

OFFICE OF COURT INTERPRETER SERVICES
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WORKING WITH COURT INTERPRETERS EFFECTIVELY

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Issues Addressed in this Packet:

- What is the role of the Office of Court Interpreter Services in ensuring equal access for Limited English Proficiency (LEP) persons in court?
- How does OCIS fulfill its mission as stated in G.L. c. 221C?
- For which proceedings will OCIS assign interpreters?
- Does OCIS also provide translation services (written documents)?
- What is a certified/professionally qualified/OCIS-screened court interpreter?
- What are the differences between a bilingual person and a professionally-trained court interpreter?
- What are the dangers of using unqualified people as interpreters in Court?
- Why should a court interpreter never become involved in a case, beyond his/her role as a linguistic facilitator?
- Things you need to know that will help you improve communication with an LEP when using an interpreter.
- What if you have no choice but to use an “ad hoc” interpreter?
Ideas for troubleshooting
- What are some common misconceptions about court interpreters?
- How can the different members of the Court system assist interpreters so they may perform their duties with excellence?

THE OFFICE OF COURT INTERPRETER SERVICES

The Right to Equal Access

All persons within the Commonwealth, regardless of their literacy or proficiency in the English language, have the right to equal access to the courts and to justice, and have the right to access all of the services and programs provided in court facilities. **Chapter 221C of Massachusetts General Laws was enacted into law on December 23, 1986**, thereby creating a centralized court interpreter office for the Trial Court that guarantees and protects the rights of non-English speakers throughout their legal proceedings. This law addresses not only the right to an interpreter but also the quality of the interpretation, and recognizes the direct correlation between accurate interpretation and a fair legal process for non English-speaking defendants or victims. The purpose of the law was to “provide the broadest possible protection for the rights of non-English speaking persons to understand and to be understood.”

The Office of Court Interpreter Services

The Office of Court Interpreter Services (OCIS) receives requests for services in all languages. **All court departments may place requests for criminal and civil legal proceedings, including court investigations/interviews for CHINS, Care and Protections, Delinquencies, Court Clinics, Grand Jury, Mental Health Commitment Hearings and the institution of court actions.** The office also provides interpreters for the deaf and hard of hearing through the Massachusetts Commission for the Deaf and Hard of Hearing.

The Office of Court Interpreter Services is committed to providing professionally qualified interpreters for judicial procedures to over 135 separate Trial Court locations throughout the state. OCIS is charged with assessing language needs, serving as a liaison between the Trial Court system and the interpreters, recruiting and screening applicants, assigning and scheduling interpreters, setting and enforcing certification standards, and providing continuing education and training to Massachusetts Trial Court interpreters.

Standards and Procedures for Interpreter Services (2003; 2009)

In April 2003 the Trial Court promulgated a Standards and Procedures for Interpreter Services (*Standards*) with the purpose of providing interpreters, judges, attorneys and other court personnel with important information about accessing, using and providing interpreter services in the Massachusetts Trial Court, and with guidelines to follow when requesting or acting as interpreters through the Office of Court Interpreter Services. A revised version of the *Standards* was approved and adopted effective October 30, 2009. Access it at: www.mass.gov/courts/admin/planning/interpreters.html.

Requesting an Interpreter

Each court department has a **designated court liaison**, often in the clerk’s office or at the Judge’s Lobby, who forwards OCIS the request form for Interpreters. Attorneys, clerks and other court officials can assist non English-speakers by notifying the court liaison as soon as possible of their need for an interpreter. OCIS can only fill requests

from a court liaison. It is also important to correctly determine the specific language needed.

Arranging for Interpreter Services

OCIS does not pay for attorney-client interviews, but court-appointed attorneys may request interpreters for their interviews through OCIS if they have an approved Motion for Funds. Attorneys interested in getting this assistance from OCIS should fax in an Attorney/Client Interview- Foreign Language Interpreter Request Form. OCIS will assign an interpreter, who will later submit a personal invoice directly to CPCS.

OCIS can fax or mail interpreter request forms to court liaisons and to court-appointed attorneys. OCIS phone numbers are: **617-878-0343;0269/ 1-888-409-6225, Ext. 343.** **The fax number is 617- 367-9293.**

Cancellations

Court liaisons and attorneys who request interpreter services should inform OCIS of cancellations or continuances as soon as possible by calling the office or by faxing in a cancellation form.

Telephone Interpretation

Courts may also access phone interpretation services through OCIS through the court liaisons. Phone interpretation is more appropriate for conducting procedures outside of the courtroom such as probation interviews, magistrate hearings, or short courtroom proceedings.

List of Interpreters Available for Out-of-Court Assignments

As the sole public accrediting authority for spoken language court interpreters in the Commonwealth, OCIS maintains a list of interpreters to facilitate access to the courts for Limited English Proficient (LEP) individuals. In addition, OCIS provides general access to interpreter services by making this list public so it can be used by attorneys and other legal or law-related entities that seek assistance in obtaining qualified interpreters. To arrange interpreters for non-court-ordered events for individuals who are deaf or hard of hearing, contact the Massachusetts Commission for the Deaf and Hard of Hearing (www.mass.gov/mcdhh). The list includes both staff interpreters and per diem interpreters. Staff interpreters are state employees, while per diem interpreters are independent contractors. This list is updated quarterly and is not intended as a complete list of all OCIS interpreters or as a source for official confirmation of an interpreter's certification status. To access the list of interpreters:

www.mass.gov/courts/admin/planning/interpreters.html.

Scope of Service

OCIS provides interpreters for any civil or criminal court proceeding including the institution of such proceeding. OCIS also provides interpreters for court investigations or interviews for **CHINS, Care and Protections, Delinquencies, Court Clinics, Grand Jury and Mental Health Commitment Hearings**. In addition, OCIS will schedule and compensate interpreters for providing **services upon request of a Court Liaison for parents, guardians and other individuals who must understand the court proceeding.**

Standards and Procedures, Section 8.00 Requesting the Services of a Court Interpreter:
8.01 Types of Proceedings for Which an Interpreter Will Be Provided.

(A) The OCIS will schedule and provide court interpreters, upon receipt of a request pursuant to section 8.02, to appear at any and all criminal or civil judicial proceedings, including the institution of such proceedings (e.g., the filing of a complaint and affidavit seeking a restraining order pursuant to G.L. c.209A or other similar proceedings). In emergency situations where written requests are not possible, OCIS will provide interpreters and will be responsible for compensating interpreters for providing services upon telephone request.

OCIS will be responsible for compensating interpreters who provide these services when scheduled or assigned by OCIS under these Standards and Procedures. OCIS will give priority to scheduling the following types of proceedings: criminal proceedings; juvenile proceedings, including CHINS, care and protection proceedings, and petitions seeking to dispense with parental consent to adoption under G.L. c. 210, § 3; proceedings under G.L. c. 209A and other proceedings for protection from abuse, civil commitment hearings pursuant to G.L. c. 123, proceedings conducted in the Housing Court, housing cases conducted in the District Court, and proceedings conducted to secure child support payments. In addition, OCIS will schedule and compensate interpreters for providing services upon request of a Court Liaison for parents, guardians and other individuals who must understand the court proceeding.

An interpreter who has been sent to a court facility for a particular day or part of a day, and who is not actively interpreting in a court proceeding, shall, upon request, provide interpreting services for other court personnel during the period for which the interpreter is being compensated by OCIS so long as he or she remains available for courtroom proceedings as assigned or for other OCIS assignments as needed. Responsibility for providing these services continues to lie primarily with other court offices or departments.

For further information:

Go to: <http://www.mass.gov/courts> [MA. Court system site]

Click on: Site Index

Click on: I (interpreters)

Click on: Interpreter Services

“Proposed Standards and Procedures...”

or click directly on the “Interpreter Services” page:

<http://www.mass.gov/courts/admin/planning/interpreters.html>

See: Massachusetts General Laws, Chapter 221C,
“Court Interpreters for the Trial Court” (1986)

The Court Interpreter

Definitions

“A court interpreter is the communication facilitator for the parties involved in a proceeding and as such plays a vital role in the protection of the rights of non-English speakers engaged as parties or witnesses in legal proceedings in the Trial Court Departments.” (1:01 Code of Professional Conduct for Court Interpreters of the Trial Court)

Court interpreters should be readily able to **orally** interpret written and spoken language from English into other languages or from other languages into English. The interpreter will use either the **simultaneous** mode or the **consecutive mode**, depending on the type of encounter. Court interpreters should also be able to assist the Court or the users of their services by orally translating written documents from English into the other language or vice versa. This is called, **sight translation**. An interpreter is different from a **translator** in that the latter converts **written** texts from one language into another.

Placing the LEP on an Equal Footing and Ensuring Due Process

Court interpreters assigned by OCIS must be available to assist LEP parties and court staff equally to ensure due process. In fact, services provided by OCIS court interpreters shouldn't be regarded as for any party in particular but for the legal process itself. As most other interpreters, court interpreters are bound by strict standards of **accuracy, impartiality and confidentiality** when they interpret from one language into another, as set forth in *Code of Professional Conduct for Court Interpreters of the Trial Court* (1988). According to the accuracy standard, the interpreter will preserve the speaker's style, tone and register (level of speech) without adding, deleting, improving or toning it down. They are expected to interpret everything said in court regarding the defendant's or witness's case. Through such accurate rendition of the speaker's voice—both the English speaker's and the LEPs—interpreters aim at placing the LEP on an equal footing with the English speaker.

Interpreters are never to give any type of legal advice, offer personal opinions or become involved in a case other than as the language facilitators, never as an advocate or a social worker. Under certain circumstances, they could also serve as cultural clarifiers whenever there is a breakdown in communication due to a cultural misunderstanding, but they should promptly return to their default role.

Minimum qualifications for court interpreters

Professional court interpreters are expected to possess the following minimum qualifications:

- Academic, native-like mastery of both English and a second language;
- A wide general knowledge characteristic of what a minimum of two to four years of general education at a college or university would provide;
- Knowledge and understanding of cultural nuances that characterize speakers of English and their other language;
- Ability to perform three major types of court interpreting: **simultaneous and consecutive interpretation** and **sight translation** (orally translating a written document);
- A commitment to abide by the interpreter's code of professional conduct

OCIS-Screened and Certified Interpreters

The screening process includes all or most of the following:

- A review of the applicant's credentials and resume to determine academic level and professional experience
- Written screening exam
- Interview
- Attendance at mandatory introductory training
- Mentoring (in the court, with a certified interpreter)
- Observation in Court

Interpreters who are successfully screened by OCIS will be assigned to the Trial Court as "***OCIS-screened interpreters.***"

After completing a minimum set of criteria, they can become ***State-certified*** through OCIS, either upon passing written and oral exams or by submitting a certification packet proving compliance with a set of standard educational and professional criteria.

GENERAL INFORMATION ABOUT OCIS COURT INTERPRETERS

OCIS has over **150 independent contractors (per diem interpreters)** on its list, representing over 40 languages.

OCIS currently has **25 staff interpreters (full time interpreters)** on its list: 17 Spanish, 5 Portuguese, 1 Vietnamese, 1 Haitian Creole and 1 Khmer (Cambodian).

Some of them are assigned for “**Automatic Morning Coverage**” whereas others are assigned to specific cases.

Some interpreters are assigned to cover one court/court complex per day. Others are assigned to cover multiple courts on the same day.

OCIS instructs its interpreters to announce their appearance with the session's clerk as well as with the court officers in the courtroom.

OCIS instructs its interpreters to sit as close as possible to the bar (railing) or at a designated seat in the courtroom. The reason for this is to avoid unnecessary contact with the non English-speaking defendants and to be accessible to those who might need them.

OCIS instructs its interpreters to inform the court officers in a courtroom of their whereabouts in case they are needed again.

Most court interpreters, especially when they are new, will use their non interpreting time to listen to proceedings, and to learn terminology and process. They will be consulting dictionaries, taking notes, etc.

When would court interpreters need a court officer's/clerk's/ attorney's Judge's assistance:

- ✓ To find out where a case will be heard.
- ✓ To get docket numbers, case names, attorneys, etc. They have to include all of this information in the bills they submit to OCIS.
- ✓ To find out whether there's a sitting area allotted for the interpreter in the courtroom/courthouse.
- ✓ To sit/stand where they can see and hear while they interpret.
- ✓ To know where else they are needed and to keep court officers in other courtrooms informed of their whereabouts.
- ✓ To inform the Court about impediments to their performance.
- ✓ To promote a working environment in which they can perform their duties as mandated by the Court.

Common Misconceptions about Court Interpreters

- ✓ *Any bilingual person can interpret in Court.*

Speaking two languages does not necessarily qualify someone to act as a court interpreter. Languages are not mirror images of each other. Therefore, interpreting is not simply a word by word mechanical process. Interpreters need to excel in analytical and linguistic skills, and they must understand the interpreter's protocol and ethics.

(For more information we recommend: William Hewitt, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, State Judicial Institute/National Center for State Courts, 1995.)

- ✓ *Interpreters don't need to have access to a case's documents before interpreting.*

Yes, they do, especially for long proceedings such as hearings and trials. Whenever an expert witness will be called to testify, interpreters must get a chance to prepare for technical, specialized language. Even during smaller proceedings, interpreters will be able to render a better quality of work if they have had a chance to review police reports, case summaries, etc.

- ✓ *It is the court interpreter's job to make sure that the LEP understands all the details of the legal process.*

Not really. There are people in Court whose role is to make sure that LEPs understand the legal process. These are the attorneys, court officers, probation officers, judges, advocates, etc. The interpreter's true job is to make sure that speakers of different languages, while involved in a court/legal process, may communicate orally with each other. They should make possible that this happens as if such communication took place between speakers of the same language.

- ✓ *A good interpreter never interrupts the Court proceedings.*

Actually, the contrary would be true. Professionally-trained interpreters know they must request assistance from the Court whenever they feel that their working conditions don't allow them to perform with a high level of accuracy. Therefore, they must bring it to the Court's attention if they cannot hear, if they have problems understanding what was said, or if they are being asked to go beyond their role as impartial, neutral participants.

- ✓ *A good interpreter never makes mistakes.*

We wish that would be true! The truth is, even the best interpreter can make errors of interpretation. Interpreting is a very difficult, demanding task and interpreters are rarely given enough time to prepare before a case. Without information and context on the information to be presented in Court, it is very easy to make mistakes. Professionally-trained interpreters know they should correct the record if they realize they have made a mistake.

IMPORTANT INFORMATION REGARDING LEP PARTIES WHO NEED ASSISTANCE WITH COURT FORMS

The Code of Professional Conduct for Court Interpreter of the Trial Court (Section 4:00, *Standards & Procedures of the Office of Court Interpreter Services*) contains guidelines for interpreters assisting illiterate LEP parties who need to fill out forms or write statements for court purposes:

- “4.07 Scope of Practice. Court interpreters shall limit themselves to interpreting or translating and shall not give legal advice, nor express personal opinions to individuals for whom they are interpreting, nor engage in any other activities which may be construed to constitute a service other than interpreting or translating.
- (A) Court interpreters are responsible only for assisting others to communicate and should limit themselves to the activity of interpreting or translating. Court interpreters should refrain from initiating communications while interpreting, unless it is necessary for ensuring an accurate interpretation.
 - (B) Court interpreters should not perform acts that are the official responsibility of other court officials including, but not limited to, court clerks, investigators, interviewers, or probation officers. Such acts may include the filling out of forms or paperwork for LEP or DHH individuals.
 - (C) When interpreting for an LEP or DHH individual, the court interpreter should have the appropriate officer of the court or staff present while filling out forms or written statements in order to respond to any questions that the individual might have. If the court interpreter needs to write down the person's statement, the court interpreter should have the person dictate it in his/her own language and write it down verbatim. The court interpreter should then read the written statement back to the individual and provide a written translation into English of the statement, signed and dated by the court interpreter.”

SUGGESTIONS FOR WORKING EFFECTIVELY WITH PROFESSIONALLY-TRAINED COURT INTERPRETERS

DO:

1. Explain to the non English-speaker that the interpreter is there as an impartial party to interpret exactly what you say and what he/she says.
2. Address the person directly, not the interpreter. In other words, do not tell the interpreter; “ask him or her if...” or “tell him/her that...”
3. Speak and assure that others speak at a volume and rate that can be accommodated by the interpreter.
4. Make certain that the interpreter can hear and that only one person speaks at a time.
5. Help the interpreter clarify any doubt that could hinder his/her accurate rendition of what was said.
6. Ask questions or say things in simple, straightforward sentences.
7. Clarify or define yourself any term of art as requested by the LEP party.
8. Understand that the interpreter has to transfer the speaker’s own style, tone and register (level of speech). If the interpreter sounds incoherent or uneducated, it is because the speaker sounds just like that too!
9. Avoid “rapid-fire” delivery of what to you is very routine information. Also avoid using idioms, figurative language, acronyms or telling jokes. They don’t translate easily and can get confusing.
10. Understand that it could take more time to say in some languages what you are saying in English.
11. Make sure that the interpreter can hear all speakers. Interpreters cannot interpret what they can’t hear.
12. Be patient and understanding if the interpreter asks for clarification or reminds parties to slow down.
13. Feel free to inquire about the interpreter’s professional qualification and to monitor the interpreter’s compliance with his/her code of professional conduct. For example, if the interpreter is having a conversation with the non English-speaking party, you may certainly talk to the interpreter about it and

request that he/she stop. You may then remind the interpreter that he/she should avoid even the appearance of lack of impartiality.

14. Allow interpreters to do their job in court even if you speak the non English-speaker's language. Interpreters are trained in the practice of interpretation, translation and interpreting skills. They also know they must remain impartial and not take sides.

15. Make good use of the interpreter's time. He/she may have other assignments to cover.

DO NOT:

- Ask an interpreter to not interpret something. He/she is professionally and ethically bound to interpret everything.
- Ask the interpreter to assist a non-English speaker in filling out forms other than orally translating entries. There should be a court staff present who can explain the contents of the form and who can guide the non-English speaker through filling it.
- Ask an interpreter to comment on the case, the non-English speaker, etc. He/she is bound to observe neutrality and impartiality at all times.
- Assume that the interpreter can find an equivalent legal term in his/her target language. You may have to explain terminology, so that the interpreter interprets the explanation.
- Expect interpreters to not make mistakes ever. Interpreting is an extremely difficult task, and errors are expected. Professional interpreters are trained to correct mistakes when they become aware of them, or to discuss /explain a perceived mistake. They can refer to the code of professional conduct for further information.

DAMAGE CONTROL: SUGGESTIONS FOR WORKING WITH NON-PROFESSIONAL INTERPRETERS

In cases where no professionally-qualified interpreter is available, it is sometimes deemed unavoidable to resort to using bilingual individuals who are not trained as interpreters (“ad hoc” interpreters) to facilitate communication and expedite short interpreted encounters with LEPs. People who qualify under the denomination “ad hoc interpreters” may be bilingual staff, family members, and people from the non English-speaker’s community, volunteer self-proclaimed interpreters or individuals with little or no training who nevertheless market themselves as interpreters and charge a fee for their services.

Because of the risks involved in using untrained individuals as interpreters for court proceedings, this practice should generally be avoided by the Court. If they are used, there should be a brief *voir dire* with the ad hoc interpreter to ascertain her or his understanding of what will be discussed in Court, and to generally advise her or him about what is expected. Also in these cases, a basic knowledge of the role of the court interpreter can help court staff guide the ad hoc interpreter to a more successful encounter.

Here are some ideas for attorneys, clerks, judges and court staff in general who are using ad hoc interpreters to minimize possible miscommunication and errors.

SETTING UP THE PROCEEDINGS:

- Determine whether the ad hoc interpreter knows the person he or she would be interpreting for and to what extent (Especially when it could affect the person’s willingness to disclose important information in front of an acquaintance or relative.) Avoid using family members as interpreters, especially minors.
- Explain to the ad hoc interpreter that they should say everything the person says as accurately as possible without changing, adding or deleting.
- Ask the ad hoc interpreter to refrain from making personal comments or giving advice to the non English-speaker and to limit themselves to interpreting what the Court says into the non English-speaker’s language and vice versa.
- Conduct a brief *voir dire* to assess the ad hoc interpreter’s proficiency in English and in the other language.

- Unless a relative or a bilingual advocate is used to interpret, ask the ad hoc interpreter to introduce her/himself to the non-English speaker as an impartial language facilitator. The ad hoc interpreter should also mention that everything said would be kept confidential.
- Explain to the ad hoc interpreter that the party conducting the interview/meeting/hearing will generally address the person directly, not the ad hoc interpreter. Make sure to address the non-English speaker directly and focus on them. Ideally the interpreter should be “invisible” in the proceedings.
- Clarify or define any term of art that the ad hoc interpreter and the non English-speaker might not be familiar with.

DURING THE PROCEEDINGS/MEETING/SESSION:

- Speak and assure that others speak at a volume and rate that can be accommodated by the interpreter.
- Make certain that the interpreter can easily hear and that only one person speaks at a time.
- Ask questions or say things in simple, straightforward sentences. It will be easier for the ad hoc interpreter to transfer them into the other language. It will also make it much easier for the non-English speaker to understand.
- Avoid “rapid-fire” delivery of what to you is very routine information. It takes time to process an incoming message, and it could take more time to say in some languages what you are saying in English.
- Avoid using idioms, figurative language, acronyms or telling jokes. They don’t translate easily.
- Monitor the interpreter’s performance. You may have to intervene if you think that the ad hoc interpreter is not interpreting much of what the non English-speaker is saying or that the ad hoc interpreter is interpreting incorrectly.
- Monitor the ad hoc interpreter’s performance. Again you may have to intervene if you think that the ad hoc interpreter is engaging in conversations with the non English-speaker or if the non English-speaker seems uncomfortable or confused.

HELPFUL GUIDELINES WHEN USING PHONE INTERPRETING SERVICES

You may facilitate compliance with the Interpreters' Code of Professional Conduct by:

- Speaking directly to the parties through the interpreter, avoiding phrases such as "Tell him...", "Ask him...", "Does he...", etc. Interpreters are required or be the voice of the speaker and are not allowed to rephrase, paraphrase or summarize.
- Remembering that the interpreter is obligated to interpret everything that is said during the exchange, whether or not it is directed to the party using the interpreter or is considered essential or even important. Likewise, whatever the party using the interpreter says must be interpreted even when the presiding official may have understood it.
- Ensuring that participants speak one at a time at a moderate rate of speech. A concept expressed in one word in English may require a whole phrase or sentence in the other language.
- Ensuring that all parties honor the interpreter's requests for repetition or clarification.

Help ensure that the interpreter can hear everything by:

- Taking whatever steps may be necessary to see that all parties speak up so they can be easily heard and understood by the interpreter.
- Being alert to frequent requests for repetition or clarification as this may indicate that there is a problem with audibility.
- Taking extra care to ensure that the room is free of noise.
- Requiring that parties enunciate clearly and avoid mumbling.

Be the interpreter's eyes by:

- Informing the interpreter of the names and roles of the participants.
- Giving the interpreter enough information to understand what is happening in the room when there are interruptions, significant non-verbal activity or long periods of silence.

Control the flow of communication by ensuring that:

- Everyone keeps statements at a moderate length, neither too short or too long, and at a normal pace. Pauses should be made at the end of sentences or at logical breaks in thought.
- Ensure that all speakers pause to allow interpretation before responding to one another.
- Only one person can speak at a time.

Ensure the LEP (Limited English Proficiency) Individuals Right to Equal Access

- If there are any “housekeeping” matters at the end of the proceeding, such as directing the LEP individual to the Cashiers Office, try to do so while the interpreter is on line.
- If the LEP person has an attorney and needs to have private attorney client communication it might be better to provide an interpreter on site to ensure that access.

Handling Problems During Telephone Interpreted Proceedings

Interpreters are required by the Code of Professional Conduct for Court Interpreters to interpret everything that anyone says during a proceeding faithfully and accurately. When interpreting on site, the interpreter may use a variety of strategies for handling anything that arises which prohibits the interpreter from rendering a faithful and accurate interpretation as required by Code. However, many of those strategies are not available to the interpreter appearing via telephone as they depend on one's physical presence, e.g., using hand signals to direct a speaker to pause. As stated earlier, communication by way of telephone is more challenging and complex.

Interpreters have been trained to follow the general principles articulated below when anything happens that interferes with the interpreter's ability to do his or her job:

- *Get the presiding officer's attention.* First, the interpreter must say, e.g., “Mme./Mr. Clerk” or “Excuse me, your honor” to get the presiding officer's attention. Interpreters are trained to seek resolution of problems through the officer, even if the problem is being caused by an attorney or a party.
- *State the problem.* Interpreters have been trained to describe the problem for the judge or other court official as respectfully, succinctly, and clearly as possible. They are supposed to state exactly what is happening that is preventing them from doing their job. The assumption is that the presiding officer will resolve the problem.
- *When appropriate, the interpreter might suggest how the problem may be resolved.* If the problem persists, interpreters have been trained to restate the problem and then offer a solution for the problem as succinctly as possible. Samples of this step are provided below as “Step 2”.

Guidance for Interpreters

Here are a few situational examples of the more typical problems encountered during telephone interpreting followed by examples of how interpreters are expected to handle them in progressive stages:

Problem

The interpreter cannot hear a speaker (e.g., speaker is not near the telephone, someone speaks too softly, courtroom has poor acoustics, other noises/sounds drown out what is said, background noise such as shuffling papers, tapping on table, closing/opening doors)

Step 1:

"Your Honor, the interpreter was unable to hear the last speaker."

Step 2:

"Your Honor, the interpreter is still unable to hear. Is it possible to instruct the prosecutor to speak louder?"

Problem

Two or more persons speak at the same time and the interpreter cannot understand what both said.

Step 1:

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

Step 2:

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

Problem

A speaker talks in utterances that are too long.

Step 1:

"Your Honor, the parties are speaking too long for the interpreter to recall all of the information."

Step 2:

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

Problem

A speaker talks in utterances that are too short.

Step 1:

"Your Honor, the interpreter is having difficulty because the speaker is pausing too frequently. Could the court instruct her to pause only after complete sentences?"

Step 2:

"Your Honor, the interpreter is still unable to hear. Is it possible to instruct the prosecutor to speak louder?"

Problem

The presiding officer is not permitting pauses for the interpreter to interpret everything being said during the exchange, e.g., attorneys are talking to each other or to the judge and not pausing for interpretation.

Step 1:

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

Step 2:

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

Problem

Static comes on the telephone line or the connection.

Step 1:

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

Step 2:

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

ON MENTAL FATIGUE AND BEST PRACTICES ON TEAM INTERPRETING (FROM THE OREGON TRIAL COURT)

INTERPRETER FATIGUE

Chapter 19 of the Judges' Criminal Benchbook on interpreting, page 1027, provides that interpreters should work in teams to cover any proceeding that is more than two hours. This is to accommodate interpreter fatigue. This paper is a discussion of interpreter fatigue and its impact on the court record and on protecting the rights of linguistic minorities. [See *New Study on Fatigue Confirms Need for Team Interpreting*, Mirta Vidal, February 1999, published in PROTEUS, the Newsletter for the National Association of Judiciary Interpreters and Translators, www.najit.org .]

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

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

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

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

BEST PRACTICE: TEAM INTERPRETING

The recommended practice for simultaneous and consecutive interpreting calls for two or more interpreters for court proceedings lasting longer than two hours. The length of time an interpreter is able to maintain accuracy varies to some degree depending on the gravity, complexity, and intensity of the proceeding, but generally the court should not expect an interpreter to work alone for any hearing expected to last longer than two hours. If the court decides to proceed without a second interpreter, an interpreter working alone will need frequent ten-minute breaks. Studies show that accurate interpreting decreases dramatically after approximately 30 minutes of continuous interpreting. (See Appendix C of the Criminal Benchbook Chapter on Interpreters, *New Study on Fatigue Confirms Need for Team Interpreting*, Mirta Vidal, February 1999. Reprint by permission.)

The best practice is for team interpreters to trade off every 20-30 minutes at the microphone, thus rotating their respective roles throughout the proceeding. Therefore, a two-member team of interpreters provides interpreting to the defendant and to all witnesses and parties needing interpreting services, irrespective of whether they are prosecution or defense witnesses. Canon Number Three of the Oregon Code of Professional Responsibility requires interpreters to maintain all information learned during the course of an assignment in absolute confidentiality.

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

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

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

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interpreters office

United States District Court, Southern District of New York

For Attorneys: Examining Witnesses Through an Interpreter

The following suggestions are made by the Interpreters Office of the Southern District of New York, in the spirit of aiding communication in the courtroom.

Examining a witness through an interpreter is not identical to examining a witness directly: when moving between languages, the possibilities for misunderstanding, confusion, inexactitude or error increase substantially. Generally, extra time and patience are needed to prepare a non-English speaker to testify.

In court, American lawyers speak legalese ("*I'm moving to sever*"), not everyday English. While many Americans are bewildered by legal proceedings, people from other countries are even more at a loss because legal systems vary from country to country. In-court hearings, for example, are not commonly held in Roman law countries, where most legal issues are decided on the papers. Many terms used in U.S. courts are unfamiliar to foreigners: i.e., *grand jury*, *jury selection*, *charge to the jury*, etc. for the simple reason that there is no parallel concept or procedure in foreign legal systems. An interpreter will convey these terms in the closest equivalent (e.g., *indictment* will be called a '*formal accusation*' or '*accusation by the Grand Jury*') but on no account is an interpreter permitted to offer explanations of procedure because the interpreter's code of ethics prohibits giving legal advice.

Early on in a case, an attorney would do well to clarify to the witness or defendant the various stages the case will pass through and how long each stage may take.

People perceive the honesty and seriousness of legal proceedings differently, depending on a variety of factors and experiences. In countries with a tradition of corruption, bribery or judiciary inefficiency, the population has learned not to set great store by what happens in court. The American justice system is not universally revered, either, and may appear artificial, inflexible or absurd. Attitude toward the legal system may affect a witness's demeanor when testifying.

Among the foreign-born, mastery of English varies a great deal, and for matters of great seriousness, such as legal proceedings, defendants or

witnesses frequently request an interpreter, if only to make them feel more secure.

The best interpreters will allow you to follow the natural rhythm of questioning, and will at the same time convey some of the "flavor" of the witness, contributing to a sensation that you are hearing the witness directly, despite the language barrier.

Getting the Right Interpreter for the Job

Active court interpreters polish their skills every day, and generally, the more experience they have, the better they become. However, interpreters can also develop bad habits or have attitude problems. Some people who work as interpreters do it as an occasional sideline and are not well versed in the legal field. Interpreting ability and style vary, depending on experience, knowledge and attitude. Stress on an interpreter "to get it right" is significant, and even greater when a case is high profile. An excellent interpreter should have years of experience, be pleasant to work with, have good recall, smooth delivery, no hemming and hawing, call no attention to himself, and express no opinion on the merits of a case.

Consecutive interpretation is that done in Q and A format and differs from simultaneous in that it requires a different set of mental reflexes. Skill levels, interpreting style, and memory capacity vary, so it is wise to choose carefully the interpreter you will use with a witness. Some interpreters have better short-term memory, and will pause or interrupt less. Some are better than others in diction, performance ability, idiomatic expressions, street slang, or legal jargon. If you work through an Interpreters Office or coordinator, tell that person of any concerns or past experiences so as to avoid a repetition of problems.

In choosing an interpreter, it is best to plan ahead. If plans are not made until the day before, you will likely get a last-minute, patchwork arrangement, especially inadvisable if a witness will be testifying for a long period of time (a day or more). Freelance interpreters who work regularly in court are flexible, but cannot ignore other commitments when trial schedules change without notice. Interpreters are paid for their time, whether or not they are actually interpreting, so waiting time is costly.

If the testimony will be more than brief (over an hour), two interpreters should be assigned to rotate with the witness, so that the interpreter's mental fatigue does not adversely affect the accuracy of the testimony.

Most Important Step: Prep

Making arrangements for an interpreter is only the first step; then both the witness and interpreter need to be prepped for what will ensue.

What to Tell the Interpreter

Since words are interpreted not in isolation but in context, for reasons of logic an interpreter needs to have a broad-brush idea of the case. If you take a few minutes to brief the interpreter before starting the assignment, it will help avoid confusion later on, so that the interpreter doesn't imagine another scenario, which may be likely but inapplicable.

The essential material for the interpreter to see ahead of time: a copy of the major case documents such as the complaint, indictment, prior testimony, or relevant tape transcripts.

To ensure continuity and quality, inform the interpreter of *when* you will be needing an interpreter, *for how long*, in what *type of proceeding*, and *for whom*.

Attorney Checklist for Interpreted Testimony

When briefing the interpreter, be sure to mention:

- 1.** What the case is about: names and nicknames, places, overall plot; what piece of the proceeding the interpreter will be needed for;
- 2.** Any documents likely to be referred to or shown to the witness;
- 3.** Where the witness is from, how many years he or she has lived in U.S. (The witness may use some Anglicisms, whether correctly or incorrectly, and the interpreter should be forewarned);
- 4.** Educational level of witness, any speech defects or particularities;
- 5.** Numbers that may come up: addresses, amount of drugs or money, telephone numbers that will repeatedly be referred to, account numbers, etc.;
- 6.** Any physical evidence that will be referred to or shown to the witness;
- 7.** Any emotional factors that may affect the witness's concentration or delivery: mental problems, fear, jumpiness, etc.;
- 8.** Any key words (descriptions, disputed dialog, slang, code words, etc.) that may be elicited in the testimony.

What to Tell Witnesses Who Will Testify Through an Interpreter

- Prepare the witness ahead of time, preferably with the same interpreter who will accompany the witness to the stand so that the

witness's speech patterns will be familiar to the interpreter and vice versa. Just as a New Yorker might have to concentrate more when listening to an Alabama accent, a Spaniard may have to concentrate more when listening to a Caribbean accent. Accent variation and idiosyncratic speech abound. While interpreters, who are educated speakers, use standardized Spanish, Russian, French, etc., defendants or witnesses may hail from anywhere, and an uneducated speaker will be harder to follow than someone who expresses himself cogently. Interpreters have to "tune in" many different accents or speaking styles, and any lead time is helpful to the ear.

- Instruct witnesses not to direct any comments or questions to the interpreter during the testimony, but to act as though the interpreter were not there. Courtroom testimony is formal and stylized, and it is improper for the interpreter and witness to have any private conversation. If the witness has spoken with the interpreter before in informal settings, he may think there is nothing wrong with engaging the interpreter in conversation while on the stand: he should be told not to fraternize with the interpreter.
- Advise witnesses not to volunteer information but to limit themselves to answering the question, and to direct their answers to the examiner, not to the interpreter.
- Instruct the witness to look either at the attorney or at the jury, and explain that testimony is judged not only by words but by manner of testifying and body language. (Bear in mind that body language varies from culture to culture. In some cultures it is considered polite to answer questions with the eyes downcast, so a witness may have to be coached beforehand, to look up when answering the questions.)
- Instruct witnesses to wait for the question to be translated before they answer, and to answer in their native tongue.
- Advise witnesses to listen to the translation of the question even if they think they understand the English. Tell them to answer briefly, directly and to pause regularly so that the interpreter may render the testimony into English.

WARNING: Many witnesses forget to pause, and often interpreters cannot retain all detail in long narratives. It is a good idea to practice the rhythm of Q and A with the interpreter and the witness ahead of time so everyone can get accustomed to the procedure of waiting for the translation.

- Instruct witnesses that if they hear the word "objection," they should wait for the judge to rule, and then answer only if the objection is overruled.

- Construct questions with extra care. If you insert parenthetical remarks, or backtrack in your formulation of the question, room for misunderstanding increases greatly. It is easier to interpret logical questions and answers than rambling ones. If possible, refrain from questions with double negatives or ambiguous references. When using the word "you," clarify if you intend the singular or plural ("you yourself " or "yourself and others"). Remember to wait for the translation of the question and of the answer: even if you yourself can understand the foreign language response, the judge and jury need to hear it from the interpreter.

What to Do about Mistakes

Interpreters are not immune to mistakes, slips of the tongue, mental blanks, or memory lapses. If an error in interpretation occurs, it should be corrected as soon as possible, hopefully without causing undue embarrassment to the interpreter.

- If you believe a witness's answer is in error, or that the witness was misunderstood by the interpreter, the best solution is immediately to follow up with a rephrased question.
- Even if you are fluent in the interpreted language, do not substitute your own notion of how the question or answer should be interpreted. Likewise, do not assume that an error has occurred if you don't hear the word you expect. There is not a one-to-one correspondence between words, but many ways to reproduce sentence content from one language to another.

It is helpful to use language appropriate to the background of the witness. An interpreter is under oath to repeat exactly what is said, at the same level of formality or informality, and cannot "correct" sloppy language, turn legalisms into simplified language, or correct others' slips of the tongue. Clear questions elicit clear answers. If the question is ambiguous, filled with double negatives ("*You didn't say you wouldn't go there, did you?*") or constructed with many subordinate clauses ("*And then, although you knew it was wrong, you didn't, although you could have, stop him from what everyone knows was a mistake?*"), it stands a good chance of being misinterpreted to the witness, which may result in an unresponsive answer.

If a problem persists, it may be on account of technical or culture-bound phraseology: Does the witness know what you mean by "pre-trial proceedings?" Does your question include terms of art, cant, legalese, intentional sarcasm or ambiguity? Perhaps the witness is unfamiliar with units of measurement, directions (north, south), or neighborhood names, which are often expressed differently in other cultures. Punctuality, concept of time, and precision about time are valued differently in different cultures. An ambiguous answer may be the result of an ambiguous question. The

answer may be culture-bound rather than a deliberate attempt to mislead. In some cultures, it is considered polite to be *verbose*. In other cultures, especially in the Far East, it is polite to *assent*, but that is different from an *affirmative answer*: a "yes" answer may be equivalent to saying "*Yes, I'm hearing you (but don't necessarily agree)*." A questioner would do well to bear these cultural and psychological differences in mind so that the wrong impression is not created for the jury.

Types of Error

The examples that follow will all be in English for illustrative purposes, but of course when rendered through an interpreter, the questions are interpreted from English to a foreign language and the answers, from a foreign language into English.

The error that most concerns us is the **material error**, or **error of substance**.

A substantive error would be "*It was a blue car*" when the witness said "*It was a red car*" or "*I had 2 kilos*" when the witness said "*I had 12 kilos*." This is also known as *lexical error* (wrong word).

Another type of substantive error is called *contre-sens*, [French for "contradictory meaning"] where the interpretation conveys the exact opposite of what the speaker said; e.g., the witness says "*I don't know*" and the interpreter renders it as "*I know*."

Other categories of interpreter error are:

1. Wholesale omission of parts of the question or parts of the answer

A: "*And then when I went downstairs, I mean upstairs, because the house had two floors, I heard something.*"

A: [through interpreter] "*Then I heard something upstairs.*"

2. Distortion of meaning

A: "*I was never convicted in that case.*"

A: [through interpreter] "*I never got sentenced in that case.*"

3. Unfamiliar idiom

A: "*She was afraid of dying.*"

A: [through interpreter] "*She was scared to death.*"

4. Errors in what is called "register conservation," or appropriate level

Q: "*Wouldn't they rat you out if they knew?*"

Q: [through interpreter] "*Wouldn't they talk about you if they knew?*"

(However, it would not be wrong to interpret the question as "*Wouldn't they tell on you if they knew?*")

5. Inclusion or elimination of "politeness markers" : e.g., It would be wrong if in interpreting the question "*Where were you, sir?*" the interpreter omitted the word "*sir.*" Likewise, it is wrong for an interpreter to add honorifics or polite language if it is not in the original. Sometimes interpreters do this automatically, without thinking, but it is important that an interpreter not make a witness appear more polite (or less polite) than he is.

6. Conveying hesitancy or certainty where the opposite is expressed

Q: "*Don't you know for a fact he didn't do it?*"

Q: [through interpreter] "*Don't you think you could be mistaken?*"

7. Overly literal renderings, e.g., " I crossed the frontier." for "*I crossed the border.*"

8. Grammatical errors, e.g., "*We wasn't ready.*"

These few examples show the room for error even in simple sentences, and illustrate the many decisions about words' meaning, impact, and level of formality that interpreters must make thousands of times a day.

Interpreter errors may be caused by: gaps in knowledge or vocabulary; lack of concentration; fatigue; distraction; mishearing; cognitive overload; low memory retention (when an interpreter can't retain all the elements of the message), or "language interference" (An example of interference would be where the interpreter inadvertently or out of ignorance chooses an expression that sounds like the word used in the original, but means something different, e.g., using deception in English for "*decepción*" in Spanish would be wrong, since the Spanish word means *disappointment*, not *deception*).

Experience has shown that errors of substance are sometimes in the eye of the beholder, and great hay can be made by either side from seemingly unimportant details in a case. In any event, the burden is on the objecting party to show that an error has been made.

How to Correct the Record

If there appears to be a problem with the interpretation, request a side bar and include the interpreter, who will make a correction for the record if one is necessary. If there is disagreement about the correct interpretation of a word or phrase, the judge will instruct the parties on how to proceed. An interpreter should not be dismissed outright due to a mistaken word or phrase, because it is impossible for anyone to know all words or variants of language usage.

Other Professional Considerations

AN INTERPRETER MAY ASK TO APPROACH

An interpreter may on rare occasion ask to approach the bench for a sidebar if a language issue has come up that may lead to a miscarriage of justice, or in the event that further clarification is required from the court as to how to proceed.

GESTURES BY THE WITNESS

Interpreters should not repeat or characterize any gestures made by the witness. It is up to the attorney to describe for the record what the witness has indicated. If a gesture is very culture-specific, the witness can be asked directly what a particular gesture means in his culture.

EXPRESSING OPINIONS ON OTHER INTERPRETERS' ACCURACY

Court interpreters should not offer or be asked to express an opinion on any other interpreter's accuracy unless the request comes from the judge. In the normal course, interpreters will consult or send notes to each other on terminology usage. A "checking" interpreter should not also be engaged in interpreting the very same proceeding. The court interpreters providing the simultaneous interpretation should never be called as witnesses, unless the judge specifically requests them to. Slight variations in the way interpreters render certain expressions are to be expected, and no two interpreters will coincide exactly in all their renditions.

TRANSLATIONS TO BE INTRODUCED INTO EVIDENCE

Just as tape transcripts must be prepared ahead of time, any translation to be introduced into evidence should be done ahead of time. It is not a good idea to ask the interpreter to provide a sight translation of anything other than a simple or boilerplate document. The language of many legal documents is dense and syntactically complex, and to prepare an official translation, a translator needs to have reference material at hand and review it several times in order to produce a well-written text. Translation always takes longer than anyone expects, so please allow the translator to do the

job properly. Translators who take pride in their work will not hand in an unrefined copy.

There is no legal requirement that documents be translated by a certified interpreter, although some courts have a standard practice to request that certified interpreters prepare the translations. The Court Interpreter's Act (28 USC 1827) does not specifically provide for the translation of documents by certified interpreters.

When seeking translators, it is advisable to give as much detail about the job as possible in advance, to specify the format in which you wish to receive the translation (diskette, hard copy, columns, etc.), and to request an estimate before the translator begins the assignment. Many attorneys are surprised by the cost of translation, but have little awareness of how long it takes to do. Translations cannot be done word for word, but concept for concept, and a lot of structural reformulation must be done when transferring thought from one language to another. For this very reason, a machine is incapable of producing a reliable translation. Keep in mind that a sloppy translation is worse than none at all, because most of the time it will have to be redone, and the cost in the end will be double for the same product.

TAPE TRANSCRIPTS

Tape transcripts are very time-consuming to produce, and nearly equally time consuming if one interpreter is checking another interpreter's work. The general estimate is that for every minute of tape (assuming good audibility) an interpreter needs 30 to 60 minutes to listen, transcribe and translate.

At the outset, a defense attorney ought to get an idea from the interpreter about how long it would take to complete the assignment (often the interpreter will not be able to tell until listening to a sample of the tape) and what the estimated cost would be. In most districts, defense attorneys need prior authorization from the judge for the

When requesting transcripts to be prepared or reviewed, attorneys should also be sure to specify exactly what they want to accomplish: get a general idea of the content of conversations, get a general opinion on accuracy, see if their client is mentioned, or prepare a transcript to introduce into evidence?

In general, experienced interpreters have special equipment that can slow down the tape speed if needed, and must listen to tapes many times in order to be sure of what was said.

Be sure to ask the interpreter's experience with producing tape transcripts: how many they have done, whether they have worked for both defense and prosecution, whether they have ever testified as an expert witness, etc. _____