



National Association of Judiciary Interpreters & Translators

## **EIGHT POSITION PAPERS**

### **SUPPLEMENT TO THE FALL 2006 *PROTEUS***

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## CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITIES

### ■ Preamble

Many persons who come before the courts are non- or limited-English speakers. The function of court interpreters and translators is to remove the language barrier to the extent possible, so that such persons' access to justice is the same as that of similarly-situated English speakers for whom no such barrier exists. The degree of trust that is placed in court interpreters and the magnitude of their responsibility necessitate high, uniform ethical standards that will both guide and protect court interpreters in the course of their duties as well as uphold the standards of the profession as a whole.

While many ethical decisions are straightforward, no code of ethics can foresee every conceivable scenario; court interpreters cannot mechanically apply abstract ethical principles to every situation that may arise. This Code is therefore intended not only to set forth fundamental ethical precepts for court interpreters to follow, but also to encourage them to develop their own, well-informed ethical judgment.

### ■ Applicability

All NAJIT members are bound to comply with this Code.

### Canon 1. Accuracy

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. All hedges, false starts and repetitions should be conveyed; also, English words mixed into the other language should be retained, as should culturally-bound terms which have no direct equivalent in English, or which may have more than one meaning. The register, style and tone of the source language should be conserved.

Guessing should be avoided. Court interpreters who do not hear or understand what a speaker has said should seek clarification. Interpreter errors should be corrected for the record as soon as possible.

### Canon 2. Impartiality and Conflicts of Interest

Court interpreters and translators are to remain impartial and neutral in proceedings where they serve, and must maintain the appearance of impartiality and neutrality,

avoiding unnecessary contact with the parties. Court interpreters and translators shall abstain from comment on matters in which they serve. Any real or potential conflict of interest shall be immediately disclosed to the Court and all parties as soon as the interpreter or translator becomes aware of such conflict of interest.

### Canon 3. Confidentiality

Privileged or confidential information acquired in the course of interpreting or preparing a translation shall not be disclosed by the interpreter without authorization.

### Canon 4. Limitations of Practice

Court interpreters and translators shall limit their participation in those matters in which they serve to interpreting and translating, and shall not give advice to the parties or otherwise engage in activities that can be construed as the practice of law.

### Canon 5. Protocol and Demeanor

Court interpreters shall conduct themselves in a manner consistent with the standards and protocol of the Court, and shall perform their duties as unobtrusively as possible. Court interpreters are to use the same grammatical person as the speaker. When it becomes necessary to assume a primary role in the communication, they must make it clear that they are speaking for themselves.

### Canon 6. Maintenance and Improvement of Skills and Knowledge

Court interpreters and translators shall strive to maintain and improve their interpreting and translation skills and knowledge.

### Canon 7. Accurate Representation of Credentials

Court interpreters and translators shall accurately represent their certifications, accreditations, training and pertinent experience.

### Canon 8. Impediments to Compliance

Court interpreters and translators shall bring to the Court's attention any circumstance or condition that impedes full compliance with any Canon of this Code, including interpreter fatigue, inability to hear, or inadequate knowledge of specialized terminology, and must decline assignments under conditions that make such compliance patently impossible.



National Association of Judiciary Interpreters & Translators

## NAJIT POSITION PAPER DIRECT SPEECH 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](http://www.najit.org).

### ■ Introduction

When the participants in the judicial process do not speak the same language, an interpreter is used to relay messages. Interpreters use industry standard techniques to maintain accuracy and impartiality and ensure clear communication. These interpretation techniques are especially important in legal settings. The purpose of this paper is to illustrate one such technique—the use of direct speech as opposed to indirect speech—and to explain why all interpreters and users of interpreter services should speak to each other directly, rather than in the third person.

### ■ What is indirect or third-person speech?

Some people believe that indirect speech, which is sometimes referred to as third-person speech, is the best way to communicate through an interpreter (e.g., *Ask him... She is saying...*); but, in fact, the opposite is true. The most effective way to work across language barriers is for all speakers to use direct speech. Even when the communication has to pass through an interpretation process, people should address each other directly.

Participants in the judicial process—attorneys, judges, courtroom personnel, witnesses—or inexperienced interpreters may resort to indirect speech occasionally, unwittingly or as a matter of habit. However, it is essential to be vigilant against this practice. To understand why, consider the differences between direct and indirect speech in the following examples:

#### • DIRECT SPEECH

*Judge:* "Could you state your full name?"

*Interpreter (in foreign language):* "Could you state your full name?"

*Witness (in foreign language):* "My name is John Doe."

*Interpreter:* "My name is John Doe."

#### • INDIRECT SPEECH (by interpreter)

*Judge:* "Could you state your full name?"

*Interpreter (in foreign language):* "He's asking you to state your full name."

*Witness (in foreign language):* "My name is John Doe."

*Interpreter:* "His name is John Doe."

The use of indirect speech in the example above is an instance of unwarranted interference by the interpreter. The interpreter could have simply relayed the message directly, as it was said, without making any independent contribution to the communication process. The behavior of an interpreter using indirect speech may be compared to that of a narrator who reports to the participants what the speaker has said. The message is restated from the interpreter's narrative point of view (e.g., *He's asking... His name is...*), but the speaker's actual words are never rendered.

Notice how the use of indirect speech by other participants in an exchange can easily create communication problems:

#### • INDIRECT SPEECH (by judge)

*Judge:* "Ask him to state his true name."

*Interpreter (in foreign language):* "Ask him to state his true name."

*Witness (in foreign language):* "Who?"

*Interpreter:* "Who?"

*Judge:* "Doesn't the interpreter know who I'm talking to?"

• **INDIRECT SPEECH** (by attorney)

*Attorney:* "Ask her if she went to Mrs. Smith's house?"

*Interpreter* (in foreign language): "Did you go to Mrs. Smith's house?"

*Female Witness* (in foreign language): "Yes."

*Interpreter:* "Yes."

*Attorney:* "Was she with anyone?"

*Interpreter:* "Would counsel clarify for the interpreter who she refers to?"

In the first example, the judge uses indirect speech. The interpreter restates the message exactly, as, in fact, interpreters are required to do. But communication quickly gets derailed. This can happen with the simplest of questions.

In the second example, it is the attorney who uses indirect speech. The interpreter is attempting to "clean up" the attorney's indirect questions and make them direct. But the danger in doing so is that the attorney may continue asking questions in the third person. This will not only muddy the record, it may also lead to a situation where the interpreter does not know to whom the attorney is referring when third-person pronouns are used.

All of the examples above indicate that participants in interpreted-assisted exchanges should address each other directly, as though there were no interpreter present. The interpreter should assume the voice of the speaker for whom s/he is interpreting and, accordingly, use the same grammatical person as that speaker (i.e., the same pronouns and verbs).

■ **Why is indirect speech unacceptable in legal settings?**

As the examples above have already suggested, indirect speech should never be used in legal settings when interpreters are involved, because it hinders both communication and the judicial process. The following specific problems can be identified:

**MISCOMMUNICATION.** The use of the third-person pronouns *he*, *she* and *they* in indirect speech is a common source of confusion. For instance, when the attorney uses indirect speech in the last example above, the interpreter has no way of knowing who *she* refers to: Is it the female witness or Mrs. Smith? In the worst-case scenario, misunderstanding can take place if the recipient of the message, that is, the interpreter, makes the wrong assumption. The consequences can be serious because the credibility of witnesses depends on the consistency and accuracy of the information they provide.

**DELAYED COMMUNICATION.** The confusion created by the use of third-person pronouns needlessly slows communication down, since the speakers will have to interrupt each other often to ask for clarification. Any type of exchange, from the relatively informal attorney/client meeting to the highly formal presentation of courtroom testimony, can fall victim.

**ADVERSE EFFECT ON INTERACTION BETWEEN THE PARTIES.** Indirect speech focuses too much on the interpreter and reinforces the parties' natural tendency to talk to, make eye contact with and turn toward the interpreter, rather than to focus on each other while speaking. When communication is indirect, the parties may be more likely to seek clarification, make comments and solicit extra-linguistic information from the interpreter, none of which are part of a court interpreter's role. If the interpreter is no longer a conduit, s/he is assuming or being allowed to occupy a position of considerable power, which undermines the relationships between the parties (e.g., the rapport between defense attorneys and their clients during out-of-court meetings or the adversarial relationship between prosecutors and defendants during cross-examination.)

**INTERPRETATION NOT LEGALLY EQUIVALENT.** Court interpreters are bound by a code of ethics to provide a complete and accurate interpretation, without altering, omitting, or adding anything to what was stated. Likewise, their duty is to preserve the speaker's language level and discourse features, such as pauses, hedges, false starts and repetitions.<sup>1</sup> Once all these requirements are met, the message transmitted by the interpreter will have the same effect on the target-language audience as the original message had on the source-language audience.

The court interpreter's strict conservation of the content, form, and style of a message is known as legal equivalence,<sup>2</sup> and it is ultimately grounded in the due process and the equal protection clauses of the United States Constitution. The role of the interpreter is to put non-English speakers on an equal footing with individuals who do speak English during their interactions with the judicial system. However, interpreting rendered through indirect speech cannot be legally equivalent for the following reasons:

The interpreter has to modify the speaker's original words from a grammatical point of view, at the very least, to reflect the interpreter's narrative point

of view: "I regret what I did" → "She regrets what she did."

Messages lose their immediacy when transmitted through indirect speech. Some messages, particularly those involving emotive language, become less forceful: "I didn't do it. I swear to God I didn't. Please, believe me." Now, compare this utterance with the following: "He says he didn't do it. He swears to God he didn't. Please, believe him." In English, statements like *he/she says (that)...* can suggest a certain degree of speaker disbelief.

Direct speech readily allows the interpreter to put her/himself in the speaker's frame of mind, which in turn facilitates the faithful transmission of the message. Indirect speech is one step removed and thus immediacy is lost, which may affect the interpreter's memory of the original message.

**POSSIBLE VIOLATIONS OF DUE PROCESS.** Pursuant to the Federal Rules of Criminal Procedure and the Rules of Criminal Procedure for state and municipal courts, a guilty plea must be entered into knowingly and voluntarily. When a defendant enters a plea of guilty or no contest, s/he waives important rights:

In order for such waiver to be valid under the due process clause of the United States Constitution, it must be shown to have been an intentional relinquishment or abandonment of a known right or privilege. If a guilty plea is not knowingly, voluntarily, and intelligently made, it has been obtained in violation of due process and is therefore void.<sup>3</sup>

When an interpreter uses indirect speech (i.e., "He says he's guilty, Your Honor." Or, "Yes, she understand her rights.") the record reflects the conclusion of the interpreter, not of the defendant. This key linguistic and legal distinction has led to the nullification of a number of guilty pleas.<sup>4</sup>

**INTERFERENCE WITH PRESERVATION OF THE RECORD.** The integrity of the record is of utmost importance, whether a proceeding be in-court (e.g., a trial) or out-of-court (e.g., a deposition). The ambiguity that arises from the use of third-person pronouns in indirect speech hinders the court reporter's task of maintaining a clear record. Transcripts, particularly those that are prepared

from recordings after the fact, will be less intelligible. They are bound to contain statements such as, "INTERPRETER: He doesn't understand."

Furthermore, the legal equivalent provided by the interpreter is the record. If the interpreter fails to faithfully render the speaker's message by using indirect speech, one cannot meaningfully speak of an accurate and complete record: There is no record of the speaker's actual words and justice has not been served.

#### ■ Recommendations

Canon 5 (Protocol and Demeanor) of NAJIT's *Code of Ethics and Professional Responsibilities* explicitly bans interpreting in the third person, "...Court interpreters are to use the same grammatical person as the speaker...."<sup>5</sup>

NAJIT recommends that all indirect speech be excluded from interpreted-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 not permit the use of indirect speech during interpreted-assisted proceedings. At every opportunity, judges should instruct the parties to speak directly to each other, instead of to the interpreter. The parties should never say to the interpreter, "Tell her (that)..." or "Is he asking me...?"
- Judges should support an interpreter's request that all parties address each other directly.
- When a judge addresses a non-English speaking defendant or witness, it should always be done directly rather than speaking to the interpreter. Judges should not say to the interpreter, "What is his name?" or "How does she plead?"
- When the judge needs to address the interpreter, the record should be clear. For example, "Would the interpreter raise his voice?" If a judge says, "Would you raise your voice?" the interpreter is required to interpret exactly what was said; the witness will raise her/his voice, instead of the interpreter.

#### ATTORNEYS

- Attorneys should speak directly and maintain

eye contact with the non-English speaking client/defendant/witness, just as with someone who speaks English. Attorneys should not ask the interpreter, "Does he understand?" but ask the non-English speaker, "Do you understand?"

- If this is the first time the non-English speaker is communicating through an interpreter, attorneys are well advised to take a minute to explain how the process works (i.e., "talk to me and speak as though there were no interpreter present"), or allow the interpreter to instruct the speaker about the correct mode of address.
- If addressing the interpreter at any point, attorneys need to make it clear (e.g., "Does the interpreter know where that is?"). Even during an informal meeting, the interpreter should not have to decide whether a particular remark is an aside or not meant for the non-English speaker.

#### INTERPRETERS

- The interpreter should always use the same grammatical person as the speaker.
- If there is time in advance of the proceeding, the interpreter should instruct the parties to speak to each other directly. The interpreter may explain that direct speech avoids confusion and ensures that the parties will be fully understood by everyone, including the interpreter.
- If any of the participants (including the attorneys or the judge) addresses the interpreter instead of the speaker, or if the speaker addresses the interpreter instead of the other participants, the interpreter, referring to her/himself in the third person, should politely remind everyone to use direct speech. This *modus operandi* includes any requests for clarification. Some suggested ways of making this request are:

"Your Honor, to maintain the accuracy of the record, the interpreter requests that counsel be instructed to address the witness rather than the interpreter."

"The interpreter requests that the deponent not address her, but rather that he respond directly to counsel so as to protect the integrity of the record."

"Your Honor, so as not to confuse the record, the interpreter requests that you address the defendant directly."

"Counsel, please speak directly to your client to avoid any misunderstandings."

- In open court, if a judge addresses the interpreter instead of the witness or the defendant, it should be corrected immediately. It is not easy to point out to judges that they may have misspoken. However, it happens to everyone and judges generally appreciate the clarification. Some interpreters may prefer to address the issue at sidebar; others choose to do so in open court with a phrase similar to the ones that appear above. Most important is to be polite and to convey that the main concern is the accuracy of the interpreting process and/or the record.
- If a party continues to use indirect speech after several polite requests, then one technique to highlight the problem is simply to interpret the utterance exactly, "Ask him where he was living." The witness is likely to respond, "Ask who?" This is an indirect way of getting the parties to rephrase the question using direct speech.
- Interpreters should resist the temptation to ignore the use of indirect speech by other parties so as not to be disruptive. Not only would the interpreter be failing to comply fully with the requirement of accuracy and completeness, s/he might also get into trouble down the line (as in the last example on page 1). It is best to address the problem as soon as it comes up.
- To ask for clarification or request that the court instruct the parties, interpreters should always use the third person. This practice is essential to identify the interpreter as the speaker. A comment from the interpreter should be clearly distinguishable from one coming from the witness. Compare: "The interpreter didn't hear the question" to "I didn't hear the question."
- Occasionally, speakers will use the interpreter as a point of reference. For instance, a witness might say in the foreign language, "The man was as tall as you are." If the interpreter becomes aware (either through linguistic information and/or body language) that the speaker is referring to

the interpreter, this fact should be placed on the record by saying, "The man was as tall as you are (indicating the interpreter)."

#### ■ Conclusion

When words are especially important and clarity is sought, all parties need to be aware that the interpreter is not a narrator but a repeater. Clear communication is essential in legal settings where the rights of others and life itself are at stake. For the communication process to be effective and objective, the parties should at all times use direct speech.

#### Footnotes

1. National Center for State Courts. *Model Code of Professional Responsibility for Interpreters in the Judiciary*. See Canon 1 ([www.ncsconline.org/wc/publications/Res\\_Ctlnte\\_ModelGuidePub.pdf](http://www.ncsconline.org/wc/publications/Res_Ctlnte_ModelGuidePub.pdf)).
2. González, D. G., Vásquez, V. F., & Mikkelsen, H. (1991). *Fundamentals of Court Interpretation: Theory, Policy and Practice* (p. 16). Durham, NC: Carolina Academic Press.
3. 26 Ohio Jurisprudence 3d section 1097 Pleas.
4. The Racial Fairness Project, Cleveland, OH ([www.racialfairness.org/interpreters.htm](http://www.racialfairness.org/interpreters.htm)) lists several cases under the heading *Speaking in the Third Person*. See also: U.S. v. Gregorio Camejo (333F3d. 669) appealed in 2003 before the U.S. Court of Appeals for the Sixth Circuit.
5. NAJIT Code of Ethics and Professional Responsibilities ([www.najit.org/ethics.html](http://www.najit.org/ethics.html)).

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National Association of Judiciary Interpreters & Translators

## NAJIT POSITION PAPER

### EQUAL ACCESS AS IT RELATES TO INTERPRETATION AND TRANSLATION SERVICES

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](http://www.najit.org).

#### ■ Introduction

The National Association of Judiciary Interpreters and Translators, recognizing current trends in state and federal court systems throughout the United States, including government offices and national and local justice partners, wishes to take a position on the issue of equal access as it relates to interpretation and translation services. We hope that through this position paper we can address, assist with and clarify important issues related to language access for non-English-speaking parties.

#### ■ Need for Professionalism

NAJIT applauds state and federal entities as well as officials on every level who are working hard at establishing guidelines and policies for competent language services to be provided for non-English speakers and limited-English proficient (LEP) persons. However, we continue to hear of incidents, to read articles and to receive complaints that reveal misunderstandings about qualifications for interpreters and translators and the role of the language provider. Some entities continue to labor under the misconception that self-professed interpreters, those who have a bilingual background, or any service provider contracted by a language agency can be deemed qualified as an interpreter or translator. Nothing could be further from the truth.

#### ■ Errors and Lapses

Ever since NAJIT was founded in 1978, its mission has been to promote quality interpretation and translation services for the legal field. We advocate professional training and ethical discipline. The use of untrained and unqualified individuals sets a bad example and sends the wrong message to the public regarding the importance of equal access. Unfortunately, there are still significant numbers of cases being reversed, statements being suppressed, misdiagnosis by medical professionals, interpreters advocating for a defendant or witnesses, or interpreters unfamiliar with relevant terminology. Ethical lapses include interpreters putting their own spin on a message, omitting crucial information, or disclosing confidential and privileged information. We are aware of cases of interpreters charging additional money to non-English speakers or LEP persons while already being paid by a court or other entity.

#### ■ A Shared Responsibility

Complaints about interpreters providing poor service, not being able to do the job properly or behaving unethically are generally due to the use of non-professional interpreters. These problems would be substantially minimized if aspiring interpreters, bilinguals and the entities who utilize language services take the time to learn about our field and its competency requirements, certification, training regimens, as well as the ethical responsibilities undertaken when providing interpretation and translation services. Each stakeholder or aspiring service provider must take responsibility to educate themselves in this area.

#### ■ Individual Responsibility

We encourage aspiring interpreters to join professional associations and to learn about the field, including mentoring opportunities. We encourage organizations with an interest in the mission and goals of our profession to join

our organization and attend educational conferences. Where needed to interact with the public, fluent bilinguals can certainly be utilized for conducting routine business in a language other than English. We have no qualms about organizations that utilize language agencies in lieu of independent contractors. However, still too many are unaware of the interpreter's role, qualifications and professional responsibilities.

#### ■ Organizational Responsibility

We strongly suggest that organizations in need of interpretation and translation services look at the competency criteria essential to perform the job in question. Entities who utilize interpretation and translation services need to make sure that candidates are tested, to understand the limitations of bilinguals, and to be aware of the various levels of bilingualism required for a particular task. It is important to understand the difference between being a bilingual (even a highly educated bilingual) and an interpreter or translator with professional qualifications and experience.

Organizations, government entities, and individuals, including the non-English or LEP person, would be better served if those in charge of interpreter services began to require all language providers—whether working as independent contractors or as subcontractors through a language agency—to demonstrate the necessary skill set and credentials. Organizations need to have in place some type of reliable and valid method of testing levels of bilingualism for their bilingual staff. Agencies who subcontract interpreters and translators should be required to demonstrate to the hiring entity that they have a valid and reliable method for proving the skill level of their subcontractors and that they provide basic training in ethics. Agencies should be required to provide to the hiring entity the qualifications, training, experience, criminal background check information and references for each interpreter or translator they subcontract.

#### ■ Qualifications

As in any other field, qualifications are a necessary first hurdle. The nexus between an entity's ability to provide due process, equal access, equal protection, and to provide the non-English-speaking or LEP person true access to important services and programs is the interpreter. The use of an unqualified interpreter or translator will surely render every party or organization equally incompetent. The ability of an agency or entity to carry out its own mission goes hand in hand with the use of competent interpreter and/or translation services.

When organizations fail to request proper qualifications and out of ignorance or neglect use unqualified and untrained interpreters, the organization itself can be jeopardized. Untrained and unqualified language providers can have the effect of denying due process, equal protection, or equal access to an LEP individual. No matter how competent a judge or attorney may be, or how many interpreters are provided for a LEP individual, it will be of no value if the interpreters are untrained and unqualified.

The failure of incompetence lies not only with the unprepared person who, unfamiliar with the rigors of the field, agrees to provide language services, but also with the entities that set language policies or hire service providers without first consulting with experts in the field or understanding the profession's requirements.

#### ■ Resources Available

Many entities are unfamiliar or unaware of the resources available through national interpreting and translating associations, other national organizations, or local organizations in their states. There is substantial information available through the websites of NAJIT, the American Translators Association (ATA), the Registry of Interpreters for the Deaf (RID), the National Council on Interpreting in Health Care (NCIHC), the Consortium for State Court Interpreter Certification (Consortium), and the Administrative Office of the U. S. Courts. These organizations have available names of contacts and additional resources to assist entities needing help with interpretation or translation services. These organizations can also assist by responding to questions and concerns that an organization or individual may have about qualification requirements and professional responsibilities in the various fields of interpretation and translation. Substantial literature and references are available on the Internet and at each organization's website to assist entities with guidance on policy issues.

#### ■ Compensation Concerns

It is common to hear complaints that certified and qualified interpreters cost too much, that there is no money for interpreter services, or that there are not enough certified and/or qualified interpreters in certain geographic areas. The issue of compensation for interpretation and translation services should not be an insurmountable barrier to quality service. It is true that salaries for staff and hourly rates for independent contractors will vary depending on the region or jurisdiction within the state, and may also depend on the

cost of living in a particular area. However, in general, it is not true that hiring certified or qualified interpreters or translators will cost an organization more than hiring through a language agency or by hiring an uncertified interpreter.

Independent contractors with credentials, experience, and training can actually cost less or sometimes come at a cost comparable to hiring through an agency. Generally, agencies serve as a broker for language services and charge overhead, administrative or finder fees. We have no objection to this practice since there are benefits to an entity in working with language agencies. Some of those benefits are that it saves the entity time and footwork in searching for an interpreter or in locating interpreters in languages that are rarely encountered. On the other hand, sometimes a language agency may not offer competitive pricing or may not be able to provide the entity with interpreters and translators with the required certification or qualification to do the job right. Some agencies cannot retain credentialed interpreters because their compensation is too low. In some cases, agencies themselves are not aware of the need for qualifications and training, and they do not screen for language proficiency or provide ethical guidelines to their interpreters. The use of untrained and untested bilinguals can create misconceptions and cause a negative impact on the entities in need of interpretation and translation services. This is why it is important for all entities who utilize interpretation and translation services to make sure they specify the necessary criteria and inquire as to the methods each language agency uses to recruit and evaluate interpreters or translators and to meet the hiring entity's criteria.

#### ■ Obtaining Compensation Information

The following website contain valuable information on compensation rates:

Bureau of Labor Statistics: Salary and hourly rates for interpretation and translation services in general at:  
<http://www.bls.gov/oco/ocos175.htm>

The National Center for State Courts Certification Consortium salaried interpreter compensation survey at:  
<http://www.ncsconline.org/D•Research/Res•CtInte•ConsortCertCompSurvey2006Salary.pdf>

The National Center for State Courts Certification Consortium contract interpreter compensation survey at:

<http://www.ncsconline.org/D•Research/Res•CtInte•ConsortCertCompSurvey2006Contract.pdf>

ATA's compensation survey can be ordered from ATA's headquarters at [www.atanet.org](http://www.atanet.org) for a modest fee.

A few additional points on compensation: some independent contractors charge by a half-day or full-day. Many who charge by the half-day or full-day generally go by the federal court rate. Interpreters in some states earn less than the fees set by the federal court; other states' court rates are near or comparable to the federal court rate. Either way, note that higher fees have nothing to do with competency. Competency should always be verified. See also "notes on cost" below.

#### ■ Importance of Service Needed

In considering issues of compensation, it is important that any entity, be it a law firm, a court, a hospital, a doctors office, a law enforcement agency, an advocacy organization or language agency, take into account additional issues such as the importance of the services being provided to the non-English and limited English speaker. The more important the program or service, the greater the advisability of requiring certification.

Each program or entity must consider its needs, i.e. the frequency of contact with the LEP population and the languages most frequently encountered. Are occasional interpreter services needed or has the need become a daily occurrence? If the latter, it may be more cost efficient to hire full-time certified or qualified interpreters. If not, are there languages encountered less frequently? If so, what is fair compensation to recruit and retain a contract interpreter for future use? Find out about existing resources in each state. Inquire as to the fees for various independent contractors, make sure to understand the nature of their credentials, and create a list of credentialed interpreters. If an entity or organization prefers to contract out to a language agency, it should make sure the agency will follow the job qualifications and established criteria.

When recruiting and hiring language professionals, entities need to first consider the type of assignment. For example: is it an interpreting (oral) or translating (written) assignment? Some tips pertaining to each category follow.

#### ■ Tips For Recruiting And Hiring Interpreters

Is the interpreting for medical appointments, surgery, or is it a workman's compensation case? Is the assignment

a deposition, an in-court proceeding, or an out-of-court proceeding such as a police interrogation, interview of a potential suspect or a witness? Is it for grand jury testimony or an attorney/client interview? Will any of the information obtained through an interpreter be used in a criminal or civil proceeding or at trial? Is the interpreting assignment related to providing general information at a community meeting or at a conference on employer safety rules? Once the particular type of assignment is identified, try to contract with an interpreter who is experienced and has credentials to interpret in that specific area, whether you hire the interpreter as an independent contractor or subcontract through a language agency. The qualifications to be reviewed are:

- Years of experience
- Field of expertise (subject familiarity) i.e.: medical, legal, administrative hearings, immigration, etc.
- Credentials such as federal certification, NAJIT certification, RID certification, Consortium for member state certification, or other state-administered testing
- Membership in professional associations
- Recommendations by other certified interpreters

In addition, references and a criminal background check should be requested. (If already performed by a state or federal entity, that information should be provided by the interpreter.)

Even when an interpreter's name is obtained through one of the organizations listed above, it is the responsibility of the contracting party to make sure that the interpreter possesses the skills, training and experience in the subject matter.

Professional interpreters can always provide their certification credentials, training and references. Using experts from the outset is the most cost-effective way to ensure due process, equal access and equal protection to all. Many public service agencies fail to choose an interpreter with care, thus unintentionally putting in jeopardy the fundamental rights afforded to all persons, the integrity of the justice system and of their own organization.

#### ■ Tips for Recruiting and Hiring Translators<sup>1</sup>

When recruiting professional translators, entities need to first consider the audience the translation is intended for. For example: is the translation for a public website, is it going to a grand jury, will it be offered at trial as

evidence, or is it an informational pamphlet for a general audience? Once the particular audience is identified, you should contract with a translator who is experienced in that specific area, whether you hire the translator as an independent contractor or subcontract through a language agency. The qualifications that should be reviewed are the following:

- Years of experience
- Field of expertise (subject familiarity)
- ATA certification (translation into English or into the foreign language)
- NAJIT certification in Spanish (interpreter examination includes a translation component)
- Court certification (certification is taken as de facto translation credential)
- Membership in professional associations, publications
- Recommendations by others

In addition, references and samples of translated materials (from English into the target language or the target language into English, as required) should be requested.

#### ■ Translation Quality Control

As a general rule, professional translators will ask a second translator to review and edit their work before presenting the final product. This process ensures a more accurate translation and minimizes errors. If translations are outsourced or routed through language agencies, quality control should be built into the process, according to department standards. Language agencies generally have quality control mechanisms in place, but organizations should take care to specify their own requirements in any contract or RFP.

Other methods for quality control and review of translated materials would be to organize a focus group or quality control committee consisting of a cross-section of the exact population the translations are written for, in order to test the material before official publication. (This would only be done with translations of great importance to the community.) Other methods of review include spot-checking by experts, requiring the translations to be approved by a review board or reviser, or requesting that the embassy of that country or other stakeholders review the material for correct language and accuracy.

The best resource for obtaining professional translators is through NAJIT and ATA, but even when working

through professional associations, it is up to the contracting party to make sure the translator possesses the skills, training and experience in the subject matter as well as necessary credentialing. Professional translators can always provide samples of their work. Using experts from the outset is the most cost-effective way to get the job done correctly the first time. Many public service agencies fail to choose a translator with care, incurring double-costing later to correct errors.

#### ■ Notes On Cost

When considering costs, keep in mind that professionals holding certification, qualification, and training credentials are skilled individuals in a variable market. Depending on the language combination, independent contractors may not work on a daily basis. They do not receive benefits and must bear overhead costs themselves. Professionals must comply with continuing education requirements and pay for training and certification renewal expenses, including the cost of purchasing computers, expensive dictionaries and other materials needed for a variety of assignments. They incur travel expenses, administrative expenses, and like everyone else, they pay taxes, contribute to social security, and so on. Cost of living varies from state to state and from jurisdiction to jurisdiction. These are all included in the fee and should be taken into account when deciding on a reasonable and fair fee for both the organization and the services provider in the particular area. Less expensive may not translate to competency and "cheap" or what appears to be good value may end up costing much more in the end.

A good example of this is a story that appeared in the *Press Telegram-Long Beach*, on March 25, 2006, "California Titled Ballot Won't be Lost in Translation," which can be viewed at <http://www.presstelegram.com/news/ci•3637258>. The title of a candidate for election was mistranslated, and this single error cost the state \$80,000 to fix.

Imagine the cost to cure mistakes when a qualified interpreter or translator is not secured, or the cost

to someone's life if medical information is conveyed incorrectly, the impact on a victim if a case is appealed due to technicalities (denial of due process), or the cost of an individual's liberty if a person is wrongfully accused due to the use of an untrained interpreter. The integrity of our system of justice and our government's ability to protect the public, to provide access to all, is put in jeopardy. We often hear the phrase "something is better than nothing," but a cavalier attitude about language may also lead authorities to a false sense of security. If an entity or program is aware of already established standards of the profession, statutes, rules, procedures, certification and qualification requirements but chooses not to adhere to them, it becomes the responsibility of the entity, and legal recourse may be chosen by the public or other stakeholder to remedy the situation.

#### ■ Conclusion

As a professional association, NAJIT does not presume to set rules for a wide variety of organizations and possible scenarios. All we can do is to provide suggestions and guidance and make ourselves available to assist. Everyone has a responsibility and a stake in providing competent interpretation and translation services. NAJIT believes that working together we can improve language service across a broad spectrum and provide effective equal access for all.

#### ■ Footnotes

1. Adopted from the Summit/Lorain LEP Model Policy for Law Enforcement

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National Association of Judiciary Interpreters & Translators

## NAJIT POSITION PAPER INFORMATION FOR COURT ADMINISTRATORS

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

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

### WHEN YOU NEED AN INTERPRETER...

#### What to look for...

##### ■ *Who decides when an interpreter is needed?*

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

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

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

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

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

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

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

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

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

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

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

information by inquiring in the Administrative Office of the Courts of the particular state or at their respective websites.

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

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

**What to expect...**

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

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

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

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

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

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

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

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

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

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

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

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

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

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National Association of Judiciary Interpreters & Translators

## NAJIT POSITION PAPER

### LANGUAGE ASSISTANCE FOR LAW ENFORCEMENT

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](http://www.najit.org).

#### ■ INTRODUCTION

The work of law enforcement depends on fast, accurate communication of information, directives and instructions. With the U.S. population expanding in diversity, law enforcement officers may need language assistance in their interactions with victims, witnesses or suspects who do not speak English or are limited English proficient (LEP). The manner in which these interactions are handled has an impact on safety, investigations, and the effective administration of justice. This paper offers practical guidelines to facilitate and monitor language services—in particular interpreting—in any law enforcement setting. Section I addresses why and when an interpreter is needed. Section II discusses specifics of interpreting.

#### I. WHY AND WHEN AN INTERPRETER IS NEEDED

##### Do I need a *translator* or an *interpreter*?

These job titles may seem interchangeable, but the distinction is important. Translators work with written text and interpreters work with the spoken word, rendering messages in one language into their equivalent in another language. The skill set is similar but not identical, although for each, a highly developed knowledge of both languages is necessary. When faced with a language barrier, then, the first question

to ask is whether the job requires a translator for written communication, or an interpreter for spoken communication.

##### Who decides whether an interpreter is needed?

Federal and state laws, professional association standards, and case law govern the appointment, qualifications, role, ethics and professional responsibilities of interpreters in legal and quasi-legal settings.<sup>1</sup> Given that background, when determining whether to use an interpreter, three questions should be asked:

1. What level of language assistance does the LEP person need to communicate effectively?
2. What level of assistance does the law enforcement officer need to carry out his official purpose?
3. What is the objective of the communication? Is it simply to communicate information, or will the communication be used later for evidentiary purposes?

Law enforcement is better served by erring on the side of caution and providing a qualified interpreter at the request of the non-English or limited-English speaker. Please note that sometimes an officer may believe that a person understands English, but basic English is not sufficient when an individual is confronted with the criminal justice system. The Title VI LEP Guidance Policy, referenced below, recommends that law enforcement inform the LEP person of the right to an interpreter provided at the agency's expense.

##### Can bilingual personnel serve as interpreters?

In any legal or quasi-legal context, professional language assistance means that accuracy is paramount, along with the duty to remain impartial. Bilingual personnel without prior training should not be expected to function as interpreters. To work with languages at a professional

level, one needs to know forensics terms, medical terms, police procedure, the legal system, idiomatic expressions and street slang both in English and the foreign language, and one needs to prove such knowledge in a reliable test. The knowledge, skills and abilities needed to produce accurate interpreting or translating are not the same as those used in ordinary conversation. If language assistance at a professional level is expected within the department, those job competencies should be clearly defined and tested for by the law enforcement entity.

#### **Why not use bilingual officers as interpreters?**

If the officer's foreign language skills were previously tested and documented, bilingual officers can conduct police business in a foreign language in emergency situations when no exchange of sensitive information is required. However, an increasing number of poorly handled interactions have had a negative impact in court. Interactions handled through a qualified interpreter are more advisable.

#### **Why not use someone already at the scene to interpret?**

There are several reasons why it is inappropriate for children, friends, relatives or bystanders to provide language assistance in law enforcement settings:

- These individuals are not neutral parties.
- They may have an interest in the outcome of the case — or may even be potential suspects themselves.
- They were not tested for language proficiency.
- They are not trained to retain meaning while interpreting in a legal context.
- They do not know the limitations of their role and may manipulate the information or take on the role of advocate for one side or another.

#### **What if the person needing language assistance is from another jurisdiction or is an undocumented alien?**

The provision of appropriate and competent language assistance is based on the language access needs of the LEP person, not on residency or immigration status. State and federal constitutional and statutory provisions extend their protection to any "person."<sup>2</sup>

#### **When do I need a professional interpreter?**

Police officers encounter diverse scenarios that are not easily categorized. The need for a certified or otherwise

qualified interpreter will be determined based on the interaction. Keep in mind that the manner in which an officer handles interviews and interactions with LEP victims, witnesses, suspects and defendants will have a direct impact on the case. For that reason it is important to have a procedure already in place (see suggestions below). At the least, there should be a prioritized list of interactions that require professional language assistance available to guide officers.

As a rule, the higher the risk, impact, or importance of the scenario, the higher the standards of interpreting and translating must be. For Miranda warnings, Vienna Convention matters, or interrogations, it is strongly recommended that a certified or otherwise qualified interpreter be used. Use of a non-qualified interpreter may be subject to later challenges in court. Use of a bilingual officer may be regarded as a conflict of interest and may also be challenged in court.

#### **Has lack of interpreting or poor quality interpreting at the law-enforcement point of contact ever affected the disposition of a case?**

Yes. Many cases have been affected by substandard interpreting during law enforcement encounters with LEP persons. Three examples are:

- *State of Ohio v. Alejandro Ramirez*<sup>3</sup>, in which a twenty-year-old Mexican national who could not speak, read, or understand English was interviewed by a law enforcement official. The administrative assistant who acted as interpreter had no familiarity with legal terms and produced a non-intelligible rendition of the questioning and the Miranda warning. Ramirez was convicted of one count of murder but the case was later reversed and remanded. This case has been a learning landmark for the judiciary with regard to communication with LEP persons.
- In *People v. Sandoval*<sup>4</sup>, the tape-recorded interrogation revealed that the person acting as interpreter failed to interpret accurately and made erroneous and conflicting statements to a defendant about his Miranda rights.
- In *People v. Mata-Medina*<sup>5</sup>, an inexperienced detention officer interpreted an interrogation. The officer failed to relate to other officers the defendant's statement indicating that he could not afford an attorney.

## II. SPECIFICS OF INTERPRETING

### How long will it take?

Translation of documents is an exacting task and any translation needs to be verified. This takes time, so documents cannot be instantly translated—not even with the help of machine translation programs, which can produce only very rough drafts. Depending on the length, complexity, and purpose of the original text, accurate translation could take days, weeks or even months. However, in some instances “sight translation” may be used—see next points.

Interpretation also is complex, and needs to be accurate, but it is done either at the same time as the speakers are talking or with a short time lag. Time enters as a factor only inasmuch as it may take time to obtain an interpreter on the scene. Note that interpreters may be available in person or on the telephone.

### How does an interpreter get the job done?

Three *modes* or techniques are used by the interpreter: consecutive interpretation, simultaneous interpretation, and sight translation. A professional interpreter can handle all three and will use whichever technique is appropriate to the situation.

As a matter of ethics and for the sake of accuracy, a professional interpreter does not add, change, omit or summarize any utterance. See NAJIT’s position paper on “Summary Interpreting in Legal Settings” for further explanation of this point.

### When is each technique used?

- *Consecutive interpretation* is used in interrogations, interviews, or question and answer scenarios. An individual speaks in Spanish, for example, and then the interpreter gives the meaning in English. This requires a short waiting time between the question and the answer. Such sessions can be recorded to create a permanent record of both the original speech and the interpretation, because the voices do not overlap.
- *Simultaneous interpretation* is used in the courtroom or in any situation in which running renditions are needed at the same time as the English language communication. Usually, one

or more parties talk for an extended period while others listen to the interpretation either over headphones or by having an interpreter sit next to the LEP person. In the case of sign language interpretation, the deaf person and the interpreter need to see each other’s face and hands at all times.

- *Sight translation* is used when the content of an English or foreign language document needs to be rendered aloud immediately in the other language. Recommended practice is to afford the interpreter sufficient time to review the document’s contents before rendering it.

See NAJIT’s position paper on “Modes of Interpreting” for more details on these techniques.

### How hard is it to interpret accurately?

Research reveals that interpreting accurately and consistently at a moderate rate of speech (120 words per minute) is relatively difficult. Memory, speed, mental flexibility, patience, and many cognitive skills come into play. Interpreters need training and practice to achieve minimal levels of competency.

### How can I verify the interpreter’s competence?

Credentials and professional references should be verified rather than taken at face value. A qualified interpreter has interpreting credentials from a bona fide source and extensive experience in legal interpreting.

*Federal courts* certify interpreters in three languages: Haitian Creole, Navajo, and Spanish. The Administrative Office of the U.S. Courts maintains a roster of certified interpreters.

*State courts* certify interpreters in various languages, and some make their lists of certified individuals available to the public. At this time, 35 states belong to the Consortium for State Court Interpreter Certification, a project of the National Center for State Courts. Some states do not have a certification program or are in the initial phase of development.

*Professional associations* may offer certification programs. NAJIT certifies individuals in Spanish/English judiciary interpreting and translating. The American Translators Association certifies individuals for general translation.

*Private sector language companies*, for the most part, work with subcontracted translators and interpreters. When using a private company, ask how they test or verify interpreter credentials. Ask if they train contract employees in the ethical standards to which legal translators and interpreters must adhere. Lack of training in this area may result in disclosure of confidential information, lack of neutrality, conflict of interest, or misrepresentation of credentials, among other repercussions.

#### **How can an officer monitor interpreter-mediated communication?**

Law enforcement officers are advised to monitor interactions between the interpreter and the LEP person.

Useful strategies to ensure accuracy:

- brief the interpreter on the context before commencing an interrogation
- check comprehension by asking the LEP person to explain in his own words what he has understood of the communication thus far
- repeat questions in different form to verify answers
- look to body language
- notice if there are significant “gaps” in the interpreted portions
- Frequent hesitation or hedging by the interpreter may indicate doubt as to vocabulary or meaning (though pauses may also mean that the interpreter is taking the appropriate time necessary to make the right choice of words)

Transparency is a key aspect of good interpreting services. If confusion or doubt exists, the interpreter should keep all parties included in any inquiry for clarification.

Above all, officers should not permit private conversations between the interpreter and the LEP person.

#### **How can our office improve Title VI compliance regarding language assistance?**

Bear in mind that “There are many underlying issues that animate locals’ reluctance to make direct contact with the police: their limited English proficiency; their own or a household member’s legally problematic status; fear of retribution; concerns about police prejudice,

discrimination, and entrapment; and a desire to keep the home and family below the radar of the law and courts.”<sup>6</sup>

The following are some recommendations:

- Assess your district’s needs and set a policy. First, assess language needs by tracking the languages encountered by officers on the job. Study your community to identify LEP populations. Then devise policies and implement strategies to ensure effective communication.
- Always validate projections based on demographic data against program experience, based on the observations of your staff and input from the community (see the resources section below).
- Have a written action plan and integrate it into policy academy training.
- Hire officers or staff members who are proficient in foreign languages—particularly those languages reflected in the demographics of the agency’s jurisdiction.
- Attract bilingual staff by aggressive recruitment and pay differentials for language abilities. Post open positions in newspapers and employment agencies that target minority populations.
- It is strongly advised that the proficiency skills of bilingual staff be tested above and beyond the simple submission of credentials. Investigate available services to test bilingual personnel.
- Train bilingual staff in basic interpretation and translation protocols.
- Have vital forms and documents professionally translated into languages commonly spoken in your community.
- Encourage officers and other bilingual staff to call in professional interpreters and translators when needed.
- Equip your officers and staff with effective language tools (“I Speak \_\_\_\_\_” cards, translated Miranda Warning, etc.) and language access protocols in order for them to fulfill their duties.
- Partner with volunteers from community-based and charitable organizations.
- Conduct periodic in-house training regarding the use of qualified on-staff or contracted interpreters.
- Hold cultural sensitivity training sessions for officers.
- Conduct community outreach to strengthen ties and cooperation with law enforcement.

NAJIT applauds the work being done by law enforcement authorities that are aware of these issues and dedicated to ensuring due process and equal access to justice for all. We wish to work as partners with law

enforcement and support your efforts. Please contact our office if we can be of any assistance as you work to strengthen your department's programs in this arena.

For further information please consult the following resources:

■ **Specific to Law-enforcement**

"The Summit/Lorain Project, A Resource Document for Law Enforcement: Interpretation and Translation Services." [www.co.summit.oh.us/sheriff/LEP.pdf](http://www.co.summit.oh.us/sheriff/LEP.pdf)

LEP Planning Tool for Law Enforcement: [http://lep.gov/Law\\_Enforcement\\_Planning\\_Tool.htm](http://lep.gov/Law_Enforcement_Planning_Tool.htm)

LEP Planning Tool for Corrections: [http://lep.gov/LEP\\_Corrections\\_Planning\\_Tools.htm](http://lep.gov/LEP_Corrections_Planning_Tools.htm)

■ **Federal Level**

Executive Order 13166. Coordination and Review Section, Civil Rights Division, Department of Justice. [www.usdoj.gov/crt/cor/13166.htm](http://www.usdoj.gov/crt/cor/13166.htm)

Executive Order 13166. Limited English Proficiency Resource Document: Tips and Tools from the Field." [www.usdoj.gov/crt/lep/lepdoc%20frontpage.htm](http://www.usdoj.gov/crt/lep/lepdoc%20frontpage.htm)

Title VI of the 1964 Civil Rights Act. [www.usdoj.gov/crt/cor/coord/titlevistat.htm](http://www.usdoj.gov/crt/cor/coord/titlevistat.htm)

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. [www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.htm](http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.htm)

2000 Census. [www.census.gov/population/cen2000/phc-t20/tab04.pdf](http://www.census.gov/population/cen2000/phc-t20/tab04.pdf)

Census 2000 Brief: Language Use and English-Speaking Ability, [www.usdoj.gov/crt/lep/lepdoc%20chapter1.htm#a](http://www.usdoj.gov/crt/lep/lepdoc%20chapter1.htm#a)

National Center for Education Statistics. <http://nces.ed.gov/fastfacts/display.asp?id=96>

■ **State Level**

Consortium for State Court Interpreter Certification, National Center for State Courts. [www.ncsconline.org/D\\_Research/CourtInterp/CICourtConsort.html](http://www.ncsconline.org/D_Research/CourtInterp/CICourtConsort.html)

Language identification card issued by the State of Ohio Office of Criminal Justice Services, the Summit County Sheriff's Office, the National Association of Judiciary Interpreters and Translators and the American Translators Association. <http://www.ocjs.ohio.gov/Publications/Pocket%20Card.pdf>

■ **Professional Associations**

National Association of Judiciary Interpreters and Translators. [www.najit.org](http://www.najit.org)

American Translators Association, [www.atanet.org](http://www.atanet.org)

Community and Court Interpreters of the Ohio Valley's Resources for Interpreters, "Explanation of Court Interpreter Certification." [www.ccio.org](http://www.ccio.org)

Community and Court Interpreters of the Ohio Valley. "Getting It Right By Doing It Right." [www.ccio.org](http://www.ccio.org)

■ **Footnotes**

1 Title VI 42 U.S.C. §2000d

2 See Fifth and Fourteenth Amendments to U.S. Constitution; Section 601 of Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d. The term "person" under the fifth and fourteenth amendments has been held to include undocumented persons for the purposes of due process and equal protection. See, eg., *Plyler v. Doe*, 457 U.S. 202 (1982), *Mathews v. Diaz*, 426 US 67 (1976).]

3 *State v. Ramirez*, Case No. 97-L-289, Court of Appeals of Ohio, Eleventh Appellate District, Lake County, 135 Ohio App. 3d 89; 732 N.E.2d 1065; 1999 Ohio App. LEXIS 6241, December 23, 1999, Decided, Counsel Corrected November 20, 2000.

4 *People v. Sandoval*, 736 P.2d 1201 (Colo. 1987)

5 *People v. Mata Medina*, District Court, Pueblo County (Colorado), Case No. 97 CR 307, May 7, 1998

6 Ibarra, Peter R. "Contacts with the Police: Patterns and Meanings in a Multicultural Realm." *Police & Society: An interdisciplinary Israeli journal of law enforcement and criminology*. April 2003 <http://www.ojp.usdoj.gov/nij/specialissue/policesociety.html>

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National Association of Judiciary Interpreters & Translators

## NAJIT POSITION PAPER

### MODES OF INTERPRETING: SIMULTANEOUS, CONSECUTIVE, & SIGHT TRANSLATION

**T**he 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](http://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 embellishments<sup>1</sup>, 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 rights<sup>2</sup>, everything spoken in open court must be interpreted to her simultaneously<sup>3</sup>. 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 proceedings<sup>4</sup>. 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 session<sup>5</sup>. 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 to do the same in order to protect the due process right of the defendant<sup>6</sup>.
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](http://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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National Association of Judiciary Interpreters & Translators

## NAJIT POSITION PAPER

### ONSITE SIMULTANEOUS INTERPRETATION OF A SOUND FILE IS NOT RECOMMENDED

**T**he 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](http://www.najit.org).

#### ■ Introduction

When participants in a judicial process face the examination of an evidentiary sound file in a language other than English, the court, in an effort to be expeditious and conserve resources, may order the court interpreters present in the court room to provide an on-the-spot simultaneous interpretation of the sound file in question. The quality of in-court interpretation of a sound file will almost always fall short of the evidentiary standards that must be met, due to the lack of time, technology, and resources required by the practitioner to perform the task correctly. This paper explains why simultaneous interpreting of a recording in the courtroom is usually an impossible task that should not be ordered by a court, nor attempted by an interpreter.

#### ■ Why not interpret a sound file on the spot?

Transcription/translation (TT) is a highly specialized discipline within the broader range of language services for the judiciary. These critical factors come into play when converting information on a sound file from one language to another:

- Knowledge of the transcription/translation process
- Time
- Technology
- Research tools

Clearly some of these factors are lacking in the court-room when the judge orders the immediate simultaneous interpretation of a sound file—even when the recording is of short duration, for example, a 911 call. The interpreter present may have knowledge of the TT process, but will lack the other tools listed above, needed to perform the task at hand successfully. It follows that simultaneous interpreting of a recording in the court room will yield at best mediocre results when the life and liberty of a defendant and the pursuit of justice are on the line. A forensic psychiatrist would be remiss, indeed disqualified, if he provided an expert opinion on a patient based upon seeing the patient for the first time in the court room. Along the same lines, forensic TT requires expertise, time, and technology to perform the work required to an adequate standard.

#### ■ Why transcribe a sound file in a foreign language?

The rationale to transcribe a sound file in a language other than English follows on the heels of the rationale to transcribe sound files in English. Transcripts as an "Aid to Understanding" were first distributed by the prosecutor with permission from the Court in *People v. Feld*, in the 1953 decision of New York's highest court. An alternate view of the transcript as an Aid to Understanding is the Transcript as Opinion Evidence. In either instance, a transcript is produced by the prosecution to aide in processing sound that may not be readily accessible to the unassisted ear of jurors, the parties, and the Court.<sup>1</sup>

There may be rare instances where a tape is so perfectly clear that everyone can hear it, and it leaves no room for a challenge. However, this rarely happens, and a challenge often follows. When any portion of the sound file is challenged in the absence of a transcription/translation, the only source of reference is the official record, which will have to be read every time reference is

made to a specific portion of the recording. If someone challenges the use of a specific word, there is no transcription to reference for the word in question. Aside from a reading from the official record, the only other options are to rely on the memory of the interpreter, who may or may not be present in the courtroom during all proceedings, or to listen to the sound file each and every time a word or phrase is challenged. This method is not expeditious. For this reason, a transcription translation that stands up to scrutiny in the courtroom and meets legal evidentiary standards should always be used.

#### ■ What qualifies an individual to perform transcription/translation?

A qualified TT practitioner will meet an extensive range of criteria, some of which are listed below; this list is not exhaustive. Fuller details on the necessary qualifications will be included in NAJIT's Transcription/Translation Guidelines, now under preparation.

- Acute hearing
- Native-quality knowledge of languages
- Understanding of cultural factors
- Expertise in recognition of language registers
- Formal higher education
- Analytical skills
- Attention to detail
- Knowledge of research methodology
- Ethical expertise
- Problem-solving skills
- Neutrality
- Awareness of forensic testimony requirements
- Ability to self-monitor and correct
- Openness to third-party review
- Knowledge of technical tools
- Openness to new technology and methods

#### ■ The actual product of transcription/translation

1) **Investment of time.** In order to produce a transcribed and translated text, a substantial investment of time is required. Ordinarily, the standard unit of measure for TT is one hour of work per minute of sound. Some practitioners working with very clear audio and simple content can produce a good product at a faster rate, while practitioners working with unclear and distorted audio may take even longer.

2) **Transcribing poor-quality audio.** Initially, a recording may appear unintelligible or inaudible. Sometimes the voices in the recording overlap, or there

are multiple layers of noise mingled with the dialogue. The poorer the audio, the more technical enhancement is required. Listening over and over to the recording and, sometimes, enhancing the sound file takes time. It is through multiple hearings and the use of professional equipment that the discourse eventually emerges from the fog of noise and overlaps. When the audio quality is very poor, the transcriber/translator may also need to put the task aside and come back to it later — the fatigue factor is very prevalent in TT work. Only this extended process makes it possible to go beyond the noise, distortions, and overlaps, to obtain a good final transcription, the first stage of the process.

3) **Translating the transcribed audio.** The second stage is to prepare a translation into English of the transcribed audio recording. This phase often requires specialized library and internet research. Additionally, to ensure accuracy in the entire process, the practitioner must frequently consult with other members of the team possessing specialized knowledge in specific areas such as slang, regionalisms, or myriad technical issues.

4) **Form of final product.** The final product of this process is a two-column page placing both the foreign-language transcription and the English translation side by side, so that easy reference and checking for accuracy is possible. The conventions recommended to produce this product in the most usable format will be fully detailed in NAJIT's Transcription/Translation Guidelines, now under preparation.

#### ■ Potential violation of interpreter's oath

Despite the considerations given above, an interpreter may be ordered to interpret a recording on the spot in the simultaneous or consecutive modes. The interpreter's oath mandates faithfulness and accuracy to the best of the interpreter's ability. The interpreter should make it clear to all parties that an immediate rendition of the material in question will likely fail to meet the high standards set forth by that oath.

#### ■ Conclusion

Given all that is at stake in the courtroom, there is no room to cut corners in the forensic TT process. What may appear to be a savings in time and money may cost twice as much in the end, when the entire project must be redone. For this reason, it is to the benefit of all parties involved in the judicial process

to familiarize themselves with the fundamentals of transcription/translation and all that it entails. There are very substantial reasons why onsite simultaneous interpretation of a sound file is not recommended.

■ **Footnote:**

1. Clifford Fishman, "Recordings, Transcripts and Translations as Evidence." Draft distributed internally for publication review.

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National Association of Judiciary Interpreters & Translators

## NAJIT POSITION PAPER

### PREPARING INTERPRETERS IN RARE LANGUAGES

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

#### ■ Introduction

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

#### ■ Responsibility for Assigning Interpreters

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

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

#### ■ Lead Time Required

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

#### ■ Seven Steps from Administrative Groundwork to Conclusion of Proceedings

##### STEP ONE: WHAT LANGUAGE DO WE NEED?

Make an accurate determination of the language or dialect needed.

##### FIND OUT

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **STEP THREE: WHAT MODE OF INTERPRETING WILL BE REQUIRED?**

##### **FIND OUT**

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

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

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

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

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

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

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

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

#### ■ Separating the wheat from the chaff

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

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

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

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

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

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

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

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

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

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

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

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

#### ■ Information to be reviewed with the interpreter:

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

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

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

#### STEP SIX: REPORT TO THE JUDGE OR PRESIDING OFFICIAL

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

#### STEP SEVEN: FOLLOW-UP

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

## ■ Conclusion

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

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## APPENDICES

### Preparing Interpreters in Rare Languages

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

##### IN GENERAL

Avoid any questions that can be answered with "yes - no" replies.

##### IDENTIFICATION QUESTIONS

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

##### QUESTIONS USING ACTIVE VOCABULARY IN VERNACULAR ENGLISH

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

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

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

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

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

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

#### C. Suggested voir dire for defendant requesting a rare language

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

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



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](http://www.najit.org).

### ■ Introduction

Approved modes of interpreting in judiciary settings<sup>1</sup> 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.<sup>2</sup>...

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.<sup>3</sup>

### ■ 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).<sup>4</sup> 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.”<sup>5</sup>

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."<sup>6</sup>

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."<sup>7</sup>

#### ■ 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."<sup>8</sup>

#### ■ 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."

#### ■ 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.

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### 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\\_CtInte\\_ModelGuideChapter2Pub.pdf](http://www.ncsconline.org/wc/publications/Res_CtInte_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.
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"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](http://www.najit.proteus/back_issues/officers.htm)

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## 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](http://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.<sup>1</sup> 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.<sup>2</sup>

### **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.<sup>3</sup> 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.<sup>4</sup>

### **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.<sup>5</sup>

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."*<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup>

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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