



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, 404-566-4705, or visit the NAJIT website at www.najit.org.

■ Introduction

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

■ Responsibility for Assigning Interpreters

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

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

■ Lead Time Required

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

■ Seven Steps from Administrative Groundwork to Conclusion of Proceedings

STEP ONE: WHAT LANGUAGE DO WE NEED?

Make an accurate determination of the language or dialect needed.

FIND OUT

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

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

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

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

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

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

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

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

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

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

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

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

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

STEP THREE: WHAT MODE OF INTERPRETING WILL BE REQUIRED?

FIND OUT

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

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

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

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

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

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

STEP FOUR: FINDING A COMPETENT INTERPRETER

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

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

■ Separating the wheat from the chaff

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

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

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

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

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

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

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

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

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

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

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

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

■ Information to be reviewed with the interpreter:

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

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

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

STEP SIX: REPORT TO THE JUDGE OR PRESIDING OFFICIAL

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

STEP SEVEN: FOLLOW-UP

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

■ Conclusion

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

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References

Executive Order 13166 usdoj.gov/crt/cor/Pubs/eolep.htm

DOJ Federal Register Guidance on Limited English Proficiency www.justice.gov/crt/cor/Pubs/lepqa.htm

Summit/Lorain Ohio Model LEP Program for Law Enforcement. www.co.summit.oh.us/sheriff/LEP.pdf

National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts www.ncsconline.org/wc/publications/Res_Ctlnte_ModelGuidePub.pdf

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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.