

JUDICIAL REFERENCE GUIDE ON COURT INTERPRETER SERVICES



WASHINGTON
COURTS

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Presented By:

Administrative Office of the Courts
Washington State Court Interpreter Commission

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PREFACE

Who can work as court interpreters? The usual answer is “those people who can speak two languages.” While that is partially true, being a court interpreter is a much more complicated task. How do you know if the interpreter can say the equivalent of *mandatory prison sentence*, *conditions of probation*, or *implied consent*? A court interpreter is someone who can interpret completely and accurately from one language into another without altering, omitting from, or adding to what is spoken without changing the meaning.

An interpreter must possess specialized cognitive skills. Someone who is proficient in speaking both languages, using their own words, may still be unable to interpret at the level of a court interpreter. An interpreter must listen to what is said, comprehend the message, abstract the entire message from the words and the word order, store the idea, search his/her memory for the conceptual and semantic matches, and reconstruct the message (keeping the same register or level of difficulty as in the source language). While doing this, the interpreter is speaking and listening for the next utterance of language to process, while monitoring his or her own output.

WASHINGTON STATE COURT INTERPRETER PROGRAM

COURT INTERPRETER COMMISSION

The Court Interpreter Commission, as defined in General Rule 11.1, convened in 2005. The Interpreter Commission includes stakeholder representatives from appellate and trial court levels, court administration, interpreters, attorneys, ethnic organizations, the Administrative Office of the Courts, and public members.

The primary responsibility of the Commission is to develop and maintain program standards in education, testing, and program administration through policies contained in the *Interpreter Program Manual*. The Commission must pass any policy regarding the certified or registered interpreter programs.

The Commission also has three standing committees including: discipline, issues and judicial/court manager education. All Commission members participate in one committee.

ADMINISTRATIVE OFFICE OF THE COURTS' PROGRAM ADMINISTRATION

The Commission advises the Administrative Office of the Courts (AOC) on elements of the Interpreter Program. The AOC is responsible for establishing and administering a comprehensive testing and certification program for language interpreters (RCW 2.43.070). The AOC worked with the Commission to standardize the testing and scoring process, implement a continuing education/court hour requirement, pass a disciplinary process, and publish a directory of court certified and registered interpreters on the AOC Web site at www.courts.wa.gov/programs&orgs/courtinterpreters.

CERTIFIED COURT INTERPRETER PROGRAM

Washington State offers court interpreter certification in the following languages: Arabic, Cantonese, Korean, Laotian, Mandarin, Russian, Somali, Spanish, and Vietnamese.

The certification process exists to aid the court in identifying interpreters qualified to interpret in the courts. To become certified, an interpreter must pass the following examinations:

- **Written Exam** consisting of components on English proficiency, legal terminology, and ethics.
- **Oral Exam** consisting of components on simultaneous, consecutive, and sight translation.

Candidates who pass both the written exam and oral exam must complete the following before receiving accreditation as a certified court interpreter:

1. Submit a completed fingerprint card (available from law enforcement) and application fee to the AOC. (The AOC will submit the fingerprint card to the Washington State Patrol for processing.)
2. Attend a mandatory class on the Introduction to Court Interpreting.
3. Execute the Oath of Interpreter.
4. Obtain interpreter ID badge for court proceedings.

For an interpreter to keep their certification status current, they must submit proof of 16 hours of continuing education and 20 court hours every two years.

REGISTERED COURT INTERPRETER PROGRAM

The registered status is open to language interpreters in the following languages:

Afrikaans, Albanian, Amharic, Bengali, Baluchi, Bulgarian, Cebuano, Chavacano, Croatian, Czech, Dari, Dutch, Egyptian, Filipino, French, German, Haitian Creole, Hebrew, Hilgaynon, Hindi, Hmong, Ilonggo, Indonesian, Italian, Japanese, Javanese, Khmer, Malay, Norwegian, Pashto, Persian Farsi, Polish, Portuguese, Punjabi, Romanian, Serbian, Slovak, Swahili, Swedish, Tausug, Thai, Turkish, Urdu, and Visayan.

Note: At any time, a new language may be added or a current language deleted from the list above. For up-to-date revisions in available languages offered for the registered category, please visit AOC's Web site at www.courts.wa.gov/programs&orgs/courtinterpreters.

This program is not available for interpreters in languages where certification is offered. Those languages are: Arabic, Cantonese, Korean, Laotian, Mandarin, Russian, Somali, Spanish, and Vietnamese. **There are no exceptions to this rule.**

To become registered, an interpreter must pass the following examinations:

- **Written Exam** consisting of components on English proficiency, legal terminology, and ethics.
- **Oral Proficiency Interview** consisting of a 20-30 minute telephonic interview between a tester and the interpreter. The interview measures how well the interpreter speaks the language in which he/she is attempting to become registered.

ADDITIONAL INFORMATION

Responsibility for scheduling and coordinating interpreter services in Washington State falls upon the court administrator. Court administrators can access the certified and registered court interpreter online directories at www.courts.wa.gov/programs&orgs/courtinterpreters.

The *Judicial Reference Guide* is a joint product of the Administrative Office of the Courts' Interpreter Program and the Washington State Court Interpreter Commission. It is intended as a quick guide for judicial officers working with language interpreters in a court setting. Additional materials were provided by the National Center for State Courts and Interpreter Programs in Oregon, Florida, and New Jersey.

Every court certified and registered interpreter is issued an ID badge with a picture identifier and expiration date. Interpreters are encouraged to wear their badge in court proceedings and judges are equally encouraged to ask and see the interpreter's badge. However, court administrators are strongly advised to check the AOC Web site to ensure that interpreters used in court are current on their certification/registration requirements.

If you have questions regarding the Court Interpreter Program, please contact the Administrative Office of the Courts at (360) 753-3365.

CONSORTIUM FOR STATE COURT INTERPRETER CERTIFICATION

In 1995, the Washington State Interpreter Program joined forces with Minnesota, New Jersey, and Oregon to create the Consortium for State Court Interpreter Certification (Consortium). The Consortium operates under the direction (and is staffed by) of the National Center for State Courts (NCSC), located in Virginia.

The Consortium addresses resource shortages that impede efforts by state courts to define and implement standards for interpreting proficiency. The Consortium was created as a way to provide for and regulate exchange of existing interpreter proficiency tests and to develop new tests. It is a mechanism through which funds from several sources can be combined to achieve economies of scale across jurisdictional and organizational boundaries that would otherwise be impossible.

Currently, there are 39 states that are members of the Consortium. Through our membership, Washington has access to a written exam that is updated annually. The oral exams available to Washington include:

Oral Exam	Versions
Arabic	1
Cantonese	1
Korean	1
Laotian	1
Mandarin	1
Somali	1
Spanish	4
Russian	2
Vietnamese	2

Equal Access to Justice: Court Interpreting in Washington

By: Judge Ron A. Mamiya

Consider This:

- Nearly one out of every seven Americans over the age of five does not use English as a primary language.
- Of those 32 million persons, nearly half speak English “less than ‘very well.’”
- Because of our geographic location, Washington proportionately has even greater numbers of non-English speaking persons.
- Washington’s non-English population has increased by more than 10 percent over the past 10 years.

In 1988, the Washington State Supreme Court’s Minority Justice Task Force held public forums around our state to determine public concerns about our judicial system. The most common concern by ethnic community members, legal professionals and the public at large related to access to justice – the inability to communicate in English and fully participate in judicial proceedings.

The truth is that when a non-English speaking person is involved in court proceedings, almost always, no one other than a competent interpreter knows everything that is being said. And, since most of us are not bilingual, few are equipped to evaluate language skills. Consequently, there is very little caselaw and, until recently, few guidelines to assist us.

In 1986, our State Supreme Court created the Court Interpreter Task Force. Since that time, the state legislature has enacted two statutes, RCW 2.42, *Interpreters for Hearing Impaired Persons*, and RCW 2.43, *Interpreters for Non-English-Speaking Persons*, requiring appointment of “qualified” interpreters in all court proceedings. Despite minor differences in the two statutes, the legislative mandate is clear:

It is hereby declared to be the policy of this State.... to secure the rights of persons who.... are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

In addition, our state Supreme Court adopted court rules GR 11.2, *A Code of Conduct for Court Interpreters*, in 1989, and GR 11.3, *Telephonic Interpretation*, in 1994.

Washington State's court interpreter program is nationally recognized, and is a guiding force for the National Center for State Courts' (NCSC) Interpreter Consortium. Based largely upon the testing and educational programs developed in Washington, the National Center's Consortium has developed court interpreter certification and education programs now available to its 39 member states.

In February, 2002, Supreme Court Justices Charles Z. Smith and Charles W. Johnson, co-chairs of our state's Minority and Justice Commission (formerly the Minority Justice Task Force), asked members of the state's judiciary for comments concerning their observations and experiences relating to ethnicity and culture in their courts. Overwhelmingly, the responses again reflected concerns about interpreters, ranging from availability to competency. Although we now have a framework, we are still struggling with equal and effective access for the non-English speaking.

Where do we go from here? We have come a long way, but there is so much more to do. First, all of us involved in our judicial process must be proactive in soliciting help from the ethnic and cultural communities. In many cultures, the unwillingness to participate in court proceedings is a direct result of distrust of government and/or fear of authority. It is up to us to reach into those communities and promote court interpreting as a worthy profession.

Second, once individuals step forward as interpreters, we must treat them with the respect that they are due – as “officers of the court.” Far too often, an interpreter is viewed as a nuisance rather than a necessity. We must also be aware of the interpreter's needs allowing them to do a more effective job. It is difficult, demanding, and requires highly specialized skills that few possess and even fewer are capable of developing to a competent level.

Third, we must educate ourselves as well as interpreters of the importance of interpreting, acceptable performance standards, and the effective utilization of interpreter services. In addition, interpreter education must be provided to ensure that appropriate competency levels are reached and maintained.

Lastly, we must vow that equal access is provided at all stages of the proceedings. It goes beyond just being in court and must include the entire continuum – from the reporting of an incident through availability of probationary and social services. Imagine not being able to tell the police how you were assaulted or who did it, or going to prison because a drug diversion program is not available to a Vietnamese defendant.

Thankfully, technology provides us great access. The Administrative Office of the Courts' Web site (www.courts.wa.gov/programs&orgs/courtinterpreters) contains information on court interpreting, including an online directory of certified and registered court interpreters. Additionally, the NCSC provides an online

library, links to other states with court interpreting programs and helpful materials for both the interpreter and user through its Web site
http://www.ncsconline.org/D_Research/CourtInterp.html.

As time-consuming and resource intensive as interpreting may be, we must demand recognition that the ability to effectively communicate in court is a fundamental and basic right of all persons. Without competent interpretation, participation in our legal process is meaningless; it is the same as being unable to hear or speak. This is not an issue of providing more resources or special treatment – it is placing the non-English speaking person on *equal footing* with an English-speaking person – nothing more, nothing less. These priorities must first be instilled in our judiciary; if we educate our judges, the rest will follow.

It is up to us to make sure that our courts provide a “level playing field” and ...
Equal Justice for All.

Ron Mamiya is a Judge in the Seattle Municipal Court and has been active in court interpreting for more than 20 years. He is on the Executive Committee of the National Center for State Courts' Interpreter Consortium that offers interpreter education and testing standards to its member states. For more than a dozen years, he has been a member of the Washington State Minority and Justice Commission.

HOW DO YOU DETERMINE WHO NEEDS AN INTERPRETER?

A person who is not fluent in English learns to linguistically survive in most circumstances. The person will often guess when answering questions because they do not want to appear dumb by admitting they don't understand or want to avoid causing a disruption in court.

What questions should you ask that would help determine someone's ability to speak English? What should you avoid?

DO...

Ask open-ended questions, which require complete or near complete sentences to be answered.

Ask opinion questions, or questions where the answer would be unique to the person answering. Ask questions with no "right" answer.

Examples:

What has your work experience been prior to coming to Washington?

What do you like or dislike about your present employment?

How did your mother celebrate her last birthday?

DON'T...

Ask questions with "yes" or "no" answers.

Ask questions that can be answered with one or two words, particularly based on only understanding one or two words in the questions. For example, "What is your name?" would lead someone to answer with his/her name even if the only word the person understood was "name."

Ask questions that someone would already be exposed to over and over again by virtue of being in this country (Where do you work? What is your name? What is your address?). Exposure to the pattern of the words in the question may be what is prompting the "right" answer, not understanding the question itself.

DEFINITIONS and TERMINOLOGY

INTERPRETATION

The unrehearsed transmission of the spoken word or message from one language to another.

TRANSLATION

The conversion of a written text from one language into written text in another language.

SIGHT TRANSLATION

The reading of written text of one language, translated orally into another language.

SIMULTANEOUS INTERPRETATION

The rendering of an interpretation for a party at the same time someone is speaking, usually heard only by the person receiving the interpretation.

CONSECUTIVE INTERPRETATION

The rendering of an interpretation after the speaker has stopped speaking, usually in short utterances.

TARGET LANGUAGE

The language into which an interpretation is made from the original speaker's statement in the source language.

RESOURCES TO LOCATE INTERPRETERS

Courts should use interpreters who are certified or registered by the AOC in Washington State, without exception and in every possible situation. Pursuant to RCW 2.43.030, good cause must be found if the court uses a non-credentialed interpreter in a case that involves a non-English-speaking party in one of the languages Washington certifies or registers.

If a court has a case involving a non-English-speaking party in a language outside of the certified or registered category, the judge must still “qualify” the interpreter for the purpose of that hearing. Refer to Tips for Using and Assigning Interpreters, of this reference guide for more information on questions for judicial officers to consider when qualifying an interpreter.

Because Washington State does not have a centralized court system, each court is responsible for scheduling interpreters to meet their need. The first step in arranging for a certified or registered court interpreter is to check the AOC online directory of all certified and registered interpreters in Washington State. The directory is located at www.courts.wa.gov/programs&orgs/courtinterpreters.

If your court is in need of an interpreter in a language not represented by the certified or registered interpreter lists, please contact neighboring courts to see if they are aware of an interpreter resource. The court administrators and managers distribution lists (also maintained at AOC) can be used to access a wide audience of court administrators and managers.

Washington does not recognize equivalent certification or registration from other states, the federal government, or private agencies.

The following resources are for courts to consider when a Washington State court certified or registered interpreter is not available. Some of these sources may provide names of interpreters with only marginal skills and no court experience. Judicial officers must exercise discretion to determine qualifications to serve as an interpreter in a particular court proceeding.

- A. **Other State Courts** (Consortium member states are recommended above non-consortium states): Local court administrators (federal, superior, municipal, district), particularly courts in larger jurisdictions may have names of qualified interpreters for a particular language or dialect needed.

- B. **Non-Government Organizations:** Some schools, churches, and ethnic community organizations may be of assistance in locating an interpreter for rare languages or dialects. Exercise caution when using this alternative due to possible conflict of interest.
- C. **AT&T Language Line:** Appropriate to use for short hearings of approximately 15 minutes in duration (e.g., arraignment), “at the public counter” interpretations of non-legal matters between parties and court staff, or if the court is having difficulty determining what language the person speaks. It is not appropriate to use for long hearings or trials.
- D. **Colleges and Universities:** Foreign language departments and international student organizations of local colleges and universities can be a resource.
- E. **Medical Facilities:** Hospitals and clinics use interpreters. The Department of Social and Health Services offers certification in medical interpreting (360) 664-6035.
- F. **Private/Commercial:** Private language schools and commercial interpreting agencies are available but not endorsed or rated by the AOC.

PROPER ROLE OF A COURT INTERPRETER

The Proper Role of a Court Interpreter Should Be:

- A conduit/facilitator of communications.
- To interpret accurately all communications to and from English and the target language.
- To interpret thoroughly and precisely, adding or omitting nothing, giving consideration to grammar, syntax, and level of language.

Ethical Considerations:

- Should be considered an officer of the court.
- Abide by a code of professionalism expected of any court officer to promote confidence and impartially in the judicial process.
- The interpreter shall avoid any conflict of interest, financial or otherwise.
 - Shall not render services if a potential witness, associate, friend or relative of a party.
 - Shall not render services if he/she has a stake in the outcome.
 - Shall not render services where he/she has served as an investigator in a preparation of litigation.
- Shall not disclose any communication that is otherwise privileged without consent or court order.
- Shall not comment on a matter where he/she has served as an interpreter.
- Report any effort by another to solicit, entice, or induce the interpreter to violate any law or canon of conduct for interpreter.
- Shall not give legal advice and shall refrain from the unauthorized practice of law.

What You Should Expect From an Interpreter:

- He/she will request clarification if a phrase or word is not understood.
- He/she will interpret in the first person and should address the court in the third person, in order to keep a clear record.
- He/she will have paper and pencils available at all times and may have a dictionary or other reference material with him/her.
- He/she will be as unobtrusive and professional as possible.
- He/she will not converse with the defendant or party except to interpret everything that is said in the courtroom.

Advice to Courts:

- Beware of the interpreter who does not carry a Washington State interpreter badge.
- Be clear to identify the interpreter's level of certification (Washington State Court, Washington State DSHS, federal, other state).
- Beware if the interpreter is not interpreting everything that is being said in the courtroom. Summary and paraphrase interpreting have no place in the courtroom under any circumstances.
 - By observation, you can determine if the interpreter is simultaneously interpreting the testimony, both questions and answers of witnesses, the closing arguments of counsel, etc. The party is entitled to hear everything that is happening, as it is happening.
- Beware if you observe the interpreter engaging in conversation with the non-English-speaking party or witness.
- Beware if the interpreter is coaching or encouraging a party to answer in a certain way (such as nodding or using facial expressions). The interpreter should simply interpret everything that is being said in the courtroom, with no personal input whatsoever.
- Beware if the interpreter draws undue attention to himself/herself. A trained interpreter will be as unobtrusive as possible and professional in manner.

HOW TO USE INTERPRETERS PROPERLY IN THE COURTROOM

1. The interpreter must be able to hear and be heard. Allow the interpreter to sit wherever hearing is best facilitated, generally beside the witness or party unless the interpreter is using sound equipment.
2. Speak in phrases with long pauses when needed for consecutive interpretation. Instruct and remind counsel to speak in phrases with long pauses. Do not be impatient. Few judges, parties, or witnesses are used to communicating through interpreters. If you coach those who are not familiar with the process, the proceeding will be smoother and less intimidating for all participants.
3. To prevent undue fatigue, keep the pace of the speech within the particular interpreter's ability.
4. Do not let two or more people talk at the same time.
5. Give the interpreter periodic recesses:
 - a. Generally, the interpreter cannot work efficiently for more than 30 minutes at a time. Often, the interpreter is the only one in the courtroom talking all of the time. Courts should provide periodic recesses.
 - b. In lieu of frequent recesses (proceedings that are likely to go longer than two hours), courts should provide two interpreters to relieve one another every half-hour.
6. Advise counsel to avoid false starts, questions within questions, and parenthetical statements.
7. Speak directly to the party or witness, not to the interpreter, and advise counsel to do likewise. For example, do not say to the interpreter, "Ask him where he was..." rather say, "Where were you..." to the party.
8. Provide the interpreter in advance all relevant documents to enable him/her to prepare for expected interpretation and unique terminology such as medical terms.
9. Before trial, allow the interpreter to spend a few minutes conversing with the person who needs the interpreter. This enables the interpreter to determine the person's geographic origin, level of vocabulary, etc.

10. If available, provide accurately translated common legal forms.
11. Some legal concepts do not exist in some languages or cultures, including such fundamental concepts in the American legal system as the right to a jury trial. If an interpreter advises the court of this problem, the court should instruct the attorney or witness to rephrase the term in a less culturally bound way.

NUMBER OF INTERPRETERS NEEDED QUESTION & ANSWER

QUESTION: How many same-language interpreters are needed for separate parties in the same hearing?

ANSWER: The court should afford each party a separate interpreter, if needed, to avoid a conflict of interest.

QUESTION: What if a party and a witness need same-language interpreters in the same hearing?

ANSWER: The court should provide one interpreter for a party and a separate interpreter who can interpret for all witnesses (if a party's interpreter serves as an interpreter for a witness, the interpreter cannot assist in communications between the party and counsel).

EXCEPTION: When separate interpreters are not available, for example in rural communities, then the potential conflict should be disclosed and any waiver put on the record.

QUESTIONS TO ASK/CONSIDER WHEN QUALIFYING AN INTERPRETER

RCW 2.43.030 (2) states that:

If good cause is found for using an interpreter who is not certified or registered, or if a qualified interpreter is appointed, the appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the non-English-speaking person, that the proposed interpreter is able to interpret accurately all communications to and from such person in that particular proceeding. The appointing authority shall satisfy itself on the record that the proposed interpreter:

- a. Is capable of communicating effectively with the court or agency and the person for whom the interpreter would interpret; and*
- b. Has read, understands, and will abide by the code of ethics for language interpreters established by court rules.*

The following is a list of questions recommended for judicial officers to use when qualifying a non-credentialed interpreter for a hearing:

1. Are you certified or registered by the state of Washington as a court interpreter? Any other state? Any other credentials or certification?
2. What is your native language?
3. How did you learn English and the target language?
4. Can you read in both languages?
5. Did you formally study either language in school? What was your primary language in school? Where and how long did you attend school?
6. Have you had an opportunity to speak with the litigant(s)? Do you need a few minutes? Were there any particular communication problems?
7. Are you familiar with the dialectical or idiomatic peculiarities of the witness/parties?
8. Have you ever interpreted in court before? Where? How often? For what types of hearings or cases?
9. Have you received any special training in court proceedings?
10. Describe simultaneous interpreting and your experience with it.

11. Describe consecutive interpreting and your experience with it.
12. Do you ever summarize statements while interpreting? Do you understand the law requires you to interpret everything said by all parties?
13. Have you read the Code of Conduct for Court Interpreters? Describe briefly the topics covered (see GR 11.2).
14. Are you a potential witness in this case?
15. Do you know or have you ever met any of the parties/witnesses? In what circumstances?
16. Do you have any other potential conflicts of interest?
17. Have you ever worked for any of the parties/witnesses? In what capacity?
18. Do you believe you can communicate with the non-English-speaking person/party; i.e., have you talked with the person already or do you need a few minutes to talk now?
19. Can you readily communicate with the non-English-speaking person?

INSTRUCTIONS TO THE JURY

Instructions from judicial officer to the jury on the interpreter's role, limitation, and responsibility:

As you are aware, we will have official court interpreters help us through these proceedings and you should know what they can do and cannot do. Basically, the interpreters are here only to help us in the proceedings, to interpret the testimony of witnesses and the questions of the attorneys and my instructions to you, the jury. They are not a party in the case, have no interest in the case, and will remain completely neutral. The interpreter's sole responsibility is to bridge our communication gap.

The interpreters are not lawyers and are prohibited from involving themselves in this case in any manner. That includes conducting any type of conversation with any member of the jury panel about anything that goes on in this courtroom. Please do not try to engage them in any such discussion or any conversation at all. If you have questions about the proceedings, please direct it to me and not to the interpreter.

WHAT COURT INTERPRETERS WOULD TELL YOU IF THEY WERE HERE

1. Take some time to become familiar with my profession. I would like very much for you to understand the professional services I am responsible for rendering. When you do that, you will be more likely to respect and treat me as a professional. It may be a helpful guide if you would treat me the way you tend to treat your reporter or any officer of the court.

Once you understand my job better, here are some things you will no longer do. Please understand this is not just me talking. The following examples represent the best thinking of judges, lawyers, and court administrators – as well as professional interpreters, of course – who have pondered the role of the interpreter in great depth. These examples are based on the Code of Professional Responsibility I am expected to follow.

- a. Do not ask me to explain or restate what you or anyone else says. I can only put into another language exactly what a person has said.
- b. Do not allow attorneys appearing before you to ask me to explain or restate what someone says. When I decline to perform this task for them, please support me and do not expect me to violate the Code.
- c. Do not ask me to take the person(s) for whom I am interpreting to an office, counter, etc.
- d. Do not let two or more people talk at the same time. There is no way I can interpret everything that is being said!
- e. Do not ask me not to interpret something. I am professionally and ethically bound to interpret everything that is said.
- f. Do not forbid me to interpret simultaneously during a proceeding because it interferes with your concentration or otherwise bothers you. There are many situations in which I am professionally, ethically, and legally bound to interpret in the simultaneous mode. If my whispered simultaneous interpreting gets too loud, respectfully ask if I can speak more quietly. I will do my very best to be as unobtrusive as possible.

Sometimes I need to obtain clarification. It is unethical for me to make up an interpretation or guess at an interpretation of something I do not understand. Instead of viewing such a request as casting doubt upon my professional credentials, consider viewing it in terms of my commitment to accuracy.

6. Many of my colleagues are not very well qualified and want very much to improve their interpreting skills. They need support for attending courses and professional seminars. Please do everything you can to enable on-the-job training, so do not hesitate to take them – and me, sometimes – under your wing when there is something we need to learn.
7. Before you expect me to start interpreting for a given matter, give me the opportunity to find out what the nature of the proceeding is, who is involved, etc. Furthermore, let me speak to the linguistic minority person briefly to size up the person's communicative style and needs so I can make whatever adjustments may be necessary and appropriate to improve communication – or perhaps even discover that I might not be able to communicate sufficiently with the individual! Like any other professional, the better prepared I am, the better I will be able to do and the smoother the whole proceeding will flow.

*Taken from Court Interpreting, Legal Translating and Bilingual Services Section,
New Jersey Administrative Office of the Courts, Rev. February 1993.*

RCW CHAPTER 2.43

INTERPRETERS FOR NON-ENGLISH-SPEAKING PERSONS

RCW 2.43.010 Legislative Intent

It is hereby declared to be the policy of this statute to secure the rights, constitutional or otherwise, of persons who because of a non-English-speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

It is the intent of the legislature in the passage of this chapter to provide for the use and procedure for the appointment of such interpreters. Nothing in chapter 358, Laws of 1989, abridges the parties' rights or obligations under other statutes or court rules or other law.

RCW 2.43.020 Definitions

As used in this chapter:

(1) "Non-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language, but does not include hearing-impaired persons who are covered under chapter 2.42 RCW.

(2) "Qualified interpreter" means a person who is able readily to interpret or translate spoken and written English for non-English-speaking persons and to interpret or translate oral or written statements of non-English-speaking persons into spoken English.

(3) "Legal proceeding" means a proceeding in any court in this state, grand jury hearing, or hearing before an inquiry judge, or before [an] administrative board, commission, agency, or licensing body of the state or any political subdivision thereof.

(4) "Certified interpreter" means an interpreter who is certified by the Administrative Office of the Courts.

(5) "Appointing authority" means the presiding officer or similar official of any court, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision thereof.

RCW 2.43.030 Appointment of Interpreter

(1) Whenever an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a certified or a qualified interpreter to assist the person throughout the proceedings.

(a) Except as otherwise provided for in (b) of this subsection, the interpreter appointed shall be a qualified interpreter.

(b) Beginning on July 1, 1990, when a non-English-speaking person is a party to a legal proceeding, or is subpoenaed or summoned by an appointing authority or is otherwise compelled by an appointing authority to appear at a legal proceeding, the appointing authority shall use the services of only those language interpreters who have been certified by the Administrative Office of the Courts, unless good cause is found and noted on the record by the appointing authority. For purposes of chapter 358, Laws of 1989, "good cause" includes but is not limited to a determination that:

(i) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of a certified interpreter are not reasonably available to the appointing authority; or

(ii) The current list of certified interpreters maintained by the Administrative Office of the Courts does not include an interpreter certified in the language spoken by the non-English-speaking person.

(c) Except as otherwise provided in this section, when a non-English-speaking person is involved in a legal proceeding, the appointing authority shall appoint a qualified interpreter.

(2) If good cause is found for using an interpreter who is not certified, or if a qualified interpreter is appointed, the appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the non-English-speaking person, that the proposed interpreter is able to interpret accurately all communications to and from such person in that particular proceeding. The appointing authority shall satisfy itself on the record that the proposed interpreter:

(a) Is capable of communicating effectively with the court or agency and the person for whom the interpreter would interpret; and

(b) Has read, understands, and will abide by the Code of Ethics for language interpreters established by court rules.

RCW 2.43.040 Fees and Expenses -- Cost of Providing Interpreter

(1) Interpreters appointed according to this chapter are entitled to a reasonable fee for their services and shall be reimbursed for actual expenses which are reasonable as provided in this section.

(2) In all legal proceedings in which the non-English-speaking person is a party, or is subpoenaed or summoned by the appointing authority or is otherwise compelled by the appointing authority to appear, including criminal proceedings, grand jury proceedings, coroner's inquests, mental health commitment proceedings, and other legal proceedings initiated by agencies of government, the cost of providing the interpreter shall be borne by the governmental body initiating the legal proceedings.

(3) In other legal proceedings, the cost of providing the interpreter shall be borne by the non-English-speaking person unless such person is indigent according to adopted standards of the body. In such a case, the cost shall be an administrative cost of the governmental body under the authority of which the legal proceeding is conducted.

(4) The cost of providing the interpreter is a taxable cost of any proceeding in which costs ordinarily are taxed.

RCW 2.43.050 Oath

Before beginning to interpret, every interpreter appointed under this chapter shall take an oath affirming that the interpreter will make a true interpretation to the person being examined of all the proceedings in a language which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

RCW 2.43.060 Waiver of Right to Interpreter

(1) The right to a qualified interpreter may not be waived except when:

(a) a non-English-speaking person requests a waiver; and

(b) the appointing authority determines, on the record, that the waiver has been made knowingly, voluntarily, and intelligently.

(2) Waiver of a qualified interpreter may be set aside and an interpreter appointed, in the discretion of the appointing authority, at any time during the proceedings.

RCW 2.43.070 Testing, Certification of Interpreters

(1) Subject to the availability of funds, the Administrative Office of the Courts shall establish and administer a comprehensive testing and certification program for language interpreters.

(2) The Administrative Office of the Courts shall work cooperatively with community colleges and other private or public educational institutions, and with other public or private organizations to establish a certification preparation curriculum and suitable training programs to ensure the availability of certified interpreters. Training programs shall be made readily available in both eastern and western Washington locations.

(3) The Administrative Office of the Courts shall establish and adopt standards of proficiency, written and oral, in English and the language to be interpreted.

(4) The Administrative Office of the Courts shall conduct periodic examinations to ensure the availability of certified interpreters. Periodic examinations shall be made readily available in both eastern and western Washington locations.

(5) The Administrative Office of the Courts shall compile, maintain, and disseminate a current list of interpreters certified by the Administrative Office of the Courts.

(6) The Administrative Office of the Courts may charge reasonable fees for testing, training, and certification.

RCW 2.43.080 Code of Ethics

All language interpreters serving in a legal proceeding, whether or not certified or qualified, shall abide by a Code of Ethics established by Supreme Court rule.

GR 11 COURT INTERPRETERS

Introduction: GR 11 became effective on July 17, 1987.

The use of qualified interpreters is authorized in judicial proceedings involving hearing impaired or non-English-speaking individuals.

INTERPRETER COMMISSION

GENERAL RULE 11.1

PLEASE NOTE: GR 11.1 refers to certified court interpreters; however, for the function of the registered court interpreter category, GR 11.1 applies equally.

PURPOSE AND SCOPE OF INTERPRETER COMMISSION

(a) Purpose and Scope. This rule establishes the Interpreter Commission (“Commission”) and prescribes the conditions of its activities. This rule does not modify or duplicate the statutory process directing the Court Certified Interpreter Program as it is administered by the Administrative Office of the Courts (AOC) (RCW 2.43). The Interpreter Commission will develop policies for the Interpreter Program and the Program Policy Manual, published on the Washington Court’s Web site at www.courts.wa.gov, which shall constitute the official version of policies governing the Court Certified Interpreter Program.

(b) Jurisdiction and Powers. All certified court interpreters who are certified in the state of Washington by AOC are subject to rules and regulations specified in the Interpreter Program Manual. The Commission shall establish three committees to fulfill ongoing functions related to issues, discipline, and judicial/court administration education. Each committee shall consist of three Commission members and one member shall be identified as the chair.

(1) The Issues Committee is assigned issues, complaints, and/or requests from interpreters for review and response. If the situation cannot be resolved at the Issues Committee level, the matter will be submitted by written referral to the Disciplinary Committee.

(2) The Disciplinary Committee has the authority to decertify and deny certification of interpreters based on the disciplinary procedures for: (a) violations of continuing education/court hour requirements, (b) failure to comply with Interpreter Code of Conduct (GR 11.2) or professional standards, or (3) violations of law that may interfere with their duties as a certified court interpreter. The Disciplinary Committee will decide on appeal any issues submitted by the Issues Committee.

(3) The Judicial and Court Administration Education Committee shall provide ongoing opportunities for training and resources to judicial officers and court administrators related to court interpretation improvement.

(c) Establishment. The Supreme Court shall appoint members to the Interpreter Commission. The Supreme Court shall designate the chair of the Commission. The Commission shall include representatives from the following areas of expertise: judicial officers from the appellate and each trial court level (3), interpreter (2), court administrator (1), attorney (1), public member (2), representative from ethnic organization (1), and AOC representative (1). The term for a member of the Commission shall be three years. Members are eligible to serve a subsequent three-year term. The Commission shall consist of 11 members. Members shall only serve on one committee and committees may be supplemented by ad hoc professionals as designated by the chair. Ad hoc members may not serve as the chair of a committee.

(d) Regulations. Policies outlining rules and regulations directing the interpreter program are specified in the Interpreter Program Manual. The Commission, through the Issues Committee and Disciplinary Committee, shall enforce the policies of the interpreter program. Interpreter program policies may be modified at any time by the Commission and AOC.

(e) Existing Law Unchanged. This rule shall not expand, narrow, or otherwise affect existing law, including but not limited to RCW chapter 2.43.

(f) Meetings. The Commission shall hold meetings as determined necessary by the chair. Meetings of the Commission are open to the public except for executive sessions and disciplinary meetings related to action against a certified interpreter.

(g) Immunity from Liability. No cause of action against the Commission, its standing members, or ad hoc members appointed by the Commission, shall accrue in favor of a certified court interpreter or any other person arising from any act taken pursuant to this rule, provided that the Commission members or ad hoc members acted in good faith. The burden of proving that the acts were not taken in good faith shall be on the party asserting it.

GR 11.2

CODE OF CONDUCT FOR COURT INTERPRETERS

Introduction: The Washington State Supreme Court adopted the Code of Conduct for Court Interpreters in November of 1989. Washington law establishes that all legal interpreters, whether certified or not, must follow the Code of Conduct.

Preamble: All language interpreters serving in a legal proceeding, whether certified or uncertified, shall abide by the following Code of Conduct:

A language interpreter who violates any of the provisions of this code is subject to a citation for contempt, disciplinary action or any other sanction that may be imposed by law. The purpose of this Code of Conduct is to establish and maintain high standards of conduct to preserve the integrity and independence of the adjudicative system.

(a) A language interpreter, like an officer of the court, shall maintain high standards of personal and professional conduct that promote public confidence in the administration of justice.

(b) A language interpreter shall interpret or translate the material thoroughly and precisely, adding or omitting nothing, and stating as nearly as possible what has been stated in the language of the speaker, giving consideration to variations in grammar and syntax for both languages involved. A language interpreter shall use the level of communication that best conveys the meaning of the source, and shall not interject the interpreter's personal moods or attitudes.

(c) When a language interpreter has any reservation about ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the parties and to the court. If the communication mode or language of the non-English-speaking person cannot be readily interpreted, the interpreter shall notify the appointing authority or the court.

(d) No language interpreter shall render services in any matter in which the interpreter is a potential witness, associate, friend, or relative of a contending party, unless a specific exception is allowed by the appointing authority for good cause noted on the record. Neither shall the interpreter serve in any matter in which the interpreter has any interest, financial or otherwise, in the outcome. Nor shall any language interpreter serve in a matter where the interpreter has participated in the choice of counsel.

(e) Except in the interpreter's official capacity, no language interpreter shall discuss, report, or comment upon a matter in which the person serves as interpreter. Interpreters shall not disclose any communication that is privileged by law without written consent of the parties to the communication, or pursuant to court order.

(f) A language interpreter shall report immediately to the appointing authority in the proceeding any solicitation or effort by another to induce or encourage the interpreter to violate any law, any provision of the rules which may be approved by the courts for the practice of language interpreting, or any provisions of this Code of Conduct.

(g) Language interpreters shall not give legal advices and shall refrain from the unauthorized practice of law.

[Adopted effective November 17, 1989]

[By orders dated November 2, 1989, the Supreme Court adopted GR 11.1 and CrRLJ 3.2(0) and amended CR 79 (e) to read as set forth below. Effective November 17, 1989.]

GR 11.1 the use of qualified interpreters is authorized in judicial proceedings involving hearing impaired or non-English-speaking individuals [adopted effective July 17, 1987].

COMMENTS ON THE CODE OF CONDUCT

By: Court Interpreter Task Force

The Court Interpreter Task Force published comments to its proposed code in 1986. These comments are useful because they expand on issues covered by various provisions of the Code of Conduct for court interpreters.

Standards

The Code of Judicial Conduct (CJC) Canons 1 and 3 require high standards of conduct by judges, their staff, and court officials. Such standards apply to interpreters as well. Interpreters are the vital link in communication between litigants and the court. Conflicts of interest may consciously or subconsciously affect the quality or substance of an interpretation or translation. The need for unquestioned integrity among interpreters is obvious. These Canons apply to interpreters and translators for both the hearing impaired and for individuals who speak a language other than English. CJC Canon 3 requires court personnel and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

Accuracy

The interpreter should utilize the same level of language used by the speaker. This means that the interpreter will interpret colloquial, slang, obscene or crude language, as well as sophisticated and erudite language, in accordance with the exact usage of the speaker. It is not the interpreter's task to tone down, improve, or edit phrases.

Unless the interpreter is faithful to this concept of accurate interpretation, he or she may act as a filter or buffer in the communication process. This could damage the integrity of the trial process, which is based on an adversarial system with vigorous examination and cross-examination. Consequently, the substance of questions posed and answers given during the testimony should not be altered more than absolutely necessary to assure comprehension.

The interpreter should not assume that it is his or her duty to simplify statements for a witness or defendant whom the interpreter believes cannot understand the speaker's statements. Like witnesses who do not use an interpreter, interpreted witnesses can and should request counsel or the court to explain or simplify matters if necessary.

An interpreter should never characterize or give a gratuitous explanation of testimony. The court or attorneys will request clarification from the speaker if necessary. The court and counsel should be sensitive to possible confusion by the witness. During testimony, the interpreter may volunteer to the court his or her belief that the witness does not understand a particular question or comment.

Idioms, proverbs, and sayings rarely can be interpreted literally. The interpreter should seek an equivalent idiom or relate the meaning of the original idiom or saying.

While interpreting a non-English language, the interpreter should not offer an explanation or repeat a witness' gesture or grimace, which has been seen by the trier of fact.

Interpreters for the deaf or hearing-impaired should use the method of interpreting most rapidly understood by the deaf or hearing-impaired witness. For example, the witness may be more articulate in American Sign Language than in manually coded English or finger spelling.

Meaning

A court interpreter or legal translator is often faced with new technical terms, slang, regional language differences, and other problems posing difficulty in accurate interpretations or translations.

The interpreter or translator must take time, and be given appropriate time by the court, to determine an appropriate and accurate interpretation or translation of the material. If unable to interpret or translate the material, the parties and the court must be advised so the court can take appropriate action. When necessary, another, better-qualified interpreter should be substituted. Before such substitution, the court may determine whether another linguistic approach can be used for the same result in communication. For example, a different choice of words to be interpreted may solve the problem.

Impartiality

The purpose is to avoid any actual or potential conflict of interest. CJC Canon 3 requires similar disqualification of a judge because of a conflict of interest. Interpreters should maintain an impartial attitude with defendants, witnesses, attorneys, and families. They should neither conceive of themselves nor permit themselves to be used as an investigator for any party to a case. They should clearly indicate their role as an interpreter if they are asked by either party to participate in interviews of prospective witnesses outside of the court. Interpreters should not "take sides" or consider themselves aligned with the prosecution or the defense.

See comment to Canon 6, which discusses the use of interpreters in client and witness interviews. Care must be taken to avoid exposing an interpreter to unnecessary conflict of becoming a potential witness on the merits.

Both court interpreters and jurors should be apprised of the identity of each during voir dire to help determine whether any juror knows the interpreter.

The fees and remuneration of a court interpreter or legal translator shall never be contingent upon the success or failure of the cause in which he/she has been engaged.

Interpreters and translators shall not interpret in any matter in which his/her employer has an interest as an advocate, litigant or otherwise.

Interpreters shall be limited to the role of communication facilitators.

No interpreter who has served as an investigator assisting in preparation for litigation shall serve as a court interpreter in that cause.

Personal Opinion

To promote the trust and integrity of the judicial system, it is important that court officials, including interpreters and translators, refrain from commenting publicly regarding an action. Interpreters and translators shall not offer an opinion to anyone regarding the credibility of witnesses, the prospective outcome of a case, the propriety of a verdict, the conduct of a case, or any other matter not already available by public record.

Legal Advice

The interpreter shall never give legal advice of any kind to the non-English-speaking person or to any other person, whether solicited or not. In all instances, the non-English-speaking person should be referred to counsel. The interpreter may give general information to a non-English-speaking person regarding the time, place, and nature of court proceeding. However, in matters requiring legal judgment, the individual should be referred to an attorney.

The interpreter should never function as an individual referral service for any particular attorney or attorneys. This kind of activity has the appearance of impropriety. When asked to refer a non-English-speaking person to a particular attorney, the interpreter should refer such individual to the local bar association or to the Office of the Public Defender.

QUICK GUIDE ON CODE OF CONDUCT

By: Ron Mamiya, Seattle Municipal Court

Supreme Court Mandate: Maintain jurisdiction over interpreters.

- To establish and maintain high standards of conduct to preserve integrity and independence of the adjudicative process.
- Subject to personal and professional conduct that promotes public confidence in the administration of justice.
- Made interpreters “officers of the court.”

SIX ETHICS CANONS:

1. Professionalism

- Officer of the court
- Shall not take advantage of knowledge
- Maintain high level of professionalism

2. Doctrine of Accuracy and Completeness

- Conduit/facilitator of communication
- Interpret accurately, thoroughly and precisely
- Add nothing, omit nothing – profanity, non-sensical
- At same level – slang, regionalism, terms of art

3. Conflict of Interest

- Avoid any actual or potential conflict
- Obligation to maintain impartiality
- Interest in the outcome
- Perform investigative services
- Acquainted with party, witness, or juror unless good cause
- Prior involvement in the case

4. Confidentiality

- Shall not discuss, report, or comment (more restrictive)
- Disclose any privileged communication
- Generally bound by privileges asserted by a party
- Attorney/client, husband/wife, doctor/patient
- Can be waived

5. Appearance of Impropriety

- Refrain from public comment
- Shall not take remuneration beyond authorized compensation
- Shall not unduly fraternize with participants
- Conduct which may be interpreted as showing bias, prejudice, partiality

6. Unauthorized Practice of Law

- Shall not give legal advise
- Obligation to refer LEP to counsel
- Shall not be a referral service

GR 11.3 TELEPHONIC INTERPRETATION

- (a) Interpreters may be appointed to serve by telephone for brief, non-evidentiary proceedings, including initial appearances and arraignments, when interpreters are not readily available to the court. Telephone interpretation is not authorized for evidentiary hearings.
- (b) RCW 2.43 and GR 11.2 must be followed regarding the interpreter's qualifications and other matters.
- (c) Electronic equipment used during the hearing must ensure that the non-English-speaking party hears all statements made by the participants. If electronic equipment is not available for simultaneous interpreting, the hearing shall be conducted to allow consecutive interpretation of each sentence.
- (d) Attorney-client consultations must be interpreted confidentially.
- (e) Written documents which would normally be orally translated by the interpreter must be read aloud to allow full oral translation of the material by the interpreter.
- (f) An audio recording shall be made of all statements made on the record during their interpretation, and the same shall be preserved.

[Adopted effective July 19, 1987; amended effective December 10, 1993; September 1, 1997; September 1, 2005.]

INTERPRETER FATIGUE

This paper is a discussion of interpreter fatigue and its impact on the court record and on protecting the rights of linguistic minorities. (*New Study on Fatigue Confirms Need for Team Interpreting*, Mirta Vidal, February 1999.)

The demands placed on a legal interpreter are linguistically extraordinary. Nancy Festinger, the Chief Interpreter for the United States District Court, Southern District of New York (Manhattan), eloquently describes the interpreter's role as follows:

“ . . . we perform mental gymnastics, jumping from an attorney's constitutional argument in a motion to suppress, to a drug addict's slurred explanation, to a witness's deliberately elusive answer, to the socio-psychological jargon of a probation report, to the small print of a statute, to a judge's syntactically convoluted charge to the jury—often, all in the space of a few hours. We repeat patent nonsense, veiled (or not-so-veiled bullying), impassioned pleas, righteous indignation, stern admonishments, nit-picking questions, ironic remarks, barbed answers, tearful confessions, and through it all we must pay unflagging attention, betray no sign of annoyance or incredulity, all the while maintaining composure, impartiality and linguistic fidelity.”

The interpreter's role is an exacting role, both physically and mentally, and therefore requires an awareness of the proper working environment. It is imperative that an interpreter be able to be mentally alert at all times. Studies have presented unassailable evidence that a simultaneous interpreter's performance deteriorates markedly after a surprisingly short time. Frequently, judges will interrupt proceedings to give the court reporter a break, because they know that having an accurate record depends on having an alert reporter. They sometimes forget, however, that another important way to protect the record is to make sure that the interpreter is well rested and alert.

The court has an obligation to provide an interpreter a break whenever the interpreter feels that fatigue is beginning to interfere with the accuracy of the interpretation. This is to protect the record, and to protect the rights of the non-English-speaking person in the court.

Courtesy State of Oregon

BEST PRACTICE: TEAM INTERPRETING

The recommended practice for simultaneous and consecutive interpreting calls for two or more interpreters for court proceedings lasting longer than two hours. The length of time an interpreter is able to maintain accuracy varies to some degree depending on the gravity, complexity, and intensity of the proceeding, but generally the court should not expect an interpreter to work alone for any hearing expected to last longer than two hours. If the court decides to proceed without a second interpreter, an interpreter working alone will need frequent ten-minute breaks. Studies show that accurate interpreting decreases dramatically after approximately 30 minutes of continuous interpreting.

The best practice is for team interpreters to trade off every 20-30 minutes at the microphone, thus rotating their respective roles throughout the proceeding. Therefore, a two-member team of interpreters provides interpreting to the defendant and to all witnesses and parties needing interpreting services, irrespective of whether they are prosecution or defense witnesses.

Team interpreting works particularly well during trials. Team interpreting not only provides periodic relief to prevent fatigue, one potential cause of interpreter error, but it also allows for the presence of a second language expert in the event of challenges to interpretation at the witness stand.

Because interpreters cannot realistically know in advance every word or phrase that will arise, research of reference sources during a trial is handled by the second interpreter, who will also take care of any problems that may arise with electronic equipment, if it is used.

Because of the limited number of interpreters in some areas of the state, it is understandable that team interpreting cannot be used in all circumstances. The court must keep in mind the factor of interpreter fatigue and make adaptations to protect the rights of non-English-speaking persons before the courts.

Courtesy of State of Oregon

Selected Cases on Legal Interpreting

By: Joanne I. Moore and Judge Ron A. Mamiya

Right to or Need for Interpreter

State v. Lopez, 74 Wn.App. 264, 872 P.2d 1131 (Div I 1994), State v. Mendez, 56 Wn.App. 458, 784 P.2d 168 (Div. I 1989), State v. Woo Won Choi, 55 Wn. App. 895, 781 P.2d 505 (Div. I 1989). The trial court's failure to appoint an interpreter for a limited English speaking defendant will be upheld if counsel failed to request an interpreter or advised the court that the defendant spoke sufficient English to participate in the proceedings.

State v. Woo Won Choi, 55 Wn.App 895 (1989). No right to an interpreter if defendant's language skills are adequate to understand trial proceedings and present his defense. The trial court need not inquire directly of the defendant nor engage in interpreter waiver colloquy until court has determined that an interpreter is necessary; court may rely on counsel's representation that the interpreter is not necessary.

State v. Mendez, 56 Wn.App. 458, 784 P.2d 168 (Div. I 1989). Trial court has no affirmative duty to appoint an interpreter where defendant's lack of fluency or facility in English is not apparent.

State v. Serrano, 95 Wn.App.700 (1999). No constitutional right to a "certified" interpreter thus issue may not be raised for the first time on appeal. The trial court's only inquiry was whether the interpreter was "certified or qualified". Defense did not object at the trial level and record does not indicate the interpreter was incompetent.

State v. Harris, 97 Wn.App. 647 (1999). Hearing impaired probationer was not entitled to a sign interpreter at meetings with his probation officer when he can communicate in writing; RCW 2.42.120(3) requiring sign interpreters at court-ordered treatment programs, unconstitutionally violates one-subject rule.

Non-English-Speaking Defendant's Right to a Complete Interpretation of the Proceedings

Tomayo-Reyes v. Keeney, 926 F.2d 1492 (9th Cir. 1991), rev'd on other grounds, 504U.S.1 (1992). If the interpreter failed to translate the mens rea elements of the charge on the state guilty plea form, and interpreted 'manslaughter' as 'less than murder,' the defendant has established a basis for overturning his nolo contendere plea.

State v. Gonzales-Morales, 138 Wn. 2d 374, 979 P.2d 826 (1999). Defendant's 6th amendment right to assistance of counsel was not violated by the court's 'borrowing' of Spanish interpreter to interpret a State witness' testimony, as long as the defendant's ability to understand the proceedings and communicate with counsel was unimpaired (the court allowed the defendant to interrupt the proceedings at any time to consult privately with counsel through the interpreter).

State v. Bell, 57 Wn.App. 447 (1990). Where no evidence of personal interest in outcome, wrongdoing or untrustworthiness, use of a police victim advocate as an interpreter for the victim is within the sound discretion of the court. State v. Boulet, 5 Wn.2d 654 (1940).

Failure to Swear In Interpreter

State v. Sengxay, 80 Wn.App 11 (Div. III 1995). Failure to swear interpreter is not error absent objection.

Attorney Client Privilege

State v. Aquino-Cervantes, 88 Wn. App. 699, 945 P.2d 767 (Div II 1997). Trial court erred in allowing interpreter to testify regarding defendants demeanor during attorney-client conversations. Communications and observations by interpreter during confidential attorney-client interviews are not admissible. Interpreters' testimony regarding their in-court observations of the defendant were permissible, except for privileged communications. (Issue of allowing hearing interpreter to be witness during same hearing despite prohibition of Code of Conduct, GR 11.1, was not addressed.)

Good Cause for Appointing an Uncertified Interpreter under RCW 2.43

State v. Pham, 75 Wn. App. 626, 879 P.2d 321 (Div III 1994). The trial court properly concluded that the circumstances of this case, involving a Vietnamese-speaking child rape victim, constituted good cause for appointing an uncertified female interpreter to interpret her testimony even though a male certified interpreter was present in court. A defendant has the constitutional right to a 'competent' interpreter, but not necessarily to a certified interpreter. RCW 2/43/030(1)(b) allowing use of an uncertified interpreters for good cause when "services of certified interpreters are not reasonably available," is not exclusive.

Defense Attorney's Interview Through an Incompetent Interpreter is Ineffective Assistance of Counsel

Chacon v. Wood, 36 F.3d 1459 (9th Cir. 1994). In this federal habeas corpus action challenging a Washington State court conviction, the Ninth Circuit vacated the defendant's guilty plea as involuntary on the ground that trial counsel was

ineffective because the court interpreter who interpreted pre-trial attorney-client conversations vastly understated the probable sentence the defendant would receive if he pleaded guilty.

Trial Counsel Must Preserve Record of Deficient Interpreting

State v. Serrano, 95 Wn. App. 700, 977 P.2d 47 (Div. III 1999). Since defense counsel did not object to the court's appointment of a qualified rather than a certified interpreter at trial, the defendant may not raise the issue on appeal for the first time unless the error was of constitutional magnitude. The defendant failed to prove his trial counsel was ineffective for not objecting to the uncertified Spanish interpreter, because nothing in the record suggests the interpreter was incompetent or that the defendant did not really speak Spanish.

Interpreted Confessions Are Hearsay

State v. Garcia-Trujillo, 89 Wn. App. 203, 948 P.2d 390 (Div. I 1997), State v. Huynh, 49 Wn. App. 192, 742 P.2d 160 (Div. I 1987), review denied, 109 Wn.2d 1024 (1988), State v. Aquino-Cervantes, 88 En. App 699, 945 P. 2d 767 (Div. II 1997). Foreign language statements interpreted for law enforcement may not be admitted through officers' testimony unless the interpreter was engaged by the non-English-speaking party as the party's agent, or the statement is not offered to prove the truth of the matter asserted – that is, the interpreter testifies to what the interpreter asserts the other party said.

Proving an Interpreter Is Incompetent

Perez-Lastor v. I.N.S., 208 F. 3d 773 (9th Cir. 2000). Three types of evidence tend to prove an interpretation was incompetent. The first is direct evidence of incorrectly interpreted words that would have been interpreted differently by a more competent interpreter. Second, unresponsive answers to interpreted questions by a witness provide circumstantial evidence of interpretation problems. Third, incompetent interpretation may be established if a witness expressed difficulty in understanding the interpreter's statements.

Tomayo- Reyes v. Keeney, 926 F. 2d 1492, (9th Cir. 1991), rev'd on other grounds, 504 U.S. 1 (1992.) In a habeas corpus action, proof of inadequate interpreting can be established by putting the interpreter on the stand, asking the interpreter questions relevant to the claim, and calling an expert witness. Defense attorney's method of deposing the interpreter was insufficient because the attorney did not ask how he interpreted material phrases and also failed to call an expert witness. The interpretation accuracy issue was remanded by the Court of Appeals for an evidentiary hearing. (This case was reversed by the Supreme Court on separate federal habeas corpus standards grounds.)¹

Miranda Warnings

State v. Cervantes, 62 Wn. App. 695, 814 P.2d. 1232 (Div. III 1991). Law enforcement's use of co-defendant as interpreter during defendant's custodial interrogation was a reversible violation of due process.

State v. Teran, 71 Wn. App. 668, 862 P.2d 137 (Div III 1993). Even though the translation was not perfect, defendant validly waived his Miranda rights after law enforcement officers played a translated Spanish cassette tape of Miranda warnings and one officer read them to him in Spanish, because the defendant understood that he did not have to talk to law enforcement and that any statement could be used against him.

Court Interpreter Costs Assessments Are Unconstitutional

State v. Marintorres, 93 Wn. App. 447, 969 P. 2d 501 (Div. II 1999). Statute authorizing the trial court to order non-English-speaking parties to pay costs of the court interpreter violates equal protection, because costs may not be imposed for interpreters appointed for hearing-impaired parties.



National Association of Judiciary Interpreters & Translators

NAJIT POSITION PAPER INFORMATION FOR COURT ADMINISTRATORS

For court administrators and other persons charged with hiring interpreters for the court: It is hoped that this information will be useful to you in obtaining qualified, ethical interpreting services. The following list of frequent questions is not exhaustive. Please contact NAJIT if you have additional questions you wish added to the list.

The National Association of Judiciary Interpreters and Translators has prepared this brochure to provide guidance about practical aspects of the profession of court interpreting, both for interpreters and for those who use their services. Local policies and procedures will determine the ways in which specific interpreting issues will be handled. The information provided in NAJIT publications offers general guidance and does not include or replace local, state or federal policies. For more information, please contact: National Association of Judiciary Interpreters and Translators, (206) 267-2300, or visit the NAJIT website at www.najit.org.

WHEN YOU NEED AN INTERPRETER...

What to look for...

■ *Who decides when an interpreter is needed?*

In most cases, the presiding judge will determine when interpreting services are to be provided. Generally, a party or an attorney requests the services of an interpreter for a participant who cannot speak English, or, to use the terminology of the Department of Justice Title VI Guidelines, there is an LEP (Limited English Proficiency) individual involved in the proceedings. In criminal cases, interpreters for in-court proceedings are usually hired by the court. For out-of-court interpreting services, an interpreter may be appointed by the judge when the LEP individual is indigent. If an LEP criminal defendant has a retained attorney, then interpreter services for out-of-court matters may be contracted

and paid for independently by that defendant, but interpreting for in-court proceedings is usually still the court's responsibility. In some states, the same applies to civil cases, but more often there is no legal requirement to furnish a court-appointed interpreter to the parties.

■ *When do I need more than one interpreter? Do I need an interpreter for each defendant?*

Hiring more than one interpreter is advisable when a proceeding is lengthy, complicated and/or there are multiple defendants requiring interpreter services. "Lengthy" or "complicated" proceedings are ones that last more than two hours, or that will have extensive, complex legal arguments and testimony, such as suppression hearings and some preliminary and sentencing hearings. At least two interpreters should always be used in trials, so that they can work in shifts and avoid fatigue. Interpreting is a very intense activity that requires deep, continuous concentration and effort. Studies have shown that fatigue can occur after as little as 30 minutes and can cause an interpreter to lose her focus, thereby producing an inaccurate or incomplete interpretation. Since the interpreters have sworn to interpret "accurately and completely," they must avoid fatigue; and since their English interpretation becomes part of the record, the court must take all steps necessary to provide the working conditions necessary to ensure accurate, complete interpretation.

It is not necessary to hire an interpreter for each defendant. Equipment is available (many interpreters have their own) that allows one or two interpreters to "broadcast" interpretation through headsets worn by the non-English speaking participants. Nevertheless, in multiple defendant cases it may be advisable to hire one or two extra interpreters to ensure that someone is always available to interpret for attorney-client communications during the proceeding.

■ ***How/where do I find a competent interpreter?***

A good place to start is the NAJIT directory. By joining NAJIT, interpreters indicate that, at the very least, they are interested in updating and refining their skills through conferences and online consulting through our website and listserv. The NAJIT membership directory includes information about an interpreter's language pair, certifications and location. Federal court administrators also have lists of certified and otherwise qualified interpreters. Many states maintain rosters of interpreters who have passed state or consortium certification exams, have received training in ethics, and have demonstrated the locally required level of proficiency in the complex skills that must be mastered to become a court interpreter. For cases where penalties may be very serious, consider bringing certified interpreters in from out of town.

■ ***What is the difference between a translator and an interpreter?***

Interpreters provide an on-the-spot verbal conversion of speech in one language into another language, while translators work with written materials in a longer time frame and with unlimited access to reference materials. Translators and interpreters are not interchangeable since different skills and experience are needed for each of those tasks. Never assume that a translator can act as an interpreter and vice versa. Different mental processes, knowledge of vocabulary, and working methods and skills are needed in each case.

■ ***What credentials are available for court interpreters and which should I look for?***

NAJIT has developed a rigorous two-stage (written and oral) certification exam for Spanish-language court and legal interpreters, the National Judiciary Interpreters and Translators Examination: Spanish. This is a benchmark exam that requires excellent performance in all of the tasks of court interpreters. The Society for the Study of Translation and Interpretation oversees this credential; the examination is administered by Measurement Incorporated. The Administrative Office of the U.S. Courts certifies interpreters in Spanish, Haitian Creole and Navajo for work in the federal courts through written and oral exams. The Consortium for State Court Interpreter Certification, a program administered by the National Center for State Courts, provides testing in a number of languages for state certification in member states. Some states (for example, Washington and California) have their own certification training and testing programs. You may find more information by

inquiring in the AOC of the particular state or at their respective websites.

■ ***What is a "certified interpreter"?***

A certified court interpreter is one who has successfully passed tests explicitly designed to measure proficiency in court interpreting skills. Not all certification exams are equal (the NAJIT and federal exams are considered to be the most demanding) but most do test the skills of simultaneous interpreting (interpreting at the same time as the speaker is speaking, sometimes called "whisper" interpreting); consecutive interpreting (interpreting segments of speech out loud after they have been completed — this is used for interviews and testimony); and sight translation (oral interpretation of a written document), as well as proficiency in legal, general and colloquial terminology, good language skills in terms of grammar and usage, and, often, ethics. University degrees and certificates of attendance or proficiency from interpreting training events are not certifications. Possession of academic credentials does not necessarily indicate proficiency in the highly specialized skills needed to interpret in a legal setting.

What to expect...

■ ***Okay, I've located an interpreter, now what?***

If the interpreter is certified, you have a reasonable expectation of proficiency, but you should have the interpreter send you a resume along with pertinent information about specific training and experience in court work and some references. You should also routinely ask your interpreters if they have any reservations about their ability to interpret in the specific case you wish to assign (for example, if the case presents difficulties in terms of subject matter or very technical vocabulary).

If the interpreter is not certified (especially in the case of languages where no certification is available), speak with the interpreter personally to ensure that his accent and command of English are acceptable, and that the interpreter has some experience and knowledge of court terminology and the justice system and has worked in court before. Tell the judge that the interpreter is not certified so the judge can carry out a *voir dire* to determine the interpreter's qualifications on the record.

Send a contract or form with pertinent information to set the assignment formally. (See NAJIT's model contract if you don't already have one.)

■ **What should the interpreter be expected to do?**

The interpreter should be expected to provide competent simultaneous and consecutive interpreting and sight translation of documents (as described above in the section on certification). The interpreter should be familiar with the code of ethics for interpreters in your district, or if there is none, with the NAJIT Code of Ethics, and should be bound by those canons. (You may read the NAJIT Code of Ethics on the NAJIT website: www.najit.org, or contact NAJIT headquarters.) The interpreter should arrive punctually with the necessary equipment and/or reference materials in hand, be as unobtrusive as possible, and discuss beforehand with you all questions of logistics, best placement in the courtroom, rest periods that may be needed, and so on. The interpreter should also make known any case materials she will need to be provided in order to work efficiently and accurately. Interpreters should NOT be expected to: run errands; speak to parties without their attorney being present; "explain" things to parties; help people fill out forms; interpret tape-recorded material extemporaneously during a proceeding; give opinions about what other people understand or do not understand, or give any opinion about the abilities or statements of others.

■ **What kind of information do I need to give the interpreter?**

In order to interpret accurately and completely, it is useful for the interpreter to have as much background information about the case as possible. A good initial source of information is the complaint and affidavit of the arresting officer. Any available documents from investigative agencies will help as well. Copies of documents pertaining to the particular hearing are necessary (indictment, plea, plea agreement, motions, response to motions, PSR) since continued reference to their exact language is likely to be made. In the case of a trial, it is useful to provide the names and telephone numbers of defense and prosecuting attorneys so that interpreters may ask for copies of documents reflecting lists of numbers or transactions (such as bank statements, telephone logs) as well as transcriptions of tape recordings to be provided on-site. A copy of the final jury charge should be made available to each interpreter. You may also want to give the interpreter a copy of the Code of Ethics

and Oath used in your district and have him review and sign it before the proceeding.

■ **What working conditions are needed for good interpreting performance?**

An interpreter must be in a position to see and hear clearly, and be rested, ready and reasonably comfortable in order to do good work. For starters, try to provide a place where interpreters can store belongings and relax when off duty. Arrange for someone to inform the interpreter where to find bathroom and lunch or break room facilities, provide fresh water and glasses in the courtroom, and help the interpreter find the best location in the courtroom for seeing and hearing the proceedings. Provide chairs and a table, if possible, exclusively for interpreter use. Indicate which doors the interpreter can use when entering and exiting the courtroom so as not to disrupt an ongoing proceeding. Allow time for sufficient breaks if the interpreter is working alone. If your courtroom has interpreting equipment, have it ready and show the interpreter how to use it well in advance of the hearing. Take the time to introduce the interpreter to other staff and explain his role.

■ **How are interpreters paid? Is there a specific contract needed?**

How interpreters are paid depends on your court's policies. Generally an interpreter sends an itemized invoice and/or fills out a form detailing services rendered. A judge's order must normally accompany any invoice in order for the accounting office to pay the interpreter. If your court has a form or order that must be signed by the presiding judicial officer, tell the interpreter to make sure to get it signed before leaving. Provide the interpreter with complete information as to billing procedures in your court and where to send the invoice. It is not necessary to have a specific contract with the interpreter, but NAJIT recommends it in order to avoid misunderstandings and delays in payment. You can obtain NAJIT's sample contract from the website, or by contacting NAJIT headquarters.

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National Association of Judiciary Interpreters & Translators

NAJIT POSITION PAPER

MODES OF INTERPRETING: SIMULTANEOUS, CONSECUTIVE, & SIGHT TRANSLATION

The information provided in NAJIT position papers offers general guidance and practical suggestions regarding the provision of competent language assistance to persons with limited English proficiency. This information is intended to assist in developing and enhancing local rules, policies and procedures in a wide range of settings. It does not include or replace local, state or federal policies. For more information, please contact: National Association of Judiciary Interpreters & Translators, 206-267-2300, or visit the NAJIT website at www.najit.org.

Introduction

The modes of interpreting have evolved through time. Three modes are now recognized by the interpreting profession and have been adopted in federal and state statutes and court rules: simultaneous interpreting, consecutive interpreting, and sight translation. Each mode fits particular needs and circumstances in the judicial process and in legal and quasi-legal settings. This paper explains the use of each mode of interpreting, gives reasons for the use of each one, and provides practical suggestions for effective use of interpreters when working with individuals with limited English proficiency (LEP).

What is simultaneous interpreting?

Simultaneous interpreting is the rendering of one spoken language into another when running renditions are needed at the same time as the English language communication. The interpreter speaks virtually at the same time as the LEP person. When done properly, it is a true and accurate interpretation of one language to another, done without omissions or embellishments¹, so that the parties can understand one another quickly.

When is simultaneous interpreting used?

The simultaneous mode is used whenever participants, most often defendants, are playing a passive role in court proceedings such as arraignments, hearings, or trials.

The LEP speaker needs to hear what is being said but is not required, at that particular stage of the proceedings, to speak herself. In order to preserve the defendant's due process rights², everything spoken in open court must be interpreted to her simultaneously³. This enables the defendant to be truly present and take an active part in her defense.

Keys for proper simultaneous interpreting

In the simultaneous interpreting mode, the interpreter must do several things at once:

- listen intently to whatever party is speaking
- accurately interpret from the source language to the target language
- be prepared to switch languages rapidly whenever the LEP party is directly engaged in the procedure and consecutive interpreting is required.

What is consecutive interpreting?

In consecutive interpreting, the interpreter waits until the speaker has finished before rendering speech into another language. Consecutive interpreting is a true and accurate interpretation of one language to another, spoken in brief sound bites successively, without omissions or embellishments, so that the parties can understand each other slowly and deliberately.

When is consecutive interpreting used?

The consecutive mode is used whenever LEP participants are playing an active role — when they must speak or respond — during examinations, cross-examinations, and other proceedings⁴. Consecutive interpreting is often used when parties are addressing a witness or defendant on the witness stand. In legal settings, such as attorney/client or prosecutor/witness/victim interviews, the consecutive mode is the preferred mode of interpreting, as it is in a question and answer session⁵. Consecutive interpreting should be used during police interviews of suspects and/or witnesses or victims, especially during recorded

interviews. The gaps in speech between the parties allow for a clear and accurate transcript to be prepared if necessary for further court proceedings.

Keys for proper consecutive interpreting

In the consecutive interpreting mode, the interpreter must:

- listen intently to whatever party is speaking
- be prepared to take notes to aid in recollection
- accurately interpret after the party has completed her statement.

What is sight translation?

Sight translation is the rendering of material written in one language into spoken speech in another language. It is a true and accurate verbal translation of written material into the spoken form so that the parties can understand what documents written in foreign languages say.

When is sight translation used?

Sight translation is often used when LEP defendants are given forms in court that are written in English, such as rights forms, plea forms, and probation orders. It is also used when foreign-language documents such as birth certificates, personal letters, and identity documents are presented in court.

Keys for proper sight translation

Recommended practice is to afford the interpreter sufficient time to review the document's contents before rendering it.

When performing sight translation, the interpreter must:

- possess a wide vocabulary and knowledge of the specific type of document presented
- have the ability to quickly scan and understand the main points of the document
- accurately interpret the document into its equivalent meaning in the target language.

Summary interpreting

Summary interpreting, in which an interpreter offers a shortened or condensed version of what has been said, is not appropriate in legal or quasi-legal settings. See NAJIT's position paper on summary interpreting for more information on this point.

Recommendations

In judicial, legal and quasi-legal settings, interpreters are obligated to interpret all communication made between

parties of different languages directly and accurately, without omissions or embellishments. All those involved, such as judges, defense attorneys, prosecutors, law enforcement, court staff, court support services, defendants, victims, and witnesses, can make best use of interpreting services by following these guidelines:

1. Talk *through* the interpreter, not to the interpreter. When using an interpreter to address a non-English speaker, speak directly to that person as if the interpreter weren't even there.
2. Use the first person when addressing the other party. Do not say, "Could you ask him if he is aware of the maximum penalty for this offense." Instead, turn directly to the party you are addressing and say, "Are you aware of the maximum penalty for this offense?" See NAJIT's position paper, "Direct Speech in Legal Settings," for more details on this point.
3. Do not ask the interpreter for his opinion or input.
4. Watch your speed. This goes both ways. When speaking extemporaneously, don't speak too fast, and don't speak too slowly. When reading something aloud (such as jury instructions, waiver of rights, or a specific evidence code section), keep your pace slower than normal.
5. Do not try to communicate with the interpreter or otherwise interrupt him while simultaneously interpreting. Simultaneous interpreting requires intense, high levels of concentration and accumulated skill in order to be performed properly. Distracting the interpreter during simultaneous interpreting can cause an immediate breakdown in communication for all parties.
6. Parties must refrain from talking at the same time in order for the interpreter to interpret court proceedings properly. Just as court reporters are duty-bound to stop parties from talking over one another during recorded proceedings, interpreters have an equal duty do the same in order to protect the due process right of the defendant⁶.
7. Do not direct the interpreter to convey information to the LEP individual when you are not present.

Conclusion

Certified court interpreters are highly trained individuals who are, in many ways, the "invisible hand" of justice. They are expected to be nearly invisible in the courtroom yet must maintain acute mental presence at all times. They are expected to possess a vast legal vocabulary as well as instant, accurate recall. Often, they are whisked from courtroom to courtroom, simultaneously interpreting

for defendants at the arraignment stage at one moment, consecutively interpreting for witnesses or victims at a trial at another, and simultaneously interpreting for parents of juveniles at a hearing in yet another. On many occasions, the interpreter is handed a document and is asked to “read it to the defendant.” Frequently the interpreter walks into courtroom situations without knowing any of the background or context, adding another layer of difficulty to the interpreter’s tasks. Parties occasionally ask their interpreter to simply summarize what is being said, allowing her to pick and choose what part of the conversation is relevant to interpret, which is never allowable.

For parties needing to communicate from English into another language, having some background knowledge of the interpreter’s role in the legal field is fundamental for the administration of justice. Understanding the three modes of interpreting is an essential part of helping ensure equal access to justice to all parties — including members of linguistic minorities — who find themselves in any judicial setting, whether inside and outside of the courtroom.

■ Footnotes

1. *NAJIT Code of Ethics and Professional Responsibilities*, Canon 1 (www.najit.org/ethics.html). Also see *Professional Ethics and the Role of the Court Interpreter*, 3d Edition, 1999. Judicial Council of California, pp. 2-4 (<http://www.courtinfo.ca.gov/programs/courtinterpreters/documents/ethicsman.pdf>).
2. California Constitution. Article 1 § 14 (<http://www.leginfo.ca.gov/const.html>). Also see *People v. Aguilar* (1984) 35 Cal. 3d 785, 790.
3. U.S. Code, Title 28, § 1827(k).
4. *Ibid.*
5. González, D., Vásquez, V., & Mikkelsen, H. (1991). *Fundamentals of Court Interpretation* (p. 168). Durham, NC: Carolina Academic Press.
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National Association of Judiciary Interpreters & Translators

NAJIT POSITION PAPER TEAM INTERPRETING IN THE COURTROOM

The information provided in NAJIT position papers offers general guidance and practical suggestions regarding the provision of competent language assistance to persons with limited English proficiency. This information is intended to assist in developing and enhancing local rules, policies and procedures in a wide range of settings. It does not include or replace local, state or federal policies. For more information, please contact: National Association of Judiciary Interpreters & Translators, 206-267-2300, or visit the NAJIT website at www.najit.org

Introduction

In court settings, team interpreting refers to the practice of using two rotating interpreters to provide simultaneous or consecutive interpretation for one or more individuals with limited English proficiency. Team interpreting is recommended for all lengthy legal proceedings and is an effective tool in the administration of justice. With team interpreting, the non-English speaker or person of limited English proficiency hears the proceedings without interruption or diminution in the quality of interpretation.

How does team interpreting work?

Team interpreting is the industry standard in courtrooms, international conferences, negotiations and other venues where continuous interpreting is required for periods of over one hour. The typical team is comprised of two interpreters who work in tandem, providing relief every 30 minutes. The interpreter engaged in delivering the interpretation at any given moment is called the *active* interpreter. His job is to interpret the court proceedings truly and accurately. The other interpreter is called the *support* interpreter. His job is to (1) interpret any conversation between counsel and defendant while the proceedings are taking place; (2) assist the *active* interpreter by looking up vocabulary, or acting as a second ear to confirm quickly spoken

names, numbers or other references; (3) assist the *active* interpreter with any technical problems with electronic interpreting equipment, if in use; (4) be available in case the active interpreter has an emergency; and (5) serve as an impartial language expert in the case of any challenge to interpretation at the witness stand.¹ Team interpreting enables court sessions to proceed at the pace the judge requires without a need for extra breaks.

Why use team interpreting?

The advantages of team interpreting are many, and the reasons for it are compelling. Team interpreting is a quality control mechanism, implemented to preserve the accuracy of the interpretation process in any circumstances.

Every defendant (and in some states, the plaintiff) in the United States has the right to hear and understand the proceedings against him at every stage of the legal process. When matters of life and liberty are at stake, a trained and qualified interpreter is a vital link in the provision of due process. To do his job, a court interpreter, under oath to provide a true and accurate interpretation, must maintain an intense alertness to all courtroom speech, including questions, answers, legal arguments and colloquy. The subject matter of court hearings varies, but may include legal arguments in a motion to suppress evidence; cross-examination of experts; syntactically dense jury instructions; nervous witness testimony; or a complex or under-articulated recitation of facts. There is a limit to the focused concentration needed to comprehend complex language at high speed and render it accurately in another language. Inattention, distraction or mental exhaustion on the part of the interpreter can have adverse consequences for defendants, litigants, witnesses, victims, and the judicial process in general.

Interpreters in the courtroom can play a dual role, interpreting the actual proceedings and also interpreting

for attorney-client consultations when needed. Especially in multi-defendant cases, working in a team allows one interpreter to continue interpreting the proceedings while the second interpreter assists during any attorney-client discussions at defense table.²

The interpretation process

Interpreting is cognitively demanding and stressful, requiring many mental processes to occur simultaneously: the interpreter listens, analyzes, comprehends, and uses contextual clues to convert thought from one language to another in order to immediately render a reproduction in another language of each speaker's original utterances.³ In courtrooms with imperfect acoustics, cramped seating, security requirements, miscellaneous noise, mumbled diction, interruptions, the tension of litigation, and lawyers or clients who may need the interpreter at any moment for a private consultation, interpreters need to channel dozens of stimuli and effectively sort them in order to fulfill the task at hand. Even thirty to sixty minutes of continuous interpreting leads to significant processing fatigue. Thus, simultaneous interpretation can be seen as a "cognitive management problem." After a certain amount of time on task, an interpreter inevitably reaches a saturation point, at which time errors cannot be avoided because mental circuits get overloaded.⁴

Interpreter error and fatigue

Scientific studies have shown that mental fatigue sets in after approximately 30 minutes of sustained simultaneous interpretation, resulting in a marked loss in accuracy. This is so regardless of how experienced or talented the interpreter may be. A 1998 study conducted at the École de Traduction et d'Interprétation at the University of Geneva, demonstrated the effects of interpreting over increasing periods of time. The conclusion of the study was that an interpreter's own judgment of output quality becomes unreliable after increased time on task.⁵

Remarkably, these recent studies ratify the results obtained the very first time that simultaneous interpreting was attempted at an international conference, in 1928. The engineer's report stated: "*It was observed that an average of 30 minutes of consecutive work was the maximum time during which a satisfactory translation could be done; after this time, one runs the risk of deteriorating results, due to fatigue.*"⁶

Empirical observations of interpreters at work in many

venues have borne out the need for a relay approach to simultaneous interpreting, for the protection of both the interpreter and the end user of interpreting services.

Minimizing possibility of interpreter error

Due process guarantees the right of a litigant to see and hear all evidence and witnesses. Case law holds that on the basis of the 4th, 6th, and 14th Amendments to the U.S. Constitution, a non-English speaking defendant has a right to be provided with a complete interpretation of the proceedings rather than a summary.⁷

It is unrealistic to expect interpreters to maintain high accuracy rates for hours, or days, at a time without relief. If interpreters work without relief in proceedings lasting more than 30-45 minutes, the ability to continue to provide a consistently accurate translation may be compromised. Further, since an interpreter is under oath to provide a fair, complete and impartial interpretation, due process rights are best protected by a team of interpreters for all lengthy proceedings.⁸

Like a marathon runner who must maintain liquid intake at regular intervals during the race and not wait until thirst sets in, an interpreter needs regular breaks to ward off processing fatigue, after which the mental faculties would be impaired. Team interpreting allows the active interpreter to remain mentally fresh, while the support interpreter takes on other functions that would lead the active interpreter to cognitive overload.

Planning and coordination are needed to ensure a high level of reliability in interpreter output. Court proceedings are sometimes unpredictable. What may begin as a brief matter always has the potential to get more involved as new matters come to the court's attention. When a hearing is extended unexpectedly, if possible, a relief interpreter should be provided to rotate into the assignment. Alternatively, periodic breaks should be taken to prevent mental exhaustion by the interpreter.

Judges and interpreter administration

Judges are uniquely situated to understand the importance of language skills in the courtroom, and different courts may view interpreter administration differently. However, it is universally recognized that the team approach is the best insurance policy against errors in the interpretation process. In some courts, team interpreting is established policy and automatically

coordinated by the interpreting department. In other courts, local rules state that judges “may appoint” multiple interpreters if the proceeding warrants it. Local guidelines and practices can establish team interpreting as a necessary technique of quality control in proceedings lasting more than a certain length of time. In general, it is recommended that simultaneous interpreters rotate every 30-45 minutes when conveying general court proceedings and every 45-60 minutes when interpreting for non-English-speaking witnesses.

The job of conveying meaning in two distinct languages at a moment’s notice is unlike that of anyone else in the courtroom. It is a demanding task, and the cost of errors is high. When judges work together with interpreter administrators to ensure adequate working conditions for court interpreters, everyone benefits. From a human resources perspective, teaming also promotes the long-term effectiveness of interpreter departments by encouraging cooperation, sharing responsibility and preventing burnout or attrition.

Conclusion

Due process rights are best preserved with faithful simultaneous interpretation of legal proceedings. Court interpreters work for the judiciary and their goal is accuracy and completeness, not a particular party’s agenda. In a controlled study, it was shown that interpreters’ work quality decreases after 30 minutes. In the challenging courtroom environment, team interpreting ensures that the comprehension effort required to provide accurate interpretation is not compromised. To deliver unassailably accurate language service, court interpreters work in teams.

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National Association of Judiciary Interpreters & Translators

NAJIT POSITION PAPER PREPARING INTERPRETERS IN RARE LANGUAGES

The information provided in NAJIT position papers offers general guidance for court administrators, judiciary interpreters and those who rely on interpreting services in legal settings. This information does not include or replace local, state or federal court policies. For more information, please contact: National Association of Judiciary Interpreters & Translators, 206-267-2300, or visit the NAJIT website at www.najit.org.

■ Introduction

New immigration patterns in the United States are bringing individuals of diverse origins to various areas of the country, sometimes in unprecedented numbers. As a result, parties or witnesses who speak rare languages — languages not previously requested in a particular district — may be summoned to appear in state or federal court. In many cases, court administrators are finding it a challenge to locate the interpreters needed to provide these parties with the equal access to justice and due process that our judicial system guarantees. This position paper is intended for court administrators, newly hired schedulers, language coordinators, members of the legal profession and others whose job it is to find appropriate interpreters of rare or less frequently encountered languages and orient them quickly to judicial or quasi-judicial proceedings.

■ Responsibility for Assigning Interpreters

In most jurisdictions, state or federal law requires that the court provide a qualified interpreter to any party in a criminal case; some states extend the requirement to parties in a civil suit. Many courts in metropolitan areas have staff interpreter offices, designated by the clerk's office, to handle all interpreter requests. However, in courts with less frequent interpreter usage, personnel in the clerk's office or the judge's chambers may be asked to coordinate interpreter assignments. This job is often

more time-consuming than expected, and entails not only locating and contracting the interpreter but also preparing a new interpreter for the court environment.

■ Lead Time Required

Any communication challenge requires time, patience, persistence and individual attention to be resolved. The court's administrator or contact person will become the new interpreter's guide to the court system, its practices and idiosyncratic terminology. While written materials are certainly helpful, it is most effective to discuss important matters in person. The coordinator needs to get a sense of the interpreter's ability to absorb new material and respond to potential problems. Interpreter ethics and protocols will need careful review. It is best for the interpreter to be shown a videotape or to observe a live court proceeding before the actual assignment. A practice session at least once before the proceeding is also helpful.

■ Seven Steps from Administrative Groundwork to Conclusion of Proceedings

STEP ONE: WHAT LANGUAGE DO WE NEED?

Make an accurate determination of the language or dialect needed.

FIND OUT

- a) where the person was born
- b) what the official language of the country is
- c) whether the person was educated in the official language
- d) whether she speaks any other language(s).

The accuracy of the language request should be carefully examined. Who is the source of the information? Country of origin or most recent residence might not tell the whole story. A person's first language may be a minority language in that country; he may have grown

up somewhere else, or her education may have been entirely in another country. Many indigenous people from Mexico do not speak Spanish at all or do not speak it well, so that a Spanish interpreter would not be the correct choice for a speaker of an indigenous language even though he was born, raised and educated in a Spanish-speaking country. One might need to identify the state or even the village where the party needing the interpreter comes from.

This step is the most important and may require a lot of phone calls and cross-referencing. The person requiring the interpreter may need to be asked to identify the country and language from a card or list. (An example of such a list may be found at www.ocjs.ohio.gov/Publications/OCJS.)

Consult reference material to determine the appropriate language. To identify language, where it is spoken, the number of speakers and the degree of inter-intelligibility of dialects, see www.ethnologue.com.

In cases where a defendant or witness speaks several languages or dialects, it may be more effective to search for an interpreter of the dominant language rather than one of a harder-to-find dialect. This may occur with defendants from African or Asian countries. For example, a defendant may speak Fulani as a native dialect but have received schooling in French. It will probably be easier to find an experienced French interpreter than an experienced Fulani interpreter. The choice of language should be discussed with the defense attorney to see if French is an acceptable alternative.

The judge may need to hold a short hearing on language issues before ruling on the appropriate language, especially before a trial. (See Appendix for suggested voir dire questions to qualify the interpreter.)

STEP TWO: FOR WHAT TYPE OF PROCEEDING IS THE INTERPRETER NEEDED?

Verify the exact nature of the proceeding so that you know what the interpreter is needed for and the estimated duration (examples: a ten-minute phone call to a family member, a three-hour court hearing, an out-of-court meeting, witness testimony, attorney-client consultation, a two-week trial).

You can't find what you're looking for unless you know what is needed and how long it will last. The interpreter's

availability must match the court's needs. The longer or more complicated a proceeding, the more preparation a new interpreter will need.

For trials, hearings and proceedings lasting longer than an hour or two, the best practice is to have two interpreters rotating in 30-minute segments to ensure accuracy and prevent fatigue. (See article "New Study on Fatigue Confirms Need for Interpreting in Teams," www.najit.proteus/back_issues/vidal2.htm.)

At a minimum, the type of proceeding and the charges (if a criminal matter) are essential information.

STEP THREE: WHAT MODE OF INTERPRETING WILL BE REQUIRED?

FIND OUT

- a) simultaneous or consecutive interpreting?
- b) any need to translate documents on sight?

You will need to ask the interpreter if he or she has ever done this before. If sight translation will be needed, the interpreter of course must be literate and fluent in the language of the document.

Court proceedings are interpreted for a defendant or other parties simultaneously. In simultaneous interpreting, everything said in the courtroom is rendered into the foreign language at the same time as it is occurring, with voices overlapping. In consecutive interpreting, pauses are taken after each statement to leave time for the oral translation and the voices do not overlap.

In the less frequently used languages it may be difficult to find anyone with experience interpreting simultaneously in a courtroom or quasi-legal setting.

Foreign language testimony by a witness is generally interpreted consecutively; finding an interpreter to render witness testimony may be easier than finding an experienced simultaneous interpreter.

If the defendant speaks English but wants an interpreter to "stand by" in case of a communication problem, the judge or coordinator needs to know this. Generally, the judge will instruct the interpreter at the outset of the proceeding and indicate on the record that an interpreter is present, standing by to interpret only if the need arises.

STEP FOUR: FINDING A COMPETENT INTERPRETER
Competence is key, because an interpreter without the ability to follow court proceedings and interpret them accurately may hinder the process, convey faulty information or cause a miscarriage of justice. Competence includes familiarity with the court interpreter's role, code of ethics and protocol. If the interpreter is new, it is the duty of the court to inform the interpreter of the parameters of his job.

Note: Under no circumstances should an untrained employee of the court, a party in the action, or a bystander in the courtroom, such as an attorney, bailiff, co-defendant, or relative, be used as an interpreter, particularly in a criminal action or in civil cases involving children or domestic violence.

■ Separating the wheat from the chaff

Call other courts for recommendations, including offices of court administration. Some states (e.g. California) have online listings of interpreters in many languages. Find out if there is an **interpreters' association** in your area. Fortunately organizations such as NAJIT (National Association of Judiciary Interpreters and Translators), ATA (American Translators Association), and relevant local interpreter groups have registries available to the public. Look into these (www.najit.org, www.atanet.org) or local databases for possible contacts. **Embassies** may provide potential contacts in your area. List potential contacts, then **call each potential interpreter directly**.

When contacting a potential interpreter, review experience and credentials and describe the court's need. **Only speak directly to the interpreter.** Most jurisdictions have some sort of qualification or certification procedure for interpreters; however, not all languages are included in these testing programs. In the absence of demonstrable skills testing, it is difficult to determine if a person claiming to have interpreting ability actually has these skills. Experience is a good indicator, but some interpreters who claim experience have limited exposure to and knowledge of the legal system.

In the absence of test results, the best candidate will have **experience** interpreting in a variety of settings, a **strong foreign language background**, **good command of English**, **demonstrate quick and flexible thinking**, have some history of interpretation or translation training, and belong to **professional associations**.

In rare or less frequently encountered languages, it may be impossible to find someone with relevant interpreting experience, but the next most desirable person is one who is **educated in both languages and has worked in both languages for a significant time**. This person can then be groomed for the assignment or tried out by the court on an interim basis.

In small communities, a potential interpreter may know one or more of the parties and be **incapable of impartiality**. In this situation, it will be more cost-effective in the long run to hire an impartial interpreter from outside the jurisdiction. **Be sure to question appropriately.**

If it is impossible to locate a speaker of the needed language who also speaks fluent English, there is one more alternative. In such cases one may resort to "**relay interpreting**," a process whereby interpreters of different languages are used to communicate into English. For example, speakers of indigenous Mexican languages are more likely to speak Spanish as a second language than English. With relay, first an interpreter will interpret the witness' testimony from the indigenous language into Spanish, and then a certified or qualified Spanish interpreter will interpret from Spanish into English for the record. This two-step process is fraught with pitfalls and far from ideal, but it does provide a better solution than working directly into sadly inadequate English. It will be important to confirm both that the relay interpreter's Spanish is up to the task and that the skills of the Spanish interpreter are well above average.

On some occasions a **remote interpreter (provided via telephone)** may assist the court in establishing initial or basic communication. The federal courts have a telephonic interpreting program whereby an interpreter at a remote location can deliver simultaneous interpretation of court proceedings by means of a two-line telephone system. Some state courts also use telephonic interpretation (consecutive, not simultaneous) for short proceedings.

If subcontracting with a **language bureau or telephonic interpretation service**, inquire as to the agency's quality control procedures for the interpreters they provide and always request an interpreter with several years of experience in legal matters.

STEP FIVE: PREPARING INTERPRETERS FOR JUDICIAL OR QUASI-JUDICIAL SETTINGS

Each court uses its own routine forms; **providing the interpreter with a packet of sample documents** (of the type likely to be encountered) ahead of time will enable the interpreter to prepare in advance and ensure that critical vocabulary is familiar. This will help eliminate hesitation during the assignment.

Interpreters have differing levels of experience, education and familiarity with the U.S. legal system. Be sure to **inform the interpreter of your court protocol, terminology and short-hand ways of referring to common proceedings.**

Accurate interpreting requires **certain working conditions.** The parties need to be audible and the speed of speech must be manageable for the interpreter. If parties read from prepared text, the text should be provided to the interpreter.

■ Information to be reviewed with the interpreter:

- A. Case name, names of the parties in the case, docket number
- B. Charges in complaint or indictment, potential minimum and maximum penalties
- C. Purpose of the proceeding plus relevant vocabulary, including local acronyms or rules referred to by number
- D. Description of likely arguments, based on type of proceeding and what is known about the case
- E. Description of the courtroom, positions of the courtroom players, use of electronic equipment and what is expected of the interpreter
- F. Written description of the interpreter's ethical responsibilities, e.g. the relevant code of ethics, to be signed by the interpreter after reading
- G. The importance of observing court proceedings and understanding protocols before interpreting. Best practice is to offer the new interpreter an opportunity to shadow an experienced interpreter.
- H. If consecutive interpreting is required for the assignment and the interpreter has never been used in this function before, a role-play session can be held with consecutive questions and answers in English to test memory and reflex
- I. How to work with electronic equipment (if any will be needed) with an opportunity for a dry run

- J. What the interpreter should do if the parties are inaudible or speaking too fast: the interpreter needs to so indicate.
- K. Relevant court policies, administrative procedures, billing requirements, etc.

Access to any electronic case file is recommended so that the coordinator can understand the posture of the case and review relevant information with the interpreter prior to the assignment.

STEP SIX: REPORT TO THE JUDGE OR PRESIDING OFFICIAL

- A. After initial steps, estimate the lead time needed to locate interpreters (will vary by location and language resources) and inform the judge or presiding official.
- B. If you cannot obtain case information and reference documents from other sources, ask the judge to provide.
- C. If you need first to ascertain whether the interpreter and the party can communicate effectively, ask for parties to be brought in for this purpose.
- D. Ask the judge to confirm with the parties on the record that communication is occurring. Inform the judge that if necessary, the parties will have to slow down their normal rate of speech so that the interpreter can follow and interpret accurately. In some instances, the judge may need to take extra time and/or make special accommodations to ensure that the proceedings can be conveyed through the interpreter.
- E. If the case is proceeding to trial, allow and encourage a pretrial conference to resolve any outstanding language issues.
- F. Provide the judge with suggested *voir dire* regarding the use of an interpreter or other relevant resources.

STEP SEVEN: FOLLOW-UP

If possible, the interpreter coordinator should observe the first time a new interpreter is used, check with the parties regarding the quality of the communication, debrief the interpreter after the proceeding, provide feedback on interpreter performance, and discuss any information or material needed for future proceedings.

■ Conclusion

This paper provides an overview of the factors to be considered and a reference guide for those whose job it is to locate interpreters in languages not frequently encountered within their area. NAJIT's position is that given due process, equal protection and equal access considerations, time and care must be taken to find an appropriate interpreter in any legal or quasi-legal matter. The interpreter must be capable of conveying the communication accurately without bias, knowledge gaps or errors. This requirement places a serious responsibility on the shoulders of the administrative officials involved, one which this information can help to fulfill.

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APPENDICES

Preparing Interpreters in Rare Languages

A. Suggested voir dire to determine the need for an interpreter

IN GENERAL

Avoid any questions that can be answered with “yes – no” replies.

IDENTIFICATION QUESTIONS

1. Ms. _____, please tell the court your name and address.
2. Please also tell us your birthday, how old you are, and where you were born.

QUESTIONS USING ACTIVE VOCABULARY IN VERNACULAR ENGLISH

1. How did you come to court today?
2. What kind of work do you do?
3. What was the highest grade you completed in school?
4. Where did you go to school?
5. What have you eaten today?
6. Please describe for me some of the things (or people) you see in the courtroom.
7. Please tell me a little bit about how comfortable you feel speaking and understanding English.

B. Suggested voir dire to establish interpreter qualifications without prior screening

At minimum, court or counsel should ask the following questions of a proposed interpreter:

1. Do you have any training or credentials as an interpreter?
2. What is your native language?
3. How did you learn English?
4. How did you learn [the foreign language]?
5. What was the highest grade you completed in school?
6. Have you spent any time in the foreign country?
7. Did you formally study either language in school? Extent?
8. How many times have you interpreted in court?
9. Have you interpreted for this type of hearing or trial before? Extent?
10. Are you familiar with the code of professional responsibility for court interpreters? Please tell me some of the main points (e.g., interpret everything that is said).
11. Are you a potential witness in this case?
12. Do you know or work for any of the parties?
13. Do you have any other potential conflicts of interests?
14. Have you had an opportunity to speak with the non-English speaking person informally? Were there any particular communication problems?
15. Are you familiar with the dialectal or idiomatic peculiarities of the witnesses?

16. Are you able to interpret simultaneously without leaving out or changing anything that is said? (Have you ever done this before? In what kind of situation?)
17. Are you able to interpret consecutively? (Have you ever done this before?)

Source for A & B: National Center for State Courts, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, Chapter 6, Judges' Guide to Standards for Interpreted Proceedings. Used with permission.

C. Suggested voir dire for defendant requesting a rare language

1. Please tell me where you were born (country and city or town).
2. What is the official language of the country where you were born?
3. Please describe your formal education. (Did you attend school? Where? For how long?)
4. What was the highest grade you completed in school?
5. What was the language of instruction in school?
6. Can you read and write your native language? Do you read and write English?
7. What language(s) do you speak at home? If you have children, what language do you speak to them in?
8. Do you read books regularly? In what languages do you read?
9. Do you regularly read any newspaper or magazines? Of what language(s)?
10. Do you watch television? In what language are the shows you watch?
11. Do you listen to the radio regularly? What language is the program in?
12. How have you communicated with your attorney in the pretrial phase of this case? Have you had any communication problems?
13. When you have appeared in court before in this case, has an interpreter been provided for you?
14. Have you requested before that an interpreter be provided for you? (If not, why not?)
15. Have you gone over and discussed the discovery material with your attorney? (If yes, in what language?)
16. How long have you lived in the U.S.?
17. Do you have a job? What language do you routinely speak for your work?
18. If you think you need an interpreter, do you understand that the role of an interpreter is not to “explain” the proceedings to you but only repeat what is said in the courtroom in another language?

Source: Interpreters Office, Southern District of New York. Used with permission.