

# 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 19<sup>th</sup> 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 (Mikkelsen, 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 2011/64/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 nor 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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