Why revisit court interpreting in the US?

I have been racking my brain to remember the author of a quote that states that most people do not know the history of their profession. Agreeing with this assertion, I am trying to include in a single document an overview of court interpreting in the United States (US) as we know it today. This blog post draws from two postings I wrote in February 2011 and is not to be considered, by any means, as exhaustive. It includes, however, some of the most significant actions that have been taken to bring court interpreting to the level it has currently reached.

Interpreting in public administration settings (or community interpreting, among other names) in the US, especially in courts, has gained momentum in the last ten years. While there is still a lot to be done, it would be safe say that interpreters are gaining standing as officers of the courts. It is to be noted that it is the first time a language-based profession in the US is a step ahead of countries like Canada. This has been acknowledged by my Canadian colleagues in academia and in the courts, as well as my Canadian court interpreting students. While court interpreting in the US is not a perfect model, it is establishing its bona fides, and it is worth writing about it.

Title VI of the Civil Rights Act of 1964 prohibits discrimination against “any person in this country on the ground of race, color, or national origin.” It also prohibits that any such person be excluded “from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” Since these provisions have been construed to include any person in the US, state courts that receive federal funds are required to provide interpreters to Limited English Proficient (LEP) individuals in civil and criminal cases at no charge for defendants. Under federal law, courts must also ensure that interpreters have essential language and interpreting skills.

In October 1978, President Carter signed the Court Interpreters Act of 1978, establishing the right for any individual involved in a court proceeding to have a certified or otherwise qualified court interpreter if his/her communication or comprehension capabilities are inhibited because of a language barrier, or a hearing or speech impairment. To implement the provisions of the Court Interpreters Act, the Federal Court Interpreter Certification Examination program (FCICE) was created to define criteria for certifying interpreters qualified to interpret in federal courts and to assist
the Director of the Administrative Office of the U.S. Courts (AO) in maintaining a list of federally-certified court interpreters. These requirements also apply to state courts, where the ‘otherwise qualified’ interpreter category may represent a problem since it could include individuals whose language skills have not been screened or tested as we will see later in this post.

In August 2000, President Clinton’s Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency” and its limited English proficiency Resource Document: Tip and Tools from the Field strengthened the limited English proficiency initiative. Executive Order 13166 requires that federal agencies take “reasonable steps to provide meaningful access for LEP people to federally-conducted programs and activities.” It also requires that “every federal agency that provides financial assistance to non-federal entities publish guidance on how those recipients can provide meaningful access to LEP persons.” Ten years later, the Attorney General stressed the importance of complying with this executive order to turn policy into reality.

In July 2008, the Brennan Center for Justice—a public policy and law institute that focuses on issues of democracy and justice—released an 88-page report on an extensive study of language access in state courts. The report, Language Access on the State Courts, notes that about 25 million people in the US are LEP and need an interpreter in court. It further notes that at least 13 million of them live in states that do not require the provision of court interpreting services in most types of civil cases, while six million live in states that fail to uphold Title VI provisions, charge LEP persons for interpreting services, or have ill-prepared interpreters providing such services.

In June 2010, the US Attorney General issued a Memorandum for Heads of Department Components restating the obligations set forth in Executive Order 13166. In August 2010, less than a month later, Assistant Attorney General for the Civil Rights Division of the Department of Justice Tom Perez sent a similar reminder to all chief justices and court administrators in an attempt to bring courts into compliance with provisions that seek to provide language access to LEP persons in the judicial system. However, additional clarification was in order as the letter gave rise to a series of questions by the state courts, including definition of the extension of the term “court” and the Department of Justice’s expectations on telephone interpretation and certification for less frequently used languages.

**Otherwise Qualified Interpreters**

Certified interpreters have continuously requested review of the category “otherwise qualified interpreters.” In some states, the interpreter registry includes as “otherwise qualified interpreters” individuals who have only completed a two-day orientation session that does not assess the candidate’s language proficiency or interpreting skills. In some cases, non-certified interpreters have been grandfathered based on years of services provided to the court. Of course, compensation for “otherwise qualified interpreters” is significantly lower and decision makers try to save money. What they don’t seem to take into account when hiring a non-qualified interpreter is the cost of cases on appeal. Some interpreters who have been grandfathered in various courts have gained certification, are reaching retirement age or are simply not interpreting in court proceedings.
Attrition and advocacy on the importance of working with certified are solving the issue of grandfathered and “otherwise qualified interpreters”.

**Court Interpreter Certification**

Authority over the federal and state court interpreter certification programs falls on the National Center of State Courts (NCSC) under contract to the Administrative Office of the United States Courts. NCSC oversees the court interpreter certification program through the Consortium for Language Access in the Courts (formerly the Consortium for State Court Interpreter Certification), which was created in August 1997 with the mission to “facilitate court interpretation test development and administration standards, to provide testing materials, to develop educational programs and standards, and to facilitate communication among the member states and entities, in order that individual member states and entities may have the necessary tools and guidance to implement certification programs.” Aside from developing and administering testing material, the Consortium has conducted research on certification examination outcomes and career trends. Research reports and other information on court interpreter issues can be found on the Consortium’s website Publications page.

These certification processes, and the fact that success rates in both the state and federal court interpreter exams are notoriously low [2], has generated an increasing demand for the training of hundreds of aspiring interpreters. Interpreter training needs have primarily been addressed through short-term workshops and seminars offered by court administrators, professional organizations, and entrepreneurs, rather than through academia. A whole certification process has been set in place before establishing the mechanisms that would provide aspiring interpreters a well-rounded education. Court interpreter education and training in the US has been correctly described as “putting the cart before the horse.” (Angelelli: 2005).

**Court Interpreter Certification in Indiana**

A good example of a strong program can be found in Indiana. The Indiana Court Interpreter Certification Program is the result of an interim recommendation made to the Supreme Court in 2000 by its Commission on Race and Gender Fairness on ways to improve race and gender fairness in the courts, legal service providers, state and local governments, and public organizations. The court interpreter certification program is now the most important program of the Commission. It administers the certification examination twice a year, and offers not only a compulsory two-day orientation session for aspiring court interpreters but also skill-building workshops. It also has an advisory board made up of a cross-section of stakeholders across the state, including judges, public defenders, law professors, and of course, interpreters, which allows to program to receive feedback from a wide array of sources. All this has been accomplished with the support of the entire state judiciary. Indiana is currently exploring continuing education activities as a requirement for certified court interpreters.

**Overview of the certification process [3]**

Given that court interpreter certification is under the oversight of a national body, the certification process is by and large similar in most states. The following are certification steps in Indiana:

1. Attend a two-day court interpreter orientation session that covers interpreter ethics, protocol, basic criminal procedure, and the three modes of interpretation used in the courtroom. No language proficiency assessment is required for this activity. Anyone who pays registration
fees may attend.
2. Pass a written exam covering vocabulary, criminal procedure, and court interpreter ethics with a score of 80% or better.
3. Attend a two-day skills building seminar that covers sight translation, consecutive interpretation and simultaneous interpretation. Not all states include this step.
4. Pass all three portions – sight translation, consecutive interpretation and simultaneous interpretation – of the National Consortium-approved interpreter certification oral exam with a score of 70% or better on each of three sections. A candidate who fails one or two portions of the oral exam can retake only those portions until all three are completed successfully.
5. Submit to a criminal background check.
6. Sign an oath promising to comply with the Indiana Supreme Court Interpreter Code of Conduct and Procedure.

**Overview of the written exam**

The written test contains 135 multiple-choice questions and measures a candidate's knowledge of the following areas central to the work of a court interpreter:

- **English Language**: One indispensable component necessary to function as a professional court interpreter is a high degree of proficiency in the English language. Accordingly, the written examination assumes a high degree of literacy in the English language and familiarity with a range of language constructions. The candidate is tested on comprehension of written English vocabulary and common English idioms.
- **Court-Related Terms and Usage**: A second area of knowledge essential to successful professional performance is familiarity with the terminology and procedures of the court system. Accordingly, the written examination also measures recognition of common court-related situations and vocabulary.
- **Ethics and Professional Conduct**: The third area of knowledge required of professional court interpreters encompassed in the written test is general knowledge of ethical standards guiding the performance of duties. Accordingly, the written exam includes questions aimed at measuring a candidate's knowledge of ethical behavior and professional conduct.

For Spanish, the test includes a ten-sentence translation component in which the candidate translates ten English sentences to Spanish. The passing score is *borderline* or better.

**Overview of the oral certification exam**

The oral certification exam tests proficiency in the three modes of interpretation used in the courts: sight translation, consecutive interpretation and simultaneous interpretation. A candidate must achieve a score of 70% or better on each portion of the test to pass. Tests are given individually recorded, and scored by two certified interpreters trained as raters. The passing score for FCICE is 75% for the written portion and 80% for the oral portion. Candidates have to achieve a passing score in the two languages involved in the test.

**Certification by reciprocity**

Since most states use the testing materials developed by the Consortium, interpreters are eligible for certification by reciprocity. In Indiana, certification by
reciprocity is granted as long as the certifying state or federal government maintains the same or higher scoring standards as Indiana. This link leads to reciprocity requirements in Indiana.

Salary and wages

The inclusion of translation and interpretation in the 2004-2005 Occupational Outlook Handbook of the United States Department of Labor’s Bureau of Labor Statistics was a much celebrated step towards the professionalization of this activity. The handbook, which is updated every other year, provides a description of the nature of the work, training and other qualifications required, job outlook, and earnings and wages for the profession. While more job opportunities and better earnings remain in the realm of projections for the future, there is reason to hope that translation and interpretation are on their way to acquiring a higher standing.

Regarding the pay scale for interpreters working in courts and legal settings, the National Association of Judiciary Interpreters and Translators (NAJIT) notes that it depends in part on the law of supply and demand and the type of certification or other qualifications held by the interpreter, frequency and volume of work available, settings in which interpretation is needed, and employment circumstances under which the interpreter works (self-employment, freelance, or salaried). Remuneration varies also according to the associated cost of living of a particular area.

As NAJIT points out, most court interpreters are self-employed but full-time staff positions exist in areas where the volume of work is greatest. Of course, giving the number of Hispanics in the US, almost all staff positions are for Spanish-English interpreters. Starting annual salaries in state or federal courts for staff interpreters may range from $30,000 to $80,000. Supervisory positions may also be available. In some jurisdictions, such as California, New Jersey, and Cook County, Illinois, for example, court interpreters in certain categories, both full-time and part-time, are considered judiciary employees, and as such have collective bargaining rights.

As for freelance rates in federal courts for certified or professionally qualified interpreters, the web page of the United States Courts provides the following:

Certified and Professionally Qualified Interpreters:

Full Day: $ 388  
Half Day: $ 210  
Overtime: $ 55 per hour or part thereof

Language Skilled (Non-Certified) Interpreters:

Full Day: $ 187  
Half Day: $ 103  
Overtime: $ 32 per hour or part thereof

The difference in wages between certified and non-certified interpreters in the US federal court systems is significant and the demand for certified interpreters is great. One wonders why the Federal Court Interpreter Certification Examination is not offered more frequently. The written portion of the exam is administered once a year nation-wide. Those who pass it can take the oral portion of the test the following year but those who fail have to wait two years to take the exam again. A recent innovation in the administration of the Federal Court Interpreter Certification Examination is that it is now computerized. No more paper exams. However, candidates have to go
to an exam location, like in the past, where a proctor will be responsible for conducting the test session properly.

A lot has been achieved regarding the Language Access for LEP persons initiative; however, compliance with the various dispositions remains an issue. The good news is that forty three states have joined the Consortium as of 2011. Court interpreters have their own professional association—NAJIT, which actively advocates for the use of certified interpreters in both state and federal courts.

Interpreting in public administration settings is a profession that has evolved in nearly four decades from being a service usually provided by “bilingual” but otherwise unqualified individuals, including untrained family and staff members. It is now a profession practiced by certified or otherwise qualified interpreters. Immigrants have been at the heart of this country’s foundation, and this is not about to change even with radical anti-illegal immigration legislation like the recently enacted in Arizona, which has been copied in states like Alabama, Georgia, Indiana, South Carolina, and Utah. On the educational front, more and more higher education institutions are seeing translation and interpretation as subjects worthy of serious scholarship. A great deal is yet to be done in this arena, but a positive trend has, without a doubt, been set. This is a ‘story’ to be continued… Please continue to check back.

As always, your comment are most welcome!

References


Additional Resources

1. Examinee Handbook - National Center for State Courts

2. ACEBO publishing: ACEBO is owned by Holly Mikkelson, a leading figure in judicial interpreting (most commonly called “court” interpreting /court interpreter) training in the United States, who also teaches judicial interpreting at the Monterey Institute of International Studies, in Monterey, California.

Gladys Matthews, a native of Costa Rica, holds a Masters in Translation and Terminology and a doctorate in linguistics with a focus on legal translation from Université Laval (Quebec). She is a certified court interpreter in the State of Indiana. She has taught translation and interpretation in several universities in the United States and recently developed two on-line English-French judicial interpreting courses for the MA in Conference Interpretation of Glendon College of York University (Toronto).

An earlier version of this article appeared on her personal blog Translation and Interpretation in America.

[1] This link leads to information for both the state and the federal court interpreter certification process. The two certification examinations are similar in the way they are structured and administered. However, it is well-known that the FCICE is by far more difficult and the pass rate significantly much lower than that of the state court interpreter certification exam. Most aspiring interpreters gain certification both at the state and federal courts levels after several attempts and
some simply give up.


[3] The web site of the National Consortium for Language Access in the State Courts includes detailed information on both state and federal court interpreter certification examinations. Indiana has administered the certification exam for the English-Spanish language pair, which is the language combination that has by far the most demand for interpreting services in the courts, but also in French, Polish, and Mandarin.

[4] This link also leads to information on a national court interpreter database of interpreter categories and skills.

Recommended citation format: