# Court Interpreting at a Crossroads

*Originally presented at the 1999 Annual Conference of the National Association of Judiciary Interpreters and Translators (NAJIT), May 1999.*
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## 1. Introduction

The dawn of a new millennium affords an ideal opportunity to examine the young profession of court interpreting as it has evolved over the last few decades and to explore possibilities for the future. The purpose of this paper is to assess the current state of judiciary interpreting in comparison with other professions and to discuss the critical choices facing the profession as it leaves infancy and matures into adolescence.

## 2. History of the Court Interpreting Profession

The practice of interpreting dates back at least as far as the dawn of recorded history. According to Harris (1997), interpreting has been "documented in stone since the time of the Pharaohs." With specific reference to judiciary interpreting, Colin and Morris (1996) cite interpreted trials in 1682 and 1820 that were landmarks in English jurisprudence. A series of interpreted trials, the prosecution of the Nazi war criminals at Nuremburg in 1945-46, was a watershed for the interpreting profession because it was the first instance of the use of equipment to provide simultaneous interpretation. Conference interpreters cite these trials as a key stage in the development of their own profession (Seleskovitch, 1978).

Since that time, interpreting in general and judiciary interpreting in particular have become increasingly professionalized activities. One of the hallmarks of a profession is the existence of academic programs designed to prepare candidates for entry into the field (Carter, 1990). Schools of interpreting have now been established all over the world, first in Europe, then in North America and Australia, and more recently in Asia, Latin America, and Africa. The European schools focused exclusively on conference interpreting, as did their counterparts in North America at first. No formal training in court interpreting was offered until government entities began setting proficiency standards for interpreters in the courtroom.

The first regulation of the quality of interpretation in U.S. courts occurred when the Federal Court Interpreters Act was passed in 1978 (Gonzalez et al, 1991). This legislation required that Spanish interpreters working in the federal courts demonstrate proficiency by passing a certification exam. At the same time, the Registry of Interpreters for the Deaf (RID) developed a legal skills certificate as a complement to the general certification exam it had been administering since 1972 (RID, 1999). Australia also began requiring a proficiency exam for interpreters in 1978 (NAATI, 1999), Canada in the early 1980s (CTIC, 1999). Several individual states in the U.S. followed the lead of the federal courts and adopted certification requirements for court interpreters. California, for example, began testing interpreters in 1979, followed by New York (1980), New Mexico (1985), and New Jersey

(1987). This trend accelerated in 1995 when the National Center for State Courts founded a consortium of states to pool resources for interpreter training and testing (NCSC, 1999).

In many countries, although there has been increasing awareness of the need to ensure the quality of interpreting services in the judiciary, legislatures have not taken action to impose standards; instead, the selection of interpreters has been left to the courts' discretion. In the United Kingdom, for example, the police and the courts are encouraged to employ interpreters listed on the National Register of Public Service Interpreters or other similar lists, but the law does not require them to do so (Colin and Morris, 1996; Tybulewicz, 1997). In countries where there is traditionally an occupation of public translator or sworn translator, legislatures have simply declared that these translators are by definition qualified to interpret in court proceedings, even if they have never had any training in interpreting (Valero-Garces, 1998; Martonova, 1997).

The certification movement in the U.S. has been confined to judiciary interpreting, at least for spoken-language interpreters; in Australia and Canada, in contrast, a multi-tiered program of accreditation has been established. Professional interpreters in Australia, for example, are rated at four different levels: 1) Paraprofessional Interpreter, 2) Interpreter, 3) Conference Interpreter, and 4) Conference Interpreter (Senior). It is recommended, though not required by law, that court proceedings be interpreted by interpreters at the third level or above; those who qualify as Interpreters are tested only in consecutive interpretation (NAATI, 1999). Another singular characteristic of the United States is that the regulation of court interpreting was initiated by the legislature at the federal and state levels, albeit with input from professional interpreters. In most other countries, the impetus has come from professional associations, and the exams are administered either by the associations themselves (as is the case in Canada and the U.K.) or by an independent body that works closely with the professional association (as in Australia).

An additional sign of the growing professionalization of judiciary interpreting is the emergence of professional associations. In the United States, the first such organization to be established was the California Court Interpreters Association, founded by a group of interpreters in Los Angeles in 1971 (CCIA, 1999). (Sign-language interpreters founded the RID in 1964, but the CCIA was the first professional association of court interpreters.) The CCIA played a key role in pushing through the legislation that led to the first certification exam in California in 1979. Independently, the Court Interpreters and Translators Association (CITA), was founded in New York in 1978. In 1988 the organization changed its name to the National Association of Judiciary Interpreters and Translators (NAJIT, 1999). Meanwhile, the American Translators Association (ATA), founded in the 1950s, began attracting more interpreter members, and many of its regional chapters and affiliated organizations had large contingents of court interpreters among their membership. In 1998, the ATA started an Interpreter's Division to meet the needs of members who provide both interpreting and translating services (ATA, 1999). Many states now have professional associations that are made up partly or entirely of court interpreters (e.g., the Arizona Interpreters Association, AIA, and the Court Interpreters Association of Oregon, CIAO).

As noted above, most countries do not have legislation requiring that interpreters who perform services in the courts pass an examination; rather, certification programs tend to be voluntary schemes established and administered by professional associations. In Canada, for example, a certification exam for court interpreters was first developed by the Society of Translators and Interpreters of British Colombia (STIBC) in the early 1980s, and eventually the test was adopted for the entire country. It is now overseen by the Canadian Translators and Interpreters Council (CTIC, 1999). In the United Kingdom, a similar situation prevails: The Institute of Translators and Interpreters (ITI), which represents court, business, and conference interpreters, administers proficiency exams in various fields of specialization. Despite the lack of legislation requiring the use of ITI-tested interpreters, the organization is striving to ensure that courts throughout the United Kingdom implement such regulations (Tybulewicz, 1997).

Until relatively recently, court interpreting was ignored by the established schools for interpreters. European schools of conference interpreting may have a course in legal interpreting as part of their curriculum, but none offers degrees or specializations in judiciary interpreting. The Monterey Institute of International Studies offered its first certificate course in court interpreting in 1983 as an adjunct to the M.A. in conference interpreting (MIIS, 1999). That same year, the University of Arizona began its yearly Summer Institute of Court Interpretation (NCITRP, 1999). Since that time, universities and colleges all over the country have launched certificate courses in court interpreting. The first school to offer a degree in the field was the University of Charleston, South Carolina, which began its M.A. in Legal Interpreting and Translating in 1996 (University of Charleston, 1999). California State University at Long Beach is in the process of developing a B.A. program in interpreting (Burris, 1999), and other universities will undoubtedly follow suit.

**3. Current Situation**

Studies have shown that the prestige and pay scales of occupations tend to rise as they become more professionalized (Burrage and Torstendahl, 1990), and judiciary interpreting is no exception. With increasing regulation and restriction of entry into the profession, practitioners' status and working conditions have gradually improved, though not as rapidly as they would like. According to Arjona (1983), the advent of the Federal Court Interpreter Certification Exam raised standards and led to an increase in the pay rates of interpreters in the U.S. District Courts. It is clear that as soon as a jurisdiction imposes standards and limits interpreting assignments to those who have demonstrated their ability to meet these standards by passing an exam, the pay rate increases. For example, the State of Oregon introduced certification requirements in 1996, at which time courts were paying anywhere from $13 to $25 per hour. Now, the standard pay for certified interpreters is $32.50 per hour, and many state agencies and other employers have raised their rates to stay competitive with the courts (Rhodes, personal email, 1999).

States that strictly enforce the certification requirement and have strong professional associations (two factors that are not unrelated) tend to have higher pay scales. California, for example, has traditionally paid higher rates for interpreters than other states; in the 1980s, the Los Angeles courts were paying upwards of $190 per day, probably the highest rate of any local court system in the nation. By the early 1990s, when the CCIA was riven by internal conflicts and a new court

administration began relaxing enforcement of the certification requirement, pay and benefits stagnated. Recently, court interpreters have once again formed a united front, and the state has adopted a state-wide minimum of $200 per day, soon to be raised to $250. In New Jersey, as the number of certified interpreters increased, the pay scale rose, climbing from $74 per day in 1987 to $250 at present (NAJIT, 1999).

Compensation is not the only aspect of interpreters' working conditions that has gradually improved. In recognition of the stressful nature of interpreting, a small but growing number of jurisdictions now have regulations in place requiring at least two interpreters to be assigned to cases slated to last longer than two hours (Farrell, 1997). Duties such as document translation and tape transcription are increasingly assigned to certified interpreters who have been qualified to perform these specialized tasks, rather than to bilingual clerical staff with no training. Enlightened court administrations no longer expect court interpreters to perform unrelated duties such as filling out paperwork, working at the counter in the clerk's office, and escorting defendants to other offices (Colin and Morris, 1996).

At present, the federal court system certifies interpreters in three languages (Spanish, Navajo, and Haitian-Creole), and some 750 individuals hold federal certification (NCITRP, 1999). At the state level, 18 states have certification requirements, and tests are being developed in a growing number of languages. As mentioned earlier, the National Center for State Courts has formed a consortium of states that pool resources for interpreter testing and training. At present, 15 states belong to the consortium, and tests in 11 languages (Arabic, Cantonese, Haitian-Creole, Hmong, Ilocano, Korean, Laotian, Polish, Russian, Spanish, and Vietnamese) have been developed (NCSC, 1999). As the demographic profile of the United States changes, interpreters are becoming ever more ubiquitous in the nation's courts, which means that the legal profession is more accustomed to working effectively with interpreters to meet the needs of non-English speakers. Judges' colleges and law schools are beginning to include segments on working with interpreters in their curricula (Mikkelson, 1999).

According to Park (1998), at least six universities around the country offer certificate or degree programs in court interpreting. There is no centralized list of community colleges offering individual courses in court interpreting, but the number is definitely growing. As noted above, court interpreters can join a number of professional associations, most of which hold annual conferences and many of which present periodic workshops and seminars for their members. Academic journals are also paying increased attention to judiciary interpreting. An upcoming issue of the journal *Forensic Linguistics* will be devoted exclusively to legal interpreting, and articles on the subject have appeared recently in *The Translator* and *Interpreting*.

**4. Becoming a Powerful Profession**

How does judiciary interpreting compare to other professions? Sociologists and historians have written a great deal about the development of professions, focusing primarily on what have long been recognized as the two most powerful ones, medicine and law. Recently, the interpreting profession itself has been the subject of research and discussion (Witter-Merithew, 1990; Tseng, 1992; Mikkelson, 1996). These analyses of various professions attempt to answer the following questions: 1) What distinguishes a profession from an occupation? 2) How does an occupation become a profession, and why are some professions more powerful than others? 3) What is the difference

between a professional association and a trade union? 4) What role does credentialing play in the development of a profession?

More and more occupations are claiming status as professions in an effort to increase their prestige. According to Sapp (1978),

In contemporary America among those who work at a chosen vocation, there is no higher praise than to be called a "professional." The ideal of every occupational group is to achieve the status and prestige of a "profession." The concept of professionalism is among the first to be applied as a remedy to the weaknesses and ills of any occupational group. (20)

A review of the literature on professions shows that the line between professions and trades is a blurry one (Collins, 1990; Åmark, 1990; Burrage, 1990). There are many definitions of what constitutes a profession. To cite just one example, Brante (1990) states the following:

Professions are non-manual full-time occupations which presuppose a long specialized and tendentiously also scholarly ... training which imparts specific, generalizable and theoretical professional knowledge, often proven by examination (79).

Carter et al (1990) have devised a list of traits that characterize professions: 1) theoretical knowledge, 2) autonomy, 3) service mission, 4) ethical code, 5) public sanction (legal restrictions on who can practice), 6) professional association, 7) formal training, 8) credentialing, 9) sense of community, and 10) singular occupation choice (practitioners remain in the same occupation throughout their careers).

Referring more specifically to the interpreting profession, Witter-Merithew (1990) identifies the following standards that must be met for an occupation to be considered a profession:

1. A profession is an established field of expertise governed by standards of performance and behavior to which practitioners comply.
2. A profession is a field of expertise that consists of a body of knowledge and skills that require academic pursuit to master
3. A profession has a mechanism for testing and determining who is qualified to function as a practitioner and assumes responsibility for monitoring conformance to standards.
4. A profession has a mechanism for self-examination, contrast of perspectives, evolution of theory and practice and a system for publishing/disseminating this information (71-74).

Brante (1990) identifies four types of profession: 1) free professions (freelance, self-employed service providers), 2) academic professions, 3) professions of capital (those who are salaried employees of corporations), and 4) professions of the state (salaried civil servants). He notes that it is more difficult to maintain solidarity within an occupation if practitioners are of more than one type, since they do not have as many interests in common.

Several writers have looked at the process whereby an occupation becomes a profession. Collins (1990) focuses on the monopolization of the market or "market closure," noting that the profession is a

highly credentialized occupational world, which fragments occupational markets and appropriates ('monopolizes') opportunities for groups of specialized degree-holders; at the same time, it creates market-like phenomena in the realm of the credentials themselves, such as the 'credential inflation' which has diluted their value in recent decades (29).

When a given occupation is able to establish a monopoly in its market by controlling the supply, one might expect prices to increase in accordance with the law of supply and demand, but this does not necessarily happen. Brante (1990) explains that whereas professionals may possess an esoteric knowledge for which there might be some demand on the market, the knowledge must be linked to high status and relatively high material rewards. If the service they provide is not valued, there is, by definition, no demand for it, and therefore the diminished supply makes no difference. The most powerful professions have both the knowledge and the status; what Brante calls "semi-professions" and trades lack one or the other. (It should also be noted that *demand*, in the economic sense, is not just a desire for a good or service, but desire accompanied by buying power. There may be many potential clients who would like to avail themselves of the services of a given profession, but it they have no money, there is no demand for the services.)
Burrage et al (1990) point out that practitioners of an occupation need the cooperation of others to achieve monopoly power in their market. The main resources they use to obtain this cooperation without sacrificing their autonomy are 1) organization (forming learned societies, lobbies, labor negotiation groups, and accrediting agencies); 2) ideology (developing a sense of identity, loyalty, collegiality, consciousness, and values); 3) proximity (acquiring an intimate familiarity with procedures in their market, the "tricks of the trade"), and 4) persistence (pursuing consistent goals).

These authors also note that in powerful professions, practitioners have formed alliances with the state, their clients, and universities to gain power. Lobbies and interest groups persuade the government to enforce the rules of play in a given market, thus ensuring the practitioners' monopoly power. Clients contribute by adhering to and reinforcing the restrictions on entry into the occupation, implicitly accepting the mystique that reinforces the elitism of practitioners. Universities play a key role by contributing to the body of knowledge on which the occupation bases its elitism, and by producing a cadre of practitioners imbued with a strong sense of identity (manifested in professional jargon and symbolic tokens or rituals). University professors also reinforce the state credentialing process by serving on advisory boards or acting as examiners, and by preparing their students to take certification or licensing exams.

Collins (1990) asserts that the goods or services produced by an occupation can be controlled either by markets or by hierarchies (bureaucracies). Professionals such as doctors and lawyers generally operate in the market and resist being controlled by hierarchies, but they may be brought unwillingly into hierarchies if they are employees of a large bureaucracy (a government agency, a national health

service, or a health maintenance organization). It is harder for a profession to maintain its autonomy when it is subsumed under a larger hierarchy. Burrage (1990) points out that many professional associations have begun to act more like trade unions as the economic interests of their members have been threatened by new market trends. In this connection, it is interesting to note that an increasing number of doctors are joining unions in response to threats to their independence and standard of living posed by health maintenance organizations (Greenhouse, 1999; Yahoo! News, 1999).

This brings us to the question of what distinguishes a professional organization from a trade union. In general, professional associations "play down utilitarian aspects to direct attention away from the work which is done, and onto the style, the honor, the moral standards displayed by its members" (Collins, 1990). According to Åmark, trade unions tend to emphasize practical, economic issues, and are more likely to operate in an "open cartel." By this he means a market in which formal rules are established and anyone who agrees to abide by the rules can enter the field, as opposed to the "social closure" approach traditionally taken by professions, which restrict entry to individuals with certain personal characteristics and qualifications, including academic degrees. Burrage (1990) also notes that unions tend to have a more political agenda, emphasizing the class struggle over the more specific interests of a given occupation. Although trade unions have traditionally been associated with manual labor occupations, professionals have at various times in their histories formed unions or resorted to union tactics to achieve their objectives (Burrage and Torstendahl, 1990).

Another issue that has received some attention in studies of professionalism is credentialing. A number of different terms are used to designate the manner in which individuals document their authorization to practice a profession or occupation: licensure, certification, accreditation, and registration are the most common ones. According to Taub (1993), *licensure* is the most restrictive term. It refers to a government program in which the right both to perform services and to use the occupational title are restricted by law, and generally the license is issued only to individuals who have earned an academic degree and passed an examination (medical doctors are a prime example). *Certification* tends to be under the direct control of the profession, and it may be voluntary; at any rate, the use of the title is not restricted to those possessing the certification (teachers are a case in point). *Registration* usually refers to a list of practitioners maintained by an agency or institution, and there may or may not be any prerequisites for being included on the list. *Accreditation* refers to the approval of a facility, such as a school or hospital, where professional services are provided or where professionals are trained. These terms are not used consistently; for example, the American Translators Association has an accreditation program that better fits the definition of certification.

Hogan (1980) reports that licensing is a phenomenon of the 20th century, as the number of occupational specializations has proliferated. He cites an absurd list of occupations that are licensed in one jurisdiction or another: aerial horsehunters, athletic exhibition agents, alligator hunters, astrologers, bedding cleaners, ice cream buyers, cactus plant agents, rainmakers, and photographers. On a more serious note, he asserts that licensing unduly restricts the number of practitioners in an occupation, thereby raising prices and denying access to certain people. As a result, more and more clients resort to self-help or turn to "quacks" to obtain services. Hogan also

states that there is no evidence that quality improves when a licensure program is introduced, as tests often fail to screen out incompetent practitioners. The fact that standards vary so much from one jurisdiction to another, even though the nature of the job does not change, is evidence that licensure is ineffective, according to Hogan.

**5. Related Professions**

Two professions that are closely related to judiciary interpreting, sign-language interpreting and court reporting, have made considerable progress toward acquiring the autonomy that characterizes powerful professions. What lessons can court interpreters learn from these colleagues? One lesson is that there is strength in numbers: The National Court Reporters Association (NCRA) has 34,000 members across the nation, including official and freelance reporters, students, and associate members (NCRA, 1999). The organization is able to offer its members a number of benefits, such as group insurance, publications, loans, and a legislative monitoring service, which provide added incentives for membership. Another key element is control over the credentialing process. The NCRA offers its own certification exam, which has been evaluated by the American Council on Education and deemed the equivalent of 21 credits towards a bachelor's degree. The organization also has a continuing education requirement for its members, and its educational programs are accredited by the Accrediting Council for Continuing Education and Training. These are examples of the alliances that professions forge to wield greater influence, as noted by Burrage et al (1990).

The RID offers its members similar advantages in the form of what it terms the "three Q's of interpreting: Quantity, Qualifications and Quality, namely, the RID Triad" (RID, 1999). Like the NCRA, this organization administers its own certification exams, in consultation with an external accrediting body. It has an elaborate, multi-tiered certification system that is linked to approved academic programs. In addition to alliances with accreditation and educational institutions, the RID maintains strong ties with the consumers of interpreting services through its Ethical Practices System. It also works closely with advocacy groups, government agencies, and legislative bodies to ensure that interpreters are taken into consideration in the implementation of regulations and laws such as the Americans with Disabilities Act. Thanks to these efforts, most court systems are required by law to use only RID-certified interpreters in court proceedings.

**6. Challenges for the Future**

The judiciary interpreting profession has its work cut out for it. The path to professional autonomy entails the following steps (not necessarily in chronological order):

First, judiciary interpreters must emulate other professions by forging alliances with the state (court systems, government agencies, and legislative bodies), clients (the legal profession and advocacy groups for non-English speakers), and universities to raise standards and enforce them without sacrificing its autonomy. Individual court interpreters have played a key role in standard-setting and enforcement to date, but rarely have their professional associations been officially recognized as interlocutors in the discussion of these issues. Interpreters must also understand how the law of supply and demand works. At present, there is little demand (in the economic sense) for interpreting

services because those who perceive themselves as the interpreter's clients, litigants who do not speak English, have no purchasing power to back up their desire for competent interpreting. Interpreters must make every effort to convince the legal profession that the court interpreter's clients include not only non-English speakers but also judges, attorneys, and other judiciary personnel. Once these powerful professionals realize that it is in their best interests to have competent interpreting, the resultant demand will enable interpreters to negotiate for better working conditions.

With respect to alliances with universities, the National Association of Judiciary Interpreters and Translators (NAJIT) has taken a major step toward establishing links with academic institutions by forming the Society for the Study of Translation and Interpretation (Stock, 1999), which is intended to be a vehicle for promoting court interpreter training, test development, and research. One of its priorities is to develop a NAJIT certification exam, which will also give the profession more control over the credentialing process. If judiciary interpreters are to enjoy the autonomy that characterizes other professions, they will have to persuade legislatures and court systems to adopt this exam as the minimum standard of proficiency.

Second, the profession must recognize that court interpreters will never wield the degree of influence enjoyed by sign-language interpreters and court reporters unless they can marshal the membership numbers the RID and the NCRA can claim. The fact is that there are not very many court interpreters in the country, and there probably never will be. Thus, even if recruitment drives are launched to bring all interpreters into the fold, and even if rivalries among court interpreter associations are kept to a minimum, professional associations will have to establish alliances with other spoken-language interpreters (conference, medical, educational, business) and with organizations such as the RID, the Translators and Interpreters Guild (TTIG), and the International Association of Conference Interpreters (AIIC) to gain the necessary numerical strength. To be truly effective, these relationships must include mutual support agreements so that actions taken by one organization will be officially backed by all the members of the other, similar to the arrangements many trade unions have. Although professionals often shun labor-union tactics as beneath their dignity, research shows that professionals who have formed unions have been successful in achieving their objectives (Burrage, 1990; Collins, 1990; Åmark, 1990). Aranguren and Moore (1999) report on the effectiveness of such tactics in the case of court interpreters in the San Francisco Bay Area.

The multiplicity of languages involved in judiciary interpreting poses an especially difficult challenge to a profession that is trying to consolidate its strength. The fact that interpreters of different languages face vastly different linguistic and cultural problems is only part of the problem. More important, because of their language combination and the market in which they operate, many interpreters can work only part-time in the courts and must supplement their income with other pursuits, which dilutes their allegiance to the profession. Professional associations must be mindful of Brante's (1990) findings about conflicts among different types of professionals within the same occupation, and should make every effort to emphasize the common interests that link all judiciary interpreters.

And finally, the judiciary interpreting profession must be able to adapt quickly to innovations in related professions to avoid having change imposed on it from the outside. For example, the courts are making increasing use of technology in the administration of justice, and interpreters ignore these developments at their peril. Rather than resisting any use of video or telephone conferencing in court proceedings, professional associations must embrace these changes and play an active role in controlling the implementation of new technologies. Similarly, as court systems wrestle with tax authorities to determine whether per diem interpreters should be treated as employees or independent contractors, interpreters' associations must take preemptive action to ensure their inclusion in the decision-making. These and other controversial issues, such as remote interpreting, team interpreting and multi-tiered certification, should be debated openly within the confines of the professional association, and then a definitive policy should be adopted for dealings with other key players in the judiciary.

**7. Conclusion**

In conclusion, court interpreters striving to enhance their status and autonomy can learn valuable lessons from other professions. Perhaps the most important of these is that a powerful profession is one that controls its own destiny by establishing strong relationships with other professions and institutions so that it can anticipate change, embrace it, and dictate the direction it will take. A corollary is that a fragmented profession is a weak one that must submit to control by others.

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