked to return its verdicts in court. Due to the jury foreman's incomprehension or confusion over the meaning of 'majority verdicts', what would have been a short exchange of a few lines has resulted in a much extended interaction of a transcript of 6 pages. Example 6 below is an extract of the transcript.

Example 6: The Jury asked to return verdicts

CLERK:	May the foreman please stand. On the 1st count of false imprisonment against the accused, Lai She-hung, have you reached your verdict upon which at least five of you have agreed?
FOREMAN:	No.
COURT:	Very well, let's go to the next count. Members of the jury, have you reached a verdict on any count upon which at least …
FOREMAN:	I'm sorry, maybe I misunderstand …
COURT:	Yes.
FOREMAN:	… the question, so …
COURT:	Have you reached a verdict on the 1st count of false imprisonment upon which at least five of you are agreed?
FOREMAN:	No.

As it turned out, the jury had already reached a not-guilty verdict of 1 to 6 in respect of count 1, despite the fact that the foreman repeatedly told the court that the jury had not reached one upon which at least five of the jurors were agreed. Thinking that the foreman might have a problem with his understanding of the phrase "at least five", the defence counsel at trial interrupted at a later stage to suggest that the court rephrase it to "five or more" and the court did accordingly, which however did not seem to help. The transcript shows that the jury foreman, who, as noted above, is usually the most competent English speaker of the jury, had tremendous difficulties in his comprehension of the meaning of a majority verdict.

Conviction quashed

The inconsistency in the verdicts returned and the jury's confusion over the meaning of majority verdicts, ultimately led to the quashing of the defendant's conviction on count 3 by the Court of Appeal as it observed:

> Set against an evidential background where the jury acquitted on the first allegation of rape…this left in our opinion no logical or reasonable basis for a conviction on the later rape…The circumstances in which the verdicts were recorded have only added to our concern about the conviction. Accordingly, we have concluded that the conviction on count 3 is unsafe and cannot be permitted to stand (*Lai She Hung v. HKSAR*, 2005)

Although the Court of Appeal does not directly spell out a comprehension problem as contributory to the inconsistent and illogical verdicts, the inference one is tempted to draw from the CA's judgment and the jury foreman's confusion over the verdicts is that this particular jury did not possess the required language proficiency to be able to understand the proceedings in English.

Discussion

Notwithstanding the requirement for jurors to have sufficient knowledge of the English language, empirical studies show that jury comprehension of the court proceedings cannot be taken for granted. As has been demonstrated by the study of Duff *et al.* (1992) and my own data, despite the ubiquity of interpreters in all English-medium trials, the Hong Kong courtroom is not fully bilingual for the jurors, nor for some of the other non-English-speaking participants in court (Ng, 2015), because the interpreting service is actually provided with the primary interest of the defendant in mind. The need for the lone interpreter to shift from the consecutive mode to *chochutage* during the course of interpreting as the situation arises inevitably denies jurors without an adequate command of English full access to the trial talk. This includes evidence given in English, counsel's opening and closing addresses and the judges' summing up and jury instructions. The subsections below present some suggestions for improving jurors' access to the trial proceedings.

Make the courtroom fully bilingual with team interpreting and the use of SI equipment

As was noted above, an interpreter in the Hong Kong courtroom often works alone and has to alternate between the open court consecutive mode and the more restrictive *chochotage* mode, and the use of *chochotage* necessarily denies the jury access to the interpretation. A solution to this would be to arrange for two interpreters to work in all trials conducted in English: one interpreter would provide CI in open court for interaction between English-speaking legal professionals and Cantonese-speaking lay participants, while the other interpreter would provide Simultaneous Interpretation (SI) of the English utterances produced by the legal professionals, but not interpreted consecutively in open court. SI equipment would also be used so that the interpretation would be available to all those requiring the service. This way, not only the jury, but also spectators in the public gallery requiring interpretation services would also be able to access all unmediated utterances produced in English through a pair of headphones. As was mentioned above, these English utterances, not mediated by the court interpreter in open court, include evidence given in English, jury instructions and speeches by counsel. This may also include interactions between the judge and counsel in the course of witness examination, often resulting from the judge's intervention and leading to omissions in interpretation (Ng, 2015). With the provision of interpretation services for the jury, the language requirement or the educational level for prospective jurors could be lowered

to broaden the jury pool and thus to improve its randomness and representativeness of the community.

Allow the interpreter time for preparation

Providing jurors with interpretation services would not guarantee their full access to the court proceedings unless the quality of the interpretation is also guaranteed. In order to ensure quality in interpretation, it is essential to allow the interpreter sufficient time to prepare for the case at trial, a suggestion also made by some of the respondents in Duff *et al.*'s (1992) study. It is therefore important for court personnel to acknowledge the interpreter as part of their professional team who, like them, needs to prepare for the trial in order to do his/her job properly. As Gamal (2014: 65) points out, it is "unrealistic to expect an interpreter to walk into a courtroom without any knowledge of the topic, terminology or chronology of the case and still be able to perform efficiently". Counsel do not go to court unprepared and witnesses must all have familiarized themselves with their own statements before testifying in court. It is not only fair but also sensible to allow the interpreter access to the case files and time to prepare for the case in advance. The current situation indicates a basic lack of understanding on the part of the legal professionals about the nature and the process of interpreting.

Counsel and judges to mind their language and the way they utter it

As has been illustrated above, both the nature of legal English and lawyers' strategic use of language contribute to the incomprehensibility of much of what is said in the courtroom. My data also reveal that it is not just the words used by counsel/judges that cause comprehension problems to jurors (and other listeners), but also the way in which those words are uttered directly impacts on the comprehension of the listeners. In particular, it poses a big problem for those without a native command of the language, as is the case of Chinese jurors listening to English utterances in the Hong Kong courtroom. This may also cause a problem for the court interpreter[3] as the accuracy of interpretation hinges on the interpreter's correct understanding of the SL utterances. It is therefore important that counsel and judges use accessible language and where possible avoid technical terminology. More importantly, they should make allowance for their Chinese listeners, be they jurors or the interpreter, by articulating slowly and distinctly.

Conclusion

Trial by jury is the backbone of the English legal system and is seen as a symbol of a democratic society. However, a trial before a jury without full access to the trial proceedings necessarily renders the system fundamentally flawed. As Ritter argues, a trial by "a misinformed or under-informed jury is tantamount to a denial of the jury trial right" (2004: 214). For this reason, ensuring jurors' access to the trial in its entirety is essential for them to make an informed decision about the defendant's guilt or innocence. In the context of Hong Kong, adequately addressing and resolving the juror comprehension problem will help broaden the jury pool to improve its representativeness and randomness. At the same time, it will also help ensure the survival of trial by jury in the legal system of Hong Kong, a common law jurisdiction which is now under the sovereignty of China whose judicial system is radically different. The failure to adequately address and resolve this problem may threaten the very survival of the jury system and provide a cogent reason for its ultimate abolition.

Notes

[1]Earlier in 2008, I was given the rare permission by the then High Court Registrar to access nine criminal trials from the three levels of courts in HK, including the two jury trials for this study, for teaching and research purposes. The total length of the court proceedings of these nine trials is over 100 hours. I was awarded two grants in 2009 and 2014 to help with the transcription of the bulk of the audio data.

[2]*Lai She Hung v. HKSAR* [CACC 46/2005].

[3]Full-time court interpreters in Hong Kong are usually native Cantonese-speakers with English as their "B" (second) language.

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Appendix 1: Transcription Keys

[	overlapping talk
(2)	the length of a pause in seconds
(.)	a brief pause of less than half a second
=	latched utterances
—	a sudden cut-off of the current sound
< >	transcriber's descriptions rather than transcriptions
:	prolongation of the immediately prior sound. The length of the row of colons indicates the length of the prolongation
(words)	parenthesised words are indistinct possible hearings
boldface	words in boldface represent elements under discussion

Training interpreters to work with foreign gender violence victims in police and court settings

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Abstract. *Violence against women is a type of gender based discrimination suffered by women all over the world and it affects different groups of women in different ways. Migrant women who do not speak the host country language are especially vulnerable due to their cultural, social and linguistic isolation. To guarantee their rights, governments have an obligation to provide means for such victims to understand and be understood, including the provision of quality translation and interpreting. This paper defines the characteristics of police and court interpreting for gender violence (GV) victims and ascertains the training needs of interpreters to work in these contexts. Fieldwork results from the SOS-VICS[1] Project were analysed, including the questionnaire and interviews with agents[2] working with GV victims, as well as the survey carried out on interpreters providing attention to victims. The results confirm that interpreters require specialised training for their role in building communication bridges between the public services and the victims.*

Keywords: *Interpreter training, victims of gender violence, legal interpreting, police interpreting.*

Resumo. *A violência contra as mulheres é um tipo de discriminação de género de que são alvo mulheres de todo o mundo, e que afeta diferentes grupos de mulheres de diferentes formas. Devido ao seu isolamento cultural, social e linguístico, são particularmente vulneráveis mulheres migrantes que não falam a língua do país de acolhimento. Para garantirem os seus direitos, é obrigação dos governos assegurar os meios para que essas vítimas compreendam e sejam compreendidas, o que inclui garantias de tradução e interpretação de qualidade. Este artigo elenca as características da interpretação de vítimas de violência de género (VG) em contextos policiais e judiciais, e especifica as necessidades de formação dos intérpretes para estes contextos. Analisam-se os resultados do trabalho de campo do Projeto SOS-VICS[3], incluindo o inquérito e as entrevistas com agentes[4] que trabalham com vítimas de VG, bem como o inquérito com intérpretes que prestam assistência a vítimas. Os resultados confirmam que os intérpretes necessitam de formação especializada para desempenharem o seu papel na construção de pontes de comunicação entre os serviços públicos e as vítimas.*

Palavras-chave: *Formação de intérpretes, vítimas de violência de género, interpretação jurídica, interpretação policial.*

Introduction

Gender violence is a scourge with international dimensions and regrettably continues to be on the rise, as highlighted by recent studies (FRA – European Union Agency for Fundamental Rights, 2014; DGVG - Delegación del Gobierno para la Violencia de Género, 2015). Many women who are gender violence victims are also immigrants and this condition makes them even more vulnerable and unprotected (Amnesty International, 2007). The different factors that prevent such victims from escaping violence include: precarious work situation, family burdens, family disintegration, cultural beliefs that discourage challenging male authority, etc. An additional factor is the inability to speak the host community language, which contributes to their isolation and lack of protection, and which in turn can be a dissuasive element for requesting help. As Huelgo *et al.* (2006: 5) point out "language access plays a central role in the ability of survivors to progress in their journeys to safety".

Countless efforts have been made on the legislation and assistance fronts with a view to preventing and combating all types of violence against women. International, European and national rules have also followed suit in order to ensure preventive actions and guarantee all such victims the right to assistance and help.

At the EU level, this is evident in *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime*. This Directive recognises the special attention required by certain groups of victims, such as foreign women who are more vulnerable, because they do not have a command of the host country language. Even though this Directive is not specifically concerned with translation and interpretation, it nevertheless deals with the linguistic problems faced by victims and to that end dedicates its Article 7 to ensuring the provision of linguistic assistance to victims, during the judicial process (Hertog, 2015b). On the other hand, the need for the professionalization and specialisation of those who interpret during the criminal process is also reflected in the earlier *Directive 2010/64/UE of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings* (Hertog, 2015a; Giambruno, 2014; Del Pozo and Blasco, 2015).

However, the reality is that when these women need access to public services and require interpreters to communicate, they are mostly assisted by individuals who are not professionals and not specifically trained to work in such contexts. This results in the absence of any quality assurance regarding the interpretation, which can lead to serious miscommunication. Therefore, there arise two serious consequences: increased vulnerability and lack of protection of the victim's rights. This issue requires action as recently pointed out in a report from the Royal Commission on Family Violence by the Victoria Government in Australia, which includes among other recommendations, the need for training interpreters to understand the nature and dynamics of family violence.

> The availability of professional and independent interpreting and translating services is inadequate. Professional accreditation standards for interpreters should be amended to incorporate minimum requirements relating to understanding the nature and dynamics of family violence. (2016: 34)

The SOS-VICS project, which includes 9 participating universities, was born within this scenario with co-financing from the EU's Criminal Justice Programme. The project was

carried out in Spain and the main objective was to develop a specialised interpreter-training program to work with foreign female gender violence victims, based on the needs identified. The project also intended to raise awareness among the agents involved in assisting GV victims of the need to work with professional and well-trained interpreters in order to comply with international and EU legislation (Naredo, 2015; Abril, 2015).

Interpreting for GV victims in legal settings

Provision of attention and assistance to GV victims in Spain is mainly performed in legal, health and psycho-social settings (Toledano and Del Pozo, 2015). The legal setting is in turn divided into police and court settings.

Police settings provide protection and security for victims and the individuals involved here are law enforcement staff, especially those responsible for attending women GV victims. Encounters in this setting have different communication objectives such as: taking notes of victim's statements when lodging a complaint, assessment of risk level and victim protection, or follow-up, etc. Such encounters may take place in police stations or at the place where the police attend her.

Court settings include the victim's encounters with legal professionals such as judges, public prosecutors, lawyers, etc. with a view to protecting and defending her rights (Ortega *et al.*, 2015). Interpreting services are often used to provide advice and legal assistance through a lawyer, recording of victim's testimony by a judge or court interrogation during trial.

Legal advice to victims can also be provided outside these contexts as an integral part of centres specialised in GV, where the centre's lawyer provides counselling even though he/she may not be the legal representative in court. In such cases, the dynamics and characteristics of the communicative situation are more relaxed than in typical court settings.

Forensic doctors can be involved in both health and court settings (Valero *et al.*, 2015: 217–224). Forensic examination tries to gather evidence of physical and psychological abuse, which is recorded in a forensic or health report that details injuries and physical and psychological sequelae. Examinations can also be performed in a hospital when a forensic doctor is called in by the health care staff during emergencies or in integral examination units connected to courts.

Research aims and methodology

The aim of our research is to define the characteristics of the communicative situations that take place between foreign GV victims and agents in legal settings (police and court) and ascertain the training required by interpreters to work in such contexts. To that end, we analysed SOS-VICS' fieldwork results on the communication needs and the procedures used for providing linguistic assistance, in court and police settings in Spain to foreign female GV victims, who do not speak Spanish or the other co-official languages. This helps us to understand the training needs of interpreters who work in such contexts.

Project fieldwork was carried out using mixed research methods in accordance with the objectives and the target population, and included:

1. Two focus groups with representatives from all stakeholders involved in communicating with GV victims (agents, victims and interpreters). The first focus group

was held at the beginning of the project to obtain first hand information on how assistance is provided to foreign victims and on communication problems that arise. The second focus group was held after the draft deliverables of the project were ready, in order to get agents feedback on the same.

2. A questionnaire survey of 586 agents with experience in assisting foreign female GV victims (social, health, police and court fields[5]).
3. A questionnaire survey of 27 interpreters who had experience in assisting foreign female GV victims[6].
4. Semi-structured interviews with 12 victims and 12 agents[7].

Detailed information on the methodology used for the questionnaire and the Delphi interview is contained in project reports (Del Pozo *et al.*, 2014a,b). This paper focuses on the data from the questionnaire survey of agents (police and court staff) and on the results from interviews with interpreters which helped ascertain the training and professionalization needs specific to police and court interpreting. Moreover, and in order to enhance research results, qualitative information from the focus groups and interviews with agents has also been analysed (Hale and Napier, 2013: 12).

Interpreting for GV victims in legal settings in Spain: characteristics and training needs

Characteristics

The 2015 Violence against Women Macrosurvey carried out by the DGVG (Delegación del Gobierno para la Violencia de Género) states that the prevalence of gender-based violence among foreign women is twice that among Spanish women. This is also reflected in the testimony of agents who assist such victims surveyed by SOS-VICS (Del Pozo *et al.*, 2014a: 136). Even though these data refer to all contexts surveyed, the average number of victims assisted during the past year by each agent was 78 for Spanish women and 48 for both foreign women and victims with unknown nationality. However, the maximum number recorded for a single agent was 4381 Spanish victims and 2100 foreign female victims during just the one year.

When asked about the quality of attention given to victims, 94% of police staff and 86% of court staff considered that Spanish and foreign victims received the same attention. However, both groups acknowledged the presence of obstacles that hampered their job. To be more precise, 69% of all agents indicated that the linguistic barrier was important when providing assistance to victims. Other factors mentioned were a lack of knowledge of existing services (76% considered it to be important) and mistrust of such victims towards services offered (73% considered it to be important).

Spanish law obliges the provision of interpretation in the different stages of the criminal process to those who do not speak Spanish, and therefore, interpretation in most encounters with victims in the fields of justice and security is guaranteed by law [8]. The right to an interpreter is therefore recognized in the legal field as one of the aspects needed to fully guarantee the rights of foreign female GV victims (on par with, for example, the right to free justice when a woman is an illegal immigrant or access to social services). In this respect the questionnaire results show that 82% of court staff surveyed and 81% of police staff indicated they used interpreters at least sometimes to communicate with victims. When providing this service, 78% of police staff and 63% of court staff

mentioned the presence of a specific action protocol although only 62% of police staff and 57% of court staff said they actually followed the protocol.

However, such assistance to victims is not guaranteed at all stages of the legal process, something that agents regret as reflected in this extract taken from one of the agents surveyed:

> 104. Some questions cannot be answered with a YES or NO because the work of a lawyer involves contact with the professional interpreter only in judicial statements. The number of times an interpreter accompanies victims later in the interviews with the lawyer is anecdotal, because this kind of job must obviously be a paid job and free legal aid does not cover this service. This would be one of the biggest demands, i.e., improving assistance provision to victims with an interpreter throughout the entire process, not only during judicial actions. (Del Pozo *et al.*, 2014a: 94)

Prior to making a complaint in the police station or court, victims can ask for specialised legal assistance through the municipal services, which inform them about how and where they can make complaints, other rights they are entitled to and the procedures and encounters in which they will have the help of an interpreter. Another agent laments the paucity of resources for assistance in these and later stages of the intervention process and complains of the lack of efficacy of the services in police stations and the resultant consequences of the same for the victims.

> 91. There is little access to interpreters when attention provision to victims is basically an advisory function and in later stages of the complaint. However, it is fundamental that they understand the entire process and the resources available to them. In our case, there is a considerable delay before the interpreter arrives at the police station and the victim may possibly have decided not to lodge a complaint by then. (Del Pozo *et al.*, 2014a: 94).

In order to assure full protection of victims, we need to guarantee linguistic assistance throughout the process, so that these women can act with full knowledge of their rights, the procedures involved and the consequences of any of their decisions. Therefore, this is an essential element for the empowerment of women.

> There is discrimination in access to justice when an interpreter is not provided, because the foreigner understands some Spanish and no account is taken of the complexity of legal language. This is also the case when the foreigner is also a victim. This latter situation is the one in which most migrant women victims of domestic violence find themselves. Many women have to approach a lawyer without any guarantee that they will be accompanied by an interpreter to facilitate full comprehension of the consequences of their action. And this right is not guaranteed to victims who also have the added difficulty of linguistic barriers. (Gascón and Gracia, 2004: 7)[9]

Furthermore, the quality of interpretation is often poor since language services in these settings are provided in Spain by companies who normally hire unqualified interpreters with no special training to assist victims whatsoever (Del Pozo and Blasco, 2015). For instance, of the 586 agents surveyed, 126 affirm that interpreters take part (advise, consult), but 131 note that interpreters converse with the victim and then do not translate, and 152 say that interpreters are unaware of the terminology.

The analysis of the questionnaires and discussions held during the focus groups also provided information on how interpreter-mediated encounters take place in these settings. Generally speaking, it appears that they are not always performed in a way that guarantees adequate linguistic assistance and quality service to victims. Aspects such as the absence of reserved space for encounters with victims, changing of interpreters during the process, requesting interpreters to summarise testimonies, or allowing the interpreter to spend time alone with victims are situations which are more or less common with GV victims in police and court settings. Although percentages recorded are not high, they are nevertheless significant to indicate non-provision of interpreting according to professional guidelines and ethical principles such as precision, confidentiality and neutrality.

> Confidentiality can literally be a matter of life and death for victims of domestic violence, especially in remote communities. The advocate should ask the interpreter whether or not he or she knows the victim, the perpetrator or the children. The advocate should also ask the client or victim whether or not they know the interpreter. Even if the interpreter is not asked, the interpreter should disclose any familiarity and potential conflict of interest. Depending upon the situation, the victim and advocate may ask the interpreter to continue or may dismiss the individual and secure a different interpreter. (Polzin, 2007: 23)

In this study, 34% of police staff and 53% of court staff stated that they do not ask the interpreter about conflicts of interest. Additionally, 52% of police staff and 65% of court staff do not offer victims the possibility of changing the interpreter. In the court setting, interpreters are often asked to interpret for both victim and aggressor, which can clearly be considered a conflict of interest and which undermines the victim's trust in the interpreter.

As shown above, communication with foreign female GV victims presents specific challenges. The following section deals with the training needs of interpreters working in these contexts, compiled from the fieldwork survey carried out on both agents and interpreters (Del Pozo *et al.*, 2014a,b).

Training needs

The opinion of agents

Most agents working with GV victims stated that the use of professional interpreters improved the level of assistance to victims and they emphasized that it must be considered to be a right of the victims.

There is currently no accreditation system for interpreters in Spain or indeed in many other European countries to guarantee the quality of training in the different specialisations. This is particularly important when translation and interpretation provision is obligatory by law, but where the total absence of training and experience is often accepted as normal (Giambruno, 2014; Ortega *et al.*, 2015). According to our research, 70% of police staff and 41% of court staff claimed that they asked interpreters for accreditation prior to letting them on the job, but this being only their ID card or Translator ID card. It is obvious that this does not ensure any sort of competence since they are simply identification documents or cards issued by the same companies that hire unprofessional interpreters for the service. In this respect one of the responses received from a surveyed agent was:

> 331. My experience over the years was always with interpreters that the victims themselves brought along. Women with no knowledge of Spanish have never come to my service. These interpreters have always been friends of victims and occasionally even family members. We in the association act as the private prosecutor. Lawyers complain that declarations in police stations and courts are done through non-official interpreters, who are foreigners that speak a language and offer to translate. At times, we have doubts as to what is being translated and the same translator is normally used for both victim and aggressor. We think that official interpreters are only used in courts. (Del Pozo *et al.*, 2014a: 93)

The great complexity of GV and the multiple needs of victims require specialisation of not only services and means of assistance, but also of the agents and operators involved. Professionals who assist victims must be aware of the existing resources, the legislation and measures placed at the disposal of women and they should act from a gender point of view in a coordinated manner, following specific protocols for each field with a view to ensuring efficient service and preventing the double victimization of these women (Toledano, 2015: 18). In fact, specialisation of professionals that intervene in the information, assistance and protection process of victims is one of the guiding principles outlined in both national and international legislation (Naredo, 2015). In a court setting, the specialisation of service providers and agents linked with assisting GV victims is considered essential and is recognised by the Expert Group on Domestic Violence & Gender of the Spanish Judiciary (CGPJ) in its report for 2011 (2011: 28).

It appears that this requirement is being implemented in Spain because about 98% of court professionals and 92% of police staff stated that they received specialised training about gender violence. When asked whether they considered this training enough, 68% of the court staff and 51% of police staff said yes. However, when asked whether they would like to receive more training 84% and 87% also said yes.

When asked whether interpreters should also receive special training to work with GV victims, more than half of those surveyed from court settings considered that interpreters must be trained to work in their field, while more than half of those surveyed from police settings (54%) considered it to be important. However, these figures equally show that many agents are still unaware of the importance of working with qualified interpreters specially trained to work with GV victims as required by international law. When all agents surveyed were asked about the basic knowledge and skills an interpreter must have to be able to work in GV cases, high importance was given to knowledge of the legal system (22%), gender violence (19%), language: terminology, mastery of both languages, (18%) and psychology (18%). In so far as basic interpreter skills are concerned, the most valued aspects were empathy (51%), communication ability (20%), capacity to listen (13%) and patience (12%). These figures show that they consider that interpreters who work with GV victims should acquire and develop skills that are different from other legal interpreting settings, where for instance empathy would not be so crucial.

The police staff surveyed mentioned high (47%) and medium (27%) satisfaction with interpreter knowledge and high (45%) and medium (31%) satisfaction with interpreter skills. However, the level of satisfaction of court staff was lower in both cases: medium (39%) and high (29%) for knowledge, and medium (44%) and high (23%) for skills. The difference in their replies could be due to the fact that one of the most visible signs of interpreter performance is their knowledge of specific terminology. Since the use of

complex terminology is more common in court settings than in police settings it becomes evident that the lack of interpreter training would be more noticeable to court staff than to police staff.

The opinion of interpreters

The opinion of interpreters on training needs for the performance of their tasks in these contexts is also fundamental to complete this analysis and to design materials for such specialisation. As seen in the Delphi survey (Del Pozo *et al.*, 2014a) carried out with 27 professional interpreters with experience in this context, interpreters indicated that there is a lack of specialised training and that it is difficult to access GV training. During the interview, they were asked about training deficiencies, barriers for professional training encountered and the best mechanisms for overcoming such barriers. On the subject of training needs concerning content and issues considered important for specialisation in GV interpretation, the responses were grouped around questions related to interpreting, psychology and specific subjects for the fields of intervention. On the issue of interpreting, they gave high importance to good communications skills, mastery of working languages and specialised terminology, adequate use of pragmatic aspects and the different interpreting techniques. Mention must also be made of the importance afforded to good practices and professional deontology, not forgetting the way they actually interpret. In order to be able to mediate in GV and minor abuse encounters, Huelgo *et al.* (2006: 6) highlighted the importance of interpreters knowing the implications and the ethical and legal requisites of performing their tasks, with special emphasis on confidentiality, neutrality and precision.

Even though many of the aspects related to interpreter training mentioned by our interviewees are common to all legal interpreting training, there are quite a few specific issues that should be given special consideration when training interpreters to work with GV victims. For instance, gaining victims' trust is crucial and in this respect interpreters must emphasise the confidential nature of their intervention; even more so, when the same interpreter is used for both aggressor and victim. Interpreter impartiality and neutrality are equally important to gain victim's trust and get her to talk about her pain and suffering. Interpreters must also be trained about cultural stereotypes, values and prejudices, so that they can identify and overcome them.

Other subjects and content to be included in specialised training course that were mentioned by interpreters are related to psychology, i.e., how to act with victims, as well as stress and emotion management. Interpreters must be trained to handle emotionally-charged situations, since they can lead them to either reject the victim or over-empathise with her. This in turn can lead to inaccuracy when interpreting incoherent descriptions, contradictory statements or rude utterances, all common characteristics of victims discourse. As pointed out by Abril *et al.*:

> Both the emotional state of the woman and the hardship of the experiences told can result in an emotional burden, which is very hard for interpreters to handle. It can even prevent him/her from doing his/her job correctly and even affect the way he/she greets. Abril *et al.* (2015: 71)[10]

High importance is given to knowledge of issues linked to each intervention setting. In the specific case of police and court settings, they mentioned knowledge of legislation, (rights of victims, legal framework for gender violence, persons involved and procedures), as well as the protocols, documents and forms used. One must bear in mind that

assistance provided to GV victims is different from that provided to other persons and is often performed by professionals belonging to special units who have received special training for the same (Abril *et al.*, 2015: 70). In the legal settings, specific courts and procedures have been created to deal with this crime (Ortega *et al.*, 2015). Interpreters would greatly improve their performance if they know the specific legislation, resources and conversational dynamics.

Interpreters require specific GV training in other aspects, which include, but are not limited to: understanding the concept of gender as a social construct, awareness of the effects of violence on the victims and their behaviour, and recognition of our own prejudices and stereotypes in order to be able to work under the principles of integrity and neutrality whilst showing empathy.

On the subject of obstacles that hamper performance of their tasks, interviewees mentioned the absence of specific training and support for the same. For instance, interpreters are not included in training initiatives organised by national or regional governments. Another important factor is the lack of collaboration from other professionals who work in these contexts. In police and legal settings interpreters complain that they are not provided with information about the event prior to their assignment and on many occasions they are left alone with the victims or are asked by police and court staff to do things that go beyond their role.

And lastly, on the issue of the methods considered most appropriate for specialisation in GV and directly related to the settings discussed, they mentioned the training of interpreters, both separately and jointly with agents via courses, simulations, attendance at court trials, practice with professional interpreters, access to real testimonies and collaboration between agents, trainers and interpreters. Also mentioned was the training of agents and courses for the justice administration staff on how to work with interpreters (Borja and Del Pozo, 2015). Even though many of the issues related to training police and judicial staff on how to work with interpreters are common to other legal settings, there are specific issues related to GV settings. These are dealt with in great detail in the good practice guide for working with interpreters in GV settings elaborated by SOS-VICS (Borja and Del Pozo, 2015), which includes recommendations such as not using the same interpreter for the victim and the aggressor, not leaving the interpreter alone with the victim, making sure that interpreters do not have conflicting interests, etc.

Conclusions

The increasing incidence of violence against women worldwide has provoked a response from national and international bodies and has led to the creation of legislation to combat this crime. Protocols and special mechanisms have been established to enforce victims' rights that are enshrined in the legislation.

The analysis of the SOS-VICS project data in police and court settings shows that GV interpretation has special characteristics that are distinct from other types of interpretation, and therefore there arises the need for interpreters to receive specific training in order to be able to work with GV victims in police and court settings.

But the reality, at least in Spain, where this study was carried out, is that language assistance services in police and court settings for GV victims who do not speak Spanish or the co-official languages, do not seem to follow a rights-based approach. Interpreters

are not included in training initiatives organized by the State for agents and therefore interpreters have many difficulties to acquire specific training. The study also highlights the need for training police and court staff on how to best work with interpreters because such agents are oblivious of the interpreter's communication role or their needs for successful linguistic mediation. All of this hampers the full assistance provision to victims which is inscribed in law.

The SOS-VICS project has attempted to provide a response to the needs detected during the project by creating a good practice guide to work with interpreters (Borja and Del Pozo, 2015) besides an interpreter training manual (Toledano and Del Pozo, 2015) and a website[11].

Notes

[1]All results from the Speak Out for Support (SOS-VICS) project can be accessed through the project web site: http://cuautla.uvigo.es/sos-vics/.

[2]Following EU terminology, the word "agents" refers to all professionals involved in assisting GV victims: medical doctors, nurses and other health professionals, psychologists, lawyers, community workers, police, the judiciary, violence against women helplines, victim support organizations, social workers, etc.).

[3]Os resultados do projeto Speak Out for Support (SOS-VICS) encontram-se disponíveis no website do projeto: http://cuautla.uvigo.es/sos-vics/.

[4]Em conformidade com a terminologia da UE, utiliza-se a palavra "agentes" para referir todos os profissionais que prestam assistência a vítimas de VG: médicos, enfermeiros e outros profissionais de saúde, psicólogos, juristas, prestadores de serviços comunitários, polícia, agentes judiciários, linhas de apoio à violência contra as mulheres, organizações de apoio à vítima, assistentes sociais, etc.).

[5]For a complete report on the questionnaire, see Del Pozo *et al.* (2014a).

[6] For a complete report on the Delphi survey, see Del Pozo *et al.* (2014b).

[7]For confidentially purposes only project partners have access to the transcripts of the interviews with agents and victims.

[8]Directive 2010/64/EU of the European Parliament and of the Council on the Right to Interpretation and Translation in Criminal Proceedings was transposed into Spanish legislation in 2015 (Del Pozo and Blasco, 2015; Ortega *et al.*, 2015).

[9]Translated by authors.

[10]Translated by authors.

[11]Web de formación de SOS-VICS: http://sosvics.eintegra.es/

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Book Review

Legal interpreting at a turning point
La interpretación en el ámbito judicial en un momento de cambio

Reviewed by Yvonne Fowler & Jane Straker

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Legal interpreting at a turning point
La interpretación en el ámbito judicial en un momento de cambio
María Jesús Blasco Mayor & Maribel del Pozo Triviño (eds.) (2015)
MonTI 7, Universitat d'Alacant, Universitat Jaume I, and Universitat de València

Those of us, interpreter educators, academics and interpreters alike who have been campaigning for quality and professionalisation in interpreting for the past twenty years or so might be tempted to view the title of this excellent volume with some caution. There have been many occasions when we had thought that a "turning point" had been reached, only to be bitterly disappointed, especially in the United Kingdom. New laws, regulations or EU Directives have been passed in the UK and then ignored or subverted, agreements have been made and subsequently abandoned, professional standards have been devised and then rendered redundant because of prevailing political ideologies. It was thus with a rather heavy heart that we began reading.

In their eponymous chapter Blasco Mayor and Triviño describe the current state of legal interpreting Spain where there is a complete lack of awareness of interpreting amongst the judiciary, no national interpreting register, and poor testing procedures with no check on interpreting ability for so-called "sworn translators/interpreters". They illustrate how the government has abrogated its responsibility for cultivating quality legal interpreting by outsourcing the service to commercial companies "interested in hiring interpreters at ridiculously low rates in order to increase their profit…persons working for them as interpreters do not bother to get training which is costly in terms of time and money" (pages 60–61). This is a scenario all too familiar here in the UK since the

Ministry of Justice did the same in 2012, with disastrous results for defendants, victims, witnesses and interpreters alike. Because of this, the cause of quality interpreting was set back twenty years overnight. The authors have put forward an excellent case for the establishment of a national register of public service interpreters in Spain, but as we have seen in the UK, this by itself is not sufficient to ensure quality of interpreting, as many interpreted events still end up being mediated by non-professionals who are not registered. The authors recommend that "the [Spanish] Ministry [of Justice] should not only be responsible for the provision of this service but also for the accreditation process" (page 52) and that the government should "encourage and financially support the persons" to take interpreting courses in languages of lesser diffusion and that they should do this in conjunction with academic experts and other interested professionals. Even if this commendable ideal were to be implemented, the whole project is always vulnerable to political whim. In a European climate of economic austerity and mass migration, any imperative for the state to regulate legal interpreting is often over-ridden by the commercial imperative to have regard to the bottom line.

Hertog's chapter "Directive 2010/64/EU of the European Parliament and of the Council on the Right to Interpretation and Translation in Criminal Proceedings" provides us with a masterly survey of the progress of issues of interpreting and translation within the European Union, and, specifically, how the Directive on interpreting and translation in criminal proceedings came about. There can be little doubt that the principles of harmonising arrangements for legal interpreting across EU borders are sound ones, but Hertog does not underestimate the challenges that countries will face in their implementation. This chapter is surely set to become a point of reference for campaigners and researchers alike.

Corsellis sees a "community of practice" of legal interpreters evolving, and to some extent this is true. However, we know from previous work by Hale (who is also one of the contributors to this volume) that communities of practice have to be informed by theories of language, discourse and linguistics to rule out the possibility of interpreting intuitively, rather than operating on an informed basis thoroughly underpinned by theory and an understanding of how language works (Hale, 2007). As Hale has pointed out, unless interpreter communities of practice have access to theories of interpreting they will simply interpret as they see fit. So the missing dimension in any community of practice is contact with academic researchers (for instance, we still hear interpreters professing themselves to be "conduits" – a concept which was comprehensively ditched twenty years ago). We disagree with Corsellis that "the logic [for outsourcing] is understandable" (page 110) (in our view, public services are not commodities which can be bought and sold for profit). Despite this statement, however, Corsellis is to be commended for her unequivocal assertion that for-profit commercial interpreting companies hinder and ultimately prevent professionalisation of interpreting by weakening professional accountability and by "taking on a multiplicity of roles, such as being both employer and regulatory body. Overall slippage of standards takes place swiftly and is difficult to recover from" (page 110). This is a crucial point, and as the UK government embarks upon a new round of procurement (where doubtless yet another multinational company will be the preferred bidder) it is one which any Ministry of Justice would do well to bear in mind. However, only an optimist could say that matters are "improving" as she claims in her conclusion.

Wallace describes yet another chaotic situation in the US, where there is no nationally held register of public service interpreters, and where 28 US states (in common with many other countries) have no publicly searchable lists of legal interpreters and no national criteria for training. She describes various admirable initiatives for remedying the situation, including the establishment of a new register. However, the differentiation into tiers by certification/qualification is something which has been attempted in the UK both before (during the era of the National Register) and after outsourcing. There is evidence to show that service providers have little regard for levels of registration and certification, and take for granted the competence of the service. In addition, the companies to whom interpreting services are outsourced tend to ignore such differentiations (called "tiers" in the UK) and are often content to send any "interpreter" who answers their call. Where this chapter excels is in the discussion and explanation of the concept of "market disorder", a term first coined by Tseng (1992). Wallace goes on to quote Aequitas authors Grollmann *et al.* (2001) who maintain that there should be an agreement to use only interpreters who appear on the national register, a recommendation which we wholly endorse. In the UK we once had something called a National Agreement, which had just such a stipulation. It has now been bypassed, a largely disregarded by-product of the fashion for outsourcing in 2012.

Andjelic's analysis of the current unsatisfactory state of affairs regarding court interpreting in Montenegro is patiently and carefully detailed in French. The proposals made by the author in section 6 seem sensible and based on verifiable facts regarding Montenegrin legislation, EU Directive 2010/64 and personal reflection. The author states that the Montenegrin language is linguistically identical to that of neighbouring countries (Bosnia-Herzegovina, Croatia, Serbia) so interpreters from these other jurisdictions might be deemed sufficiently qualified to be recruited for interpreting in Montenegrin, despite their lack of awareness of the legal framework. The chapter makes important points relating to Montenegro, the 47th member of the Council of Europe, which appears nevertheless, with regard to legal interpreting and translation, to lack:

- Coherent and consistent terminology, especially a distinction between the terms 'interpreting' and 'translation' in the legal sphere. Paragraphs 4.2 and 5.1.1 elaborate on making the differentiation quite obvious by using different terms in Montenegrin.
- Quality control, code of conduct, CPD and disciplinary procedures for professional interpreters/translators.
- Training for potential interpreters/translators.
- Tests for/checks on linguistic competence.
- Written test of legal knowledge for translators and interpreters.

It is a pity for English language readers that the footnotes and bibliography are in a language which will probably be unfamiliar. The author has, however, been diligent and thorough in detailing the present inadequacies and steps which need to be taken if Montenegro wants to progress with its accession into the European Union. It is in the EU of today and tomorrow where accurate and faithful interpreting and translation will play a vital role in the 'right to be understood' of so many disparate nations.

Perhaps any change for the better in public service interpreting will come from the judiciary itself, who, after all, have the power to ensure the smooth and effective functioning of the courtroom in terms of communication and protect the rights of the non-

English speaking defendant. Some of the loudest voices who have protested against the outsourcing arrangements here in the UK have belonged to judges, lawyers and magistrates. The chapter by Hale is particularly useful and practical. It tackles the lack of awareness of interpreting issues in the judiciary head on with a detailed description of her workshop on how to work effectively with interpreters. This extremely well-thought-out 90-minute workshop is targeted at members of the judiciary in Australia, with five stimulating sections devoted to the following topics. First Hale establishes the audience's expectations and experiences of interpreters (in our view a most fruitful activity; when expectations are revisited at the end of such a workshop, the participants can measure for themselves how far they have travelled in terms of awareness). In the second section, a written excerpt of a hearing over which a magistrate is presiding is displayed. The magistrate's speech is presented as confusing, as it is not clear whom s/he is addressing (the interpreter or the defendant). It would be a straightforward matter for any of us who want to use the format of Hale's workshop to substitute their own examples of similarly confusing judicial instructions. The points to be elicited through this activity are the differences between translation and interpreting and the impossibility of interpreting word for word. The next section is devoted to linguistic theory which leads to a discussion about language in context and cultural assumptions. The fourth is devoted to debates about interpreter accuracy and the fifth offers practical guidance on working effectively with interpreters. The evaluations of the participants demonstrate that the workshop was very well-received, and it seems to have had tangible results for the better treatment of interpreters themselves. Hale gives us all hope for the future, but adds the caveat that raising awareness among the judiciary will not be sufficient in itself to improve the quality of court interpreting. We would go so far as to say that the judiciary is a very good place to start, since only judges and magistrates have the powers to enforce good practice in their courts and governments seem generally more inclined to listen to judges than to interpreters.

In the chapter which follows, the practice of outsourcing interpreting services to private for-profit companies is held up to scrutiny and found to be wanting. Claudia Angelleli provides a fascinating and disturbing account of a telephone interpreter-mediated interview between two Border Patrol guards on the US side of the Mexican border and a monolingual Spanish speaking male who was subsequently arrested, suspected of having smuggled drugs across the border in his lorry. She provides us with a short review of the most relevant literature about how information can be accessed, blocked or constructed by speakers of a language other than that of the court and how defendants' rights can be misinterpreted (a frequent occurrence in the UK because many interpreters appear to have no prepared translation to carry with them to which they can refer) with the result that any testimony may be excluded from proceedings. Angelleli also discusses the difficulties and problems of telephone interpreting, and illustrates how the telephone interpreter in question misunderstood a vital part of the interview because she was not able to see the body language of the suspect. As one of the authors of this review has studied interpreted prison video link in detail, we were particularly interested to read that Angelleli considers that telephone interpreting leads to an increased use of third person by the interpreter, a tendency frequently noted when observing lawyers' consultations via video link with their clients in prison. Angelleli shows how catastrophic these misunderstandings were for the defendant concerned, who voluntarily crossed

the border into the US as soon as he became aware that someone was going to load his truck with illegal substances, having previously spoken to a US agent who had made an arrangement with him that he should come straight to him after crossing the border. His aim was therefore to alert the Border Agents of the situation and to seek their help and protection. Through a series of serious interpreter-generated misunderstandings, including failure to use the correct intonation, the driver is arrested and spends two months in prison, only to be set free on appeal, having lost his right to work as a driver across the border. Jurors in this case only saw the English version of the phone interview transcription, whereas Angelleli believes that expert transcribers and translators should be used to first transcribe the foreign language script then translate it. Only then can a direct comparison be made between the utterances in the two languages and a proper judgement of the facts be undertaken. Worst of all, commercial companies to whom telephone interpreting is outsourced in the US tend to use unqualified and untrained interpreters for these interviews. Angelleli highlights the considerable gaps in competent interpreting provision at the Mexican/US border, and again, blame can be fairly and squarely laid at the door of the prevailing fashion of outsourcing services to commercial companies, whose only interest is making a profit. As Angelleli says, multilingualism is the norm in modern society; the judiciary had better get used to it!

Soriano writes about impartiality in police interpreting, and is a trained conference interpreter. She is evidently aware of the challenges and the ethical demands of working in this context. However, the chapter has not greatly advanced the understanding of public service interpreting; the analysis of five interpreted sessions is not really enough to constitute a serious study, as the author rarely moves out of the sphere of anecdote.

Ng, on the other hand, in a fascinating chapter, shows how the Hong Kong bilingual courtroom is unlike most others. This is because of the dominance of the English language, a legacy from the colonial era. However, most of the witnesses and defendants appearing in court nowadays (as well as the onlookers) are Cantonese-speaking. Ng adapts Bell's model of audience roles to show the complexity of interaction in the HK courtroom (Bell, 1984). For example, one of its most unusual features is the presence of a large number of bilingual court personnel (judges and lawyers) who are competent speakers of both Cantonese and English. So the renditions of interpreters into Cantonese can be accessed, criticised and exploited by these bilingual participants, and are frequently the cause of disputes by counsel, even when they are not the direct addressees of the rendition (in this volume, see Hale's assertion in this volume that bilingual court personnel often overestimate their own second language ability). Bell's Audience Design theory needs to be reconfigured to take account of interpreter-mediated events, especially those which take place in the bilingual courtroom, and Ng has succeeded in making us re-think these configurations in a bilingual context. What is particularly interesting is her recommendation for the use of team interpreting and simultaneous interpreting equipment so that both *chuchotage* and consecutive techniques can be used in appropriate situations. In this way, all those present in the courtroom would be able to access the speakers' utterances as well as the judge's interventions in English. Of course, we need to consider what relevance this has to other, more typical bilingual courtrooms. In the UK the layout of courtrooms and acoustics are often so unfavourable for an interpreter (they have no electronic transmission equipment) that they can sometimes neither hear nor see speakers properly, and are often are too timid to alert the court to this fact. Working

in pairs and the use of equipment for simultaneous interpreting would go a long way to reducing mental fatigue and ensuring good communication, particularly in long trials which may proceed for many days or even weeks.

Finally, Creezee, Burn and Gailani consider the considerable challenges of providing authentic teaching materials for a multilingual cohort of interpreters, something that is of great relevance to those of us who are interpreter educators and especially to those who have a range of speakers of languages of lesser diffusion within our classes. It is well known, as the authors point out, that trainee interpreters have particular difficulties with courtroom question types, often failing to understand how they can inadvertently subvert lawyers' rhetoric by not interpreting them properly, or by omitting the question frame. The challenge for interpreter educators is to be as creative as possible with materials that are freely available on the internet, and the authors' idea of creating blanks in YouTube postings to allow trainees to interpret prior to receiving feedback from assessors is a creative one which is likely to yield fruitful results. However, we would have liked more information about the length of each clip (the clips appeared to be no longer available when we attempted to retrieve them). To be meaningful clips need to replicate as closely as possible the sometimes lengthy question and answer sequences in the courtroom. However, we thoroughly endorse their "situated learning" approach and concur with the authors that "teachers should create a scaffold for learning and gradually allow students to safely construct their knowledge through practice" (page 275). After all, within a short period of time trainees will need to learn how to monitor their own output, as well as be trusted, competent and completely independent. Practice like this is one step away from role plays with a fully staffed courtroom in simulation.

We began this review with a heavy heart, and it is perhaps notable that out of a total of ten articles, two of the authors explore the causes or effects of poor quality public service interpreting or its lack of regulation, while four of the authors discuss (to a greater or lesser extent) the damage caused by outsourcing. As this latter phenomenon now dominates most aspects of public service interpreting (especially in the UK and Europe), this research emphasis seems set to continue. The volume as a whole, however, is a valuable compendium of research, both positive and negative, about various aspects of public service interpreting. In our view, it presents a balanced, accurate and up-to-date picture of the field. Whilst Hale, Hertog, Ng, Creezee *et al.* and other doughty researchers continue to uplift us with new approaches to research, training and regulation, we await events in the field with bated breath.

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Book Review

Language and Culture in the EU Law: Multidisciplinary Perspectives

Reviewed by Joana Forbes

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Language and Culture in the EU Law: Multidisciplinary Perspectives
Susan Šarčević (2015)
London: Routledge

The useful gathering of reviewed papers that were once presented for the occasion of the multidisciplinary conference on Language and Culture in the EU Law at Jean Monet Inter-University Centre of Excellence in Opatija, made it possible to achieve a higher level of discourse when compared with the average pre-published editions of this sort. The accession of Croatia into the EU in 2013 was the excuse that allowed this opportunity.

At the very beginning of our reading, there is a concise introduction made by Šarčević, over viewing this work as a step mark into interdisciplinary, into the undeniable impact of European law in shaping internal law and national cultures. The sentence that sums up and ties all the contributions being "to build unity in diversity" (page 2).

Firstly looking into its structure, this book is divided in three parts with 4 chapters each: Part 1 entitled "Law, Language and Culture in the EU", Part 2 entitled "Legal Translation in the EU" and Part 3 entitled "Terms, Concepts and Court Interpreting".

Following the book's content, throughout the entire volume the different perspectives are well covered, either from several backgrounds from the insiders' points of view (professionals who work within the EU institutions) or outsiders' points of view (national scholars or professionals). Moreover, this categorisation allowed a complete vision of the interaction of disciplines, cultural marks and languages involved in the entire process of transferring and harmonising EU Law in all Member States.

In Part I, the article presented in Chapter 2 by Michele Graziadei highlights the entitlement to translation and interpreting in criminal proceedings granted by the Directive 2012/13/EU of 22 May 2012, concluding that the principle of legal certainty is still hardly balanced when concerning the equal authenticity of all language versions of the legal instruments in EU law. This author identified exceptions that deviate presumptions, such as when litigants choose a different language version besides their own native language or when citizens of a country do not express themselves in their national language. For this reason, tasks cannot rely exclusively on verbal expression but there is a need to achieve the same semantic value in order to avoid the failure of a uniform interpretation. There is tacit knowledge that influences how the law is applied. The law creation and communication demand a new awareness of linguistic needs. So, in this sense this author is a fierce defender of the Lex Franca – with the consequent awareness of a third supranational law. In the legal texts there are elements or 'linguistic signs' without any established meaning, which are formed naturally by the legal activity.

On the other hand, in Chapter 3, Colin Robertson points out that there are 4 main linguistic issues in European law such as: the type of verb to use – shall (verb of command for enacting articles) or should (conditional verb for recitals which explain and justify the contents of the act) –, actions, legal effects and the implementation and transposition of the rules. Whilst analysing the different interfaces of the EU law, language and culture, this author recalls that the EU has its own legal personality based on primary law (treaties). The relationship between EU law and the Member States law is a condition of mutual dependence. All national courts interpret EU law but its ultimate arbiter is the Court of Justice of the European Union (CJEU). Although quoting an undated Murray (page 41), Robertson defends the legal analysis of comparative methods to detach submerged meanings that will necessarily influence EU interpretation. From this real insider's perspective, EU legal jargon is a separate genre and a separate legal order, in which French language gives the principal semantic structure, for that when translated into English new terms arise such as codification (meaning consolidation). Among many references, the Inter-institutional Style Guide provides a synoptic approach for that, nowadays language versions are synchronised.

In Chapter 4, the focus shifts to the interaction of both national courts and CJEU by Mattias Derlén. This article indicates that national courts often do not differentiate EU case law from EU legislation (instead "blending the two approaches of a single meaning and a single text"). Ideally, national courts can contribute to the application of EU law (positive perspective) and can constitute the limits of the Acquis impact (negative perspective). Yet, there are rules to apply: in primary law (treaties) there are 24 official languages equally authentic; in secondary law (legislation) there is attention to the working language – so the CJEU concedes equal authenticity of the official languages and requires the use of all languages, i.e., every provision of the EU law has a single meaning and all the languages "read together" create this meaning. Finally, in CJEU case law – article 37 RP – prevails the language of the case that is determined by the applicant; in appeals, it is the language of the decision of the General Court; in preliminary ruling proceedings it is the language of the national court referring the matter to the CJEU.

Barbara Pozzo, in Chapter 5, presents her comparative professional approach, emphasising the role of legal translation, the activity of comparative lawyers and the contri-

bution brought by the Draft Common Frame of Reference (DCFR). To level and normalise all different legal systems, one needs to master the "deep meaning" of the specific concepts. For this to be accomplished, the author drags attention to the need of uniform and hermeneutical principles of law and to a harmonised theory for the interpretation of multilingual texts.

Now into the frame of legal translation, Part II opens with Chapter 6 by Anne Kjœr where distinctive legal discourse is defended, again, as a result of a lingua franca used by judges and lawyers within the EU and, particularly, within the CJEU. In this sense there is a conceptual semantic independence that will differentiate legal translation as a separate theoretical activity.

Further, in Chapter 7, C. J. W. Baaij focuses on the amount of national legal knowledge needed for EU translators and lawyer-linguists to achieve legal and linguistic equivalences in the translation of EU legal instruments. Urging for an option, the author analyses two possible approaches "familiarisation" (needing a lot more in-depth knowledge) and "exteriorisation" (requiring only a "nominal awareness"). Following on to the topic of language fluency, in Chapter 8 Annarita Felici assumes the pragmatism of selecting English as a lingua franca (ELF), as a language vehicle, distinct from the native legal English, neutralised, serving a diplomatic purpose, although not clear of hypothetical ambiguities and misinterpretations.

Chapter 9, by Ingemar Strandvik, opens the debate to the importance of defining quality, either following the point of view of international lawmaking or on the side of protecting norms, beliefs and values. And while precision and fidelity to the source text is recommendable, the author incentivises translators to produce understandable versions as a means to promote uniform application of EU law by each national court. As an example, Strandvik presents a case study of the translation work on Common European Sales Law (CESL) presenting all the quality requirements set out by the European Commission.

Furthermore in Part III, Chapter 10, moving on to court conceptual interpretation, Jan Engberg focuses on autonomous legal concepts stating the importance of being described with common characteristics. The author then alerts us to this dynamic process that might clash with statutory interpretation and legal translation. Throughout the article the author uses a clever metaphor of "two lenses" to describe culture and interpersonal communication, which are factors that influence knowledge. Also an attempt is made to define the meaning of autonomous: "a concept is autonomous if it activates its own knowledge element" (page 175). The autonomy of the EU Law should not differ when interpreted by national courts of the Member States. He states CILFIT case in CJEU case law (Case no. 283/81 [1982] ECR 3415, paragraph 19): "Community law uses terminology peculiar to it" to justify that is essential to be independent and coordinated through Knowledge Communication (with research knowledge elements – conceptualisations). An example is the definition of "consumer" in Article 2 of Directive 97/7/EC in which the definition is presented in a negative way: person contracting outside professional activity. Finally, he announces a positive perspective: the task can get easier with time; concepts tend to acquire a supranational and autonomous meaning in national law.

Chapter 11 by Susan Šarčević argues for a systematic approach to EU term formation. The author calls the attention to the underlining pressure of translators when aligning

terms in order to achieve the so called and desired "conformity", sometimes having to accept neologisms and acultured versions.

Moreover, continuing the theme of the harmonisation of terminology, Maja Bratanić and Maja Lončar, in Chapter 12, defend the fatalistic perspective of the overall task. In their words, a real "myth" evidenced by the several entries in IATE, Euramis and Eurovoc, where inconsistency still persists.

Finally, in Chapter 13, Martina Bajčić develops the aims of the Directive 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings, of 20 October 2010, mainly as an opportunity to enhance the status of courts interpreters. Bajčić defends the need for court interpreting to be levelled in all member states in terms of its quality. The language is vague when mentioning "remote interpretation" and "minor offences", and fails to specify who is qualified to interpret and translate. She concludes that it is necessary to create a common accreditation scheme, as nowadays there are different procedures regarding summoning of sworn translators and even the extent of the term "interpreter" differs from country to country. This author mentions Qualetra (Quality of Legal Translation project funded by the EC) for further training of court interpreters and EMT (to unify university programmes at EU level) and establishing the so called "umbrella associations".

As an overall conclusion, this book is an excellent contribution to the legal language field and benefits all scholars and professionals of both linguistic services and legal background. Personally, one can get an undeniable assistance from this reading whilst researching and lecturing. Throughout the book it is remarkable that the interdisciplinary research arises and is emphasised in order to supply both academics and professionals with the best strategies, methods and ideas to achieve the best end: the intersection or transdisciplinary research.

It is important to consider that this book not only sheds a light on the character of EU law, but also demonstrates its influence in multilingualism and multiculturalism. Evidence is in the amount of mentions made to Euro-English, often referred to as "neutralized English", "lingua franca" or "Union-wide concept".

Its reading does present multiple perspectives (from "insiders" and "outsiders" to the EU reality) although it does not introduce contrastive and opposite opinions, all of the articles indicating that there is a real need to assert the direction in which the legal translation activity boat is navigating. Notwithstanding, there is no doubt that references to the future are no longer in terms of equivalence and term alignment above all criteria and at all costs, as authors indicate that concordance and correspondence subsides in the presence of an undeniable supranational level law and language.

Book Review

Speak English or What?: Codeswitching and Interpreter Use in New York City Courts

Reviewed by Piotr Węgorowski

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Speak English or What?: Codeswitching and Interpreter Use in New York City Courts

Philipp Sebastian Angermeyer (2015)
Oxford and New York: Oxford University Press

Speak English or What?: Codeswitching and Interpreter Use in New York City Courts by Philipp Sebastian Angermeyer published in the Oxford Studies in Language and Law series offers an investigation of interpreted-mediated hearings in small claims court in New York. The book raises important questions about the fairness of trial for speakers of languages other than English (LOTE) as it explores how language ideologies and institutional practices affect litigants' opportunity to tell their story. Grounded in an ethnographic research across three different sites and focussed on litigants who speak Haitian Creole, Polish, Russian or Spanish, the analysis is anchored in detailed examination of spoken interactions drawing on conversation analysis tradition.

The book is clearly structured with seven chapters. After introducing the aims and objectives of the book in Chapter 1, where the author argues that language choice in small claims courts indexes specific social meanings, the main body of the analysis focuses on different types on participants on one hand, and specific linguistic practices on the other. Chapter 2 then sketches a picture of the types of litigants who attend the court and the types of cases they bring with them. A brief description of the small claims court system, which is meant to widen access to justice, is also offered. The author notes that, unlike in traditional court proceedings, speakers of LOTE tend to be claimants. Speakers of four different languages are targeted, with Spanish being the most requested language in all three courts included in the study and Russian following. The motivations for the

choice of Polish and Haitian Creole are also well grounded, for example through regular schedules of interpreting sessions in those languages, but I feel that they could be better articulated, because their relevance is not immediately clear from looking at the number of speakers of those languages in the city, which the book describes in detail. Nevertheless, the focus on different languages allows Angermeyer to demonstrate phenomena that are not unique to a specific variety and allows him to build a strong case for thinking about an underlying language ideology. The author is also very careful to state that while the participants are grouped by the language they speak, their individual repertoires are often much more complex and not limited to the single variety.

The focus of the following chapter is on arbitrators, who decide in the majority of cases in small claims court. The role is assumed by attorneys on a voluntary basis and contributes to a more informal character of the proceedings. Echoing Conley and O'Barr's (1990) distinction between judges focused on enforcing rules or building relationships, as well as a categorisation provided by Philips (1998) who differentiated between procedure- and record-oriented judges, the author characterises arbitrators as either "slow" or "fast". The terminology derives from the typical length of proceedings but also reflects other arbitrators' qualities, such as willingness to engage in detailed questioning or attempts to broker a compromise. Angermeyer suggests that arbitration styles are one of the factors affecting litigants' opportunities to tell their story. Chapter 4 takes as its object interpreters and specifically in its analysis deals with one specific variable: direct vs indirect translation, that is the use of first vs third person when representing voices of others. The author argues that while courts' guidelines insist the norm of direct translation, a more flexible approach especially in interpreting from English into LOTE may be more appropriate and allow litigants to participate fully on more equal terms.

The attention of the book moves from people to processes with Chapter 5, which investigates the consequences of the interpreting modes used in proceedings. Consecutive interpreting, which is normally used with litigants' contributions, results in narratives being fragmented. Simultaneous mode, on the other hand, normally used by interpreters to interpret contributions made by other participants for the benefit of the litigant, places a greater cognitive load on interpreters and often leads to some propositional content being missed. The author notes that the resulting problems only affect LOTE speakers, who tend to be interrupted more and might not receive all relevant information. Angermeyer suggests that standby interpreting might be a viable alternative for those litigants who display some proficiency in English, with interpreters only intervening in response to local needs. In Chapter 6, codeswitching practices are analysed. The author notes that most LOTE speakers use English at some point and to varying degrees, and suggests that they do so in an attempt to accommodate to other English speakers, who, in turn, are not likely to accommodate to litigants for fear of appearing partisan in the case of arbitrators and because of specific beliefs held about the nature of translation or what constitutes standard language by interpreters. Angermeyer argues that LOTE speakers, for whom codeswitching is natural, may pose a threat to the role of interpreters by challenging the expectation that they should not speak any English. In his analysis, he also addresses the problems of defining what belongs to a given language.

The concluding chapter reviews the analyses presented in the preceding chapters and suggests that the idea of interpreted communication as putting LOTE speakers on an

equal footing as other participants is an elusive one. Angermeyer stresses that not only are institutional norms important in sustaining disadvantages faced by litigants but also that individual practices of interpreters and arbitrators vary greatly. The importance of language ideologies in this context is also discussed. Furthermore, the author considers the applicability of the research outcomes to contexts others than small claim courts, such as asylum hearings or formal trials. Perhaps it would have been useful for the final chapter to further develop the idea of indexicality, introduced in Chapter 1, although I do recognise that doing so would be a difficult task given the scope of the book.

The ethnographic detail and thorough analyses make for an engaging and interesting read. The inclusion of four different languages makes the case even more persuasive and the research even more impressive given the detail and care needed to transcribe and translate the multilingual source material. The author does address the issue of working with multilingual assistants in the introductory chapter, but it seems that there are many fine methodological points that could be explored in relation to the process of researching multilingual practices and interpreter-mediated communication.

One of the major strengths of the book is the fact that it manages to combine insights from studies of bilingualism with research in interpreted-mediated communication, and it does so with reference to language ideology. As such, it will be of interest to researchers and postgraduate students working in the fields of linguistics as well as translation studies. The context of the study means that legal professionals might also find the book useful, and although the analyses are described in linguistic terms, the style is accessible and all main concepts are well introduced and explained.

In sum, the book offers a great contribution to the field. It adds to the growing body of work in courtroom interpreting (for example Berk-Seligson, 1990; Hale, 2004 and it does so using the unique context of small claims courts and adding the ethnographic angle to the detailed interactional analysis which allows for a nuanced characterisation of interpreted-mediated communication underpinned by a discussion of language ideologies prevalent in a courtroom setting. It will certainly be most useful in research and teaching of multilingual practices in a legal context.

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Notes for Contributors

1. The editors of **Language and Law / Linguagem e Direito** (**LL/LD**) invite original contributions from researchers, academics and practitioners alike, in Portuguese and in English, in any area of forensic linguistics / language and the law. The journal publishes articles, book reviews and PhD abstracts, as well as commentaries and responses, book announcements and obituaries.

2. Articles vary in length, but should normally be between 4,500 and 8,000 words. All other contributions (book reviews, PhD abstracts, commentaries, responses and obituaries) should not exceed 1,200 words. Articles submitted for publication should not have been previously published nor simultaneously submitted for publication elsewhere.

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    - Concordances and transcripts should be set in courier;
    - Phonetics characters should be set in an IPA font (use SIL IPA93 Manuscript or Doulos);
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> The linguist approaches the problem of questioned authorship from the theoretical position that every native speaker has their own distinct and individual version of the language they speak and write, their own idiolect, and the assumption that this idiolect will manifest itself through distinctive and idiosyncratic choices in speech and writing. (Coulthard and Johnson, 2007: 161)

If author and date are used to introduce the quote, only the page number(s) preceded by 'p.' will appear at the end of the quotation:

As was argued by Coulthard and Johnson (2007):

> The linguist approaches the problem of questioned authorship from the theoretical position that every native speaker has their own distinct and individual version of the language they speak and write, their own idiolect, and the assumption that this idiolect will manifest itself through distinctive and idiosyncratic choices in speech and writing. (p. 161)

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    Mota-Ribeiro, S. (2005). *Retratos de Mulher: Construções Sociais e Representações Visuais no Feminino*. Porto: Campo das Letras.

    Chapter in a book
    Machin, D. and van Leeuwen, T. (2008). Branding the Self. In C. R. Caldas-Coulthard and R. Iedema (eds) *Identity Trouble: Critical Discourse and Contested Identities*. Basingstoke and New York: Palgrave Macmillan.

    Journal article
    Cruz, N. C. (2008). Vowel Insertion in the speech of Brazilian learners of English: a source of unintelligibility?. *Ilha do Desterro* 55, 133–152.

Nolan, F., McDougall, K. and Hudson, T. (2013). Effects of the telephone on perceived voice similarity: implications for voice line-ups. *The International Journal of Speech, Language and the Law* 20(2), 229–246.

Dissertations and Theses
Lindh, J. (2010). *Robustness of Measures for the Comparison of Speech and Speakers in a Forensic Perspective*. Phd thesis. Gothenburg: University of Gothenburg.

Web site
Caroll, J. (2004). Institutional issues in deterring, detecting and dealing with student plagiarism. *JISC online*, http://www.jisc.ac.uk/publications/briengpapers/2005/pub_plagiarism.aspx, Accessed 14 November 2009.

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    Capítulos de livros
    Machin, D. e van Leeuwen, T. (2008). Branding the Self. In C. R. Caldas-Coulthard e R. Iedema (org.) *Identity Trouble: Critical Discourse and Contested Identities*. Basingstoke e Nova Iorque: Palgrave Macmillan.

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    Cruz, N. C. (2008). Vowel Insertion in the speech of Brazilian learners of English: a source of unintelligibility?. *Ilha do Desterro* 55, 133–152.

    Nolan, F., McDougall, K. e Hudson, T. (2013). Effects of the telephone on perceived voice similarity: implications for voice line-ups. *The International Journal of Speech, Language and the Law* 20(2), 229–246.

    Dissertações e Teses
    Lindh, J. (2010). *Robustness of Measures for the Comparison of Speech and Speakers in a Forensic Perspective*. Tese de doutoramento. Gotemburgo: Universidade de Gotemburgo.

    Websites
    Caroll, J. (2004). Institutional issues in deterring, detecting and dealing with student plagiarism. *JISC online*, http://www.jisc.ac.uk/publications/briengpapers/2005/pub_plagiarism.aspx, Acesso em 14 de novembro de 2009.

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