Professional secrecy

The Court of Justice could speak in tongues because sitting discreetly in their booths were the interpreters.

In the many years I have been a judge, my opinion has often been sought in inextricably difficult situations relating to secrecy, or more precisely, different kinds of secrecy: the secrecy of confession, State secrets, non-disclosure of matters sub judice, medical confidentiality, legal confidentiality, banking secrecy, press secrecy and finally, professional secrecy.

I have often had the feeling I was being called upon to square the circle.

I belong to the generation that witnessed a sea change in the circumstances in which secrecy is approached.

In the history of ideas, the duty of silence and the duty of revelation first parted company and then later interacted like communicating vessels where, at least, it was possible to ascertain and regulate the level of each duty. When to remain silent and when to speak out.

In the course of the second half of the 20th century, the concept of representative democracy changed and the advent of the communications society heralded a new state of affairs. Transparency took on mythical proportions and democracy, driven by public opinion, became, at one and the same time, the enemy of discretion, reserve and secrecy and the custodian of the virtues of the Republic. To press the point, the idea was to challenge secrecy in the name of the people’s right to know everything whilst defending secrecy in the name of the individual’s right to his or her reputation and privacy and the State’s duty of efficacy.

The dialectic and ambivalent nature of this thinking made the life of decision-makers and social agents more difficult but, I must confess, brought some excitement to a subject which traditionally has not attracted philosophical or legal thinkers.

Since, in the office I currently hold, secrecy is not as acute an issue as it was for me in my past positions, I must confess that the honour I feel at being invited to give this lecture is somewhat tinged with puzzlement. Suddenly, in the realm of international relations dominated by diplomacy and multilingualism, I was assailed by the image of conference interpreters in revolt against the conventional views on secrecy.

I had an inkling of the challenge I was taking on and the troubles ahead.

The first was to discuss secrecy in a profession whose status and codes of conduct are not as yet firmly established.
The dearth of relevant literature compounded my perplexity.

In fact, according to some authors, conference interpreters first appeared during the First World War, because most of the American and British negotiators were not proficient in French. During the Armistice negotiations, they claim, committees were set up to consider outstanding matters with representatives of the German army and the Allies where English, German and French were spoken and military personnel with a good command of these languages was called upon to interpret. With the advent of the League of Nations, interpretation went from strength to strength. However, we are told, consecutive interpretation at the Nuremberg trials held up proceedings to such an extent that a certain Colonel Leon Dostert was prevailed upon to devise a system whereby the message could be conveyed immediately into the other languages.

Thus simultaneous interpretation was born.

However, this was still an era of improvisation and amateurism. Interpreters’ schools only emerged in the forties, marking the move towards professionalism.

I have to say that I found this account reductive: it failed to answer a number of questions. I began to think it rash to consider new professions without regard for historical continuity.

Professionals, in response to social needs, are usually informed by a cultural context. The law per se takes an interest in them once they are well defined and have fully functioning codes of conduct.

In our case, we need to establish to what extent interpreters already constituted a social category before Colonel Leon Dostert had his brain wave.

I am no specialist in the history of law and passages from the ancient classics, the Bible and novels recounting amazing New World discoveries came to mind and convinced me that the interpreter as a social function is as old as the world.

Genesis puts it in these terms:

“Go to, let us go down, and there confound their language, that they may not understand one another’s speech. So the Lord scattered them abroad from thence upon the face of all the earth (11)”.

In ancient times, foreign languages required interpretation which was associated with deciphering and prophecy. Priests and priestesses revered Cybelus as he passed through Corinth in procession in a trance uttering incoherences to the sound of drums, cymbals and trumpets. They saw him as God’s oracle.

Even today, communication accompanies faith and worship in some charismatic creeds.

The Pentecostal churches hold that speaking in tongues is a visible sign of the baptism of the Spirit and they draw this from the well-known passage of the Acts which describes the coming down of the Holy Ghost:

“And when the day of Pentecost was fully come, they were all with one accord in one place.

And then suddenly there came a sound from heaven as of a rushing mighty wind, and it filled all the house where they were sitting.

And there appeared unto them cloven tongues like as of fire, and it sat upon each of them.

And they were all filled with the Holy Ghost, and began to speak with other tongues, as the Spirit gave them utterance.

And there were dwelling at Jerusalem Jews, devout men, out of every nation under heaven.
Now when this was noised abroad, the multitude came together, and were confounded, because that every man heard them speak in his own language.

And they were all amazed and marvelled, saying one to another, Behold, are not all these which speak Galileans?

And how hear we every man in our own tongue, wherein we were born?” (The Acts 2)

The gift of speaking in tongues was associated with interpretation in the narrow sense and also with revelation and prophecy in the broader acceptation. In his first epistle to the Corinthians, the Apostle Paul cautioned:

“Wherefore let him that speaketh in an unknown tongue pray that he may interpret.”(14.13)”. and later, “But if there be no interpreter, let him keep silence in the church; and let him speak to himself, and to God” (14.28).

The wondrous history of the Discoveries also reveals the importance of interpretations. Henry, Ferdinand Magellan’s interpreter, in large part, made possible the voyage around the world. As is well known, Henry lived in Malacca and originally came from Sumatra. Ferdinand Magellan was part of the crew of the Portuguese five vessel flotilla which anchored in Malacca on 1st September 1509. The city was captured in 1511 and Magellan bought a slave whom he called Henry. This man became an outstanding interpreter during the return trip and on voyages to various parts of the East Indies. Back in Lisbon, along with his captive, in 1519, Ferdinand Magellan embarked upon a voyage of circumnavigation in the service of the King and Queen of Spain, with a crew made up of Spaniards, Italians, French, Portuguese, Greeks, Germans and two Malays, one of whom was Henry who by this time was an accomplished guide and interpreter. He, in the name of Magellan and the Spanish crown, talked to kings and merchants, bought supplies, negotiated, exchanged peace messages and signed war treaties. Henry owed his linguistic gifts to the fact that Malay was, at that time, the lingua franca of the whole archipelago as well as the official diplomatic and trading language of the region. Historians speculate that Henry was the member of the crew closest to Magellan, which explains why his last will and testament stipulates: “I declare and instruct that, from the day of my death onwards, Henry, my captive slave, Malayan, born in Malacca, aged approximately twenty-six, shall be freed, emancipated and liberated, exempt from slavery or bondage, that he shall act as he desires and sees fit; and I will that, from my goods, the afore-mentioned Henry shall receive the sum of ten thousand maravedies in coin for his sustenance: and I guarantee this liberation because he is a Christian and can pray to God for my soul”.

Later, during the colonisation of some Latin American countries the word lenguaraz described the interpreter’s function in relations with the Amerindians. Today nobody questions that the importance of the interpreter’s work was recognised. As, it would seem, were the difficulties they encountered. A contemporary chronicler wrote that lenguarez required “an excellent memory, an exceptional throat and a good deal of calm and patience”.

Before we address the legal aspects of our subject, we should realise that in many European countries, as early as the sixteenth and seventeenth centuries, the presence of an interpreter at criminal trials was enshrined in law. There were requirements to provide specific guarantees of reliability and impartiality, evidence of linguistic ability, and there was often a minimum age limit and an oath to be sworn. Further, unlike the civil courts, the criminal judge was not allowed to dispense with the interpreter even if he was familiar with the language of the plaintiffs. As principles of honour and the freedom of individuals were at stake, the interpreter was part of the “due process” which subsequently was to become embodied in fundamental rights and treaties declarations. [1]

From this brief review, we see that from the earliest times, interpretation was recognised as having a
social function. Furthermore, it is fair to say that like other well established tasks in inter-community relations, interpretation has cultural roots which combine needs, allegories and myths.

This finding is relevant as we come to assess, without jumping to conclusions, the functional and professional content of an interpreter’s work. I say “without jumping to conclusions” precisely because there is a tendency to superficially view the interpreter’s work as mechanistic, as a sort of deciphering exercise devoid of intellectual elaboration and, hence, of any independent contribution. It has already been shown that historically interpretation, from the technical and professional standpoint, is not a recent phenomenon engendered by the new international order and accelerated by complexity and globalization.

Not so.

The work of the interpreter does not consist of a simple language deciphering exercise. It essentially involves understanding the discourse which contains linguistic, technical and scientific material. The conversion of the source discourse into the target discourse entails the storage of facts which have been understood and the reworking of same, which is only possible through operational techniques and tactical decisions which require learning, training and experience. Along with knowledge of languages and culture, which make up their basic training, interpreters need specialised knowledge, not only to enable them to handle concepts pertaining to a particular sphere of culture or knowledge but also to grasp the overall organisation of a discourse which will invariably feature these factors.

In addition to these postulates, there are psychosomatic demands like a developed memory and fast response times which all go to show that interpreting requires qualifications.

The foregoing suffices to show the natural propensity of interpreting towards professionalism and its close links with identical areas in which the organisational dimension, knowledge and leges artis specific to any profession are developed.

Nevertheless, apart from acquiring the qualifications for the job, it might be asked whether this is an activity conducive to rules of conduct or, in other words, one that needs a code of professional ethics.

Clearly professions have ethical limits.

What we need to know is whether in this instance there is any urgency attaching to the affirmation of rules and duties. For those who see interpretation as straightforward mediation or quasi-automatic in nature, it would seem inappropriate to frame a code of conduct and, hence, to be concerned with the secrecy issues related to some other professions.

Once again, I believe we need to delve more deeply.

Interpretation is an intellectual activity which needs professional and ethical rules.

Furthermore, the need for neutrality on the part of interpreters often comes up, while their beliefs, although less frequently and perhaps less appropriately, are also discussed.

What we can truly say here, is that in interpretation the transmission of a discourse is not the mere deciphering of a message; the process of understanding cannot be divorced from the worldview of the interpreter. The impartiality and the rigour with which the interpreter approaches the cultural, political, scientific or technical area on which the discourse draws will depend on a heightened state of consciousness which alerts the interpreter to possible deviations prompted by interference from his or her own value system.

On the other hand, interpreters have to be mindful of the content, aim and oratory of the material, including the circumstances in which it is delivered.
In some sense, interpretation is always an act of linguistic engineering. This is particularly true where the existence of official languages inevitably leads to the impoverishment of discourses, reflected in poor vocabulary and syntactical and grammatical distortion, which force the interpreter to use additional stratagems. The saying *traduttore-traditore* has some truth in it, or, to use a more colourful comparison, which is as convincing as it is false, there is nothing more like a translation than a woman; usually, the more beautiful she is the less faithful and the more faithful the less beautiful.

There is a degree of subjectivity in the reworking of a speech.

I remember the story of a friend of mine who was as upright and competent a politician as he was a poor orator and linguist. He used to revel in the work of the interpreters who quite often transformed him into a dazzling parliamentarian, proclaiming his ideas in ways he would have never been able to do.

This reworking process is a challenge interpreters cannot ignore. Communications of little linguistic or oratory value are frequently recreated through interpretation. Any dysfunctioning can, notwithstanding, lead to a serious breach of the principle of neutrality.

This need for professional rules and a code of conduct was keenly felt by the International Association of Conference Interpreters which adopted a Code of Professional Ethics and, subsequently, a document on professional standards.

Under the heading “Code of Honour”, the Code of Professional Ethics stipulates in article 2 that members of the Association shall be bound by the strictest secrecy which must be observed towards all persons and with regard to all information disclosed in the course of the practice of the profession at any gathering not open to the public. In addition, under the same provision, members of the Association shall refrain from deriving any personal gain whatsoever from confidential information they may have acquired in the exercise of their duties as conference interpreters.

It is clear from these extracts that we are referring to a special category of interpreters i.e. conference interpreters.

This qualification is in order since these interpreters practice their profession in a way that implies a special relationship with the law.

There is not, however, one single way of practising the profession.

We know that some interpreters are employed on a permanent basis by an organisation while others are self-employed.

It is also true that, quite frequently, contractual links are short-lived. And relate to a single well-defined piece of work.

Sometimes, interpreters work in the same place; more often they are called upon to travel and geographic mobility is the rule.

The complexity and cross-cutting nature of the material is another feature. This obtains even when the business is fundamentally of one kind (political, legal, etc) for varied extraneous material will intrude episodically: ranging from environmental medicine and population flows to aeronautics.

The conditions which apply to contracts, mobility and trans-disciplinarity, impact the legal status of the profession and also, indirectly, the issue of confidentiality.

Depending on the type of contract, interpreters may find that they are subject both to the Association rules and to those of the institution for which they work. Where the two are incompatible, it is
necessary to examine the link and the regulations to ascertain which shall prevail.

In turn, geographical mobility means that the jurisdiction may change along with the place of work and even the type of jurisdiction may be predicated on the international setting.

Similarly, the variety of subjects handled confronts interpreters with different kinds of secrets (State, medical, banking etc) and the need to look into the different legal status of the confidential material to which they have access.

Clearly, the Code of Ethics uses the term *strictest* to describe interpreter’s professional secrecy. That would seem to settle the matter. But the legal value of the Code of Ethics can be challenged or challenged to a degree, depending on the link established between a given legally recognised association and a specific branch of law.

This brings us to the matter of secrecy.

The duty of members of a profession to uphold secrecy goes back to time immemorial. In the Book of Proverbs, the Bible has Solomon say: ??

“Debate thy cause with thy neighbour *himself*; and discover not a secret to another:

Lest he that heareth it put thee to shame, and thine infamy turn not away”. (25.9)

The Hippocratic oath is also familiar. Hippocrates was a physician who lived in the 5th century B.C. It reads: “I swear by Apollo Physician and Aesculapius……and all the gods and goddesses, making them my witness,…..what I may see or hear in the course of the treatment or even outside the treatment in regard of the life of men, I will keep to myself, holding such things shameful to be spoken about”.

In fact, as the criminal oversight of secrecy was established relatively early as regards some professions, there remain significant gaps and inconsistencies in most legislations. This is due to the fragmentary nature of criminal law. Criminal law only addresses situations requiring particular protection, it therefore normally adopts an reactive and not a systematic approach.

While the roots of medical confidentiality reach back to the Hippocratic oath and hence were enshrined in law earlier, other professions saw secrecy being incorporated in law as disputes arose and the interests at stake so demanded. France, for instance, incorporated secrecy into the Penal code in 1810. Under the *Ancien Régime*, it was considered reprehensible for the members of certain professions, sworn to secrecy, to disclose information acquired in the course of their work. This did not apply to clerics bound by the secrecy of the confessional for whom the Council of Trent, held in the 15th century, confirmed the strict secrecy of confession.

The variety of professions bound by secrecy and the diversity of confidentiality issues posed by specific professions gave rise to varying degrees of obligation.

In everyday language we could talk in terms of low and high secrecy or absolute and relative secrecy.

If I had to put it in a nutshell, I would say that, nowadays, there are an increasing number of circumstances in which the law enforces professional secrecy and, at the same time, the duty to remain silent has become eroded. In other words, while the force and scope of secrecy have been extended, we are increasingly faced with situations where, for reasons of the administration of justice, national security, public health and so forth, revelation is required.

Methods of incrimination also differ.

In English and North American law, professional secrecy is not regulated as such although it can be
derived from the concept of legal privilege, attached to the legal professions, and that of confidentiality which applies to other occupations.

In countries like Germany, Austria and Switzerland the professions subject to professional secrecy are enshrined in law.

In other countries like, for instance, Spain, France and Portugal, professional secrecy generally comes under an open-ended incrimination clause the decisive elements of which are, to draw on the Portuguese Criminal Code, the existence of a secret, whether the disclosure was made by a person bound to confidentiality and whether that duty was owed to the State, the occupation, employment, profession or trade of a given individual.

The individuals covered by secrecy are described with the terms “necessary confidant” which applies to all those whose profession or occupation elicits and requires that third parties confide in them. The Portuguese code further incriminates “whosoever, without permission, uses a secret relating to the commercial, industrial, professional or artistic activities of others, which has come to their knowledge through their condition, occupation, employment, profession or craft and which has harmed another person or the State”.

Incrimination applies to the concept of a profession in its broadest sense encompassing activities performed regularly but not necessarily exclusively or principally, without them being strictly profit-making. The decisive factor is that there exist a link that is not merely fortuitous between the professional activity and the knowledge of secret facts. Said facts need not have been conveyed to the professional in confidence.

The criminal code governing secrecy follows one of two approaches. One focuses on personal values which tend to be identified with privacy; the other focuses on supra-individual values which relate to the functions of some professions.

While, under some legislations, the protection of professional secrecy seeks to defend privacy, in others, the public-institutional area prevails. In the latter case, great store is set by society’s interest in being able to place its trust in the discretion and reserve of certain professionals and of that being a proper condition of their employment.

Nonetheless, even those who emphasize privacy do not rule out the indirect protection of community and institutional values.

The diversity and incompleteness of these systems prompted the Parliamentary Assembly of the Council of Europe to recommend to the Committee of Ministers (Recommendation 1012 (1985)) that they prepare a Recommendation to Member States, laying down minimum standards to defend professional secrecy based on two principles. Firstly, that “any person having knowledge of a secret by reason of his particular status or office or of his profession or skills, that the affected party, expressly or by implication, wishes to be kept secret is covered by the obligations of professional secrecy”. Secondly, that “exceptions to this obligation must be provided for by law or ordered by a regular court and be in accordance with Art. 8.2 of the Convention for the Protection of Human Rights and Fundamental Freedoms”.

These matters are quite theoretical and doubtless not very interesting to an audience where there are few lawyers. However, I could not overlook them as they are, to some extent, key in answering the questions of conference interpreters.

Three more points before we come to grips with these replies.

Firstly, I wish to make it clear that, in most legal systems, the duty of professional secrecy which binds professionals is defined in statutes or regulations, sometimes with the force of law and
sometimes only binding on members of a profession. As is characteristic of criminal rules, criminal codes only lay down the duty of secrecy implicitly, by making violations a criminal offence and punishing them.

In some instances, there is no general clause incriminating such breaches or no legal provision that specifically refers to named professional categories. In these cases, and conference interpreters are amongst them, breaches of professional secrecy as such are not treated as criminal offences.

Secondly, note should be taken of some aspects of secrecy which merit separate treatment and which could give rise to difficulties of another order as regards conference interpreters.

The issue of professional secrecy falls into three stages as described by the renowned French criminal lawyer [2] as “la parole confiée (the confidence), ”le silence imposé” (the required silence) and “la parole retrouvée” (the confidence revealed). The first two stages have to do with the information gathered and the secrecy obligation. For members of an Association who adopt a Code of Ethics that demands strictest secrecy and that only excludes from this rule speeches made in public meetings, interpreting these stages seems fairly straightforward. However, the third stage - the confidence revealed - looks more complicated.

The terms the confidence revealed refers to situations in which the person in whom the secret has been confided can or must speak out. He or she has been released from the secrecy obligation because imperative reasons in the eyes of the law justify disclosure or because an authority, i.e. the Judiciary requires a breach of secrecy.

While not wishing to make an over-hasty judgement, I have to say that this issue raises increasingly interesting problems.

The third point has to do with the singular position of the conference interpreter in terms of the confidant concept.

As stated earlier, professional secrecy can be invoked where an individual is in a relationship that is usually called necessary-confidant. Generally speaking, such individuals (lawyers, physicians, psychologists, etc) establish or maintain professional relations with holders of secrets which compel the latter to reveal aspects of their private lives. Normally, such professionals have to acquire specific qualifications and belong to professional associations and are subject to Codes of Ethics.

The professional profile of conference interpreters fits the above bill. But the necessary-confidant role marks them out. Actually, the holder of a secret usually has considerable (in some instances complete) freedom of choice in establishing or maintaining relations with a professional. As a rule, one chooses one’s physician and one’s lawyer. Where conference interpreters are concerned, choice is limited. Even in institutions where interpreters are members of staff and subject to strict performance rules, the confidence relationship tends, in principle, to be solely institutional. The recipients of interpretation services are very varied.

Sometimes, they are not even part of the organisational environment governed by the institution. The fact that interpreters work in booths, whereby they have a view of the meeting room but cannot always be seen from the outside, lends a technological dimension to the service which devalues the personal aspects of the performance.

Furthermore, the interpreter is not the end recipient of the confidential material.

The interpreter is a mediator.

A conference may well involve an exchange of secrets between participants adding to the confidential nature of the event over which the interpreter has no influence.
In such a case it could be argued that the relationship of the holder of the secret with the interpreter is more one of necessity than of confidence.

I believe that is wrong.

One should not lose sight of the fact that, in this case, confidence does come into play albeit indirectly through the institution or the conference organiser. Otherwise, the holder of the secret would not speak and the conference would not achieve its purpose.

Finally, another distinctive feature is that confidential material conveyed in meetings is not usually associated with the privacy of the individual conveying the information. This can be readily understood as the number of participants in a meeting is not conducive to an atmosphere of confidentiality.

Does this then mean, in establishing the duties of a conference interpreter, that emphasis should be placed on the institutional dimension and the objective value of the material disclosed.

Theses considerations intimate that there is no one answer to the problems conference interpreters face.

Answers depend on a number of variables beginning with the identification of the legal system and including the contractual relationship of the interpreter and ending with the interpretation of the rules applying. When all is said and done, a prudential attitude should be brought to bear in evaluating cases.

Firstly, the geographical application of the laws.

Clearly, interpreters are bound by the Code of Ethics adopted by their professional association, which may enjoy extra-territorial validity. Above and beyond that, the personal status of interpreters may be relevant in determining the content and extent of their professional duties, which can come into play, in particular, in defining civil or criminal liability.

But no more than that can be adduced.

As we established, criminal law is decisive in terms of how professional secrecy is governed. Its application, in principle, is overriding regulated by the law prevailing where the events take place.

A breach of professional secrecy is punished or the way in which it is punished is in keeping with the legislation of the country in which the act was committed, although this can give rise to difficulties which I shall not address (in the interests of simplicity) such as those stemming from the fact that the meeting was held in one country and the disclosure made in another.

Another variable, as mentioned above, has to do with the terms of employment of the interpreter. If he or she performs his or her job purely as a freelancer, the Code of Ethics adopted by the Association will enjoy independent and full force. If, however, the interpreter is a permanent or temporary agent of an institution, the regulations of the institution will normally override Association rules.

There may also be contractual professional and ethical rules written into the service agreement entered into by the interpreter; i.e. the interpreter signs a contract which waives his or her commitments to the Association. In such a case, the interpreter makes a choice involving responsibility to one of the parties.

In an interesting contribution based on Belgian law, interpreter liability was analysed from two standpoints – professional secrecy and the duty of discretion – which led, respectively, to the application of a criminal penalty and financial compensation. The solutions that the study
developed on disclosure and reasons justifying it could easily be extrapolated to other legal systems.

It so happens that this article related to translators and interpreters *tout court*. Now, in various respects, the position of the conference interpreter has its idiosyncrasies.

What answers, then should I go for? Answers dependent on the various legislations or dependent on a particular legal system.

Neither one nor the other.

Solutions designed on the basis of rough comparisons would be incompatible with this intervention. An approach drawing on a specific legal system would gain in clarity whilst not getting us any nearer to solving our conundrum.

Those are my reasons for eschewing comparisons or a specific system-based analysis drawing on a particular legislation, and for confining myself, after the general considerations I have just expounded, to describing some conflictual situations and testing the outcomes which, according to trends in law, I deem plausible.

In this connection, I would offer a first reaction to the claim that the *strictest* nature of professional secrecy is excessive.

Is it really excessive?

The difficulties inherent in this issue quickly prompt us to conclude that, apart from cases where meetings are held in public, the secrecy requirement as it stands is well suited to the characteristics of the interpreter’s work.

The conference interpreter is a necessary-confidant under various secrecy assumptions, in a variety of places and in unforeseeable circumstances. Diplomatic and State secrets may emerge in international meetings as naturally as medical and banking secrets do in scientific meetings.

One solution I have heard aired involved subjecting interpreters to the various secrecy regimes. [4]

At a medical conference, the interpreter would be bound by medical confidentiality. If the conference involved stock exchange traders then their secrecy rules would obtain.

Although this is ingenious and could be used for other purposes, as we shall see later, this system offers two pitfalls. The first flows from the common principle generally enshrined in constitutional traditions whereby the use of analogy for purposes of incrimination is disallowed.

The second has to do with a requirement of accuracy and precision which would be wholly undermined. In the light of the diversity of solutions (the way secrecy is handled varies from one country to another), this would be tantamount to demanding encyclopedic knowledge of an interpreter in an area which even lawyers see as changing and incomplete.

Moreover, it seems to me that since the trust between the holder of the confidential information and the interpreter is overwhelmingly of an operational nature and that since the interpreter is not usually provided with contextual information, he or she will be unable to determine the contours of confidential material or distinguish the dividing line between, say, civil service confidential material and State secrets.

Hence the obligation to keep silent about everything that was said at a non-public meeting, as laid down in the Code of Ethics seems necessary and reasonable. While it appears radical, the solution does not depend on a prior understanding of the kind of secret material the interpreter is to be exposed to but, rather, on the actual nature of interpretation; that is a go-between activity in which, as such, the characteristics of the necessary-confidant are heightened.
Despite the above, difficulties may arise.

Clearly, there is a need to establish whether secrecy should relate solely to the information to be interpreted or encompass everything the interpreter sees and hears during a meeting.

I shall not venture to analyse the Interpreters’ Code of Ethics, especially since I have found inconsistencies in the different language versions I perused, and this merely confirms the old saying that “shoemakers children are the worst shod”.

However, I will outline a solution.

All the material that comes to the knowledge of an interpreter in the course of his or her work should be subject to secrecy. In borderline cases involving complications (initiatives, silences, signs, conflicts, who spoke to whom etc) the duty of discretion will provide protection.

A problem that needs careful consideration is the position of an interpreter as regards written documents provided by the speaker. Is the interpreter entitled to pass these on to others and, in particular, to the institution or to the organising body of the conference?

As is well known, contributors often supply the interpreters with the text on which they will base their speeches. This is a sensitive issue as it is not uncommon for a speaker to stray from his text or even dispense with it completely when, for instance, the words of another participant prompt him to change his strategy. Should the interpreter pass on the text to the institution or anyone else?

The answer is no, unless the regulations so require. In other words, there may be rules or instructions governing the situation whereby written material is part of the dossier or is, in a sense, handed to the interpreters as members of the institution. In that case the institution must decide.

In any event, I would be inclined to conclude that, in the absence of provisions to the contrary, such material cannot be given to the institution and should unofficially or on request be returned to the contributors.

Moreover, such a situation could well arise in a public meeting where no secrecy requirement would normally be in place. Even so, the same rules should obtain, derived from the general rules of conduct incumbent upon interpreters and, similarly, applied to the institution, its functionaries or agents or to the organising body of the conference.

The value of secrecy, however, can be tested in the way it stands up to the duty to disclose.

This is the crunch. How should interpreters react when faced with situations or entities which compel or seek to compel them to violate secrecy?

The duty to give testimony in a court of law is a classic example.

This is an example of the duty to cooperate with an appeal to public spiritedness.

Here again there is no single reference framework. Procedural legislations vary.

In some systems, professional secrecy or, at least, some professional secrets can be withheld in Court.

In other systems, the decision to disclose lies with the holder of the secret. Case law in some countries holds that, in such cases, silence should not be misused. A practical example drawn from Belgian case law helps clarify the position. A surgeon discovered during a second operation that the patient’s discomfort was due to a compress the surgeon who performed the first operation failed to remove from the patient’s abdomen. Could the second surgeon refuse to testify? The court decided
not, arguing that to acquiesce would amount to a perversion of the right to remain silent, because confidentiality was designed to protect the patient and not the colleague of the surgeon being questioned.[ 5]

Let’s imagine, for argument’s sake, that the situation fitted the strict requirement to protect the patient. I would still have some hesitation where conference interpreters are concerned. Interpreters, because of the nature of their professional qualifications and because of the relationship they have with holders of secrets, are not in a position to properly weigh up the interests in play. That is to judge as to what they should disclose and what they should keep secret. A physician knows and observes the patient, knows the implications of confidentiality in terms of privacy, understands the repercussions disclosure might have. The interpreter’s position is very different.

Since the interpreter cannot form a judgement on the interests at stake, he should keep his counsel.

And what if he or she is required to testify in court?

The case is purely academic when the authorities can prevail upon the prime confidant (the professional who addressed the conference) to make a disclosure. In other cases and in the light of matters touched upon earlier, the authorities should apply standards that turn out to be stricter taking into account the protection of the owner of the confidential material. Take a conference where patients and doctors come forward, respectively, to present clinical cases and to criticize their handling, the interpreters receive information whose end recipients are the doctors present. Since no provisions have been worked out for the interpreters to disclose information, they would have to be subject to the same strict rules that apply to medical confidentiality.

Again, there are situations where revelation is justified in terms of a law of need. In general terms this occurs whenever disclosure is necessary to remove an imminent danger that threatens considerably superior interests. A good example would be plans which endanger the lives or the physical integrity of other people. The justification of such a disclosure may become the duty to report where criminal activies are involved.

Another matter of considerable interest has to do with how secrecy is handled after the death of the interested party.

I have already seen it written that interpreters can never write their memoirs.*

I would not completely subscribe to this view knowing that I am taking a stand in favour of culture and of the literary talent of many of these celebrated professionals.

Most legal systems stipulate that breaches shall be punished when the agent reveals the secret after the death of the confider.

It is, nonetheless, important to realise that there is a difference between breaking secrets while the interested party is still alive and after his or her death. The idea is to accommodate the fact that time – tempus edax rerum – irreversibly erodes secrecy and affects the importance of keeping the secret. In other words, the need for protection reduces as the memory of the deceased fades or as he emerges as a historic figure. [6]

From another point of view, protection after death is more concerned with privacy. In their work conference interpreters are not involved with this aspect.

All this shows that, in this area, the position of the conference interpreter is not substantially different from that of other professionals.

I could continue this demonstration but my time has run out.
Moreover, I have the feeling that, if I were to do so, I would be running the risk of merely speculating, since the legal reference frameworks are scant.

Is there a move towards greater regulation of this professional activity?

I simply do not know.

I do know, however, that the profession of interpreter, which already has a history and a tradition, cannot but grow in importance in the future.

The phenomena of integration and globalization herald the weakening of identities and uniformity. But, in truth, we are witnessing the strengthening of cultural diversity and a genuine language renewal.

Why is this?

Along with economic growth and development, there emerge other social dimensions, rooted in history, with human beings at the centre.

Human beings attach great importance to their identities and to the mystical dimension of life.

They also unceasingly strive to reach others, strangers.

I work in an institution where the language regime is part of the internal culture and I remember the way a colleague described the experience that awaited me: “In this institution there is a unique and truly magic moment. That is when the judges read out in sequence their rulings in their own languages”.

A few days later, I experienced that magic and the biblical resonances returned unbidden.

The Court of Justice could speak in tongues because sitting discreetly in their booths were the interpreters.

1 See on France, Jean Florian Eschylle, *L’interprète en matière pénale*, Revue de science criminelle det de droit pénal comparé N°2, avril-juin 1922, pg 2259 etc.
4 Danielle Gree, *Le secret professionnel jusqu’à ce que mort s’ensuive?*, Communicate, Aiic Online
5 Lambert, op. cit. pg. 21.
6 Christopher Thierry, *La responsabilité de l’interprète de conférence professionnel ou pourquoi nous ne pouvons pas écrire nos mémoires*, Meta, XXX, I, pg. 78 etc
7 Costa Andrade, *Codigo Penal (Comentário Conimbricence)*, Tomo 1, pg. 789.

**Recommended citation format:**