



POSITION PAPER

TEAM INTERPRETING IN COURT-RELATED PROCEEDINGS

Introduction

By law, the court interpreter is duty-bound to fully communicate all courtroom exchanges, including questions, answers, legal arguments and colloquy to persons with limited or no English proficiency. A complete understanding of the proceedings is critical to the defendant's ability to participate and assist in their own defense. In addition to accuracy, the role of the interpreter encompasses leveling the playing field to allow the non-English speaker the same access to information as any English speaker, by allowing them to hear the proceedings through uninterrupted interpreting services, including moments of levity that impact the tone and tenor of the proceeding.

Court hearings vary in subject matter, ranging from legal arguments to expert testimony to complex or unclear recitations of facts, etc. The length of time an interpreter can effectively focus on processing complex information delivered at high speeds and render it accurately and immediately into another language is finite. An interpreter suffering from mental fatigue is more likely to make mistakes that could negatively affect the integrity of the interpretation which, in turn, could be extremely detrimental to defendants, litigants, witnesses, victims, and the judicial process in general. Having reached the point of cognitive fatigue, the interpreter's ability to self-monitor and self-correct is

compromised, thus jeopardizing a faithful and complete interpretation.

Team interpreting is the most effective tool for protecting the integrity of the interpretation, the liberty and rights of defendants/litigants, and it is critical to the administration of justice and the safeguarding of due process.

What is team interpreting?

Team interpreting refers to the practice of using two or more interpreters who share the responsibility of providing simultaneous or consecutive interpreting for one or more individuals with limited English proficiency. Team interpreting is recommended for all legal proceedings that may extend over a period of thirty minutes and fall outside the category of formulaic proceedings that generally follow a set and scripted order such as arraignments, initial appearances, sentencing, and pleas.

Since there are more exceptions to the rule than can be anticipated, even "short" matters can become long and complex, thus requiring a case-by-case determination by the assigning officer in conjunction with the interpreter as to whether a team of interpreters should be provided.

Team interpreting should be used in all in-court proceedings, grand jury hearings, proffers/plea offer negotiations, as well as depositions and jail visits. It is an

indispensable tool that protects the accuracy and faithfulness of the interpretation.

How does team interpreting work?

The concept of team interpreting is rooted in practicality. There are historical precedents for team interpreting developed jointly by practitioners, attorneys, and judges. Team interpreting is born of necessity and logic: the Nuremberg Trials¹ and the Tokyo War Crimes Tribunal² are landmark examples of the genesis of this time-tested practice which was developed in and for the courtroom setting.

The thirty-minute block is often used as the bench mark for determining whether one or more interpreters are needed, and must take into consideration the event duration, the number of users, as well as the complexity and density of the subject matter. No proceeding should ever be deemed more important than another by administrators or interpreters when determining appropriate staffing. All proceedings require the same level of accuracy, attention, and care when it comes to interpreting quality. Interpreters are not free to determine which utterances merit interpreting and which do not. Every utterance during any legal proceeding should be treated as critical and essential in terms of court interpreting.

Team interpreting is the industry standard and the long-standing practice of The Registry of Interpreters for the Deaf (RID). Professional sign language interpreters are staunch defenders of teaming and are rarely challenged when they insist on a team of two or more interpreters to avoid work conditions that compromise the accuracy of

the interpretation. It is also the industry standard in international conferences, negotiations, and other venues where continuous interpreting is required. While some courts do follow the professional standard in the courtroom, unfortunately, there are still too many that do not.

The typical team is composed of two interpreters working in tandem, switching off every 20/30 minutes, at the discretion of the team and as warranted by the interpreting demands. The *Active Interpreter* accurately renders the meaning of everything being said from one language to the other during the proceeding. By default, the team member not directly delivering the interpretation becomes the *Support Interpreter*. The *Support Interpreter's* responsibilities will vary slightly in keeping with what is happening in the proceeding. If the team is working in simultaneous interpreting, the *Support Interpreter* assists the *Active Interpreter* by jotting down numbers, lists, etc., while also researching and providing their teammate with any challenging terminology. During witness testimony, the *Support Interpreter* continues to provide this assistance, in addition to carrying out the extremely important task of being a safety net by vigilantly doing everything possible to ensure the accuracy of the interpretation. This is essential given that the only time the interpretation is documented as part of the official record is during testimony at the stand. In the case of sign language interpreters, the source language of a Deaf witness is not recorded, which means that the *Support Interpreter's* function in ensuring accuracy becomes additionally significant since the interpretation will be the only thing

¹ Gaiba, Francesca The Origins of Simultaneous Interpretation, The Nurember Trial, University of Ottawa Press, 1998

² Takeda, Kayoko. "Interpreting at the Tokyo War Crimes Tribunal." Doing Justice to Court Interpreting, Benjamin Current Topics, pp. 10 - 27, Monterrey Institute of International Studies

preserved in the record and there is no recording to consult in the event of a challenge.

In summary, depending on the setup of the courtroom, the duty of the *Support Interpreter* is to (1) interpret objections and colloquy between the parties in the well of the court when the *Active Interpreter* is engaged in interpreting witness testimony at the stand; (2) assist the *Active Interpreter* by researching vocabulary; (3) act as a safety net for the *Active Interpreter* and the interpretation by confirming names, numbers or any other references; (4) assist with any technical and/or equipment issues; (5) fill in if the *Active Interpreter* has an emergency such as a coughing spell; and (6) serve as a second language expert to confirm and/or correct the interpretation whether at the witness stand or during simultaneous interpreting.

Interpreter Performance and Responsibility

Interpreting is a complex activity that leads to fatigue³, whether working in simultaneous or consecutive. This also has a detrimental effect on accuracy and complete recall, as well as decision-making. To avoid fatigue, the *Active Interpreter* must be relieved every 20/30 minutes by the *Support Interpreter* for the same duration of time.

Fatigue is not the only factor that makes team interpreting essential. The team needs to confer and work together to deliver an interpretation that is accurate and complete, and for which both interpreters are responsible. In the RID Fact Sheet on The

Use of Interpreting Teams in the Courtroom the following statement appears:

"...Since interpreters are ethically obligated and sworn to interpret accurately, these communications between the team members should be welcomed. These communications are not viewed as a sign of substandard interpreting skill; rather, they are properly viewed as a commitment to the fidelity of the interpretation."⁴

If the interpreters are "ethically obligated and sworn to interpret accurately," why is the use of team interpreting in all court-related settings still being debated?

In part, this is due to administrative considerations being prioritized over what essentially is adherence to the oath court interpreters must take throughout the United States. The administration of the Court Interpreter Oath is part of the aftermath of the litigation of *New York v. Negron*⁵, the seminal case in the history of court interpreting in this country. The right of any defendant, English-speaking or not, to fully understand what is happening in any legal proceeding against them and be able to assist in their own defense is the keystone of the Federal Court Interpreter Act. This codification of a criminal defendant's rights ensured that any Limited English Proficiency (LEP) defendant would be present in both body and mind during any legal proceeding. Another factor is that, often, those in charge of making arrangements for interpreting services lack an understanding of what professional and effective interpreting entails.

³ Vidal, Mirta (1997, Winter) New study on fatigue confirms need for working in teams. *Proteus*, (6)1. Washington, DC: National Association of Judiciary Interpreters and Translators (NAJIT)

⁴ NCIEC, The Use of Interpreting Teams in the Court Room, National Consortium of Interpreter Education Centers Fact Sheet, p. 2

⁵ 28 U.S.C. §1827. Interpreters in the Courts of the United States

Every individual interpreter is responsible for requiring the use of team interpreting. The interpreter provides services under the Court Interpreter Oath which impresses on the interpreter the grave importance of interpreting accurately and binds them to the court.⁶ The interpreter working under oath is duty-bound to preserve the integrity of the record and the interpretation. It is the interpreter who takes the oath, no one else. It is the interpreter who is ultimately responsible for doing everything possible to ensure that they can comply with the oath.

The court's responsibility

While the interpreter's adherence to the oath is paramount, it would be a fallacy to ignore the responsibility of the court and its officers to provide the indispensable professional working conditions prompted by the administration of the Court Interpreter Oath. If the court refuses to provide a team of interpreters for a complex proceeding and the interpreter is being asked to work under untenable conditions, the oath itself provides the means to substantiate the interpreter's position. Carla Mathers, a practicing sign language interpreter and practicing attorney, sums it up best when she states the following in her book:

“When the interpreter states for the record that she or he is unable to comply with the oath due to the fatigue of working alone, the court is afforded the opportunity to modify the ruling and provide the appropriate working conditions to ensure the deaf litigant is fully present for the proceeding. If the court refuses, the issue may be noted for appeal by the attorney.”⁷

To assist the court and its officers – judges, staff, assigning officers, counsel and fellow interpreters – the interpreter must be knowledgeable and prepared to perform the very important task of educating the different players. The interpreter must take responsibility for educating these individuals through consistent, not occasional, good practice. This process must be repeatedly carried out with new judges and officers of the court not familiar with working with interpreters. It bears mentioning that everything the interpreter does to inform the users of interpreting services must always be sensitive to court protocol and decorum, while being clear and unequivocal.

Why use team interpreting?

The primary function of Team interpreting is to preserve the accuracy and faithfulness of the interpretation.

Besides the normal mental demands on the interpreter, court interpreting requires the interpreter to be prepared to cope with sudden shifts in source and target language, immediate changes in language register, sudden changes in interpreting mode from simultaneous to consecutive and back, as well as other unexpected twists and turns. All of this, plus the ever-present duty of living up to the Court Interpreter Oath, makes court interpreting one of the most challenging specialties in the field, since the court interpreter can never forget that their performance is critical to the life and liberty of the individual involved in the proceedings.

Every criminal defendant (and every plaintiff in some states,) in the United States has the right to be present (in every sense of

⁶ Mathers, Carla M. Sign Language Interpreters in Court: Understanding Best Practices, Bloomington, Indiana, 2007

⁷ Op. Cit.

the word) during every phase of the legal process. In matters of life and liberty and the protection of property, a trained, experienced and qualified interpreter is vital to due process. To expand on an old adage, it is not practice that makes for effective and quality court interpreting, rather, it is perfect practice that makes for effective and quality court interpreting.

The importance of having the services of a qualified and capable interpreter was underscored by Reich Marshall Hermann Göring when he was tried at Nuremberg. His fate lay in his participation in the proceedings through interpreters. When Reich Marshall Göring and his codefendants were informed that they could choose attorneys from prepared lists, he responded the following: "Of course I want counsel. But it is even more important to have a good interpreter."⁸

Nuremberg is the seminal event in the history of our profession where the current practices in both simultaneous and team interpreting were born. Given that the Nuremberg Trials are where simultaneous interpreting and team interpreting originated, it can be inferred from Göring's words that it is not sufficient to just have one good interpreter. It is necessary to have two good interpreters at all times, and that is what makes team interpreting in court imperative.

In addition to articles on fatigue and the long-established protocols adopted by The Registry of Interpreters for the Deaf (RID), detailed protocols on team interpreting are presented in *Fundamentals of Court Interpreting*.⁹ The mentally taxing nature of interpreting in general, and of court

interpreting in particular, make team interpreting indispensable. No other setting places so much legal responsibility on the practitioner as does court interpreting.

In lengthy trials where the majority of the evidence will be introduced through interpreting, fatigue becomes an ever-present danger even with a team of two interpreters. In these situations, both interpreters are constantly working without a break which does affect interpreter performance. In such situations the best practice is to add a third interpreter to the team, creating a *petite equipe*. A team of three allows interpreters on a team to take an actual mental break from the demands of actively interpreting or providing support.

Doesn't it follow then that the more interpreters assigned to a case the better? Wouldn't it be reasonable to assign one interpreter per defendant in multi-defendant trials as some courts do? And have each interpreter work independently for their own defendant? The answer is a resounding **NO**. Staffing a trial should be done with efficiency and common sense, with logic serving as a guiding light. There is no need to have five different interpreters performing the same task at the same time for five defendants in a trial. Not only would this create a confusing cacophony in the courtroom, but each defendant would get a slightly different version of what is being discussed. The sensible solution would be to contract a *petite equipe* of professionally qualified and credentialed interpreters to provide services for all the defendants on trial who speak the same language. Doing so would be more efficient and effective for all involved, and save precious court resources.

⁸ Gaiba, Francesca, *Ibid*, Epigraph

⁹ Dueñas González, Roseann, Vásquez Victoria F, Mikkelson, Holly, Fundamentals of Court Interpretation, Theory, Policy and Practice, Second Edition, Carolina, Academic Press, 2012

Challenges to the Interpretation

It often happens that counsel, the Court, and/or a juror have varying levels of familiarity with the language being interpreted. Corrections for perceived errors of interpretation are occasionally forthcoming from these parties, and proper protocol dictates that such matters be handled at the Bench or outside the presence of the jury. In such instances, team interpreting is a useful tool for the Court because having a second professionally qualified and credentialed interpreter present in the courtroom who has been actively monitoring the other team member's performance makes it easier to resolve the dispute. It should also be noted that if a team of interpreters is working effectively and an error is indeed made, the *Support Interpreter* would inform the *Active Interpreter* of the mistake immediately so that a proper correction could be made on the record in a timely fashion, if merited. The interpreter's self-correction makes any outside intervention unnecessary. However, if there is no team and an interpreter is working alone, any perceived error in interpreting will have to be discussed by all the parties involved and it will be the interpreter, being the only party professionally credentialed as a language expert, who will ultimately have to decide to stand by their original rendition or stand corrected.

Interpreter error and fatigue

Mental fatigue sets in after approximately 30 minutes of sustained simultaneous interpreting, resulting in a significant loss of accuracy. This occurs regardless of how experienced or talented the interpreter may be. Accuracy may be compromised even

before the thirty-minute mark, depending on the complexity of the subject matter, the speaker's speech patterns and speed, and even the time of day. A 1998 study conducted at the École de Traduction et d'Interprétation at the University of Geneva, demonstrated the effects of progressively prolonged periods of interpreting on the integrity of the rendition. The conclusion of the study was that an interpreter's own judgment of output quality becomes unreliable after increased time on task.¹⁰

Other empirical observations of interpreters at work in different venues have borne out the need for a relay approach to simultaneous interpreting to protect both the interpreter and the end user of interpreting services.

While studies to date focus on simultaneous interpreting regarding the effect prolonged periods of interpreting have on the quality of the product rendered, it should not be assumed that interpreter fatigue is not an important factor when the interpreter works in the consecutive mode. Different cognitive functions and stress levels may come into play when working in Consecutive, but this does not change the fact that interpreter fatigue will set in and have a detrimental effect on the accuracy and integrity of the interpretation after the interpreter has been working for prolonged uninterrupted periods of time. This is critical in the courtroom where it is only the consecutive interpretation of witness testimony that is taken down as part of the official record.

Team interpreting also preserves the health and welfare of the interpreter. Research shows that prolonged exposure to elevated levels of cortisol produced by stress are

¹⁰ Gile Daniel. "Conference Interpreting as a Cognitive Management Problem." *The Interpreting Studies Reader*, F. Pochacker and M. Shlesinger, (eds.), Routledge., 2002

damaging to human physiology. Working alone for extended periods of time in consequential legal proceedings results in elevated stress levels for the interpreter¹¹

The Interpreting Process

Interpreting is a highly demanding and stressful cognitive activity that requires the interpreter to listen, analyze, comprehend, and anticipate the speaker's intent through the use of clues derived from the context of the discourse to convert meaning in one language into meaning in another, and immediately render an equivalent of the speaker's original utterances. In the courtroom, the interpreter faces a multitude of challenges such as imperfect acoustics, cramped seating, security requirements, ambient noise, mumbled diction, interruptions, and the tension produced by the litigation itself. A competent court interpreter must be able to navigate a wide range of demands.

Simultaneous interpreting is often described as a "cognitive management problem" where thirty to sixty minutes of continuous interpreting may produce significant cognitive fatigue depending on the complexity of the subject matter and the speed at which information is being delivered. No matter the subject matter, the interpreter will inevitably reach a saturation point at which time errors will occur due to cognitive overload.¹² It cannot be stressed enough that one of the first casualties of cognitive overload or interpreter fatigue is the interpreter's ability to self-monitor and protect the accuracy of the interpretation.

Minimizing the possibility of interpreter error

Due process guarantees the right of a litigant to see and hear all evidence and witnesses against them. 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.

It is folly and unrealistic to expect interpreters to be able to maintain a high rate of accuracy after working for hours (or days) at a time without relief. Working without relief compromises the ability of the interpreter to continue providing consistently accurate interpreting. Furthermore, due process itself is being compromised when a team of professionally qualified interpreters is not contracted for all lengthy proceedings.

Much like a marathon runner who must hydrate at regular intervals during the race before thirst actually sets in, an interpreter must have regular breaks to prevent cognitive fatigue which would put the integrity of the interpretation at risk. Team interpreting allows interpreters to remain mentally alert by allowing them to reset their cognitive functions at regular intervals and reduces the level of stress of the *Active Interpreter* by having the support of a qualified and credentialed interpreter monitoring their output which, in turn, protects the accuracy of the interpretation.

Planning and coordination are needed to ensure a high level of reliability in interpreter output. Court proceedings are

¹¹ Mayo Clinic.org/healthy-lifestyle/stress-management/in-depth/stress/art-20046037, Chronic stress puts your health at risk

¹² Gile Daniel, Conference Interpreting as a Cognitive Management Problem. *The Interpreting Studies Reader*, F. Pochhammer and M. Shlesinger, (eds.), 163-176 London/New York. Routledge, 2002

sometimes unpredictable and what may start out as a brief matter can often become much more involved as new information comes to the Court's attention. When a hearing is extended unexpectedly, every effort should be made to provide a second interpreter to rotate into the assignment. A far less preferable or practical alternative is to allow the court interpreter to take periodic breaks to address issues of mental fatigue. Even when a second interpreter can be brought in for such unanticipated situations, the interpreter coming into a proceeding that is already in progress may be at a disadvantage having had no prior exposure to the case and not knowing what has transpired in the proceeding up to that point.

Accuracy and bias issues related to an interpreter's subjectivity and/or conflict of interest will also remain unattended if the course of action selected is to allow the interpreter periodic breaks. Depending on the circumstances, a conflict of interest may be an issue of particular import when it comes to languages of more limited diffusion. This factor had to be contended with during the Tokyo Criminal War Crime Tribunal and the Nuremberg Trials where interpreters working in four different languages had had prior personal contact with defendants or had been impacted directly by their actions. It was critical in these instances to have the interpretation reliably monitored.

Judges and interpreter administration

Judges are uniquely situated to understand the importance of professional interpreting skills in the courtroom, and different courts may have a different understanding of how interpreters work best. However, the recognized standard in the field of professional interpreting is that the team approach is the best practice to prevent errors in the interpreting process. In some

courts, team interpreting is established policy and proceedings are staffed accordingly by the office responsible for interpreting services. In other courts, local rules state that judges "may appoint" multiple interpreters if a proceeding warrants it. Local guidelines and policies can play a key role in ensuring quality control in interpreted matters of long duration by making team interpreting a standard practice. Professional practice is that interpreters rotate every 20/30 minutes at the discretion of the practitioners, whether the mode of interpreting is simultaneous or consecutive.

In an environment where judges and administrators do not unanimously insist on team interpreting, the responsibility must be borne by the individual practitioner. The concept is perfectly understood by RID and conference interpreters who insist that working in a team be part and parcel of their working conditions. It is a practice strictly adhered to by the Office of Language Services of the U.S. Department of State which requires a team of two interpreters for its public diplomacy assignments. Administrators do have the obligation to conserve public resources, but not when it jeopardizes the rights of the defendant and/or litigants. Additionally, conserving resources by opting for inadequate staffing will result in cases being appealed, consuming even more resources. Both the Court and counsel need to be aware of what is needed for effective interpreting to happen and insist that these key practices be observed. When best practices are not implemented, it falls to the individual interpreter to respectfully and firmly request that these standards be met. In the end, it is the practitioner, and not the administrator, judge, or counsel, who takes the oath to render a faithful and accurate interpretation.

When judges work together with interpreting services administrators to ensure adequate working conditions for court interpreters, everyone benefits. The services performed by the interpreter are unique and performed by no other in the courtroom.

From a human resources perspective, the practice of team interpreting promotes a work environment of cooperation and shared responsibility which draws highly qualified professionals who clearly know the importance of doing their jobs well.

Conclusion

Court interpreters are officers of the court and have a sworn obligation to perform their work with accuracy and completeness, and to the best of their abilities. To meet this obligation, it is necessary to insist that proper working conditions be provided, thus making the use of team interpreting indispensable for longer proceedings. Not doing so jeopardizes the ability of the interpreter to honor their commitment to work to the best of their ability and render an accurate, complete, and faithful interpretation. More importantly, due process cannot be guaranteed without team interpreting.

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Final revision and editing

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