



Interpreters and the judicial process

Nicola Laver

The increasingly global practice of law means a stronger reliance on interpreters but failures in accuracy can lead to catastrophic results.

Lawyers are practising in a multicultural international society that is unprecedented and the ensuing need for accurate and reliable interpretation of defendants' and witnesses' mother tongues is greater than ever before.

But while there are rules in place in many jurisdictions to govern the competence and qualifications of interpreters, are they sufficiently rigorous to facilitate fair trials – or are innocent people suffering the consequences?

Incompetence

The *Alejandro Ramírez* case in 2000, for instance, had serious implications in the US state of Ohio after the defendant's conviction was eventually thrown out when incompetent police interpreting was revealed. The defendant's interrogation was translated by an 'interpreter' who had studied Spanish for just two years, had no prior training in judiciary interpretation and was not fluent in Spanish. The Ohio Court of Appeals ruled that the defendant could not possibly have understood the proceedings. For

example, at one stage the interpreter should have said: 'You have the right to the advice of an attorney.' Her Spanish interpretation was: 'You have a right-hand turn to give a visa to a lawyer.'

In jurisdictions such as South Africa, where there are a number of official languages, the problem is compounded. Philip van der Merwe is the editor of the SA Attorneys' Journal, *De Rebus*. He comments: 'There are quite often problems related to translators – given our 11 official languages, they play an important role! The latest was a threat to strike by Western Cape translators that would have brought many trials there to a standstill, which was averted at the last minute.'

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Isabel Framar
National Association of Judiciary
Interpreters and Translators

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Regulation

In the United States, statute governs the competency of interpreters including the use of properly certified and qualified interpreters. The Federal Rules of Evidence state that the interpreter is subject to the provisions relating to qualification of an expert (defined as someone having knowledge, skill, experience, training or education) and the administration of an oath to make a true translation. The ABA also states that there should be a certification programme in place to ensure the proper training of court interpreters in commonly spoken languages and they should be available for non-English-speaking court users at every phase of the justice system.

Isabel Framer, a director with the National Association of Judiciary Interpreters and Translators, explains the existing impact of these rules:

'The interpreter, besides possessing native-like fluency in both the source and target language, must have training, education and knowledge of the specialised field. The interpreter needs to know and understand legal terminology and other specialised vocabulary.'

When the interpreter resorts to summary, the interpreter takes it upon [himself] to determine what portion of the information is or is not important and the interpreter is not qualified to make those determinations.'

However, despite these rules, she warns of the many dangers: 'This is why it is crucial that not only interpreters obtain training and certification but the judiciary also becomes familiar with the role of the interpreter and how unregulated interpreter services can have an adverse impact in judicial proceedings.'

She stresses the implications throughout the judicial process: 'The court for example has a duty to make sure that the administration of justice (due process, equal protection and equal access) is carried out. If the court cannot competently understand or be understood, the court is unable to carry out their duty.'

'The attorney has a duty to provide effective assistance of counsel (to defend his/her client competently); if the interpreter is untrained and unqualified, the interpreter can render

the attorney ineffective. The prosecutor has a duty to prove that a defendant is guilty beyond a reasonable doubt. If the prosecution is using an untrained and unqualified interpreter, it would not be able to properly and competently question victims or witnesses and may obtain wrong or misleading information. Law enforcement is charged with the investigation of a case and if it uses untrained and unqualified interpreters it too might obtain misleading information, leading to wrongful arrests or thousands of dollars wasted due to misleading information. The interpreter is the nexus between the parties.'

UK position

The United Kingdom has some catching up to do, and leading trade union, Amicus, has recently warned that the failure to use qualified interpreters is resulting in justice failures and causing serious malpractice by police and court authorities. Amicus says some authorities use agencies who ask unqualified interpreters to recommend friends if they are not available for work and some use people who have not studied the language in question since school. In one instance, a case involving an alleged sexual assault had to be adjourned because a statement translated by an unqualified interpreter was impossible to understand.

Currently, there is no obligatory state registration system for interpreters in the United Kingdom. The National Register of Public Service Interpreters (NRPSI) holds a voluntary register of interpreters: a national agreement is in place where the aim is that every interpreter working in the criminal justice system in England and Wales should be selected from the NRPSI, whenever possible. Certainly, the Crown Prosecution Service only uses interpreters registered with the NRPSI and the Law Society encourages solicitors to make members of the NRPSI their preferred choice of interpreter.

But the crucial problem is that registration is voluntary and there are only about 1,000 currently registered, with far more required if miscarriages of justice are to be avoided. The Police Federation has already claimed that the shortage is causing real problems with a lack of interpreters being readily available when required.

In the European Union, the Grotius programme of the EU Justice and Home Affairs Directorate funded a project in 2001 to establish equivalent standards for legal interpreting and translation in Member States. The four participating countries were Belgium, Denmark, Spain and the United Kingdom and funding has just been awarded to implement

its recommendations as to qualifications and competency of interpreters through Member States.

Minimum standards not being met

It is arguable, then, whether the United Kingdom's system even meets the minimum standards under Article 6 of the European Convention of Human Rights: this affords the right to a fair trial, including the free assistance of an interpreter if one cannot understand the language in a trial situation. Where defendants, witnesses and victims do not adequately speak or understand English, the interpretation must be sufficiently reliable to meet the requirements of European and domestic law. The evidence suggests this is not always possible.

Rachael Maskell of Amicus warns: 'A voluntary register of qualified interpreters is not enough. We need state registration of the sector to ensure standards in the profession, including terms and conditions and continual professional development and the highest standard of interpreting for some of the most vulnerable in our society.'

Amicus is demanding continuous professional development and a separate register for interpreters in training and unqualified interpreters.

Worse to come

Imminent changes in the legal aid system are likely to compound the problem. Richard Miller, director of the United Kingdom's Legal Aid Practitioners Group, says: 'By and large in this country, we have good legal aid rules that mean independent interpreters can be used; but with the recent changes proposed by the Government, they will pay the solicitor a fixed fee, and the solicitor will have to pay interpreters out of that fixed fee, which leads us to fear that unqualified and unsuitable interpreters may be used, to the serious detriment of the client.'

He warns that the worst-case scenarios could involve the victims of rape and torture:

'In the culture in many countries from which asylum seekers come, a woman who has been raped is viewed as "damaged goods" and shunned by her family and her community. Therefore, if you have an interpreter from the family or community, the woman will be very reluctant to spell out what has happened to her, therefore her lawyer will not get the full picture and her asylum claim will be very much weaker than it could be. This in turn may lead to the claim being rejected, and the woman being returned to a country where she is in real danger of further rape, torture or murder.'

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Rachael Maskell
Amicus

Similarly, the victims of torture often feel ashamed and degraded, and/or do not want to put their families through the trauma of knowing the detail of what they have suffered, and will be reluctant to talk about it in front of family or community members, with the same potential consequences.

On the other side of the coin, if the person feels they have behaved less than honourably, or if they have exaggerated things to family and community members, they will feel they have to paint themselves in the best possible light in front of informal interpreters, rather than telling the whole truth even when it is adverse to them. This can damage their credibility, which can often make the difference between a claim being accepted or being rejected. With an independent interpreter, there is a better chance of the lawyer being able to get to the truth of the situation.'

Isabel Framer's warning should not go unheeded: 'The use of untrained and unqualified "interpreters" may lead to inaccurate testimony, misunderstanding of rights, charges and possible penalties; a defendant may not be able to competently participate in his own defence, reversal of cases, guilty people going free, innocent people wrongly accused, and thousand of dollars wasted on misleading investigations and retrials.' ☒

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