

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 promotes 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 Taskforce

The Court Interpreter Taskforce 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. CJC3 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 not 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 that 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 that 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 she or he has been engaged.

Interpreters and translators shall not interpret in any matter in which his or 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.



Model Code of Professional Responsibility for Interpreters in the Judiciary

Introduction

The following document is a Model Code of Professional Responsibility for Interpreters in the judiciary. The Model Code presents key concepts and precepts, which over the years have emerged in statutes, rules, case law, and professional experience. Like the Model Court Interpreter Act (Chapter 10), it has been prepared in consultation with an advisory group of individuals who have special expertise in court interpretation. The advisory group included the judges, lawyers, court administrators, and state and federally certified professional interpreters who are named in the acknowledgements for this publication.

Purposes of the Model Code

The purposes of the Model Code are threefold:

- 1) to articulate a core set of principles, which are recommended for incorporation in similar codes that may be adopted in the several states or local jurisdictions;
- 2) to serve as a reference, which may be consulted or cited by interpreters, judges, and court managers where no other authoritative standards have been adopted, and
- 3) to serve as a basis for education and training of interpreters and other legal professionals.

Research has shown that courts must often rely on interpretation services of bilingual individuals who have received no specific training about the requirements, role and responsibilities of a court interpreter. Research has also shown that many judges and attorneys are also unaware of the professional responsibilities of the interpreter and how these translate into highly demanding technical skill requirements. At the very least, anyone serving as a court interpreter should be required to understand and abide by the precepts set out in this Model Code. Judges and attorneys should also become familiar with the code and expect conduct from interpreters that is consistent with it.

**CODE OF PROFESSIONAL RESPONSIBILITY
FOR INTERPRETERS IN THE JUDICIARY**

PREAMBLE

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier.¹ As officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

APPLICABILITY

This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use, or deliver interpreting services to the judiciary.

Commentary:

The black letter principles of this Model Code are principles of general application that are unlikely to conflict with specific requirements of rule or law in the states, in the opinion of the code's drafters. Therefore, the use of the term "shall" is reserved for the black letter principles. Statements in the commentary use the term "should" to describe behavior

¹ A non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence.

that illustrates or elaborates the principles. The commentaries are intended to convey what the drafters of this model code believe are *probable* and *expected* behaviors. Wherever a court policy or routine practice appears to conflict with the commentary in this code, it is recommended that the reasons for the policy as it applies to court interpreters be examined.

CANON 1: ACCURACY AND COMPLETENESS

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

Commentary:

The interpreter has a twofold duty: 1) to ensure that the proceedings in English reflect precisely what was said by a non-English speaking person, and 2) to place the non-English speaking person on an equal footing with those who understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral interpretations are not appropriate when they distort the meaning of the source language, but *every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted*. This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (e.g., a term or phrase with no direct

equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions, or dramatic gestures.

Sign language interpreters, however, *must* employ all of the visual cues that the language they are interpreting for requires -- including facial expressions, body language, and hand gestures. Sign language interpreters, therefore, should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct.

The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

CANON 2: REPRESENTATION OF QUALIFICATIONS

Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

Commentary:

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their training, certification and experience prior to appointment so the officers of the court can fairly

evaluate their qualifications for delivering interpreting services.

CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

Commentary:

The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties.

The interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters should maintain professional relationships with their clients, and should not take an active part in any of the proceedings. The interpreter should discourage a non-English speaking party's personal dependence.

During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, refrain from casual and personal conversations with anyone in court that may convey an

appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Should an interpreter become aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the appropriate judicial authority and counsel.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. Before providing services in a matter, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information.

The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters where interpreters should not serve:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;
2. The interpreter has served in an investigative capacity for any party involved in the case;
3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;
4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case;
5. The interpreter has been involved in the choice of counsel or law firm for that case.

Interpreters should disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case.

Interpreters should not serve in any matter in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney should not serve in both capacities in the same matter.

CANON 4. PROFESSIONAL DEMEANOR

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary:

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enable them to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible. Interpreters should work without drawing undue or inappropriate attention to themselves. Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court.

Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings. However, interpreters who use sign language or other visual modes of communication must be positioned so that hand gestures, facial expressions, and whole body movement are visible to the person for whom they are interpreting.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

CANON 5: CONFIDENTIALITY

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary:

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of her or his duties. It is especially important that the interpreter understand and uphold the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to an appropriate authority within the judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in professional responsibility.

CANON 6: RESTRICTION OF PUBLIC COMMENT

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

CANON 7: SCOPE OF PRACTICE

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Commentary:

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy

an assignment competently. In such instances they should make it clear that they are speaking for themselves.

An interpreter may convey legal advice from an attorney to a person only while that attorney is giving it. An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may translate language on a form for a person who is filling out the form, but may not explain the form or its purpose for such a person.

The interpreter should not personally serve to perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation counselors.

CANON 8: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

Commentary:

If the communication mode or language of the non-English-speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room is not quiet enough for the interpreter to hear or be heard by the non-English speaker, more than one person at a time is speaking, or principals or

witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret). Sign language interpreters must ensure that they can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movement, as well as hand gestures.

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even competent and experienced interpreters may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter (e.g., the unscheduled testimony of an expert witness). When such instances occur, interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters should feel no compunction about notifying the presiding officer if they feel unable to perform competently, due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

Interpreters should notify the presiding officer of any personal bias they may have involving any aspect of the proceedings. For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

CANON 9: DUTY TO REPORT ETHICAL VIOLATIONS

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Commentary:

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should turn to a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

CANON 10: PROFESSIONAL DEVELOPMENT

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.

Commentary:

Interpreters must continually strive to increase their knowledge of the languages they work in professionally, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judiciary that relate to the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

Additional References

The following sources were used as references when the Model Code was originally drafted for discussion by the work group of judges, interpreters and interpreter program administrators in Williamsburg, Virginia, in July, 1993. Source materials marked with an asterisk are recommended as supplementary references.

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| California | Standards of Judicial Administration-Section 18.3, <i>Standards of Professional Conduct for Court Interpreters</i> (See California Rules of Court, Rule 985)

*Judicial Council of California, Administrative Office of the Courts Workshops For Court Interpreters (Training Manual), <i>Professional Ethics and the Role of the Court Interpreter</i>

California Court Interpreters Association, <i>Code of Ethics</i> |
| Federal Courts | <i>Code of Professional Responsibility of the Official Interpreters of the United States Courts</i> |
| Massachusetts | *Office of the Chief Administrative Justice, Massachusetts Trial Court, <i>Code Professional Conduct for Court Interpreters of the Trial Court</i> |
| New Jersey | *Administrative Office of the Courts, Court Interpreting, Legal Translating and Bilingual Services Section, <i>Recommended Code of Professional Responsibility for Interpreters, Transliterations and Translators</i> |
| Washington | *Rules of Court, General Rule 11.1, <i>Code of Conduct for Court Interpreters</i> |
| Registry of Interpreters for the Deaf, Inc. | <i>Code of Ethics</i> |
| Texts | *Chapter 34, "Ethical Principles and Standards" in Gonzalez, Roseann; Vasquez, Victoria; and Mikkelson, Holly, <i>Fundamentals of Court Interpretation</i> , Carolina Academic Press, 1991. |

It Take Two to Tango, But Three to Interpret

By Emma Garkavi and Lorane West

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“It takes two to tango, but three to interpret,” as Agustín de la Mora, a federally certified interpreter and trainer has taught us. It is a wonderfully simple statement and a quick way to check on whether you are potentially stepping out of your role. Bottom line: If you are communicating with a person and there are only two of you, you are NOT inter-pretng.

Sometimes, staff and attorneys may ask interpreters to independently call a defendant with a message, or to find out why the defendant is late to a hearing. They may have bilingual office staff who routinely make such calls or talk to their clients. But it is NOT appropriate for a court interpreter to call a defendant independently, no matter how simple you expect the matter to be. The same thing goes with being asked to run after a defendant to give a short message, or to be involved in any other two-party contact.

What are some of the potential problems?

ATTORNEY-CLIENT PRIVILEGE. If an attorney speaks to a client via an interpreter in a three-way conversation, the privilege clearly remains. Privilege is not equally clear if the interpreter has been sent off to track down the client’s phone number (or the client) and hold a two-way conversation.

BECOMING A WITNESS. If the interpreter goes off to call the client about his non-appearance, and then the case is called, the judge could potentially order the interpreter to testify as to what the defendant stated on the phone. This, my friends, is how an interpreter can slide down the slippery slope out of their role and onto their backsides.

BEING MISREPRESENTED. There is nothing to protect you from a defendant later claiming, for example, “the interpreter told me I didn’t have to show up for this hearing.” Here is a funny little conundrum: There are no witnesses to an interpreter interpreting alone (and by the way - you are NOT interpreting).

PUBLICIZING YOUR PHONE NUMBER. Several interpreters have found their friendly desire to help out an attorney turn into dozens of calls from a defendant, who thanks to caller ID, start calling the person who speaks their language instead of counsel.

OH YES – ETHICS. Rule 11.2 (b) includes our duty of “adding or omitting nothing” but are you really going to call a client and say verbatim, “Can you do me a favor and call the defendant and ask him why he’s not here yet? I’m swamped and I just can’t deal with this right now.” Of course you won’t. You will end up in your own voice, explaining that you are an interpreter and an attorney asked you to give the person a message or ask a question – thus you are NOT REALLY INTERPRETING, are you?

OH YES – ETHICS AGAIN. Rule 11.2 (d) —No language interpreter shall render services in any matter in which the interpreter is a potential witness” – well, you are making yourself a potential witness by stepping outside your role as interpreter. Your conversation is no longer covered by your own confidentiality rules as you are not interpreting, nor is it covered by the attorney-client privilege, if the attorney isn’t even present.

BEING BARRED. If you have had outside contact with a defendant, it is generally considered a bar to your further participation in the professional capacity of interpreter. Imagine a case in which you have to pop out of the interpreter chair and go to the witness stand to testify as to why the defendant missed the last court appearance, based on a telephone call you made as a favor to a busy attorney.

OKAY I’M CONVINCED BUT WHAT CAN I DO? Easy. You can follow your Code of Conduct and interpret, staying within your professional role and avoiding these potential pitfalls. When asked to independently contact a client, simply let the requestor know that you would be glad to INTERPRET for them, but you need them to be present.

Suggested script when asked:

“If you would like to make the call, I’d be happy to interpret for you. I am not allowed to call on my own.”

“If you would like to talk to your client, I’d be happy to interpret for you. I am not allowed to talk with the defendant alone.”

If pressured, don’t hesitate to firmly state, “As interpreter, I am not allowed to contact anyone alone, because by definition it takes three to interpret. And I wouldn’t want to end up becoming a witness, or being barred from interpreting further in this case.” Then politely repeat your offer to do what we do – interpret.



National Association of Judiciary Interpreters & Translators

NAJIT POSITION PAPER SUMMARY INTERPRETING IN LEGAL SETTINGS

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

Approved modes of interpreting in judiciary settings¹ include consecutive interpreting and simultaneous interpreting as well as sight translation — verbally rendering in a target language the contents of a document written in a source language. Modern professional standards forbid summary interpreting in the courtroom and other legal settings in almost all instances. The purpose of this paper is to explain why all interpreters and users of interpreter services should refrain from using summary interpreting in legal settings.

■ What is summary interpreting?

When an interpreter summarizes, she renders what has been spoken aloud in a shorter and more condensed form, regardless of the actual words used by the speaker. The National Center for State Courts gives the following explanation in its publication *Court Interpretation: Model Guides for Policy and Practice in the State Courts*:

Interpretation means the unrehearsed transmitting of a *spoken* or signed message from one language to another. Interpretation is distinguished from “translation,” which relates to written language. Two modes of interpreting are used in court by qualified interpreters — “simultaneous” and “consecutive.” A third common mode is “summary” interpreting, which should not be used in court settings.²...

Summary interpreting is paraphrasing and condensing the speaker’s statement. Unlike simultaneous and consecutive interpreting, this method does not provide a precise rendering of everything that is said into the target language.³

■ Why is summary interpreting unacceptable in legal settings?

By its very definition, “summary” implies condensing and necessarily omitting some of what is said. The nature of summarizing goes against the grain of standard rules and canons of judiciary interpreting. The judiciary interpreter’s duty is to convey accurate and complete messages between or among parties. Summarizing, whether from spoken or written communication, requires an interpreter to participate in creating part of the message. With the very few exceptions noted below, summary interpreting does not enter into the acceptable practices of a professional judiciary interpreter. When an interpreter is allowed to summarize, she is being permitted to decide or evaluate what portion of testimony or statements given by the parties is relevant. An interpreter is not qualified to make such determinations. A defendant or litigant has the right to hear everything taking place. Finally, by using summary interpretation, an interpreter is no longer an impartial communicator but becomes a participant in the proceedings.

The landmark decision deeming summary interpreting inadequate to ensure due process arose from the case: *US ex rel. Negron v. New York*, 434 F.2d 386 (1970).⁴ During a murder case, the prosecution’s interpreter provided the Spanish-speaking defendant with summaries of witness testimony in sessions lasting from ten to twenty minutes. “However astute [the interpreter’s] summaries may have been, they could not do service as a means by which Negron could understand the precise nature of the testimony against him.”⁵

Interpreters working in legal settings run the risk of compromising their code of ethics and canons of professional conduct if they opt to summarize the message from one party to the other. An interpreter has no personal knowledge of the events leading up to a lawsuit or criminal case. Moreover, an interpreter does not have access to all documents or written information surrounding a case. If an interpreter evaluates the weight of any statements, he becomes a party to the case and assumes a role far beyond that of the professional interpreter. If this occurs, adherence to the tenets of neutrality and impartiality is compromised. The final opinion of the National Center's *Guide* is: "[Summary interpretation] is a mode of interpreting that should not be used in court settings."⁶

The standard reference work for judiciary interpreting, *Fundamentals of Court Interpretation*, makes only one reference to summary interpreting: "In the past, summary interpretation (informing the defendant of the gist of testimony or arguments at the trial) was occasionally provided when interpreters were untrained non-professionals who were unable to keep up with the rapid pace of courtroom discourse; and, therefore, this mode is not recommended for use during witness testimony into either language."⁷

■ Minor exceptions

There are a few situations in which summary interpreting may safely be employed as follows:

UNRELATED COURT ACTION

When courtroom personnel – judges, attorneys, clerks, probation officers or court officers (bailiffs) – discuss the details of a case not involving the defendant, summary interpreting can serve a limited purpose to inform a defendant that the current discussion does not involve her case.

OVERLAPPING CONVERSATIONS

Some attorneys, court personnel and judges have telegraphic, overlapping conversations. If an interpreter were to repeat the fragments such as: "I think I have; On what page; Let me look at; Where are those references," the rendition would be unnecessarily confusing. An acceptable rendition would be: "Looking for the correct page (reference, exhibit)." Any doubts are generally clarified immediately after by the parties.

SIGHT TRANSLATION IF REQUESTED

On the web site of the U.S. District Court for the

Southern District of New York, there is only one mention of summary interpreting in five pages of guidelines. In the section covering "Sight Translation of Documents" the author indicates, "You may give a summary [of the document's contents] only if the judge requests one."⁸

■ Technical note: Economizing is not summarizing

To some extent, condensing a statement or economizing words occurs occasionally when interpreters are working between source and target languages, as interpreter trainers readily point out, but this is different from summarizing. Interpreter trainers speak of "economizing" words from the source to the target language. For example, if there is a more concise means of transmitting the *same message* with all its subtleties from the source to the target language, then the shortest phrasing could be chosen by the interpreter.

Redundancy is frequent in legal language. Due to the blending of Norman and Anglo-Saxon terminology, many phrases employ one word from each source language to convey the same meaning. Sometimes there are three words used to convey the same meaning. In this case, the message does not suffer by using two adjectives with the same meaning instead of three, or indeed only one, while keeping in mind that "our goal is to make a full and faithful interpretation of courtroom speech."⁹

■ Modern practice has evolved

In the past anyone able to speak two languages (English and a foreign language) and willing to help out in court was considered to be an interpreter. No professional guidelines or rules were in place. Over the last 40 years, the role of an interpreter in court has received judicial and legislative attention. It is now recognized that an accurate, unbiased interpreter is necessary to protect the legal right of a non- or limited-English speaking defendant to participate fully in his or her own defense. And the services of an interpreter, logically, have been extended also to victims and witnesses.

In other words, the principal purpose of providing an interpreter in the courtroom is to put the defendant, litigant or witness on an equal footing with English speakers of a similar education and background. Starting from this concept, everything said in the courtroom that can be heard and understood by an English speaker must be interpreted for the non-English speaker. Conversely, anything said audibly by

non-English speakers must be interpreted to the court. This concept is the basis of the profession of judiciary interpreting as practiced today.

■ Recommendations

Canon 1 (Accuracy) of NAJIT's Code of Ethics and Professional Responsibilities explicitly bans omitting or paraphrasing speech that is to be interpreted:

Source-language speech should be faithfully rendered into the target language by conserving all the elements of the original message while accommodating the syntactic and semantic patterns of the target language. The rendition should sound natural in the target language, and there should be no distortion of the original message through addition or omission, explanation or paraphrasing

NAJIT recommends that summary interpreting be excluded from interpreter-assisted exchanges in legal settings. The following guidelines are intended to help interpreters and the other participants in the judicial process comply with professional standards:

JUDGES

- Judges should specifically prohibit summary interpreting during interpreter-assisted proceedings.
- If it seems necessary to direct that a summary sight translation of a document be provided, judges should take into account the difficulty of the task and the possibility that an important detail of the document may be omitted through inadvertence or time pressure.

ATTORNEYS

- Attorneys should not request that interpreters summarize speech during interpreted exchanges.
- Outside the courtroom, if an attorney believes that a summary of a document is sufficient, it is up to the attorney to provide such summary. The interpreter will interpret the attorney's summary, not create a summary.

INTERPRETERS

- When asked to summarize speech, the interpreter should cite the legal precedent *U.S. ex rel. Negron vs. New York* and the canon of ethics as the basis for declining.

- When asked to give a summary sight translation by a judge or an attorney, the interpreter should be particularly careful to remain accurate despite the time pressure of the situation.

■ Conclusion

Summary interpreting makes the interpreter a participant in the interpreted exchanges, runs the risk of compromising due process, and violates the canon of ethics and professional responsibilities. Summary interpreting has no formal place in the courtroom and does not belong in the professional judiciary interpreter's choice of modes for interpreting speech. Summary sight translation must be practiced with extreme care for accuracy.

Footnotes

- 1 Established by Federal Statute 28 USC section 1827.
- 2 National Center for State Courts, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* (www.ncsconline.org/wc/publications/Res_Ctlnte_ModelGuideChapter2Pub.pdf), pp. 31-32 (*Model Guides*). Alicia Edwards in *The Practice of Court Interpreting* (Philadelphia, PA: John Benjamins Publishing, 1995) never mentions summary interpreting.
- 3 NCSC, *Model Guides*, p. 33.
- 4 *Federal Reporter*, second series, Volume 434 F.2d: Cases Argued and Determined in the United States Courts of Appeals, United States Court of Claims and United States Court of Customs and Patent Appeals (St. Paul, MN: West Publishing Co., 1971), pp. 386-391.
- 5 *Ibid.*, p. 389.
- 6 *Model Guide*, p. 32.
- 7 González, Roseann Dueñas, Victoria F. Vásquez and Holly Mikkelson, *Fundamentals of Court Interpretation: Theory, Policy and Practice*, Durham, NC: Carolina Academic Press, 1991, p. 164.
- 8 Website <http://sdnyinterpreters.org/> for the United States District Court, Southern District of New York.
- 9 Edwards, *op. cit.*, p. 63

Additional references

Summit/Lorain Ohio Model LEP Program for Law Enforcement, pp. 37, 59, 97, 104
www.co.summit.oh.us/sheriff/LEP.pdf

Suggested Guide for Interpreter Proceedings
www.ccio.org/CCIO-SuggestedGuide.htm

"Interpreters as Officers of the Court: Scope and Limitations of Practice" This article provides additional background on summary interpreting with specific examples. www.najit.proteus/back_issues/officers.htm

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THE ETHICIST

Interpretive Confidence

By RANDY COHEN

Some time ago I was working as a court interpreter, translating what is said in court for the defendant and what the defendant says for the court. During a recess, the defendant confided that he did commit the crime and intended to take the stand and lie about it. I sought the advice of a colleague, who then informed the judge. As a result, I was chastised and lost my job. Was I wrong to divulge this information? E.N., Seattle

You were. Even if you made no explicit pledge of confidentiality, your role as an interpreter invites the defendant to confide in you, a relationship that does not terminate during a recess, out in the hall by the doughnut cart.

The connection you've cultivated — emotionally, psychologically — endures. Unless you cautioned the defendant that you might disclose what he said, you abused his trust and your position.

Robin G. Steinberg, executive director of the Bronx Defenders, a public defenders' organization in the Bronx (well, they would be), says of interpreters: "They become the only bridge between the attorney and the client. Those confidential communications can only occur with the interpreter, and those conversations are, indeed, confidential. There would be absolutely no way for a client to know that communications s/he makes just to the interpreter are subject to disclosure."

Steinberg is right. A defendant naturally sees you as a quasi member of his legal team, someone to whom he can speak freely. Moreover, his requiring an interpreter indicates that he has limited facility with English and so is isolated in the court setting, making him even more apt to be candid with someone who speaks his language.

What you could have done was speak to the defendant's lawyer. Generally, in the United States, if a client baldly announces an intention to lie on the stand, his lawyer is ethically bound to prevent him. Here in New York State, if a lawyer is unable to do that, he or she may, but is not required to, speak to the judge.

While you acted badly, your colleague acted worse, imperiling the defendant and betraying your trust. I'm surprised that the judge spared him a sound thrashing, if that remedy is available under Seattle law.

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Send your queries to ethicist@nytimes.com or The Ethicist, The New York Times Magazine, 229 West 43rd Street, New York, N.Y. 10036, and include a daytime phone number.

Leave It in the Box by the Door

By Ruann L. Wood

The virtual box by the door is for everyone and anyone who calls themselves an interpreter, whether it be an American Sign Language interpreter or a spoken language interpreter. This article will provide a few pointers on how to ensure that the interpretation provided, from the client and customer perspective, is void of interpreter bias.

In one activity that took place in my eighth grade English class back in the 1980's, the teacher had the class analyze various Beatles' songs for obvious and hidden meanings. In the tune *Eleanor Riggs*—not the most uplifting and inspirational song ever written—there is a line that says, “Eleanor Riggs, wearing a face that she keeps in a jar by the door....” The meaning of this line, if flexed ever so slightly, fits the profession of interpreting perfectly and that will become clear in a moment.

Imagine a virtual box. Each interpreter chooses the color and size of the virtual box. This box is placed by the door of every interpreting assignment that an interpreter walks into. The box must have the capacity to contain all biases that an interpreter has on any given topic, against any given speaker, against any given host entity, against any given individual receiving the interpretation, as well as any bias against the team interpreter, if there is one. Biases can include morals, values, traditions, beliefs, political viewpoints and opinions of all shapes and sizes. All of the above are taboo in any interpreted setting and should be left in the virtual box by the door.

The interpreter who consciously decides to leave all biases in the virtual box by the door stands prepared to enter as a neutral party and remain as such throughout the process, thus minimizing any effect on the parties needing the communication facilitation. Doing this allows the client receiving the interpretation to establish his or her own bias and make decisions about the information conveyed, presented or shared.

Now, don't close the lid on the box yet. The box is not full.

Bad days, to include bad hair days, wardrobe disasters, not enough coffee, and traffic woes as well as bad moods from family tiffs and financial strain must also be placed or thrown, if the day is truly bad, into the virtual box by the door. These also have no place in an interpreted setting as they are sure to negatively affect everyone and the interpretation. As much as interpreters believe that it is possible to mask these, they inevitably surface during casual conversation, during wait times, during break times. Remember that one person's bad day has

the ability to taint the day of everyone else around.

The last item to drop in the virtual box by the door is, well, technology. Cell phones, smart phones and PDAs are a distraction to any interpreter. Checking email and text messages while being paid to perform an interpreting assignment is unprofessional. Such behavior influences the client's view of the interpreter as well as the customer's view, which ultimately taints the view of the company providing the service.

How is it possible to leave technology in the *virtual* box by the door? Create an “at work” setting for the device. The “at work” setting does not ring and does not vibrate, thus removing any chance for the personal attention of the interpreter in the setting to decrease. This is a new habit that must be formed to replace the bad habit of feeling the need to be connected at all times.

What about Eleanor Riggs and the face that she keeps in a jar by the door? Well, that is what the interpreter should *pick up* after dropping all the biases, bad days and technology in the box. Every virtual box contains a jar that includes a smile, a friendly hello along with a handshake or hug (depending on the client, culture, and setting) and a positive attitude. The happy face may not represent how the interpreter feels, but it is what is necessary and appropriate for the setting. The client and customer deserve a friendly, professional interpreter who is there to get the job done with excellence.

At this point the virtual box is closed. The interpreter walks into the setting and performs the job they have been hired to do, remaining neutral and not distracted.

When the assignment is over, while in the process of leaving, go back to the virtual box and pull out the items that cannot be lived without. All the rest, well, consider lightening the load by leaving those behind in the box by the door. In exchange, feel free to keep the friendly,

happy face from the jar that was in the virtual box by the door. It is less to carry around and, upon arrival at the next assignment, there isn't much left to leave in that virtual box by the door. ■



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Court and Assignment Protocol

When Called About an Assignment

Who/What/Where/When/How Much: When an interpreter is contacted about an assignment, the interpreter should inquire into who requires the interpreting, what type of hearing and legal proceeding it involves, where the interpreter must report upon arrival at the courthouse, and what time the interpreter is expected to arrive. If a contract or formal payment policy is not in place, the interpreter should also confirm the hourly rate, hourly minimum, travel reimbursement and cancellation policy.

Obtaining this information helps the interpreter determine what degree of preparation is necessary, identify whether potential conflicts of interest exist, avoid confusion when arriving for the assignment, and avoid disagreement when submitting an invoice for an unexpected amount.

Before the Assignment

Dress: Interpreters are expected to dress professionally to conform with the courtroom culture. Their dress should be both conservative in style and color, and bright colors or casual clothing should be avoided. As conduits of communication, interpreters must assure that focus is placed on the courtroom participants, and such visual distractions in appearance are inappropriate.

Driving/Transportation/Parking: Courts expect interpreters to arrive on time, and excuses for tardiness due to being lost, stuck in traffic, or difficulty finding parking will not be acceptable. If working at a court location for the first time, investigate into the best driving directions, bus lines, etc., as well as parking availability and costs. Carry a cell phone with you, as well as contact numbers for the courthouse. If it appears that you will be late for any reason, notify the court as soon as possible and keep them informed as to your status. Be aware that if a hearing was continued to a later date due to your tardiness, you may forfeit your payment for the assignment.

Case Preparation: With experience, court interpreters will require less time for hearings which they frequently encounter, such as arraignments or plea hearings. However, new interpreters should take time to prepare, even for these routine matters. Most courts provide copies of their frequently used forms and statements of rights online, and interpreters should be familiar with these in advance. For more technical hearings that will include legal motions and witness testimony, interpreters should request copies of documents so that they can better understand the context of the proceeding, and have the opportunity to look up unfamiliar vocabulary. If such preparation cannot occur in days prior to the assignment, it is advisable that interpreters appear early for the assignment, and use time at court to review documents and prepare accordingly.

Bring Your Tools: Court interpreters should always arrive armed with a pad of paper and pen for note taking, a bilingual dictionary and/or legal glossary, business cards and a copy of the local jurisdiction's code of ethics. Additionally, the interpreter may consider bringing along a copy of his/her credentialing certificate, an invoice for the assignment, and any other information which may be helpful.

Cancellations: Always avoid cancelling an assignment you have accepted. If for unforeseen reasons you are unable to interpret, immediately contact the court.

During the Assignment

Check-In With Court Administration: While practices vary from court to court, court staff frequently expect court interpreters to check-in with them prior to proceeding to a courtroom. They may want to verify your start time, and can frequently provide last minute information about the proceeding(s) for which you were hired, and any other that have arisen.

Check-In at the Courtroom Too: When arriving at the courtroom the interpreter should also check in with the appropriate person. This frequently is not the judge, because he/she is likely either involved in other legal proceedings, or is in chambers. If you are new to a courthouse, you can likely receive assistance from the courtroom clerk or sheriff's deputy – or at least they can likely direct you to the appropriate person. Introduce yourself to the attorney representing the non-English speaker, and in the presence of that attorney, introduce yourself to the non-English speaker and engage in a brief conversation to assure that you are linguistically compatible. Interpret this conversation into English for the attorney, so that there is no appearance of side conversations between you and the non-English speaker. If the non-English speaker is not represented by an attorney, either have this brief conversation in the presence of a courtroom clerk or sheriff's deputy, or wait until the case is called and request that it done briefly at the beginning of the case.

“Hallway” Interpretation: It is frequently expected that court interpreters will interpret for attorney/client conversations immediately preceding and following courtroom hearings, as many decisions and important conversations occur at this time.

Where to Sit and Wait? While courts expect interpreters to arrive on time, they rarely begin all hearings as scheduled. Do not bring newspapers or magazines to read while waiting for the hearing to begin. Do not sit next to the non-English speaker, as that is often an invitation for conversation which can lead to the appearance of unethical conduct. Sit far away from the non-English speaker, or ask the courtroom clerk or sheriff's deputy if you can sit in the jury box or on a chair in the inner courtroom area -- these are typically the places where attorneys sit and wait for cases to be called.

Introduce Yourself to the Court Reporter: Court reporters are expected to get a full record of the proceedings. If given the opportunity, briefly introduce yourself to the court reporter and give him/her a copy of your business card so that your name will be accurate on the record.

Qualification, Swearing In and Oath: Most judges are required under the Rules of Evidence to ask interpreters questions on the record regarding their qualifications, and regardless of their credentials and experience, interpreters should not feel offended by such questions. The Rules similarly required the courts to swear in the interpreter and administer an oath requiring the interpreter to provide a complete and accurate interpretation.

Positioning and Volume: Unless electronic simultaneous interpreting equipment is provided, an interpreter is expected to stand/sit close to the non-English speaker. Do not position yourself in between the non-English speaker and his/her attorney. Stand or sit to the side, and slightly behind the non-English speaker. When simultaneously interpreting to the non-English speaker,

keep your voice quiet enough to avoid unnecessary noise pollution in the courtroom, yet loud enough so that the non-English speaker clearly hears your voice.

Requesting Assistance from a Judge: Remember that judges manage and control courtroom proceedings. If you need time to consult a dictionary, request a repetition, ask that a person speak more loudly or slowly, you must always direct your statement or request to the judge. However, this must be done in a respectful way in accordance with courtroom culture. When the court interpreter must make a request or ask a question, the interpreter must refer to him/herself in the third person. State loudly and clearly, “Your honor, the interpreter requests...” When an interpreter speaks in the first person using “I” or “me”, the court record will inaccurately reflect that these statements/questions came from the non-English speaker. If a sensitive issue has arisen which should not be stated aloud in front of the jury or courtroom audience, you may state “Your honor, an unexpected issue has arisen. May the interpreter approach the bench with counsel for a brief sidebar conversation?”

During the Proceeding, Appropriate Use of the First and Third Person: When interpreting, you must accurately interpret what is stated rather than restate on behalf of someone. When a non-English speaker states to his/her attorney “what will happen to me?” the interpreter will look at the attorney and say in English “what will happen to me?” and not “he wants to know what will happen to him.” If an attorney, judge or other courtroom professional directs questions to the interpreter instead of the non-English speaker (“ask the defendant where he lives”), politely instruct that person to direct the questions to the non-English speaker to avoid confusion. If the non-English speaker directs questions or statements to the interpreter (“tell the lawyer that I have to get back to work this afternoon”), accurately and completely interpret this information to the English speaker. If it appears appropriate to provide an explanation to the non-English speaker, only do so in the presence of the English speaker and interpret into English anything stated to the non-English speaker.

After the Assignment

More Hallway or Front-Counter Interpretations: Following many hearings, parties are expected to complete paperwork, receive new hearing dates, make arrangements for payments, etc. It is crucial that all of these conversations are also interpreted so that non-English speakers can fully understand and participate in the court process. Once the courtroom hearing is done, verify whether your services will be necessary for any such exchanges. If, alternatively, you are requested to provide additional interpreting for a time period exceeding your scheduled time, and/or interpreting for a non-court agency (e.g. the court asks you to accompany a defendant to undergo an alcohol evaluation at the department of probation), check-in with the court staff to clarify your time commitment and to whom you direct your invoices.

Check-Out:

Do not leave the courthouse without verifying with the appropriate judge or court staff that your scheduled time has expired, and/or that there are no other matters requiring your assistance. Court staff may want to note your departure time for billing purposes. If possible provide your invoice at this time. Court staff appreciate when interpreters quickly submit their invoices.

THE INTERPRETER VOICE

Useful Interpreter Phrases in Formal Settings

By: Aleé A. Robbins, FCCI

COURT INTERPRETERS are often faced with the challenge of working with clients, including judges and attorneys, who are unfamiliar with our role. Over the years I have developed some useful phrases which have helped me to observe proper interpreter protocol and avoid ethical dilemmas. Moreover, using these phrases illustrates the neutral and objective role that I play, thus *defining by example* my function in the formal and adversarial setting of a courtroom.

For Matters Dealing with Interpreter Preparation and Protocol:

1. Your Honor, may the interpreter have a moment outside to meet the witness and become familiar with his speech patterns?
2. Your Honor, in order to provide accurate interpreting for the record, may the interpreter have a moment to review the indictment? (and/or case file, preliminary hearing transcript, police reports, pre-sentence report, etc.)
3. Your Honor, would the Court ask counsel to direct the question to the witness in the first person, rather than prefacing the question with "Ask him...."?
4. Your Honor, could the witness be instructed to answer in the first person, rather than beginning his answers with, "Ma'am, tell him that..."
5. Your Honor, the interpreter cannot hear counsel clearly. Would the Court request that she speak louder?
6. Your Honor, the interpreter needs a break. Is this an appropriate time?
7. Your Honor, the interpreters are experiencing problems with the electronic equipment. May we have a brief moment to correct the problem?
8. Your Honor, the interpreter requests that the question be repeated.
9. Your Honor, will there be any further need for the interpreter at this time? (When finishing your assignment)

For Matters Dealing with Language, Challenges & Specialized Expertise:

1. Your Honor, there is a word here. May the interpreter inquire?
2. Your Honor, the witness has used a term with which the interpreter is unfamiliar. May he/she clarify the meaning with the witness?
2. Your Honor, may the interpreter consult briefly with her colleague? (For your own need to clarify a word or phrase, or if you are challenged by anyone, including your colleague. Such challenges should be made privately, at side bar, and not in open court)
3. Your Honor, may the interpreter approach side bar with both counsel? (For urgent matters that arise unexpectedly during a case such as conflicts of interest, or to deal with challenges of any type. These should *always* be handled outside of the presence of the jury)
4. Your Honor, in order to render the most accurate translation possible may the interpreter have time to review the document and consult reference materials? (This applies in particular to sight translation of difficult documents. Such documents should be translated in written form, not sight translated in open court.)
5. Your Honor, the interpreter is not fully prepared to interpret for an expert witness in this field, due to the technical nature and specialized vocabulary involved. He/she would appreciate a brief recess to make alternative arrangements. (Such arrangements might include time to adequately prepare or to obtain a replacement interpreter with the requisite technical knowledge)

Alee Robbins states that it is important for interpreters to add phrases to this list that are appropriate to their own jurisdictions. However, she hopes this provides a good start in developing their "interpreter voice". She can be reached at alee2000@bmi.net

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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.

Do You Want Your Court Interpreter Ready To Do The Best For Your Case?

Court interpreters are confronted by a pervasive misunderstanding of our role in legal settings. On the one hand, we're viewed as potential "informants," the holders of privileged attorney/client communications which we might stupidly reveal to opposing counsel or some other sinister party. We're not with 'em, so we must be agin' 'em. On the other hand, we're supposed to be so smart and wonderful that, unlike any other person working in the court, we need no preparation. (12/2/2000 e-mail communication from **Marcella Boido, M.A.**) We can simply breeze into a courtroom, with no advance knowledge of the case, and with the mere taking of the oath to "interpret faithfully from English into X language, and X language into English", we can magically transform the complicated and esoteric legal testimony of a Supreme Court Justice from Ecuador or, just as easily, instantly reproduce the testimony of an uneducated dishwasher from Vietnam who speaks in a circular, slang-ridden jargon known only to his neighbors in Saigon. The truth is, certified interpreters are trained professionals who abide by a strict code of ethics that prohibits our revealing privileged information, or any information gathered in the course of our work on a case. Most interpreters are rabid about protecting attorney/client confidentiality. And importantly, we require a certain amount of preparation to accurately

and faithfully interpret for non-English speaking litigants, including the deaf. Experienced interpreters routinely handle matters such as arraignments, sentences, bail reviews, etc., with little or no preparation. However, testimony, trials and other contested hearings require an interpreter to do some case preparation, because they are far from routine, may entail highly complex or technical vocabulary, and are fraught with the emotions inherent in an adversarial process. Sadly, some courts have actually forbidden interpreters from referring to dictionaries or glossaries during a trial. **Chief Justice Wallace P. Carson, Jr.**, in Order No. 95-042, established a Code of Professional Responsibility for Interpreters in Oregon Courts. Canon One of the Interpreter Code, under the rubric of Accuracy and Completeness, states: The interpreter has a twofold duty: 1) to ensure that the proceedings in English reflect precisely what was said by a non-English speaking person, and 2) to place the non-English speaking person on an equal footing with those who understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language. Needless to say, an interpreter cannot fulfill this obligation for accuracy and completeness, conserving every element of information, unless properly prepared for a case.

A practicing attorney from Massachusetts, who is also a nationally known interpreter educator and a certified sign language interpreter, writes:

Both the prosecution and the defense can help the interpreter provide an accurate interpretation. It is to the advantage of the defense counsel to aid the interpreter so that clients may have the benefit of a fair hearing before the court. The prosecutor can reduce the chances for a mistrial on the grounds of a poor interpretation by allowing the interpreter access to as much material as is permissible. Any complaints, informations or indictments, expert reports, summaries, case histories, pre-sentence reports, jury instructions, or other pertinent documents which may be released to any other officer of the court, and which would not infringe upon a privilege, should be given to the interpreter as far in advance of the proceeding as is possible.¹

It is worth noting that certified court interpreters in Oregon are bound, as well, by a very strict code of confidentiality. Canon Six of the Oregon Interpreter Code states:

"The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of his or her duties. It is

1. Preparation: More Than Just a Good Idea; **Carla M. Mathers**, Esquire, CSC, SC:L RID Views, Vol. 16, Issue 8, Aug./Sept. 1999.

especially important that the interpreter understand and uphold the attorney-client privilege that requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications." Attorneys may be concerned that an interpreter who asks for materials will divulge privileged information. We do not, cannot, and will not. Some attorneys feel that access to materials or witness preparation will sway our interpretation, or color our point of view. To the contrary, they provide us with insight, context and specifics so that we can immediately process the source language into the target language (a task which requires more than twenty cognitive skills), with the greatest chance for accuracy, clarity and the emotional impact each witness's testimony is designed to achieve. Oregon certified court interpreters want only one thing when interpreting for non-English speaking litigants; the chance to interpret accurately—the first time. We need your understanding and cooperation so that we can do our best work. By allowing your assigned interpreter access to the witnesses and materials needed to prepare for the case, you greatly improve our ability to do the very best job for the courts—and your clients.

***Alee' Robbins, Interpreter Supervisor
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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.
6. *Professional Ethics and the Role of the Court Interpreter*, 3d Edition, 1999. Judicial Council of California, p. 26 (<http://www.courtinfo.ca.gov/programs/courtinterpreters/documents/ethicsman.pdf>).

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What is the Role of a Court Interpreter?

A court interpreter is a “language mediator”¹ or “language conduit”² whose participation allows an individual who does not speak or understand English to participate meaningfully in a judicial proceeding. An interpreter conveys the meaning of a word or a group of words from a source language (e.g., Spanish) into the target language (e.g., English). Colloquial expressions, obscene or crude language, slang, and cultured or scholarly language have to be conveyed in accordance with the usage of the speaker. A court interpreter’s job is not to tone down, improve, or edit any statements; instead, he/she must maintain the same register, or level of language spoken, and style of the speaker. There are three different modes of interpretation:

Simultaneous Interpretation: The interpreter speaks contemporaneously with the speaker. This mode of interpreting is often used when the court interpreter is seated at counsel table assisting a non-English-speaking party.

Consecutive Interpretation: The interpreter listens and speaks in a sequential manner after the speaker has completed a thought. The speaker may pause at regular intervals to facilitate the conveyance of his or her statements through the interpreter.

Sight Translation: The interpreter reads and translates a written document orally in court.³

Summary Interpretation: The interpreter summarizes the statements of the speaker. This mode of interpretation has *no* place in a court proceeding.

A court interpreter is an officer of the court who must comply with a Code of Professional Responsibility, which imposes ethical responsibilities relating to the interpreter’s conduct (see sidebar). The court interpreter should take an oath in open court before every proceeding to faithfully, accurately, and impartially interpret the proceedings using his or her best skill and judgment.⁴ A court interpreter is neither a witness nor an expert witness.⁵

When an interpreter is used by a defense attorney to interview the defendant, the attorney-client privilege applies. When a suspect is interrogated through an interpreter by a police officer, courts have held that the interpreter is a joint agent of the parties. *U.S. v. DaSilva*, 725 F.2d 828 (2d Cir. 1983). “When two persons who speak different languages and who cannot understand each other converse through an interpreter, they adopt a mode of communication in which they assume that the interpreter is trustworthy, and which makes his language presumptively their own. Each acts upon a theory that the interpretation is correct. Each impliedly agrees that his language may be received through the interpreter. If nothing appears to show that their respective relations to the interpreter differ, they may be said to constitute him their joint agent to do for both that in which they have a joint interest.” *Commonwealth v. Vose*, 157 Mass. 393, 394-395 (1892); *Camerlin v. Palmer Company*, 83 Mass. (10 Allen) 539 (1865); *People v. Romero*, 575 N.Y.S.2d 802 (Ct.App. 1991); *U.S. v. Beltran*, 761 F.2d 1 (1st Cir. 1985).

The court interpreter plays an important role in protecting the rights of a non-English-speaking person.⁶ A non-English-speaking person is “any principal party in interest or witness participating in a legal proceeding who has limited ability to speak or understand the English language.”⁷ It also includes parents of minors who are parties in a civil case.

A judge cannot be expected to train a court interpreter. The office of court interpreter services should be responsible for the training and certification of the court interpreters in your jurisdiction.

1 Gonzalez, R. D., V. F. Vasquez, V. F. and H. Mikkelson *Fundamentals of Court Interpretation: Theory, Policy and Practice*. Durham, N.C.: Carolina Academic Press, 1991.

2 *United States v. Nazemain*, 948 F.2d 522 (9th Cir. 1991), cert denied 113 S. Ct. 107 (1992).

3 It is important that a judge know the difference between an interpreter and a translator. A translator translates a written document in one language into a written document in another language. Translation requires different skills than those used by an interpreter.

4 I suggest that in a busy arraignment session, in order to save time, the interpreter be sworn only at the beginning of the session. However, it is advisable for the judge or the session clerk to indicate on the record that the interpreter has previously been sworn.

5 *Commonwealth v. Belete*, 37 Mass. App. Ct. 424, 426 (1994). However, an exception is made in circumstances in which a judge has to resolve a dispute about an interpretation to which an attorney or a juror has objected. *Commonwealth v. Festa*, 369 Mass. 419, 429-430 (1976). In these circumstances, the judge should appoint a second, certified court interpreter to resolve the dispute about the interpretation given by the first court interpreter. The second court interpreter acts as an expert witness by providing an opinion as to the correct usage of or meaning of a word or expression that is in dispute. The judge can believe or disbelieve the opinion of the expert witness about the interpretation provided by the first interpreter. The first interpreter should not later perform interpreter services in that same case. Many jurisdictions will not be able to assign different court interpreters because of a limited number of qualified interpreters. This is another reason to train interpreters and to insist that they understand and comply with the Code of Professional Interpreters.

6 In 1970, the Second Circuit Court of Appeals held that the Sixth Amendment right of confrontation, applicable to the states through the due process clause of the Fourteenth Amendment, required non-English-speaking defendants the right of an interpreter at the government's expense. *U.S. v. Negron*, 434 F.2d 386 (2d Cir. 1970).

7 Model Interpreter Act, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*. Williamsburg, Va.: National Center for State Courts, 1995.

What a Judge Can Expect from a Certified Court Interpreter

Many jurisdictions distinguish between a certified interpreter and a non-certified interpreter. A certified interpreter is an individual who has passed an oral and written examination, such as the federal court interpreter's examination, or an examination administered by a state court or a recognized international agency (e.g., the United Nations) that has been shown to be valid and reliable.⁸ There is a growing recognition among professional groups of court interpreters for the need of standardized interstate testing and certification programs.

8 See *Seltzer v. Foley*, 502 F. Supp. 600 (S.D.N.Y. 1970).

A court interpreter will speak clearly, in a manner that reflects but does not minimize the tone and emotions of the speaker. A court interpreter should never simplify the questions or statements for a non-English speaker even when the interpreter believes the non-English speaker cannot understand the questions or statements. It is not the obligation of the court interpreter to request an explanation or simplification of the question or statement. The court interpreter must not correct factual errors made in questions put to the non-English speaker and must not correct the testimony of non-English speakers, even if errors are obvious. As an officer of the court, the court interpreter must remain impartial. A court interpreter is not a liaison or social worker. There should be no unnecessary discussions with the attorneys, parties, or witnesses, either inside or outside the courtroom.

A certified court interpreter will always refer to himself or herself as the "interpreter" when addressing the court. This practice is followed to avoid confusion on the record. For example, if the interpreter did not hear the question posed by the attorney to the witness, the court interpreter will raise his/her hand and address the judge and state, "The interpreter did not hear the question. Would the Court order the attorney to repeat the question?" The judge should then order the attorney to stop turning his or her back to the witness when he or she asks the question and order him to repeat the question. A court interpreter also is obligated to interrupt the proceeding whenever he/she is unable to understand a word or phrase. Again, the court interpreter will signal to the court and inform the judge of the problem. The judge can order the attorney to rephrase the question. If an error occurs in interpretation during a jury trial, the court interpreter should avoid alerting the jury of the problem. In most situations, the problem can be resolved with a brief sidebar conference. The interpreter can explain the problem to the attorneys and the judge. Perhaps the problem can be solved by the judge ordering the attorney to rephrase the question or to simplify the words used in the question. Sometimes, the court interpreter needs to consult a dictionary and may ask, "Your Honor, may the interpreter consult a dictionary (or other source) to clarify the meaning of the word?" The judge can, if necessary, request the services of a second interpreter to resolve the problem. The judge should record and preserve the words or phrases of the foreign language that are in contention for the record. A hearing should be conducted to hear the opinion of the second court interpreter, who in this case acts as an expert witness. The judge has to rule, in view of the evidence, as to the correct interpretation. If the correct interpretation is different from the original interpretation, the judge must instruct the jury to disregard the first interpretation. The attorney can then repeat the question originally posed to the non-English speaker so that the jury can hear the correct interpretation. Curative instructions will be necessary to inform the jury that the misinterpreted answer is no longer evidence and must be disregarded. Whenever an objection is made, the court interpreter must interpret everything that is said by the attorney who made the objection and must instruct the witness by a hand gesture not to speak until the court has ruled on the objection. The interpreter must interpret what the attorney(s) state to the judge as well as the judge's ruling on the objection. A non-English-speaking witness or party in a civil or criminal case is entitled to hear everything that everyone else hears in the courtroom.

Working with a Court Interpreter

When Should an Interpreter Be Appointed?

An interpreter should be appointed as soon as possible. Frequently, a judge learns that an individual needs an interpreter from court personnel, the session clerk, a probation officer, or the attorneys in a case. The judge should conduct a brief voir dire of the individuals needing the interpreter. The judge should not ask questions that require yes or no answers. I do not ask if they speak English. The judge should ask the persons needing the interpreter questions such as where they live, if they work and what kind of work they do, and how long they have lived in the state. One question the judge should not ask is whether they speak English. The judge should assume that if he or she is alerted about a language problem, the probability is that the assistance of a court interpreter is needed. There are times when the judge may suspect that an individual may be hiding behind an alleged language barrier. It is still best to err on the side of appointing the interpreter than to risk depriving individuals of their day in court.

Orienting the Court Interpreter

It is good practice, when possible, to allow the court interpreter to speak to the attorney who requested the interpreter so that the interpreter may orient himself or herself regarding the specific vocabulary to be used during the trial or hearing. The interpreter will be better prepared if he or she knows the nature of the case, the charges or claims being tried, and who needs the interpreting—a witness, a party in a civil case, or a defendant in a criminal case. The interpreter may request a photocopy of the charges or complaint, grand jury minutes, deposition transcripts, police reports, medical records, or other documents. The judge should inform the attorney representing the party needing the interpreter that the court interpreter has requested an examination of the documents. The interpreter may also want to briefly speak to the party or witness, in the presence of the attorney, to determine the source language, dialect, idioms, and colloquialisms that the witness may use while testifying. It is important for the court interpreter to assess the witness's level of education, accent, and intelligence, which will be helpful in reproducing testimony later in English. Preparation is especially important in lengthy, complex cases. If the court interpreter makes a request to prepare for the hearing or trial, both parties should be notified.

Location and Placement of the Interpreter

It is the court interpreter's responsibility to place himself or herself so that the interpreter can perform the interpretation comfortably and inconspicuously. The interpreter must be able to see and hear the attorneys and the witness and has an obligation to inform the court if he or she has difficulty hearing because of the noise level in the courtroom. The judge, in turn, has the responsibility to support and assist the interpreter. The judge may ask the attorney to repeat a question or raise his or her voice or may order the attorneys to speak one at a time. If the court interpreter is interpreting for a party at counsel table and the attorney is monolingual, the court interpreter should be seated between the attorney and the party.

The Fatigue Factor

It is very tiring to interpret for long periods of time. If a court interpreter believes that he or she is not able to provide accurate interpretation because of fatigue, it is the obligation of the interpreter to inform the court. The judge should then call a 15-minute recess to allow the interpreter to rest. Some jurisdictions provide for teams of two court interpreters when the proceeding will be longer than two hours. Two court interpreters can relieve each other at periodic intervals and prevent fatigue and delays.

Conducting Proceedings Involving Court Interpreters

Take Command of the Proceedings!

In closing, what follows is a list of what a judge can do to take command of proceedings involving interpreters in court and some recommendations on how to improve court interpretation locally. Remember, the judge is in charge!

1. Advise the non-English speaker not to engage in conversation with the interpreter and to answer only the questions asked. If the non-English speaker does not understand the question, he or she should simply state, "I do not understand the question."
2. Advise the jury at the beginning of the case that the court has assigned an interpreter to assist the defendant or witness who does not speak or understand English.
3. If problems develop during the hearing or trial, require the attorneys to use short sentences. Do not allow the attorneys to show off their command of the English language. Keep it simple!
4. Allow only one attorney to speak at a time.
5. Avoid jargon, slang, colloquialisms, and technical terms: for example, "What score does one have to get on the exam to cut the mustard?"
6. Avoid rhetorical questions and negatives, such as "Did you not . . . ?"
7. Never allow the attorneys to ask compound questions.
8. Discourage questions that begin "Isn't it true that . . . ?"
9. Do not allow anyone, including a judge, to put questions to the interpreter. Questions are put to the witness.
10. Do not allow the witness to enter into a conversation with the interpreter. Instruct the witness not to converse with the interpreter.
11. Do not allow the use of double negatives in questions.

professional title like “doctor” and simply calling the person “mister” or “madam”.⁴ Very little is unintentional when it comes to examining or cross-examining a witness.

While it is true that interpreters proficient in the long consecutive mode bring into their renditions every word a question may contain, it is also true that many fail to include the **non-verbal elements**, turning hostile and empathetic questions alike into a robotic performance, stripped of the original speaker’s clear intent.⁵ Interpreters in judiciary contexts, where language and law are inextricably joined, must be particularly aware that “[o]ne type of signal that is important in forming impressions of other people, and in judgments of credibility, are the non-verbal signs indicating the emotional state of the person perceived.”⁶

To illustrate this point, I will read one question with four different intonations:

- 1: But YOU never called the police, did you?
- 2: But you NEVER called the police, did you?
- 3: But you never called THE POLICE, did you?
- 4: But you never called the police, DID YOU?

The emphasis in the different parts of the question suggests a different intent on the part of the examiner, and may elicit a different answer on the part of the witness. These questions cannot all be interpreted in a monotone, nor can they be interpreted with the emphasis on the wrong part of the question.

The first question – *But YOU never called the police, did you?* – implies that the witness took no action, and may have been negligent in some way, or perhaps irresponsible. The answer can be a simple “No” or maybe: “I didn’t, but my sister did!”, thus explaining such inaction.

The second question – *But you NEVER called the police, did you?* – emphasizes the time element, “never”, implying that the witness *had* time to call the police but never did, leaving the fact finders to wonder why. Was the witness busy doing something else? Did the witness have something to fear from the police? Or something to hide? The answer could be: “I did call, but I kept getting a recording in English that I could not understand.”

The third question focuses on *who* was called: *But you never called THE POLICE, did you?* The witness may have called a friend or a relative. So the issue is that no call was made to the police specifically. Maybe the witness’s intelligence or good judgment is being questioned implicitly. One possible answer could be: “I am here illegally. I was afraid to call the police, so I called my cousin, Alex.”

Finally, the fourth variant stresses the tag question, which makes the whole question a veiled statement with accusatory overtones: *But you never called the police, DID YOU?* The attorney does not really want to know if the witness did or did not call the police, or why. All he⁷ really wants to do is drive the point home for the jury and the judge to hear, and all he wants from the witness is a “yes” or “no” answer. It is a witness impeachment question. It is hostile. And the *tone* will most likely *not* be friendly, or soft-spoken, or gentle. Nor should the interpreter’s be, either. Compare:

[In a soft, polite, even-leveled tone:]

But you never called the police, did you?

[In a harsh, aggressive, loud-pitched voice to illustrate contrast:]

But you never called the police, DID YOU?

Such nuances become exponentially more important when the questions are protracted and the interpreter chooses the long consecutive mode to convey them. Many of the paralinguistic elements can be lost, impacting not only the way a witness perceives the intent of the examiner, but also the answer that ends up on the record. Furthermore, there will be an impact on the fact finders, who will have heard a question with a certain intonation signifying a specific intent – to discredit or to encourage the witness, depending on who is asking the question – and what they hear in English is going to be different from what the witness heard in the other language. In that case, the answer may be incongruent from the fact-finder’s perspective. Researchers in Norway found that “Credibility judgments [are] strongly influenced by the emotions displayed.” (...) [P]erceived credibility [is] reduced when the witness display[s] neutral or incongruent emotions.”⁸

Suppose an attorney asks the following question:

Q: [Even tone, apparently non-threatening] You said during the direct examination by Mr. Witherspoon that you had only been in this country for three months when you met the defendant, Abel Fox, [rise in volume, taking on an aggressive tone] yet you also testified that just a few days after having met him [adding an inflection that suggests incredulousness] you **agreed to drive a car for him** [dramatic pause] from Arizona to Montana [second dramatic pause] **with no questions asked?**

A witness who hears and understands the nonverbal cues may get defensive, and give an answer that will reflect that state of mind:

A: [Underlining shows where emphasis is placed with voice inflections] Well, he said he was going to pay me more money than I make in six months working in construction, plus I didn’t have to sweat, you know, it was just driving [brief pause] on a highway [brief pause] in an air-conditioned car, and then delivering it where he told me. He gave me a map and everything!

But what can happen if the interpreter renders the same question in a monotone?

Q: [Even tone, non-threatening, no pauses] You said during the direct examination by Mr. Witherspoon that you had only been in this country for three months when you met the defendant, Abel Fox, yet you also testified that just a few days after

having met him you agreed to drive a car for him from Arizona to Montana with no questions asked?

A: [*Witness not feeling threatened*] Yes, that's what happened.

Now, let's go back to the defensive answer, and deliver it with no inflection.

A: Well, he said he was going to pay me more money than I make in six months working in construction, plus I didn't have to sweat, you know, it was just driving on a highway, in an air-conditioned car, and then delivering it where he told me. He gave me a map and everything!

What is the perception a jury will have of this laid-back witness as opposed to the defensive one we heard before? How are these different renditions going to affect the defense attorney's subsequent line of questioning, or the prosecution's re-direct examination, or the jury's evaluation of that witness' credibility? We have no way of knowing that right now because there are no studies that look at this phenomenon specifically. But we don't have to be scientists to realize the impact an interpreter can have on every actor in a courtroom when a delivery is void of the proper inflections.

Knowingly or unknowingly, the interpreter who fails to convey irony, sarcasm, hostility, or – on the other hand – compassion, empathy, encouragement, is altering the course of an examination or cross-examination, is having an impact on the testimony that the fact-finders hear, and is affecting the possible outcome of a case. In one experimental study, “While testifying that they were the victims of an armed robbery, male and female witnesses showed fear, anger, or no emotion. (...) It was found that (...) female displays of anger and fear produced a much greater difference in guilt rating for defendants than male changes in emotion. Additionally, over all experimental conditions, witnesses were believed to be telling the truth most when they showed fear and least when they showed anger.”⁹

Inattention to the paralinguistic elements of meaning worsens significantly when the interpreter *performs for the English-speaking audience*, making all witnesses sound alike, regardless of their degree of confidence on the witness stand – or lack thereof – sometimes overlooking emotional displays such as fear or enthusiasm. A study on communication styles conducted in Amsterdam “showed two videotaped versions of a simulated police interview to groups of subjects. In one version the victim was very upset, in the second version she displayed no clear emotions. The results showed that observers judged the witness to be less credible in the latter condition”.¹⁰ Another study found that “a witness who displays nervous behaviors is considered to be less credible than a witness who does not display such behaviors, independent of whether the testimony is true or not.”¹¹

This is an aspect of courtroom discourse that has been the subject of linguistic studies for decades, and which interpreters in judiciary settings cannot afford to ignore or dismiss. Even when all the words are there, even when all the periods and commas, all the phrases and sentences are there, the wrong inflection, the wrong nonverbal cue, is going to distort the *meaning* of those words. A mechanical and emotionally incongruent rendition is always going to

be inaccurate at best, and – at worst – can have a detrimental effect on the final outcome of a case.

Of course, the interpreter walks a fine line between conveyance of nonverbal elements and over-the-top histrionics. A colleague back home tells the story of a witness during cross-examination who flew into a rage and yelled at the attorney – in Spanish – “That’s a lie!” (in a very loud and forceful tone). The interpreter proceeded to convey that in English with the exact same forcefulness and loudness, which earned him a reprimand from the judge. What is the moral of the story? You have to bring it down a notch or two when the Source Language message includes an extreme display of emotions. You have to modulate your voice so it conveys sentiment, not drama. For example, when someone cries... or when someone laughs. You are not expected to laugh or cry, but you should modulate your voice accordingly such that the nonverbal elements of the Source Language message are not completely lost to the Target Language listener. If someone is crying, and you are using a cheerful voice to interpret what that person is saying, the Target Language listener cannot possibly get the remorse a Source Language speaker may be trying to convey, or the sense of loss and tragedy, just from the words alone. Your **performance** has to carry *that* across languages as well. Also part of your responsibility as an interpreter is to bring all that feeling across from Source Language to Target Language without laying it on too thick. When you do, the attention shifts from the witness and what the witness has to say, to you and how you’re putting on a show for the jury and everyone else in the courtroom. An interpreter’s performance is never about the interpreter as an individual, it is about the Source Language speakers and how best to bring across their message. Whether that message is a question intended to get a rise from the witness, or an answer intended to disrespect the attorney, the interpreter has the power to get that across, or to let it get lost in the translation.

I was in a courtroom once when a Task Force agent was testifying through an interpreter. Oftentimes Task Force Agents in Puerto Rico are police officers who do not speak English well enough so they testify in Spanish. It was evident from his tone of voice and inflection that this agent was very proud of the work he had done, and was more than happy to tell the jury all about it, in full detail. But when the interpreter’s rendition came, none of the agent’s pride and enthusiasm came across. This particular interpreter was simply not paying attention to those elements, too preoccupied with taking notes of every word spoken, and then putting on an impressive performance to showcase those long consecutive skills. It gets even worse when the witness has finished his answer and the interpreter takes 15, 25, 40 seconds to keep on writing while everyone else in the courtroom waits... and waits... and waits...

Had this been an English-speaking monolingual audience, the witness would have been completely overshadowed by the interpreter. It adds insult to injury when an interpreter delivers a long string of words with no inflection other than the natural hesitations of someone trying to read his notes. Have you ever paid attention to a court reporter’s read back? There is no inflection, no intonation. That is how some interpreters come across when they read back from their notes: they are putting all the words together, but they are not really putting the whole *message* together.

When that happens, the long consecutive mode is counter-productive, and a judiciary interpreter could do a much better job by shortening the length of the speech rendered in order to preserve all the nonverbal elements, rather than insist on a long but absolutely flat consecutive performance. Plus, these self-imposed demands for inflexible and sometimes unreasonable performances add a cognitive load that will accelerate the inception of mental fatigue, thus reducing the interpreter's retention capacity in the long run and increasing the number of errors the longer that interpreter remains on the stand.

3. Short, Long, or In-between?

What we call **short consecutive** interpreting in judiciary settings normally covers between 1 and 25 words or so that we must retain, mentally translate, and deliver right after the Source Language utterance. The Source Language utterance can be a complete sentence, part of a more complex sentence, or more than one short phrase or statement. It seldom requires note-taking, except maybe for numbers or names.

The **short consecutive** mode of interpreting is not the same as having *zero* retention so you end up interrupting the witness every three words just to be able to spit them out and move on. All consecutive interpreting has to focus "on the comprehension phase of human discourse."¹² If we are interrupting the witness every three to five words, *we are not understanding* what that witness is trying to convey. With so little information, we cannot even *begin* to understand why he chose the words he chose, and why he placed them in the order that he did, and what was the point he ultimately wanted to make. So you are just a poor substitute for one of those digital recorders that gives you instant playback, but only for 30 seconds at a time.

An interpreter has to be **actively engaged** in what the witness is saying, to the extent that you can not only *understand* but almost *anticipate* what the witness will say next – and therefore how you will compose the translated version you are to render. Being engaged in the Source Language speaker's discourse is what will ultimately lead you to make the right Target Language decisions, and prevent you from sounding like the voice coming through the loudspeakers at the airport, or a very badly dubbed film. If consecutive interpreting on the witness stand is a mechanism by which listeners can *understand* what someone else is saying in another language, as if both speaker and listener shared a common language, then interpreters must use **critical thinking** to make interpreting decisions, and not just mimic words.

We have to move beyond the acoustic stimulus-response cycle, that is, hearing a string of sounds and formulating a mental image related to the sense those particular sounds convey. Like when you hear the sounds "w-ē" in English and picture yourself with a group of people, yet you hear the same sounds in French and you picture yourself agreeing to something. Or when you hear the sounds "h-ī" in English and think of someone greeting someone else, or maybe a tall building, but in Japanese you would envision an agreeable person. That is the acoustic stimulus and response in our brains. That is the simplest relationship between sounds and meaning. We know that this most elementary of cognitive functions is not enough for an interpreter to perform competently.

True competency in the consecutive mode does not come from prodigious memorization or note-taking or both. On the witness stand we have to know how to take the information provided by

the Source Language speaker and combine it with the knowledge we have each acquired through life's journey, making wise choices in the Target Language so all parties can truly understand each other at all levels. The ultimate challenge for an interpreter is being able to establish relationships between what is being said, what has already been said, and what we can anticipate will be said¹³. Having done that, a judiciary interpreter can then choose the best consecutive mode for that particular moment – whether it is short, long, or somewhere in-between.

Suppose you have a witness who is being asked to describe a car accident. Based on your overall experience as an interpreter, as well as prior questions and answers of that witness, or maybe the testimony of other witnesses, you can anticipate a certain type of response. The witness begins by saying:

A: The car skidded like from here to there...

You have fractions of a second, as you hear those first 8 words, to decide: do I let her finish with all the details she wants to give in her answer, or do I break it down into smaller segments? This decision is particularly important if the witness is also using body language to get her message across. For example:

A: The car skidded like from here to there... and then it spun around like this... so I stopped my car because I wasn't sure which way it was going to go next, and then I looked in my rear-view mirror and saw this other car that coming straight at me like at 60, 65 miles an hour, so I tried to maneuver and get out of the way but it still hit me, and that was when I crashed against the guardrail and... Next thing I know I have glass shards all around me and this part of my dress is covered in blood...

When a witness uses body language to complete his verbal message, the consecutive interpretation has to be delivered within a time frame that allows the target-language listeners to put the words and gestures together in a way that makes sense. *We* cannot emulate those gestures and incorporate them into our verbal rendition. Interpreting “He went like this and then I felt something here and as we were struggling I felt him hit me over here so I went like that and hit him back, but then he threw a punch and I ended up on the ground” after the witness is done gesturing and matching those gestures to his words will be a senseless exercise that will surely leave the target-language listeners wondering what it all meant.

Another type of answer can be a fragmented account of events. For example:

A: Well... I think there were three men... you know, maybe four, I'm not sure because I was standing like... from here to there, and... well, it all happened so quickly that... you know, I didn't *really* get a chance to... uh... I wasn't... I wasn't counting... I just saw like a bunch of people with guns and... I was scared, of course, you know, because... And then I heard some yelling, “get down!” “Get down!” So I went like... like this... with my arms like this, trying to cover my head, uh... And... I know I tried to hide behind a... a truck or a car or something... I don't remember right now, but there was something there and...

and... and... then I heard the... Bam! Bam! Bam! Bam! Bam! Like that. I didn't even know I had been shot... I didn't feel it until... well, it felt really warm down here, down my arm... so I looked, and... yeah, I was bleeding all right!

This type of answer almost demands a short consecutive rendition, because it is nearly impossible for the interpreter to deliver all the right pauses, inflections, hesitations, incomplete sentences, false starts, and repetitions. I have heard interpreters attempt it, plummeting into this mechanical read-back of copious notes, with absolutely counter-productive results because the listener is missing out on all the nuances, even when he is getting all the words.

One interpreting strategy that can be helpful with these types of answers is one that has been termed the **semi-consecutive** mode¹⁴. This is actually a short consecutive rendition that establishes a certain rhythm between the Source Language speaker and the interpreter, allowing for longer answers to be rendered with great ease. The benefit of this type of consecutive hybrid is that it allows for longer answers to come across almost effortlessly, without necessitating longer retention on the part of the interpreter.

For the semi-consecutive mode to work, the interpreter *and* the Source Language speaker *have* to be attuned to each other, such that one begins to speak as soon as the other one stops, without interrupting each other or the flow of ideas. The utterances are brief enough to allow for this peculiar turn-taking, but not so brief as to sound inarticulate. This type of rendition comes about when the witness is intelligent and eloquent, so he knows not to break up his utterances into ungrammatical units or incomplete thoughts. For example, the witness will say "When the evidence custodian delivered the shell casings to our lab for analysis..." rather than "When the evidence custodian // delivered the shell casings // to our lab // for analysis..."

A well-performed semi-consecutive has the added benefit of enabling fact-finders to make undistorted credibility and reliability assessments of a non-English speaking witness. One important criterion for long consecutive to have become the preferred mode is that witnesses who provide narrative answers are perceived as being more credible and reliable than the ones who give fragmented answers.¹⁵

I have also noticed that with the semi-consecutive interpreters tend to preserve more of the Source Language nonverbal elements in their Target Language renditions, and I attribute that to the almost symbiotic relationship the interpreter comes to establish with the Source Language speaker when using this mode, as opposed to the professional detachment that often prevails. Professional detachment is necessary so the interpreter does not become personally involved with any particular person or set of circumstances, and therefore can avoid any bias or other improprieties. However, professional detachment does not mean that as a judiciary interpreter you eliminate all the nonverbal indicators of emotion used by your Source Language speaker.

As a general rule, the Source Language speaker's own discursive style will determine which of the consecutive mode variations to use. A person who starts to say one thing and in mid-sentence goes off on a tangent, repeatedly, is best suited for short-consecutive renditions. When attorneys become disorganized in their examination, they can fall into this category. It is particularly

disconcerting to hear an interpreter on the witness stand incorporate false starts and incomplete thoughts into her rendition of an attorney's question, without the proper pauses and intonation.

Q: [With intonation and pauses] When you were approached by the Border Patrol Officer... strike that. When you stopped at the Falfurrias check point, what personal identification documents... what – what documents, if any, did you provide the authorities?

Q: [Without intonation or pauses] When you were approached by the Border Patrol Officer, strike that, when you stopped at the Falfurrias check point, what personal identification documents, what, what documents, if any, did you provide the authorities?

Making sure every single word is translated is not as important as making sure the question comes across as intended. If the interpreter cannot make the proper pauses, or convey the proper intonation so the Target Language listener understands – as Source Language listeners do – that certain portions of the question are ungrammatical repetitions, false starts, and the like, then he is not really doing his job. In fact, the interpreter may end up confusing the witness, and as a result of the confusion *created by the interpreter* the witness may either be non-responsive or give an answer that makes her seem less truthful, or less reliable, or less credible in the eyes of the fact-finders.

At the other end of this spectrum are speakers who are consistently logical and coherent in their discourse, so they are well suited for long consecutive renditions. In addition to attorneys, this last group can include **factual** and **expert witnesses**. Factual witnesses will most likely provide narrative accounts of events as they developed along a time/space continuum. Expert witnesses, on the other hand, tend to provide testimony having to do with abstract concepts, making it better suited for the semi-consecutive. Take these two examples:

A factual witness

A: I had an appointment to meet with Mr. Polanski in his office at 3:30 p.m. on June 16, 2007. His office was in a 2-story building near downtown Ft. Lauderdale, but I can't remember the exact address right now. When I got there I rang a doorbell and got buzzed in. Mr. Polanski was there alone; there was no secretary. It was just the two of us the whole time I was there. He didn't even ask me to sit down, and I didn't really want to be there. He just asked me if I had the envelope, I said I did. He put his hand out... and I gave him the envelope with the one hundred thousand dollars in it. That was it. I left and never saw Mr. Polanski again. Until today, that is.

An expert witness

A: Our cyber-crimes unit had Mr. Polanski's bank account under surveillance. We detected a movement from his bank account in the U.S. to a bank in the Cayman Islands known to be a hawala broker. The U.S. currency at that point was

exchanged for Rupees, and transferred to a known hawaladar in Sri Lanka. In Colombo, the capital city, a local undercover agent was approached to buy five postal money orders which were to be moved by boat to the port of Karachi, in Pakistan. The plan was to use the money orders to buy gold and then deposit that gold in a safe belonging to a member of Lashkar-e-Omar, also known as Al Qanoon, a Pakistani Islamic fundamentalist terrorist organization. The FBI, in a joint operation with the Federal Investigation Agency in Pakistan, confiscated the money orders and arrested the defendant here, Mr. Polanski, and twenty-seven co-conspirators.

The interpreter has to be making decisions constantly about whether to allow what will evidently be a lengthy answer to be delivered in its entirety before interpreting it, or whether to render it in shorter utterances that will not affect the impact of the testimony or the fact-finders' perception of the witness' credibility and reliability. In fact, an interpreter may decide to use the long consecutive for some answers and the short or semi-consecutive for other answers by the same witness. There is no one-size-fits-all that can be applied all the time, because discourse changes during testimony, and someone who was very confident may suddenly become nervous and defensive, or someone who was sympathetic may suddenly become angry. As emotions change during the course of testimony, so can the style of someone's discourse, and the interpreter has to make adjustments accordingly.

Granted, there are some difficult situations in which the interpreter can feel like she's right in the line of fire. Maybe the examining attorney is openly hostile and the witness is openly resentful. Suppose they are both men and the interpreter is a female. The men are having a testosterone party and she may want to diffuse the situation by using a softer tone of voice because she may feel uncomfortable herself. Well, that's like cleaning up foul language because you never use it yourself. Those are not *your* words, and you have no right to change them. Likewise, you have no right to change anything else about the Source Language speaker's message. So even if you want to act as a buffer zone in a verbal match between an attorney and a witness, *that is not* your role.

Of course the verbal sparring can also be taking place between a man and a woman, or two women; the interpreter can be either male or female. None of that should matter. Gender is one variable we have to erase from the equation to the extent possible. If a witness is rude, your rendition has to convey that. If an attorney is abrasive, you have to convey that to the witness. The message is in the "how", not just in the "what". In fact, "one observer at the first Nuremberg trial complained that '[y]oung women with chirpy little voices' interpreting the rough declamations of generals diminished the power of their words."¹⁶ We cannot change the pitch of our voice so that a female sounds male or vice-versa. What we can do is to be aware of our own voice: am I soft-spoken? Do I have a booming voice? Is my voice a *distraction* in any way while I am interpreting? Be aware of how your own voice, your own discursive style, may interfere with your sworn duty as a judiciary interpreter. Be self-critical and make every effort to eliminate those peculiarities of your own discourse that may distort the message of the speaker for whom you are interpreting.

4. Where Semantics and Pragmatics Meet

The interpreter's delivery has to accommodate the Source Language speaker's style regardless of whether the audience is the non-English speaking defendant, or the English-speaking judge. The perception a witness has of the examining attorney is just as important as the perception jurors have of a witness. The opinion we form about a person's intelligence, expertise, and so forth, is directly related to the way in which that person speaks. So when an interpreter is using the consecutive mode he has to know whether or not he is providing the fact-finders with all the elements of discourse they need to be able to form an accurate opinion of a given speaker¹⁷.

The absence of nonverbal or paralinguistic information is not always due to any particular limitation or defect in the interpreter's retention capacity. It is simple indifference... or ignorance. These can be very dangerous attitudes if they seep through a consecutive rendition from the witness stand, particularly when disguised as formality. Judiciary interpreters have been trained to remain neutral and impartial, to interpret everything that is said without embellishments or omissions, but not to emulate facial or body gestures. With such a tight straightjacket, it is little wonder that many are afraid to venture too far from the semantic aspects of discourse, into the pragmatic aspect of meaning¹⁸.

Interpreters must know how tight or how loose our straightjackets are tied. Until now, we have been operating on the assumption that the straightjacket is fully strapped, tight as can be, and there is absolutely no wiggle room whatsoever. Of course, we all know that in real life no interpreter can perform under such constraints. My contention is that those who try it are precisely the ones who end up sounding like robots.

Can interpreters develop an intuitive knowledge of what is meaningful and what is not in the Source Language utterance? What we can ignore and what we cannot when we reformulate the utterance in the target language? Can we release some "room" in our short-term memory used to remember unimportant data so we can instead retain important nonverbal information?

If a witness says "I remember seeing a hammer, a white plastic bag and some rope on the floor in the living room..." the interpreter can say "I remember a white plastic bag, some rope, and a hammer on the floor in the living room..." The order in which the objects are seen is not significant to the overall meaning of this utterance, nor is the verb "to see". It is a foregone conclusion that the witness remembers these things because she *saw* them, not because she smelled or heard them.

If, however, a witness says "I walked by the grocery store, the hardware store, and the park", then the order is establishing a certain sequence in time and space, so it has a particular significance. The interpreter must retain that word order. The verb "to walk" is also significant because the witness could have driven or ridden a bike.

An interpreter who knows how to read all the verbal and nonverbal information provided by the Source Language speaker and recreate that in the Target Language as if he were that other person actually speaking – like an actor "in character" during a play or a movie – will produce in his mind a translation as close as possible to spontaneous or natural discourse as we can possibly produce when we are recreating someone else's words. In that process, the intuitive knowledge

about language use we all have can, indeed, help us decide what information is actually **meaningful**, and what information is not.

Repetitions can be meaningful, because at a given point in time they can convey the speaker's state of mind: she is unsure, nervous, or perhaps obsessive about details. Other times repetitions simply mean that the speaker is getting ahead of herself, or is simply a bad public speaker.

Q: Doctor, can someone with borderline personality disorder... uh... disorder, and all the other psychological problems that the defendant has... can that someone – I ask you – can he be capable of constructing a detailed... uh... narrative... that reflects distortion of the truth but is – but is a consistent narrative over a long period of time?

Are repetitions in this context meaningful? Are hedges meaningful? I would argue that they are not. The examining attorney is not trying to confuse the witness, is not being evasive, and the repetitions may be the result of nerves or distractions. Does this nonverbal information contribute anything to the meaning and intent of the question? This added nonverbal information is not going to have a significant impact on the witness' answer. In this particular context, all the interpreter needs to convey is the core question, not the distracting repetitions and hedges: (1) *is* someone with borderline personality disorder, (2) and all other psychological problems that the defendant has, (3) *capable* of constructing a detailed narrative, (4) that reflects distortion of the truth, (5) but is consistent over a long period of time? To expect the interpreter to do anything else is a burdensome and unreasonable expectation that contributes nothing to the accuracy of the rendition, the conveyance of meaning, and the ultimate understanding by the Target Language listener of the Source Language speaker's message.

Ungrammatical pauses can be meaningful, because they can convey a witness' level of education or degree of knowledge about a particular subject. However, when ungrammatical pauses are combined with frequent hedges, false starts, repetitions, or digressions, the discourse may become so fragmented that the interpreter can no longer provide an accurate rendition unless the rendition is equally fragmented. There are times when nonverbal behavior becomes as significant – or more so – than the verbal behavior. “A common observation by legal scholars (e.g., Gardner, 1933) has been that testimony given in an assertive and positive manner is treated by the courts as accurate and truthful.”¹⁹ When such inferences as honesty, or expertise, can be made on the basis of discursive style, interpreters have the power to distort them when they distort the nonverbal contents of discourse.

4. Conclusion

There are advantages and disadvantages to both long and short consecutive modes. The choice should be based on the Source Language speaker's discursive style, not the interpreter's ability to perform in one mode or the other. Interpreters have to be proficient in both techniques so they can indeed provide complete and accurate renditions, not word-for-word repetitions or read-backs lacking in nonverbal content. If the interpreter is not proficient in the long consecutive technique, he should at least be able to engage in a semi-consecutive when the discourse interpreted demands a certain flow and coherence that a fragmented short consecutive cannot

provide. Conversely, an interpreter who is proficient in the long consecutive mode but cannot carry the message across languages with the proper intonation and other nonverbal elements of discourse should consider using the short or semi-consecutive modes.

An interpreter's performance in a legal setting is not just about the words and the sequence in which they are put together. It is about **meaning**. Meaning cannot be conveyed solely by making accurate lexical choices in the proper grammatical sequence. Meaning comes about from the synergy between source-language speaker and interpreter, from establishing the best cadence in the turn-taking between the two, from placing the proper stress, volume, speed, and even silences exactly where they belong. These are the elements an interpreter must keep in mind when choosing between long, short or semi-consecutive renditions.

¹ For purposes of this paper, the focus will be exclusively on the consecutive interpretation of courtroom witnesses.

² When referring to the interpreter's "performance", the term is intended to include all the following meanings:

- *the execution of an action* – the interpreter conveys the message of the SL speaker in the TL
- *something accomplished* – people who do not speak the same language can understand each other upon the interpreter's rendition
- *the action of representing a character* – the interpreter assumes the "persona" of the SL speaker
- *a public presentation* – the interpreter is in open court and has an audience when a consecutive interpretation is rendered

Furthermore, "performance" as it refers to interpreters must also cover the linguistic behavior (of an individual) and the ability to speak a certain language (= competence).

³ Arguably, the appellate court is also part of this English-speaking audience. However, the interpreter's rendition is delivered to that particular audience through the court reporter's transcript, completely devoid of any paralinguistic elements, therefore constituting a separate and distinct issue beyond the scope of this paper. Furthermore, appellate courts seldom review a lower court's or jury's finding as to the credibility of a witness. "A common rationale for deference to the trial court's findings of fact is that only the finder of fact has had the opportunity to see and hear the witness and to judge her demeanor. An appellate court, deprived of this opportunity, would only be 'second-guessing' the trier of fact were it to review a credibility determination". Morris D. Bernstein, *Judging Witness Credibility: A Talmudic Perspective*.

[www-camlaw.rutgers.edu/publications/law-religion/articles/RJLR_5_1_4.pdf -]

⁴ Cf. Conley, John, M. and O'Barr, William M. *Just Words: Law, Language and Power*. Chicago: University of Chicago Press, 1979. Also: Atkinson, J. Maxwell, and Paul Drew. *Order in the court: The organization of verbal interaction in judicial settings*. Atlantic Highlands, N.J.: Humanities Press, 1979.

⁵ See studies by Susan Berk-Seligson, (*The Bilingual Courtroom. Court Interpreters in the Judicial Process*. Chicago: Chicago University Press, 1990); Sandra Hale, ("The interpreter on trial: Pragmatics in court interpreting." In S. E. Carr, R. Roberts, A. Dufour, & D. Steyn (Eds.), *The critical link: Interpreters in the Community*. Amsterdam and Philadelphia: John Benjamins, 1997); and Marianne Mason, (*Courtroom interpreting*. Lanham, Md.: University Press of America, Rowman and Littlefield, 2008).

⁶ Kaufmann, Geir, Guri C. B. Drevland, Ellen Wessel, Geir Overskeid, and Svein Magnussen. The Importance of Being Earnest: Displayed Emotions and Witness Credibility. *Appl. Cognit. Psychol.* 17: 21–34 (2003).

⁷ Male and female pronouns are used indistinctly throughout this paper, and every use of one gender implies the inclusion of the other.

⁸ Kaufmann, et al. *Op Cit*. Also: Wessel, E., Drevland, G., Eilertsen, D., & Magnussen, S. "Credibility of the Emotional Witness: A Study of Ratings by Court Judges". *Law and Human Behavior*, 30, 221-230 (2006).

⁹ Melville, Amy Lynn. *The Crying Game: An examination of how stereotypes affect witness credibility*. Cornell University: Honors Thesis, May 2007.

[ecommons.library.cornell.edu/bitstream/1813/7820/1/Melville,%20Amy.pdf -] This also raises the issue of gender-specific discourse and the possible impact of an interpreter's gender and his or her discursive style on the fact-finders, but that subject –addressed by M. Mason in her book, *Courtroom Interpreting* (See Note 5) – falls outside of the scope of this paper.

- ¹⁰ Winkel, Frans Willem and Leendert Koppelaar. "Rape Victims' Style of Self-Presentation and Secondary Victimization by the Environment". *Journal of Interpersonal Violence*, Vol. 6, No. 1, 29-40 (1991). Baldry, Anna Costanza and Winkel, Frans Willem. "Perceptions of the credibility and evidential value of victim and suspect statements in interviews". *Psychology and Criminal Justice: International Review of Theory and Practice*, Boros J, Munnich I, Szegedi M (eds). De Gruyter: Berlin, 74–82 (1998).
- ¹⁰ Bothwell, R.K. and Jalil, M. "The credibility of nervous witnesses". *Journal of Social Behavior and Personality*, 7(4), 581-586 (1992).
- ¹¹ *Ibid.*
- ¹² Widlund-Fantini, Anne-Marie. *Danica Seleskovitch, Interprète et témoin du XXe siècle L'Age d'Homme*, Lausanne (2007). Review by Jennifer Mackintosh [<http://www.aiic.net/ViewPage.cfm/page2652.htm>]
- ¹³ Cf. Bakhtin, Mikhail (1981). *The Dialogic Imagination: Four Essays*. Austin: University of Texas Press, 1981. "The word in living conversation is directly, blatantly, oriented toward a future answer-word: it provokes an answer, anticipates it and structures itself in the answer's direction. Forming itself in an atmosphere of the already spoken, the word is at the same time determined by that which has not yet been said but which is needed and in fact anticipated by the answering word. Such is the situation in any living dialogue." (p. 280)
- ¹⁴ Marianne Mason. *Courtroom interpreting*. Lanham, Md.: University Press of America, Rowman and Littlefield (2008). She first encountered the concept in De Groot, A. M. B. (1997). "The cognitive study of translation and interpretation: Three approaches". In *Cognitive processes in translation and interpreting*, ed. J. H. Danks, G. M. Shreve, S. B. Fountain, and M. K. McBeath, 25-56. Thousand Oaks, CA: Sage; and Gerver. (1976). "Empirical studies of simultaneous interpretation: A review and a model". In *Translation: Applications and research*, ed. R. W. Brislin, 165-207. New York: Gardner. [E-mail exchange with author.]
- ¹⁵ O'Barr, William M. *Linguistic Evidence: Language, Power, and Strategy in the Courtroom*. New York: Academic Press (1982).
- ¹⁶ Persico, Joseph E. *Nuremberg: Infamy On Trial* 263 (1994). Cited by Joshua Karton in *Lost in translation: international criminal tribunals and the legal implications of interpreted testimony* [<http://www.thefreelibrary.com/Lost+in+translation:+international+criminal+tribunals+and+the+legal...+a0181897961>]
- ¹⁷ Cf. Conley, John M.; O'Barr, William; and Lind, E. Allan. "The Power of Language: Presentational Style in the Courtroom." *Duke Law Journal*. 1978:6:1375-1399 (1978).
- ¹⁸ "Pragmatics is that branch of linguistics concerned with *language in use* or the study of *meaning as it arises from language occurring in context*. Pragmatics does not examine the relationship between the word and its definition or sense (the domain of *semantics*) but the relationships between words and the entities (real-world or otherwise) to which those words refer (*referents* or *discourse entities*). Furthermore, the linguist working in pragmatics is trying to account for utterances in terms of the meaning intended by the speaker and understood by the hearer." [<http://en.citizendium.org/wiki/Pragmatics>]
- ¹⁹ Deffenbacher, Kenneth A. (1980) "Eyewitness accuracy and confidence: Can we infer anything from their relationship?" *Law and Human Behavior*, Vol. 4, No. 4, 243-260. Also: Gardner, Dillard S. (1932) "The Perception and Memory of Witnesses". *Cornell Law Quarterly*, 18, 391-409: "Juries quite generally regard the assertiveness and positiveness of the witness as the best test of accuracy..."

Top 10 Suggestions for Attorneys Working with Court Interpreters



The proper role of the interpreter...

- 1. It takes three to interpret.** Court interpreters interpret, plain and simple. They don't offer personal opinions, explain legal matters to LEP (limited English proficient) or deaf persons, clarify cultural nuances to attorneys, or assist LEP or deaf persons to fill out legal forms. They cannot call your clients on their own, you need to arrange for a 3-way call and talk to the client. Interpreters should interpret what is being spoken, or sight translate what information appears on a paper/form. When an interpreter sight translates a document from English to the non-English language, remain present to answer questions.
- 2. Interpreters interpret exactly what is spoken.** Supreme Court General Rule 11.2 requires court interpreters to interpret all communications accurately without adding or omitting anything. Interpreters do not interpret verbatim; instead they retain the same meaning and formality level of the speaker. When you speak in formal, eloquent words, the interpreter will use the linguistic equivalent. If your client swears or answers in a nonsensical way, an accurate interpretation means that you will hear a swearing or a nonsensical answer in English.

To ensure that communications are accurately conveyed...

- 3. Direct your comments and questions to the LEP or deaf person, not to the interpreter.** Interpreters are trained to interpret exactly what you say. If you say to the interpreter "Ask him whether he can pay the fine?" The interpreter may likely interpret that literally, which results in confusion. Instead please say to the LEP or deaf person "Can you pay the fine?"
- 4. You may need to explain legalese and acronyms, and to simplify references to case law, rules, and statutes as you speak with your LEP client.** Many of these concepts, particularly infrequently used ones, are complicated to interpret into another language. Communicating information in "plain English" will result in more accurate interpretations, particularly when an interpreter has limited court experience.
- 5. Slow down; ensure that everyone speaks one at a time.** Like court reporters, interpreters cannot interpret for more than one person at a time. If an interpreter is interpreting consecutively (interpreting after you have completed speaking), stop after each complete idea. Do not speak continuously for a long time; pause frequently to allow time for interpretation. Watch to see that the interpreter has finished before beginning to speak again. If an interpreter is interpreting simultaneously (interpreting while you are speaking), make sure to allow pauses in between speakers. Pauses are crucial because most languages require more syllables to convey the same idea, and because word order varies from language to language. Interpreters are several words *behind* the speaker, and need the pauses in between utterances

in order to keep up. If you are reading aloud from a document, slow down. Most people read at a much faster pace than they normally speak.

6. **Provide copies of documents/motions/pleadings/names to the interpreter before the hearing or meeting.** Interpreters more accurately interpret when they have background context and specific information that will be referenced such as names, dates, statutes, rule numbers, or jury instructions. If the interpreter doesn't get the information in advance, carefully pronounce names and numbers to ensure accuracy.
7. **Give Interpreters a Break.** An interpreter is the only person who is speaking nonstop during court hearings or client meetings. Give interpreters breaks every 20 – 30 minutes to rest, offer a glass of water, and ensure that they can comfortably see and hear all speakers in the room. Remember that private discussions between the client and attorney may be a break for the court, but not for the interpreter.

Effectively coordinate with the court...

8. **Notify the Court of Interpreter Needs.** Because there are relatively few interpreters who are qualified to interpret legal proceedings, scheduling them can be very tricky. If you have a case where an interpreter will be needed, contact court staff as soon as possible. For more uncommon language needs, provide the court with information on the person's language, dialect, and country of origin.

Know the law...

9. **Familiarize yourself with the legal standards.** There are statutes, court rules, and case law pertaining to court interpreting and ensuring language access. Be particularly aware of standards for interpreter qualifications, RCW 2.43.030, the Code of Conduct for Court Interpreters, GR 11.2, and the legal standards that are unique to the Deaf community under the Americans with Disabilities Act.

Use credentialed court interpreters when possible...

10. **Use court certified and registered interpreters to communicate with your clients.** Like attorneys, court certified and registered interpreters have proven their skills through testing and training, are required to comply with continuing education, and are held to ethical standards. A listing of AOC certified and registered court interpreters for spoken languages can be found at www.courts.wa.gov/interpreters. Similarly, the Registry of Interpreters for the Deaf (RID) administers a rigorous legal certification exam, and only those interpreters who are qualified to interpret legal matters receive the SC:L certification. A listing of certified sign language interpreters can be found at www.rid.org. Remember your case rests on good communication and communication rests on good interpretation.



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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WHEN IS A TEAM NOT A TEAM?

Nancy Festinger

The co-pilot is trying to get the pilot's attention, but the pilot isn't listening; annoyed, he growls, "Don't interrupt me now. Can't you see I have a plane to get off the ground?" Later, the plane crashes.

Unlikely? Hardly. It turns out that 95% of airline crashes are caused by communication failures in the cockpit. These failures are not traceable, as some might think, to machine malfunction, such as headphone or microphone failure, but to human miscommunication, the way that information is conveyed by crew members to one other. In the example above, the co-pilot was trying to tell the pilot of an aircraft problem. But in the pilot's rush to get underway, he silenced his subordinate, who then clammed up, perhaps doubting his own judgment.

Some pilots have better safety records than others, but what distinguishes the best from the rest? Wanting to find out, the airlines commissioned a study to find out what pilots with the lowest error rates were doing that the others weren't. Surprisingly, the price of success in this instance was measurable in time, not money. Successful pilots, it was discovered, always took extra time to establish team rapport before taking their positions in the cabin. Most flight teams are newly-created groups of co-workers who have seldom worked together before. It was the pilot's approach to teamwork that really mattered—no matter how experienced the crew. The successful pilot always introduced himself, invited questions, and reminded crew that the number one priority was passenger safety. This seemingly banal routine was shown to have a decisive impact on the team's performance.¹

Interpreter supervisors have a lot to learn from this model. While I frequently choose the team members who will work together on a trial, too often I have taken for granted that they will be courteous in giving advice and support to one another. I have usually spoken to each one separately, but often do not have the occasion to sit down with the team together prior to "take-off." Disasters, of course, have a way of unfolding without warning: terrible chemistry between teammates; sniping; indifference; correcting a colleague to a third party without telling the colleague first; disappearing acts; burdening one's colleague with the lion's share of the work or exhausting the colleague with chitchat; endless uncertainty about when to take turns, or excessively detailed timekeeping schemes; high-and-mighty attitudes; failure to answer colleagues' questions; or outright derision at others' ignorance. Jealousy and in-

fighting are particularly common among interpreters of lesser-used languages, who may perceive each other as competition for relatively few jobs.

Although the combination of personality traits is infinitely variable, an introductory routine would be an excellent approach to limit the potential for disaster. It is a good idea for a supervisor to make a habit of talking to teams before a trial begins. While scheduling these sessions maybe difficult to manage, team orientation should be a priority. The idea is to communicate directly and personally with the team members before they start, setting the tone for the trial.

A handout on Effective Interpreting Teams can be given, and then the interpreters would hear (with variations depending on the experience level): "Thank you for accepting this assignment with the court, and I hope your experience here will be rewarding. In my role as supervisor, I care a great deal about the quality of interpretation provided to the court. The judges are very mindful of the interpretation because they are used to high quality. I consider every interpreter an ambassador for the profession, and we are lucky to enjoy an excellent reputation because those we work for respect our skills. The team on this trial and in all trials has an important role to play. I am going to review what will be expected of you while this trial is pending so there is no misunderstanding about each one's responsibility.

Our priority here is the accuracy of the interpretation and consideration for your teammate. As team mates you have equal responsibility, even if your experience levels are different. Before the trial commences, you should agree on when to take turns with the microphone, keeping in mind that the person on the mike should be the one to pass it, not the other way around. Experience has shown that a flexible attitude toward switching is more effective than strictly timed half-hour intervals. If an opening statement lasts 40 minutes, the "on" interpreter may want to finish it before passing the mike. While interpreting, you may pass notes to each other on vocabulary questions, or assist each other with names, numbers and other details. The relief interpreter's role is to validate accuracy with the partner and to be available for attorney-client consultations, as well as for any emergency that may arise. Keep a record of case information in the event someone else comes in on the case who has not been here from the beginning. Do not absent yourself from the courtroom for more than a few minutes without warning because you have no way of knowing what may occur while you are out of the courtroom. Be friendly and available to one another without being overly judgmental. Share resources, knowledge and information and treat your team mate as your parachute: to be most trusted in times of emergency.

Your attitude is as important as your language ability. The interpreters are part of a much larger process, and should strive to remain in the background. I cannot stress enough the importance of punctuality: the interpreter may wait for others, but others should never wait for the interpreter. Both interpreters are expected to be in the courtroom at the appointed hour, unless previous arrangements have been made. Interpreters should not offer an opinion about trial strategy, witness credibility or someone else's translation; and if you are left alone in the presence of a defendant move a distance away so he will not be tempted to talk to you. Refer all questions to the attorney, even questions you know the answer to, such as "Where does the jury sit?" Courtroom protocol should be respected at all times, in body

language as well as appearance. Do not slump in the chair or betray facial reactions to anything happening in the courtroom.

Do not try to do anyone else's job but your own. If asked to do something you are not sure is within your responsibility, please consult with your colleague and with me. If there are schedule changes in the trial, please convey them promptly to the office. We will also get any incoming message to you. In communication I may have with the judge, I represent the interpreter's point of view and can advise the court of potential problems. If you have any questions or concerns, we can discuss those now."

A meeting of this sort would take about 15 minutes. It is likely that fewer problems will present themselves once the team is put on notice that their cooperation is not only devoutly to be wished but expected.

It's not hard to be a good solo act when no one is watching, but the best interpreters, and those most valued by their supervisors, are those who are considered desirable teammates by their colleagues. Like a successful duet, a good interpreting team makes beautiful sense together. And the enjoyment factor increases twofold.

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CORRECTING INTERPRETATION ERRORS

David Mintz

“Proteus, Fall 1993, Volume II No. 3”

The most often cited reason for having interpreters work in teams of two is the need for periodic relief. Equally compelling, in my view, is the argument that when testimony is presented to a jury through an interpreter, you need two interpreters: one to do it, and another to make sure the first one is doing it right.

If you accept the propositions that (1) humans make mistakes, and (2) that interpreters are human, then there is no question that interpreters make mistakes. Even an interpreter with a masterful command of all the vocabulary and every nuance of both languages and impeccable technique will eventually commit some random error and fail to realize it. The question is what is going to be done about it, when, how, and by whom. I refer here not to trivial, inconsequential errors, but rather to outright errors of substance or omissions that make the interpretation substantially different from the original message. Granted that the determination of what is substantial and what is inconsequential is largely subjective; we will come back to this question in due course.

Important as it is, this topic is rarely discussed formally. Our ethical codes tell us that when we make a mistake and realize it, we should own up to it and correct it immediately. But who is going to correct the mistakes that we make unwittingly? Sometimes the witnesses themselves have enough English to detect an error made going into English, and enough nerve and motivation to say something about it. Some other bilingual observer in the courtroom might notice the mistake, but spectators do not customarily address the court in the middle of a trial, nor do they have any standing to do so. One of the attorneys, the case agent (in federal criminal matters), or a defendant might perceive an error, but as interested parties it seems inappropriate for any of them to question the interpretation, no matter how good their good faith may be. Thus it is up to the other interpreter to say something.

The remaining subparts of the question, then, are when and how. When you see a colleague make an outright error on the witness stand, you have several options; (1) Do nothing at all. This is not particularly helpful. (2) Do nothing, but then go around gossiping about how so-and-so screwed up—behind so-and-so’s back. This is not a very professional approach to the problem either. (3) Wait until a break in the proceedings, approach the interpreter, and say, “The witness said x but you said y.” Then you have put the obligation on the interpreter to do something. This is preferable to the first two ways of dealing with the problem, but it is not ideal. The interpreter who made the error then has the option of either keeping his or her mouth shut about it, or making a solemn confession to the judge, outside the presence of the jury, and letting the judge decide how to remedy the situation. Certainly this is not incorrect, but it has

one drawback: the lawyers get into the act and make an issue out of it (that's their job). The situation can then become needlessly messy. This remedy is also belated to the extent that the testimony continued after the mistake.

The interpreter also has the option of unilaterally announcing the self-correction in open court at a later opportunity, but this might displease the judge and/or the attorneys who would have preferred to have a say in the matter of how to remedy the problem.

(4) Stand up right now and say something like "Excuse me. The testimony was..." Alternatively, stand up and say "Your Honor, could the interpreters please have a moment to confer with each other?" Then alert the other interpreter to what happened so that he or she can then say, "Interpreter's correction: the testimony was..."

In either case, the point is to rectify the problem immediately. Experience has convinced me that this is the ethically correct way to go. The longer you go on without doing anything, the more the process is distorted. If the interpreters take control of the situation by acting immediately and decisively, the damage done by the mistake is minimal, even negligible. It feels uncomfortable and strange to stand up and interrupt a trial, but that is no excuse not to do what needs to be done. The sooner you simply do it and get it over with, the sooner you can get on with the show—free of the nagging feeling that you ought to have done something.

Some may object to embarrassing a colleague. The counterargument is that a responsible colleague will be grateful for the correction, not resentful. If on the other hand the interpreter has a fragile ego, too bad. The accuracy of the interpretation comes first.

Another difficulty arises if the interpretation is so replete with howlers that you would have to interrupt every two minutes to keep the record straight. In that case, the problem is more basic than having to correct the occasional error: such interpreters have no business being up on the witness stand, and that is a different issue from the one that concerns us here.

To return to the question of deciding what constitutes a substantial error: is it the interpreter's place to make that judgment? Yes, because we have no other choice. Nobody else in the courtroom bears the responsibility for the accuracy of the interpretation. Yes, you use your judgment, and your instincts. When you are certain that you heard something wrong, and you get a feeling of unease, that is your ethical sense telling you to do something.

By way of examples, here are two stories about a recent drug conspiracy trial in which I worked for several weeks. There were a number of witnesses who testified in Spanish, so the interpreters had to be onstage for a cumulative total of perhaps 25 hours. Thus

the occasional error was virtually inevitable; I watched and heard an extremely capable colleague translate a subordinate clause that came at the end of a long statement: “porque fue [Fulano] el que había entregado el dinero.” She interpreted it as “because [Fulano] was the one who had collected the money.” The semantic discrepancy is both basic and obvious; something had to be done. I stood up and said, “Pardon me. ‘Because [Fulano] was the one who had delivered the money.’” My instantaneous judgment was that yes, this was a substantial error: it was important the jury hear this witness’ testimony about who had delivered the drug money to whom. We went on from there, and it was not a big deal.

Later in the same trial I watched a colleague interpret some testimony about how the witness had come to know one of the other people involved in the case: “yo lo conocía porque los colombianos jugábamos fútbol los domingos ahí en el parque, y fue ahí que lo conocí.” When this interpreter rendered fútbol as football, I let it go, although I was certain the witness meant soccer. At this point in the trial it was clear that the game the Colombians played in the park on Sundays was not an issue and not worth interrupting the proceeding.

In many cases the decision is not nearly so easy. Again, one has to do the only thing one can do: rely on one’s judgment and gut reaction. By working together in an attitude of mutual respect and support, correcting one another’s errors immediately rather than later or not at all, interpreters will do a better job than would otherwise be possible. In the process, they will earn the respect and gratitude of everyone in the courtroom who relies on their accuracy.

Useful phrases – Telephone Interpreting

Adapted from the “Manual for Interpreters Delivering Services by Telephone to Court Proceedings and Court Support Services” from the Court Interpreting Section of the New Jersey Administrative Office of the Courts.

Telephone interpreting can be significantly more challenging than on-site interpreting because the interpreter does not have the advantage of seeing who is speaking, watching body language or hand gestures, and sound quality is limited. Similarly, courtroom participants are not able to see the interpreter’s body language which might indicate interpreter fatigue, or difficulty hearing an inaudible speaker or multiple speakers simultaneously speaking. Therefore, telephone interpreters must be verbally assertive in identifying obstacles to clear interpretation.

As a general rule, interpreters are encouraged to follow the below principals when anything happens which interferes with the interpreter’s ability to accurately interpret everything being said:

1. **Get the judge’s attention.** First, the interpreter must say “Your Honor” to get the judge’s attention. Remember, the judge is in charge of the proceeding. Even if the problem is being caused by an attorney or a party, it’s the judge to whom you need to go to seek a resolution of the problem that has arisen.
2. **State the problem.** Next, as respectfully, succinctly, and clearly as possible, describe the problem; state exactly what is happening that is preventing you from doing the job you are sworn to do.
3. **When appropriate, offer a suggestion how the problem may be resolved.** When the problem persists, or it appears that the judge has not taken steps to solve the problem, repeat the statement of the problem (perhaps using different words) and then offer, as respectfully, succinctly, and clearly as possible, a solution for the problem.

Problem: The Interpreter Cannot Hear A Speaker

1. “Your Honor, the interpreter is unable to hear the speaker” or
“Your Honor, the Interpreter did not hear the last statement” or

If the problem continues, the interpreter may suggest a solution

2. “Your Honor, the interpreter is still unable to hear. Will it be possible to instruct the speaker to move closer to the microphone/to speak up?”



Problem: Two Or More Persons Speaking At The Same Time

1. "Your Honor, the parties are speaking at the same time and the interpreter is unable to hear and interpret."

If the problem continues, the interpreter may suggest a solution

2. "Your Honor, the parties are still talking over one another. Will it be possible to instruct the parties to speak one at a time?"



Problem: Interpreter Fatigue

1. "Your Honor, will it be possible in the next 5-10 minutes to have a break for the interpreter?"

If a break isn't given or the judge forgets to break

2. "Your Honor, in order to continue interpreting accurately and completely, the interpreter needs a five minute break. Will now be a good time?"



Problem: Static On The Telephone Line Or Connection Is Interrupted

1. "Your Honor, the interpreter was unable to hear because of static on the line."

If the problem continues the interpreter may suggest a solution

2. "Your Honor, the interpreter is still unable to hear because of static. Could we hang up and get a new connection?"



Problem: Judge Is Not Permitting Pauses For Interpreting

1. "Your Honor, the interpreter was unable to interpret because there was no pause (between the question and the answer) (between the speakers)."

If the problem continues the interpreter may suggest a solution

2. "Your Honor, the interpreter requests that the court instruct the participants to pause for interpretation before responding to one another."



Problem: Interpreter Needs To Identify And Correct An Interpreting Mistake

1. **Error in English:** Your Honor, the interpreter has become aware of an error in his/her interpretation. The interpreter said ____ when it should have been ____.
1. **Error in Foreign Language:** Your Honor, the interpreter has become aware of an error in his/her interpretation.



If the Judge doesn't provide an opportunity to make the correction

2. **Error in Foreign Language:** "Could the court repeat / direct the attorney to repeat the question/statement?" *Then, interpret the repeated question/statement and state on the record what was correct.*

Problem: Speaker Talks In Utterances That Are Too Long

1. "Your honor, the speaker is speaking too long for the interpreter to recall all the details." Or "Your honor, the interpreter is having difficulty recalling that much information."



If the problem continues the interpreter may suggest a solution

2. "Your Honor, could the court instruct the speaker to pause after each sentence or two?"

Problem: Speaker Talks In Utterances That Are Too Short

1. "Your Honor, the interpreter is having difficulty because the speaker is pausing too frequently."



If the problem continues the interpreter may suggest a solution

2. Your Honor, could the court instruct the speaker to pause only after complete sentences?"

Problem: Interpreter Does Not Speak The Same Language As The Party

1. "Your Honor, the party speaks (name of language) and this interpreter is unable to interpret for that language." Or "Your Honor, this interpreter interprets for (name of language) and the party appears to be speaking a different language that is unknown to this interpreter."



WHO'S WHO IN COURT

JUDGE: the public official presiding over the legal matters brought in court. The chief or PRESIDING JUDGE has legal authority or control in the court (e.g., Judge Thomas L. Edwards, presiding).

MAGISTRATE: Same as judge

ADMINISTRATIVE LAW JUDGE: a professional hearing officer who works for the government to preside over hearings and appeals involving governmental agencies. They are generally experienced in the particular subject matter of the agency involved or of several agencies. Also called HEARING OFFICER.

ADJUDICATOR: a person who settles disputes.

COURT CLERK: an official or employee who handles the business of a court, maintains files of each case, and issues routine documents. Most courtrooms have a clerk to keep records and assist the judge in the management of the court.

COURT REPORTER: a stenographer who records and transcribes a verbatim report of all court proceedings.

DEPUTY SHERIFF: An officer of the court whose duties include keeping order in the courtroom, handling errands for the clerk and judge, and guarding jurors in deliberation.

BAILIFF: a court official who is usually a DEPUTY SHERIFF.

COUNSEL: legal advisor; an attorney

DISTRICT ATTORNEY (DA): prosecuting officer of a judicial district. DEPUTY DISTRICT ATTORNEYS work for the DA, investigating alleged crimes in cooperation with law enforcement.

PROSECUTING ATTORNEY, PROSECUTOR: generic term for the government's attorney in a criminal case, including District Attorney, States Attorney, U.S. Attorney, Attorney General, Solicitor General, or special prosecutor.

DEFENSE ATTORNEY AT LAW: the lawyer representing the defendant.

DEFENDANT: the party against whom an action is brought (by the plaintiff). Also called the ACCUSED.

PLAINTIFF: person who brings a complaint to court (against the defendant).

LITIGANTS, PARTIES TO A SUIT: any party involved in the lawsuit (plaintiffs, defendants, petitioners, etc. – not witnesses or attorneys).

WITNESS: one who testifies or gives evidence before the court.

- **CHARACTER WITNESS** is someone testifying to the good reputation of another.
- **EYEWITNESS** is a witness who saw or heard something and testifies about it.
- **MATERIAL WITNESS** is one whose testimony is required, and whose presence may be forced by subpoena or custody.

JURY: group of people sworn to judge and give a verdict on a case presented in court.

JURORS: people who serve on a jury.

LEGAL DOCUMENTS

AFFIDAVIT: a written declaration made under oath.

BILL: formal statement of complaint in a case.

CERTIFICATE: document attesting to the truth of something (e.g., birth certificate, certificate of completion, etc.).

CHARTER: a grant of rights, powers and privileges from an authority or state agency.

DECREE: a judgment of the court.

DEED: a signed, sealed and delivered document acting as a contract showing transfer of property.

INDICTMENT: written statement charging a party with the commission of a crime.

INJUNCTION: court order prohibiting someone from doing a specific action.

MOTION: request to the court for an order or ruling.

ORDER: a command by the court; every mandate or direction of a judge that is not a legal opinion or judgment.

- **PROTECTION ORDER** is intended to protect an individual from harm by restricting access to that individual.
- **RESTRAINING ORDER** is a temporary order of a court to keep conditions as they are (like not taking a child out of the county or not selling marital property) until there can be a hearing in which both parties are present.

ORDINANCE: a regulation, especially one enacted by city government.

RECORD: official account of court proceedings preserved as evidence.

STATUTE: law enacted by a legislature; codes.

SUBPOENA: summons requiring the appearance in court to testify; failure to appear as summoned can be punished as contempt of court.

WARRANT: judicial authorization for an officer to search, arrest, or seize items (**ARREST WARRANT, SEARCH WARRANT**).

WILL: legal declaration of a person's wishes regarding the disposition of his/her property after death.

WRIT: written order issued by the court. A **WRIT OF EXECUTION** is a court order to a sheriff to enforce a judgment by levying on real or personal property of a judgment debtor to obtain funds to satisfy the judgment amount (pay the winning plaintiff).

LEGAL TERMS EXPLAINED

A crime is an illegal act that is punishable in a court of law. An indictment – a written statement charging a person or persons with an offense – is issued by a grand jury. A grand jury is a jury that makes inquiries into criminal cases and issues the indictments when the evidence indicates that a crime has been committed. This evidence is called the corpus delicti (Latin for the substantial fact that a crime has been committed, and in popular crime jargon, the body of the murder victim).

An information is a written accusation issued by a prosecuting attorney charging the person with committing a criminal offense. When a person has been charged with the commission of a crime, a warrant is issued requiring the arrest of that person. After the arrest, that person is taken into custody and held to answer the charge made against him/her.

At the arraignment, the prisoner is brought before the court to hear the reading of the indictment or the information, and to enter a plea of guilty or not guilty. A preliminary examination is the hearing conducted by a judge to determine if there is enough evidence to hold for trial the person accused of a crime.

A crime is classified as a felony or a misdemeanor. A felony is a crime of a serious nature that is punishable by imprisonment or death. A misdemeanor is any crime that is not a felony, and is usually punishable by a fine or a short jail sentence.

Homicide is the killing of a human being by another, whether intentional or unintentional. Homicide may be justifiable, excusable, or felonious. Justifiable homicide is an intentional killing without any evil design, such as a situation where a police officer kills someone to prevent the commission of a felony that could not otherwise be avoided. An excusable homicide is a death that results from an act of self-defense or an unintentional death resulting from someone doing a legal act. Felonious homicide is the wrongful killing of a human being without justification or excuse of the law. Murder and manslaughter are the two types of felonious homicide.

Homicide is a necessary ingredient of the crime of murder and manslaughter. Murder is the intentional killing of another human being with malice aforethought, which is the deliberate planning and intention to kill or seriously injure another person. Manslaughter is the killing of another human being that is unlawful but done without malice aforethought.

Assault and battery are two terms that are often combined. Assault is a threat to inflict bodily harm upon another, whereas battery is putting the threat into effect.

Forcible and unlawful entry into a building with the intent to commit a crime therein is to break and enter, commonly called B & E. If a burglar gains entry into a house by fraud, threats, or trickery, the entry is referred to as constructive breaking.

Larceny and robbery are both felonies that involve the taking of another's personal property unlawfully. An essential element of larceny is the intent to steal the property

of another and permanently deprive the owner of said property. Robbery is the direct taking of property (including money) from a person (victim) through force, threat or intimidation.

Forgery is the alteration of anything in writing with the intent to defraud. For instance, one might forge a signature on a check. The offering of a forged check for payment is to utter and publish.

A writ of habeas corpus requires the law enforcement officials holding a person to bring that person to court. Habeas corpus is a protection against illegal confinement, such as holding a person without charges or when due process obviously has been denied. If a person charged with a crime is arrested in a state other than the one in which the crime was committed, the person may be returned to the state in which the crime occurred by the process of extradition.

A defendant may be released on bail prior to a trial, which means that security (usually money) is placed with the court in order to release a person being held in jail until the time of the trial.

The parties to a crime may be a principal, an accomplice, and an accessory. The one who actually commits a crime or who aids and abets (that is, assists in the criminal act by giving encouragement or support to its commission) is a principal. An accomplice is one who knowingly assists the principal in the commission of a crime but is not present when the crime is actually committed. An accessory *before the fact* knows about the crime before it is committed and may have assisted in the planning of the crime. An accessory *after the fact* does not have any knowledge of the crime until after it is committed, but helps conceal the known fact of the crime.

Reasonable doubt is uncertainty that is logical, credible, or plausible – it is not an imaginary or a fictitious doubt. A conviction is the outcome of a criminal trial whereby a person is found guilty of the charges that were made. Proof – establishing fact by evidence – beyond a reasonable doubt is required for a conviction in a criminal case. When one is convicted of a criminal offense, the sentence may be imprisonment in a jail or penitentiary. Incarcerate also means to put in prison.

Parole, pardon or reprieve all relate to the prisoner serving a lesser sentence than that given at the end of the trial. A parole is a conditional release of a person from prison before the end of the sentence. A pardon releases a person who has committed a crime from the punishment required by law. A reprieve is a delay or postponement of punishment.

GLOSSARY OF TERMS

A

Acquit

To find a defendant not guilty in a criminal trial.

Action

Proceeding taken in a court of law. Synonymous with case, suit, lawsuit.

adjudication

A judgment or decree.

Administrator

1. One who administers the estate of a person who dies without leaving a will.
2. A court official.

advance sheets

Initial, temporary publications of decisions of Washington's appellate courts. Advanced sheets are published weekly.

adversary system

Basic U.S. trial system in which each of the opposing parties has an opportunity to state his or her viewpoint before the court. Plaintiff argues for defendant's guilt (criminal) or liability (civil). Defense argues for defendant's innocence (criminal) or against liability (civil).

affidavit

A written or printed declaration or statement under oath. See certificate under penalty of perjury of perjury.

affidavit of prejudice

A written motion by a party to a judge, requesting that the judge not hear the case.

affirm

The assertion of an appellate court that the judgment of the lower court is correct and should stand.

allegation

An assertion, declaration or statement of a party to an action made in a pleading, stating what the party expects to prove.

alleged

(allegation) Stated; recited; claimed; asserted; charged.

answer

A formal response to a claim, admitting or denying the allegations in the claim.

appeal

Review of a case by a higher court.

appeal on the record

Refers to a review by a superior court of a district or municipal court decision, through an examination of the lower court's transcript, tape recording or other official documentation of the proceeding.

appearance

1. The formal proceeding by which a defendant submits to the jurisdiction of the court. 2. A written notification to the plaintiff by an attorney stating that he or she is representing the defendant.

appellant

Party appealing a decision or judgment to a higher court.

appellate court

A court having jurisdiction over appeal and review.

appellee

The party against whom an appeal is taken. See respondent.

arbitration

The hearing and settlement of a dispute between opposing parties by a third party whose decision the parties have agreed to accept.

arraignment

In criminal cases, a court hearing where a defendant is advised of the charges and asked to plead guilty or not guilty.

at issue

The time in a lawsuit when the complaining party has stated a claim, the other side has responded with a denial and the matter is ready to be tried.

attachment

Taking a person's property to satisfy a court-ordered debt.

attorney at law

A lawyer; one who is licensed to act as a representative for another in a legal matter or proceeding.

attorney of record

An attorney, named in the records of a case, who is responsible for handling the case on behalf of the party he or she represents.

B**bail**

An amount of money determined by the judge and posted with the court clerk as security.

bail bond

An agreement by a third party to pay a certain sum of money if the defendant fails to appear in court.

bailiff

A court employee who, among other things, maintains order in the courtroom and is responsible for custody of the jury.

bankruptcy

A legal proceeding where a person or business is relieved of paying certain debts.

bench warrant

Process issued by the court itself or "from the bench" for the attachment or arrest of a person.

best evidence

Primary evidence; the best evidence which is available; any evidence falling short of this standard is secondary; i.e., an original letter is best evidence compared to a copy.

brief

A legal document, prepared by an attorney, which presents the law and facts supporting his or her client's case.

burden of proof

Measure of proof required to prove a fact. Obligation of a party to prove facts at issue in the trial of a case.

C**calendar**

List of cases arranged for hearing in court.

caption

The caption of a pleading, or other papers connected with a case in court, is the heading or introductory clause which shows the names of the parties, name of the court, number of the case, etc.

case

Any proceeding, action, cause, lawsuit or controversy initiated through the court system by filing a complaint, petition, indictment or information.

caseload

The number of cases a judge handles in a specific time period.

cause of action

A legal claim.

certificate under penalty of perjury

A written statement, certified by the maker as being under penalty of perjury. In many circumstances, it may be used in lieu of an affidavit. See affidavit.

certiorari

Procedure for removing a case from a lower court or administrative agency to a higher court for review.

challenge for cause

A request by a party that the court excuse a specific juror on the basis that the juror is biased.

chambers

A judge's private office.

change of venue

The removal of a case begun in one court, to another. See venue.

charge

Formal accusation of having committed a criminal offense.

chief judge

Presiding or administrative judge in a court.

chief justice

Presiding justice of the Supreme Court.

circumstantial evidence

All evidence of indirect nature, the process of decision by which judge or jury may reason from circumstances known or proved to establish by inference the principal fact.

citation

1. Summons to appear in court. 2. Reference to authorities in support of a legal argument.

civil law

All law that is not criminal law. Usually pertains to the settlement of disputes between individuals, organizations or groups and having to do with the establishment, recovery or redress of private and civil rights.

claim

The assertion of a right to money or property.

clerk of court

An officer of a court whose principal duty is to maintain court records and preserve evidence presented during a trial.

closing argument

The closing statement, by counsel, to the trier of facts after all parties have concluded their presentation of evidence.

code

A collection, compendium or revision of laws systematically arranged into chapters, table of contents and index and promulgated by legislative authority.

commit

To lawfully send a person to prison, a reformatory or an asylum.

common law

The system of jurisprudence, which is based on judicial precedent, rather than legislatively enacted statutes of law. Also called "case law."

community service

A sentencing alternative usually used in lieu of a monetary penalty or fine.

commutation

Change of punishment from a greater to a lesser degree, such as from death to life imprisonment or ending a sentence that has been partially served.

comparative negligence

Negligence of a plaintiff in a civil suit that decreases the recovery of damages by his/her percentage of negligence compared to a defendant's negligence.

competency

In the law of evidence, the presence of those characteristics that render a witness legally fit and qualified to give testimony.

complainant

One who makes a complaint. See plaintiff.

complaint

1. (criminal) Formal written charge that a person has committed a criminal offense.
2. (civil) Initial document entered by the plaintiff that states the claims against the defendant.

condemnation

The legal process by which real estate of a private owner is taken for public use without consent but upon the award and payment of just compensation.

contempt of court

Any act that is meant to embarrass, hinder or obstruct a court in the administration of justice. Direct contempt is committed in the presence of the court; indirect contempt is when a lawful order is not carried out or is refused.

contested hearing

A hearing held in courts of limited jurisdiction for the purpose of allowing a person to dispute the determination that an infraction has been committed. The person may subpoena and examine witnesses and present evidence. Such hearings are held without a jury.

continuance

Adjournment of the proceedings in a case from one day to another.

convict

1. To find a person guilty of a charge (verb). 2. One who has been found guilty of a crime or misdemeanor; usually refers to convicted felons or prisoners in penitentiaries (noun).

corpus delicti

The body or material substance upon which crime has been committed; e.g., the corpse of a murdered person, the charred remains of a burned house.

corroborating evidence

Evidence supplementary to that already given and tending to strengthen or confirm it.

costs

An allowance for expenses in prosecuting or defending a suit. Ordinarily does not include attorney's fees.

counterclaim

Claim presented by a defendant in opposition to, or deduction from, the claim of the plaintiff.

county clerk

Elected official who is clerk of the superior court. See clerk of court.

court

1. Place where justice is administered. 2. Judge or judges sitting in the court administering justice.

court administrator

Manager of administrative, nonjudicial affairs of the court.

court commissioner

A judicial officer at both trial and appellate court levels who performs many of the same duties as judges and justices.

court of appeals

Intermediate appellate court to which most appeals are taken from superior court.

court reporter

Person who records and transcribes the verbatim testimony and all other oral statements made during court sessions.

court, district

Court of limited jurisdiction where civil cases up to \$50,000 and small claims cases up to \$2,500 can be heard. Criminal and gross misdemeanors and traffic citations are also heard in district court.

court, juvenile

Division of superior court that deals with the conduct and circumstances of children under the age of 18.

court, municipal

Court whose jurisdiction is confined to a city or local community. In Washington, jurisdiction is generally limited to criminal and traffic offenses arising from violation of local ordinances.

court, small claims

A division of state district court where parties can bring claims up to \$4,000. Procedures are simplified and lawyers are generally not allowed.

court, superior

State trial court of general jurisdiction. See general jurisdiction.

court, supreme

"Court of last resort." Highest court in the state and final appellate court.

courts of limited jurisdiction

Includes district and municipal courts.

crime

Conduct declared unlawful by a legislative body and for which there is a punishment of a jail or prison term, a fine, or both.

criminal insanity

Lack of mental capacity to do or abstain from doing a particular act; inability to distinguish right from wrong.

criminal law

Body of law pertaining to crimes against the state or conduct detrimental to society as a whole. Violation of criminal statutes are punishable by law.

cross-examination

The questioning of a witness by the party opposed to the one who produced the witness.

custody

Detaining of a person by lawful process or authority to assure that individual's appearance to any hearing, the jailing or imprisonment of a person convicted of a crime.

D**damages**

Compensation recovered in the courts by a person who has suffered loss, detriment or injury to his or her person, property or rights, through the unlawful act or negligence of another.

de novo

"Anew." A trial de novo is a completely new trial held as if the original trial in the court of limited jurisdiction had never taken place.

declaratory judgment

A judgment that declares the rights of the parties on a question of law.

decree

Decision or order of the court. A final decree completes the suit; an interlocutory decree is a provisional or preliminary decree that is not final.

default

A failure of a party to respond in a timely manner to a pleading; a failure to appear for trial.

defendant

1. (criminal) Person charged with a crime.
2. (civil) Person against whom a civil action is brought.

defense attorney

The attorney who represents the defendant.

deferred sentence

See sentence, deferred.

deposition

Sworn testimony taken and recorded in an authorized place outside of the courtroom, according to the rules of the court.

determinate sentence

See sentence, determinate.

direct examination

The questioning of a witness by the party who produced the witness.

discovery

A pretrial proceeding where a party to an action may be informed about (or "discover") the facts known by other parties or witnesses.

dismissal with prejudice

Dismissal of a case by a judge that bars the losing party from raising the issue again in another lawsuit.

dismissal without prejudice

The losing party is permitted to sue again with the same cause of action.

disposition

1. Determination of a charge; termination of any legal action.
2. A sentence of a juvenile offender.

dissent

The disagreement of one or more judges of a court with the decision of the majority.

dissolution

Legal ending of a marriage. Formerly called divorce.

District and Municipal Court Judges' Association

Association of judges of courts of limited jurisdiction established by statute to study and make recommendations concerning the operation of the courts served by its members.

district court

See court, district.

divorce

See dissolution.

docket

Book containing entries of all proceedings in a court.

domicile

Place considered to be a person's permanent home.

double jeopardy

Prohibition against more than one prosecution for the same crime.

due process

Constitutional guarantee that an accused person receive a fair and impartial trial.

DUI

Driving under the influence of intoxicating liquor or drugs.

E

eminent domain

The power to take private property for public use by condemnation. See condemnation.

en banc

"On the bench." All judges of a court sitting together to hear a case.

enjoin

To require a person to perform, or abstain or desist from some act.

entrapment

The act of officers or agents of a government in inducing a person to commit a crime not contemplated by the person, for the purpose of instituting a criminal prosecution against him or her.

et al

"And others."

evidence

Any form of proof legally presented at a trial through witnesses, records, documents, etc. See expert evidence.

ex parte

1. A proceeding brought for the benefit of one party only, without notice to or challenge by an adverse party. 2. The department of the court that hears ex parte proceedings.

exhibit

Paper, document or other object received by the court as evidence during a trial or hearing.

expert evidence

Testimony given by those qualified to speak with authority regarding scientific, technical or professional matters.

extradition

The surrender by one state to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other.

F**fact-finding hearing**

A proceeding where facts relevant to deciding a controversy are determined.

felony

A crime of graver nature than a gross misdemeanor.

fine

A sum of money imposed upon a convicted person as punishment for a criminal offense or infraction.

fraud

An intentional perversion of truth; deceitful practice or device resorted to with intent to deprive another of property or other right or in some manner to do injury to that person.

G**garnishment**

Proceeding whereby property, money or credits of a debtor in the possession of another are applied to the debts of the debtor, as in the garnishment of a person's wages.

general jurisdiction

Refers to courts that have no limit on the types of criminal and civil cases they may hear. Superior courts are courts of general jurisdiction.

grand jury

A body of persons sworn to inquire into crime and, if appropriate, bring accusations (indictments) against the suspected criminals. Not generally used in Washington.

gross misdemeanor

See misdemeanor.

guardian ad litem

A person appointed by a court to manage the interests of a minor or incompetent person whose property is involved in litigation.

H**habeas corpus**

"You have the body." A writ of habeas corpus requires a person be brought before a judge. It is usually used to direct an official to produce a prisoner so that the court may determine if such person has been denied his or her liberty without due process.

hearing

An in-court proceeding before a judge, generally open to the public.

hearsay

Evidence based on what the witness has heard someone else say, rather than what the witness has personally experienced or observed.

hung jury

A jury whose members cannot agree on a verdict.

hypothetical question

A combination of facts and circumstances, assumed or proved, stated in such a form as to constitute a coherent statement of facts upon which the opinion of an expert can be asked by way of evidence in a trial.

I**immunity**

Freedom from duty or penalty.

impeachment of a witness

An attack on the credibility of a witness by the testimony of other witnesses.

inadmissible

That which, under the established rules of evidence, cannot be admitted or received.

indictment

Written accusation of a grand jury, charging that a person or business has committed a crime.

indigent

Needy; poor; impoverished. A defendant who can demonstrate his or her indigence to the court may be assigned a court-appointed attorney at public expense.

information

An accusation of some criminal offense, in the nature of an indictment, but which is presented by a competent public officer instead of a grand jury.

infraction

An act which is prohibited by law but which is not legally defined as a crime. In Washington State, many traffic violations are classified as infractions.

injunction

Writ or order by a court prohibiting a specific action from being carried out by a person or group.

instruction

Direction given by a judge to the jury regarding the applicable law in a given case.

interrogatories

Written questions developed by one party's attorney for the opposing party. Interrogatories must be answered under oath within a specific period of time.

intervention

Proceeding in a suit where a third person is allowed, with the court's permission, to join the suit as a party.

J**judge**

An elected or appointed public official with authority to hear and decide cases in a court of law.

judge, pro tem

Temporary judge.

judgment

Final determination by a court of the rights and claims of the parties in an action.

jurisdiction

Authority of a court to exercise judicial power.

jurisprudence

The science of law.

juror

Member of a jury.

jury

Specific number of people (usually 6 or 12), selected as prescribed by law to render a decision (verdict) in a trial. See trier of facts.

juvenile court

See court, juvenile.

L**law**

The combination of those rules and principles of conduct promulgated by legislative authority, derived from court decisions and established by local custom.

law clerks

Persons trained in the law who assist judges in researching legal opinions.

leading question

One that suggests to a witness the answer desired. Generally prohibited on direct examination.

limited jurisdiction

Refers to courts that are limited in the types of criminal and civil cases they may hear. District, municipal and traffic violation bureaus are courts of limited jurisdiction.

litigant

One who is engaged in a lawsuit.

litigation

Contest in court; a lawsuit.

M**magistrate**

Court official with limited authority.

mandate

Command from a court directing the enforcement of a judgment, sentence or decree.

mandatory arbitration

The hearing and settlement of a dispute, involving a money judgment of \$50,000 or less, by a third party whose decision is binding on the parties.

misdemeanor

Criminal offenses less than felonies; generally those punishable by fine or imprisonment of less than 90 days in a local facility. A gross misdemeanor is a criminal offense for which an adult could be sent to jail for up to one year, pay a fine up to \$5,000 or both.

mistrial

Erroneous or invalid trial. Usually declared because of prejudicial error in the proceedings or when there was a hung jury.

mitigating circumstances

Those which do not constitute a justification or excuse for an offense but which may be considered as reasons for reducing the degree of blame.

mitigation hearing

A hearing held in courts of limited jurisdiction for the purpose of allowing a person to explain the circumstances surrounding his or her commission of an infraction. The determination that an infraction has been committed may not be contested.

modify

In the appellate process, to change the terms of, rather than revise, a judgment of a trial court, administrative agency or intermediate appellate court.

monetary penalty

A penalty levied against a person convicted of a traffic infraction.

moot

Previously decided or settled, but lacking legal authority. A moot point is one not settled by judicial decisions.

motion

Oral or written request made by a party to an action before, during or after a trial upon which a court issues a ruling or order.

municipal courts

See courts, municipal.

N**negligence**

The absence of ordinary care.

O**oath**

Written or oral pledge by a person to keep a promise or speak the truth.

objection

Statement by an attorney taking exception to testimony or the attempted admission of evidence and opposing its consideration as evidence.

of counsel

Phrase used to identify attorneys that are employed by a party to assist in the preparation and management of a case but who are not the principal attorneys of record in the case.

offender

1. A person who has committed a felony, as established by state law, and is 18 years of age or older. 2. A person who is less than 18 but whose felony case has been transferred by the juvenile court to a criminal court.

omnibus hearing

A pretrial hearing normally scheduled at the same time the trial date is established. Purpose of the hearing is to ensure each party receives (or "discovers") vital information concerning the case held by the other. In addition, the judge may rule on the scope of discovery or on the admissibility of challenged evidence.

opening statement

The initial statement made by attorneys for each side, outlining the facts each intends to establish during the trial.

opinion

Statement of decision by a judge or court regarding a case tried before it. Published opinions are printed because they contain new legal interpretations. Unpublished opinions, based on legal precedent, are not printed.

opinion, per curiam

Phrase used to distinguish an opinion of the whole court from an opinion written by only one judge.

overrule

1. Court's denial of any motion or point raised to the court. 2. To overturn or void a decision made in a prior case.

P**parties**

Persons, corporations, or associations who have commenced a lawsuit or who are defendants.

penalty assessment

An assessment or fee added to a monetary penalty or fine. Such fees are earmarked for the support of specific state programs such as traffic safety, criminal justice training, etc.

peremptory challenge

Procedure, which parties in an action, may use to reject prospective jurors without giving a reason. Each side is allowed a limited number of such challenges.

perjury

Making intentionally false statements under oath. Perjury is a criminal offense.

personal recognizance

In criminal proceedings, the pretrial release of a defendant without bail upon the defendant's promise to return to court.

petition

Written application to a court requesting a remedy available under law.

petition for review

A document filed in the state Supreme Court asking for a review of a decision made by the Court of Appeals.

petitioner

See plaintiff.

plaintiff

The party who begins an action; the party who complains or sues in an action and is named as such in the court's records. Also called a petitioner.

plea

A criminal defendant's official statement of "guilty" or "not guilty" to the charge.

plea bargaining

In a criminal case, the process in which the accused and the prosecutor negotiate a mutually satisfactory disposition of the case. Such bargains are not binding on the court.

pleadings

Formal, written allegations by the parties of their respective claims.

polling the jury

A practice whereby the jurors are asked individually whether they agreed, and still agree, with the verdict.

power of attorney

Document authorizing another to act as one's agent or attorney in fact (Not an attorney at law).

precedent

Previously decided case that is recognized as an authority for determining future cases.

preponderance of evidence

The general standard of proof in civil cases. The weight of evidence presented by one side is more convincing to the trier of facts than the evidence presented by the opposing side.

presentence report

A report to the sentencing judge containing background information about the crime and the defendant to assist the judge in making his or her sentencing decision.

presiding judge

Chief or administrative judge of a court. See chief judge.

pro tem

"Temporary." See judge, pro tem.

probable cause

Reasonable cause; having more evidence for than against; a reasonable belief that a crime has or is being committed; the basis for all lawful searches, seizures, and arrests.

probate

The legal process of establishing the validity of a will and settling an estate.

probation

Set of conditions and regulations under which a person found guilty of a criminal offense is allowed to remain in the community, usually under the supervision of a probation officer.

proceeding

Any hearing or court appearance related to the adjudication of a case.

prosecution

1. Act of pursuing a lawsuit or criminal trial. 2. The State of Washington, the party that initiates a criminal case.

prosecutor

The public officer in each county who is a lawyer and who represents the interests of the state in criminal trials and the county in all legal matters involving the county. In criminal cases, the prosecutor has the responsibility of deciding who and when to prosecute. Also known as prosecuting attorney.

R**reasonable doubt**

If, in the minds of the jury, a doubt exists which may have arisen from the evidence, or lack of evidence, a doubt that would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence, or lack of evidence.

rebuttal

The introduction of contradicting or opposing evidence showing what a witness said is not true; the stage of a trial at which such evidence may be introduced.

record

1. To preserve in writing, print or by film, tape, etc. 2. History of a case. 3. The word-for-word (verbatim) written or tape-recorded account of all proceedings of a trial. See transcript.

record on appeal

The portion of the record of a lower court necessary to allow a higher court to review the case.

redirect examination

Follows cross-examination and is carried out by the party who first examined the witness.

remand

To send back. A disposition by an appellate court that results in sending the case back to the original court from which it came for further proceedings.

reply

Pleading by the plaintiff in response to the defendant's written answer.

respondent

1. Party against whom an appeal is brought in an appellate court; the prevailing party in the trial court case. 2. A juvenile offender.

restitution

Act of giving the equivalent for any loss, damage or injury.

rests the case

When a party's presentation of evidence is concluded.

reversal

Setting aside, annulling, vacating, or changing to the contrary, the decision of a lower court or other body.

S**search and seizure, unreasonable**

In general, an examination without authority of law, of one's premises or person for the purpose of discovering stolen or illegal property or some other evidence of guilt to be used in prosecuting a crime.

search warrant

A written order, issued by a judge or magistrate in the name of the state, directing an officer to search a specified house or other place for stolen property, drugs, or contraband. Usually required as a condition for a legal search and seizure.

sentence

Judgment formally pronounced by a judge upon a defendant following conviction in a criminal prosecution.

sentence, concurrent

Two or more sentences that run at the same time.

sentence, consecutive

Two or more sentences that run one after another.

sentence, deferred

An alternative to a prison sentence consisting of probation, jail, or other appropriate condition.

sentence, determinate

A sentence that states exactly the number of actual years, months or days of total confinement, partial confinement or community supervision or the number of actual hours or days of community service work or dollars or terms of a fine or restitution. The fact an offender can, through "earned early release", reduce the actual period of confinement, does not affect the classification of the sentence as a determinate sentence.

sentence, suspended

Execution of the sentence has been withheld by the court based on certain terms and conditions.

separation (jury)

Recessing the jury for meals.

service

Delivery of a legal document to the opposite party.

set aside

Annul or void as in "setting aside" a judgment.

settlement

1. Conclusion of a legal matter. 2. Compromise agreement by opposing parties in a civil suit before judgment is made, eliminating the need for the judge to resolve the controversy.

settlement conference

A meeting between parties of a lawsuit, their counsel and a judge to attempt a resolution of the dispute

small claims

See court, small claims.

speedy trial

Right of a defendant to be tried promptly.

statute

A law created by the Legislature.

statute of limitations

Law that specifies the time within which parties must take judicial action to enforce their rights.

stay

Halting of a judicial proceeding by order of the court.

stipulation

Agreement by the attorneys and parties on opposite sides of a case regarding any matter in the trial proceedings.

subpoena

Document issued by the authority of the court to compel a witness to appear and give testimony or produce documentary evidence in a proceeding. Failure to appear or produce is punishable by contempt of court.

subpoena duces tecum

"Bring the document with you." A process by which the court commands a witness to produce specific documents or records in a trial.

suit

Any court proceeding in which an individual seeks a decision. See case.

summons

Document or writ directing the sheriff or other officer to notify a person that an action has been commenced against him or her in court and that he or she is required to appear, on a certain day, and answer the complaint in such action.

Superior Court Judges' Association

Association of judges of Washington's courts of general jurisdiction established by statute to study and make recommendations concerning the administration of justice in the courts served by its members.

suspended sentence

See sentence, suspended.

T**testimony**

Any statement made by a witness under oath in a legal proceeding.

tort

An injury or wrong committed, with or without force, to the person or property of another, which gives rise to a claim for damages.

transcript

The official record of proceedings in a trial or hearing, which is kept by the court reporter.

trial

The presentation of evidence in court to a trier of fact who applies the applicable law to those facts and then decides the case.

trial de novo

See de novo.

trier of facts

The jury or, in a non-jury trial, the judge.

V**venue**

The specific county, city or geographical area in which a court has jurisdiction. See change of venue.

verdict

Formal decision made by a judge or jury (trier of facts).

voir dire

(pronounced "vwar-deer") - "To speak the truth." The process of preliminary examination of prospective jurors, by the court or attorneys, regarding their qualifications.

W**Washington Appellate Reports**

Bound volumes that contain printed decisions of the state's Court of Appeals.

Washington Reports

Bound volumes that contain printed decisions of the Washington State Supreme Court.

Washington State Bar Association

A statewide association of attorneys organized under rules of the Washington State Supreme Court to administer bar examinations, conduct a mandatory legal education program for attorneys and perform disciplinary functions in those cases where it appears an attorney may have violated rules of the Attorney's Code of Professional Conduct. More than 20,500 active members belong to the association (1997).

willful act

An intentional act carried out without justifiable cause.

witness

Person who testifies under oath before a court, regarding what he or she has seen, heard or otherwise observed.

Writ

A special, written court order directing a person to perform, or refrain from performing, a specific act.

Source: www.courts.wa.gov/newsinfo/resources/index.cfm?fa=newsinfo_jury.termguide&altMenu=Term

PROFESSIONAL ORGANIZATIONS

There are numerous benefits to belonging to a professional interpreter/translator organization(s). Such organizations assist in promoting the recognition and advancement of the interpretation/translation profession, such as high standards/guidelines and the interests of professional interpreters and translators. These organizations provide information that will assist newcomers to the profession and enhance the abilities of established practitioners, like providing workshops for interpreters and translators. They assist members in marketing their services. Additionally, they provide a forum in which interpreters and translators can network, discussing mutual needs and keep abreast of developments within the profession and business objectives. Finally, they inform the public, courts, clients and persons in allied fields about interpretation and translation as well as raise awareness about the value of the profession.

ATA — American Translators Association is a professional association founded to advance the translation and interpreting professions and foster the professional development of individual translators and interpreters.

American Translators Association

225 Reinekers Lane, Suite 590

Alexandria, Virginia 22314

(703) 683-6100

FAX: (703) 683-6122

ata@atanet.org / www.atanet.org

NAJIT — National Association of Judiciary Interpreters and Translators is a professional organization whose mission is to be a leader in promoting quality interpretation and translation services in the judicial system. Members are mindful of the importance that services may have in assuring due process and adequate legal representation. Members are bound by a code of ethics and a set of professional responsibilities promulgated by the Association. The contact information for NAJIT is:

National Association of Judiciary Interpreters and Translators

1707 L Street NW, Suite 570

Washington, DC 20036

(202) 293-0342

www.najit.org

NOTIS — Northwest Translators & Interpreters Society was established in April 1988 as a forum for professional translators and interpreters in the Pacific Northwest. NOTIS is a chapter of the American Translator Association. The contact information for NOTIS is:

Northwest Translators & Interpreters Society
1037 NE 65th St #107
Seattle, Washington 98115
(206) 701-9183
www.NOTISnet.org

WITS — Washington State Court Interpreters & Translators Society is a non-profit, professional organization officially established in September 1988. WITS seeks to further the goals of the interpreting and translating profession, enhance the professional standing of its members, and inform the public about the interpreting profession. The contact information for WITS is:

Washington State Court Interpreters & Translators Society
PO Box 1012
Seattle, Washington 98111-1012
(206) 382-5690
www.WITSnet.org

Interpretation and Translation Resources for the Criminal Justice System

By [Ken Strutin](#), Published on March 15, 2006

[Printer-Friendly Ver.](#)

Criminal Justice Resources

Ken Strutin (JD, MLS) is an experienced law librarian, criminal defense attorney, and well-known writer and speaker. He is the author of [The Insider's Guide: Criminal Justice Resources on the Internet](#), and has lectured extensively about the benefits of using the Internet for legal research at national and local CLE training programs. Mr. Strutin also wrote [ALI-ABA's Practice Checklist Manual on Representing Criminal Defendants](#), and co-authored the award winning [Legal Research Methodology](#) computer tutorial, published by the [Center for Computer-Assisted Legal Instruction \(CALI\)](#). He has contributed chapters to several books and written many articles concerning knowledge management, legal research and criminal law. Mr. Strutin has taught courses in [Advanced Legal Research](#) and [Law Office Management](#). He is also listed in [Who's Who in American Law](#). Currently, Mr. Strutin is the Director of Legal Information Services at the [New York State Defenders Association](#) and writes a column for the [New York Law Journal](#).

This bibliography contains resources concerning the interpretation of criminal and related proceedings for non-English speakers or people with limited English proficiency (LEP). It begins with a review of translated legal publications, and the covers a broad range of web sources on court interpretation, best practices, and related issues.

Foreign Language Publications & Websites	Federal and State Court Interpreter Programs	Reference Sources
Directories and Services	Court Interpreter Associations	
Deaf and Hard of Hearing Resources	Guides for Working With Interpreters	
Ethics and Standards	Courses and Programs	

Foreign Language Publications, Websites, and Referrals

An attorney or judge plays a role in informing and enlightening the accused, witnesses and jurors about the nature of the process they are participating in. Some courts and government agencies have already embarked on ambitious publishing programs to produce materials for non-English speakers. These publications range from flash cards, identifying a communicant's native language, to multilingual glossaries, court forms, and handbooks.

Flash Cards

- [Language Identification Flash Cards \("I Speak"\)](#)
The Census Bureau developed flash cards to assist in identifying **38 languages**.
- [Pictures Speak Louder Than Words](#) (International Institute, St. Louis , MO)
This is a flash card book designed to help police communicate with limited English speakers.

Federal

- Federal Citizen Information Center
This is a collection of publications and websites concerning federal benefits and other programs in more than a dozen languages. It includes glossaries for terms in particular areas of law.
- Federal Court System in the US (US Courts)
This guide to the structure and operation of the federal court system is published in **English, French, Italian, Russian, Serbian, Spanish and Turkish**.
The Center publishes extensive summaries of news items about claims of actual innocence and wrongful conviction of death row inmates, and related developments.
- FirstGov en Espanol (US)
FirstGov is a gateway site to millions of web pages containing federal and state government information, services and resources. This is the **Spanish** language version.
- Guide to Naturalization (USCIS)
The United States Citizenship and Immigration Services publishes a handbook on the naturalization process in English, Spanish, Tagalog, Chinese, and Vietnamese. More information about these works, and lists of additional publications are available on their website.
- FirstGov en Espanol (US)
FirstGov is a gateway site to millions of web pages containing federal and state government information, services and resources. This is the **Spanish** language version.
- Guide to Naturalization (USCIS)
The United States Citizenship and Immigration Services publishes a handbook on the naturalization process in English, Spanish, Tagalog, Chinese, and Vietnamese. More information about these works, and lists of additional publications are available on their website.
- Improving Access to Services for Persons With Limited English Proficiency (DOJ)
This site describes the resources for implementation of Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." *The Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them.*
- Interpreters Office of the Southern District of New York (SDNY)
This is a rich collection of resources for interpreters and translators working in the federal court system.
- Let Everyone Participate
This website provides information about federal government agencies and programs designed to give meaningful access to people with limited English proficiency.
- Supreme Court Publications (US Supreme Court)
The Supreme Court has prepared guides for visitors and others interested in learning about its function and history. Visitor guides are available in **Chinese, French, German, Japanese Russian, and Spanish**.

State

- Bi-lingual Resources for Court Officials (NC)
The North Carolina Court system has created **Spanish** language versions of commonly used court forms and documents.
- Criminal Justice System Handbook (NYS Unified Court System)
This is a guide to the operations of the criminal justice system in New York State . It provides explanations of procedures and definitions of terms common to the criminal process. And it is available in three languages: **French**

Korean and Spanish.

- [Jailhouse Lawyer's Manual in Spanish](#) (NY)
The Manual is published by the [Columbia Human Rights Law Review](#) (CHRLR) and covers legal research, criminal appeals, post-conviction remedies, and issues regarding conditions of confinement and prisoners' rights. The [English version](#) of the Manual is fully available online. In 2005, the CHRLR published the 6th edition of this popular work, and produced the first **Spanish** edition.
- [LawHelp.org](#) (US)
This is a collection of links to self-help legal aid resources on civil and criminal topics. The links are organized by state, and some sites provide "Resources in Other Languages" ranging from **Arabic to Urdu**.
- [Tennessee Law Court Forms](#) (TN)
This is a collection of official court forms, notices, petitions and affidavits used in the Tennessee Courts. They are available in the following languages: **Arabic, Kurdish, Laotian, Russian, Spanish and Vietnamese**.

Criminal Justice

- [Criminal Justice Terms Bilingual Dictionary](#) (2nd ed. Gould Publications) (English-**Spanish**)
- [Spanish to English Terminology Database](#) (SDNY)
- [Spanish Words & Phrases](#) (Public Defense Investigators Network)

Referrals

- [Multi-lingual Legal Referral Hotline](#) (Asian Pacific American Legal Resource Center - **Bahasa-Indonesia, Bengali Cantonese, English, Hindi, Japanese, Korean, Punjabi, Mandarin, Tagalog, Tamil, Urdu, and Vietnamese** - C region)

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Directories and Services

Interpreters and translators can be found through directories published by the courts and private membership associations. There are also independent companies that specialize in this work and offer phone-based interpretation.

Directories

- [Directory of Interpreters and Translators](#) (NAJIT)
- [Directory of Language Services Companies](#) (ATA)
- [Directory of Translation and Interpreting Services](#) (ATA)
- National Court Interpreter Database (US) (access limited to federal court personnel)
- [Register of Legal Interpreters](#) (IAFL)
- [Roster of Certified \(AOUSA\) Spanish Interpreters](#) (NYC area)

Private Companies

- [Language Line Services](#)

- [Translation Plus](#)
- [viaLanguage](#)

Deaf and Hard of Hearing Resources

The interpretation needs of persons who are deaf or hard of hearing are collected here across all categories.

- [Breaking the Silence: Interpreters for the Deaf in Interpreter Manual](#) (Kentucky Department of Public Advocacy 2004)
- [California Center for Law & The Deaf](#)
- [Deaf Lawyers: A Resource for Deaf/Hard of Hearing Attorneys and Law Students](#)
- [Guidelines for Accommodating Persons Who Are Deaf or Hard of Hearing in the Courts](#) (NC Draft 2004)
- [Guide for Law Enforcement Officers: When in Contact With People Who Are Deaf or Hard of Hearing](#) (DOJ 2005)
- [Interpreting](#) (National Association of the Deaf)
- [Interpreting for Miranda Warnings](#)
- [Language and the Law in Deaf Communities](#) (Gallaudet University Press 2003)
- [National Association of the Deaf: Legal Rights](#)
 - [Federal Courts](#)
 - [Police and Law Enforcement Agencies](#)
 - [Prisons and Jails](#)
 - [State and Local Courts](#)
- [New York Relay Service](#)
- [Registry of Interpreters for the Deaf](#)
- [Sign Language Interpreting: Legal Settings](#)

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Ethics and Standards

Professional associations and the courts have developed rules of ethics and standards for court interpretation. The key federal statute and model act governing the use and conduct of court interpreters are noted below.

Model Act and Federal Statute

- Chp. 10 "[Model Court Interpreter Act](#)" in [Court Interpretation: Model Guides for Policy and Practice in the State Courts](#) (National Center for State Courts 1995)
- [Court Interpreters Act, 28 USC § 1827](#)

Model and Association Codes

- Chp. 9 "[Model Code of Professional Responsibility for Interpreters in the Judiciary](#)" in [Court Interpretation: Model Guides for Policy and Practice in the State Courts](#) (National Center for State Courts 1995)
- [Code of Ethics and Professional Responsibilities](#) (NAJIT)
- [Code of Professional Conduct](#) (RID)
- [Code of Professional Conduct and Business Practices](#) (ATA)

- [Code of Professional Ethics and Professional Standards \(AIC\)](#)

Federal and State Ethics Codes

- US: [Federal Court Interpreter Ethics and Protocol \(SDNY\)](#)
- AR: [Arkansas Code of Professional Responsibility for Interpreters in the Judiciary](#)
- CO: [Colorado Judicial Department Code of Professional Responsibility for Court Interpreters](#)
- ID: [Idaho Code of Professional Responsibility for Interpreters in the Judiciary](#)
- IO: [Iowa Code of Professional Conduct for Judicial Branch Interpreters \(annotated\)](#)
- ME: [Maine Policy Concerning Standards of Professional Conduct for Interpreters Providing Services in Judicial Proceedings \(annotated\)](#)
- MA: [Massachusetts Code of Professional Conduct for Court Interpreters of the Trial Court](#)
- MN: [Code of Professional Responsibility for Interpreters in the Minnesota State Court System](#)
- NJ: [New Jersey Code of Professional Conduct for Interpreters, Translators, and Translators](#)
- NM: [Code of Professional Responsibility New Mexico Court Interpreters](#)
- NC: [Code of Ethical Conduct for Interpreters](#)
- TN: [Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts \(Rule 41\)](#)
- OR: [Code of Professional Responsibility for Interpreters in the Oregon Courts](#)
- UT: [Utah Code of Professional Responsibility for Court Interpreters](#)
- VA: [Code of Professional Responsibility for Interpreters Serving in Virginia Courts \(annotated\)](#)
- WI: [Wisconsin Code of Ethics for Court Interpreters \(annotated\)](#)

Ethics Opinions

- Chp. 10 "Model Court Interpreter Act" in [Court Interpretation: Model Guides for Policy and Practice in the State Courts](#) (National Center for State Courts 1995)
- [Court Interpreters Act, 28 USC § 1827](#)

General

- UT: [2004-03-22: Court Interpreters and Confidentiality](#)
- UT: [2004-03-22: Court Interpreters as Investigators](#)

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Federal and State Court Interpreter Programs

Government agencies and the court systems have published information on the availability of interpreter and translation services, certification and testing, court rules, oaths, codes of ethics, ethics opinions, glossaries, handbooks and other resources. Here are the links to selected court web pages of government sites with significant collections.

Federal

- [Federal Court Interpreter Program](#)
- [Federal Court Interpreter Certification Program](#)

States

- [State Court Rules for Language Interpreters \(NCSC\)](#)
- [State Interpreter Programs \(NCSC\)](#)

- o [Arkansas](#)
- o [California](#)
- o [Colorado](#)
- o [District of Columbia](#)
- o [Idaho](#)
- o [Iowa](#)
- o [Massachusetts](#)
- o [Minnesota](#)
- o [New Jersey](#)
- o [New York](#)
- o [North Carolina](#)
- o [Utah](#)

Court Interpreter Associations

Professional associations are excellent resources. They provide, among other services, access to directories, reference books in foreign languages, networking opportunities, newsletters, continuing education, codes of conduct, certification requirements and classes, and more.

- [American Translators Association \(ATA\)](#)
This is a membership organization that reports on current developments in the translation and interpretation fields, offers accreditation examinations, publications, and other benefits.
- [International Association of Forensic Linguists](#)
This is an organization for linguistic professionals working in the legal system or on any aspects of law and language.
- [National Association of Judiciary Interpreters and Translators \(NAJIT\)](#)
This is a non-profit organization devoted to the advancement of court interpreting and legal translation. Their web site posts information about news, training events, certification examinations and association activities.
- [Professional Organizations \(National Center for Interpretation\)](#)
This is a compilation of regional, state and local professional and court interpreter associations.

Guides for Working With Interpreters

Interpreters, attorneys and judges have developed checklists and guidelines for maximizing communication in court with non-English or limited English proficiency people.

- [Attorney's Primer: Working With Interpreters](#), Proteus, Winter-Spring 2000
- [Court Interpretation: Guides for Policy and Practice in the State Courts](#) (State of Colorado Judicial Department 1998)
- [Court Interpreter Tips](#) (Supreme Court of Nevada)

- [Courtroom Interpreter: A User's Guide and Checklist](#) (MI 1996)
- [For Judges, Attorneys, and Court Staff: Best Practices Manual](#) (MN)
- [Guidelines for the Use of Foreign Language Interpreting and Translating Services in the Court System](#) (NC)
- [Interpreter Checklist](#), Champion, June 1998
- [Interpreter Manual](#) (Kentucky Department of Public Advocacy 2001)
- [Interpreters Office of the Southern District of New York](#)

- [AUSA Checklist for Working With Interpreters](#)
- [How Judges Can Promote Flawless Interpretation](#)
- [For Attorneys: Examining Witnesses Through an Interpreter](#)
- [Translations](#)
 - [Serving Non-English Speakers in the Virginia Court System: Guidelines for Policy and Best Practice](#) (VA 2003)
 - [Ten Tips on Using Court Interpreters in Child Witness Cases](#), APRI Update, vol. 11, no. 12 (1998)
 - [Translation Getting It Right: A Guide to Buying Translations](#) (ATA)
 - [Using Interpreters in Forensic Interviews](#), APRI Update, vol. 15, no. 12 (2002)

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Courses and Programs

Certification and basic educational requirements are discussed on most court interpreter websites. The associations usually list continuing education and advanced training sessions, along with references to courses offered at local colleges. Here are a few educational resources for interpreters and translators nationwide.

- [ATA Institutional Members Providing Translation/Interpreting Courses](#)
- [Master of Arts in Bilingual Interpretation](#) (College of Charleston)
- [National Center for Interpretation](#) (University of Arizona)

Reference Sources

Among the resources already noted, there are an abundance of bibliographies, books and articles on key issues in legal interpreting and translation.

Current Awareness and Periodicals

- [International Journal of Speech, Language and the Law](#) (IAFL)
- [Interpreting in the News](#) (Charleston College)
- [Proteus](#) (NAJIT)

Bibliographies

- [Basic Bibliography: Court Interpretation](#) (SDNY)
- [Bibliography of Linguistic Research](#) (IAFL)
- [Colorado Interpreter Project](#) (University of Denver, College of Law)
- [Recommended Reference Works](#) (ACEBO)
- [Resources for Court Interpreters](#) (Minnesota State Law Library)

Books

- Bilingual Courtroom: Court Interpreters in the Judicial Process (University of Chicago Press 1990, 2002)
- Court Interpretation: Model Guides for Policy and Practice in the State Courts (National Center for State Courts 1995)
- Criminal Defense of Immigrants (Law Offices of Norton Tooby)

- § 1.45 G. Dealing With Interpreters in Court
- § 1.46 1. Right to an Interpreter in Criminal Proceedings
- § 1.47 2. Using an Interpreter in Court

- Cultural Issues in Criminal Defense (Juris Publishing 2000)

- Chapter 2: Using Interpreters

- Developing and Maintaining a Successful Legal Referral Hotline for Immigration Communities: A "How To" Handbook (Asian Pacific American Legal Resource Center 2003)
- Ensuring Meaningful Access to Legal Services: A Model for a Legal Interpreter Project (Asian Pacific American Legal Resource Center 2004)
- Fundamentals of Court Interpretation: Theory, Policy, and Practice (Carolina Academic Press, 1991)

Reports

General

- Court Interpretation: Model Guides for Policy and Practice in the State Courts (National Center for State Courts 1995)
- Criminal Defense of Immigrants (Law Offices of Norton Tooby)

- Court Interpreters in Attacking Bias in the Justice System (ABA)
- Report From the Front Lines: Multilingual Training-of-Trainers for Refugee Interpreters (ACEBO)

Law Enforcement

- Summit/Lorain Project: Resource Document for Law Enforcement: Interpretation and Translation Services (LEP)

State Reports

- Report to the Legislature on the Use of Interpreters in the California Courts (CA 2004)
- Family Law Interpreter Pilot Program (FLIPP): Report to the Legislature (CA 2001)
- Report on Interpreter Services in the Vermont Courts
- Use of Interpreters Instructions, Florida Bar News, December 15, 2005

Articles

- Court Interpreter as Guarantor of Defendant Rights (ACEBO)

- [Court Interpreting at a Crossroads](#) (ACEBO)
- [Interpreted Psychological Evaluations](#), Proteus, Fall 2004
- [Interpreter Issues on Appeal](#), Proteus, Fall 2000
- [Interpreters and Their Impact on the Criminal Justice System: The Alejandro Ramírez Case](#), Proteus, Winter-Spring 2000
- [Interpreters as Officers of the Court: Scope and Limitations of Practice](#), Proteus, Summer 2005
- [Protecting the Rights of Linguistic Minorities: Challenges to Court Interpretation](#), 30 New Eng. L. Rev. 227 (1996)
- [Sources of United States of America Legal Information in Languages Other Than English](#), LLRX, March 27, 2005
- [Towards a Redefinition of the Role of the Court Interpreter](#) (ACEBO)

Internet Resources

- [ACEBO](#)
- [AIIC](#)
- [American Council on the Teaching of Foreign Languages](#)
- [Court Interpretation Project](#) (National Center for State Courts)

Internet Resources

- [ACEBO](#)
- [AIIC](#)
- [American Council on the Teaching of Foreign Languages](#)
- [Court Interpretation Project](#) (National Center for State Courts)
- o [Competitive Procurement of the **Spanish**/English Interpreter Certification Program](#)
- o [Court Interpreter Technical Assistance](#)
- o [State Court Interpreter Certification Consortium](#)
- o [State Interpreter Contracts](#)
- [Ethnologue: Languages of the World](#)
- [Interpreters and Translators](#) (Occupational Outlook Handbook)
- [InTrans Book Service](#)
- [Translation Services on the Internet](#) (USCIS)
- [Translator & Interpreter Resources](#) (NOTIS)
- [Translators Home Companion](#)

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