Interpreting in a Legal Setting:

A Guide for the Attorney



Interpreters and the Courts

The right to an interpreter is guaranteed by:

- 4th, 5th, 6th and 14th Amendments
- Federal Court Interpreter Act (1978, Amendment, 1988)
- Civil Rights Act of 1964 (Title VI)



Interpreting vs. Translating

- <u>Interpreter</u>: transfers a verbal message from the source language into a verbal message in the target language
- <u>Translator</u>: transfers a written message from the source language into a written message in the target language

Different skills required for each of the "twin professions"



Qualifications and Standards of Practice

The Role of the Interpreter

- Becomes officer of the court once interpreter has been sworn
- Assumes a neutral role in an adversarial system
- Provides language access for Limited English Proficient (LEP) parties for court and court-ordered matters
- Ensures effective communication between parties
- Takes an oath to interpret everything faithfully and accurately
- Abides by ethical constraints determined by the profession



Qualifications and Standards of Practice

Skills Required

- Mastery of spoken English and the second language
- Good short-term memory and ability to multi-task
- Specific knowledge of legal system and terminology
- Excellent general and specialized vocabulary
- Ability to work well under pressure, flexibility and cooperative attitude
- Unique cognitive skills and the ability to process information quickly and accurately



Code of Ethics

- Accuracy
- Impartiality and Conflicts of Interest
- Confidentiality
- Limitations of Practice
- Protocol and Demeanor
- Maintenance and Improvement of Skills and Knowledge
- Accurate Representation of Credentials
- Impediments to Compliance



Qualifications and Standards of Practice

Certifications

- Federal Court Interpreter Certification (3 Languages, testing currently only in Spanish)
- National Center for State Courts (Currently in 42 States and 20 Languages)
- NAJIT (Currently only in Spanish)
- ASL and other Signed Languages



Qualifications and Standards of Practice

Best Practices

- Insist on using a certified court interpreter for all types of legal proceedings
- This includes non-judicial assignments
- Prohibit a family member, friend or a minor from interpreting
- Refrain from using bilingual attorneys to interpret



Qualifications and Standards of Practice

Best Practices: Sound Files

- Ad-hoc interpretation of sound files in court is never advisable:
 - Interpretation falls short of evidentiary standards
 - Accuracy of interpretation cannot be verified which may lead to challenges
 - Only appropriate evidence for the record is a written transcript and translation.



Direct Speech

The Standard Technique used by Interpreters

- Interpreters will use the same grammatical voice as the speaker
- When the interpreter needs to address court or counsel, the interpreter refers to him/herself in the third person
- Witnesses should be advised by court or counsel to reply directly to the party and not to the interpreter



Preparation of Witnesses

Essential Information for the Interpreter

- Information about the case, names, numbers and places
- Documentation for case preparation such as: police reports, indictments, expert witness and witness depositions, motions, jury instructions, claims and counterclaims
- Witness preparation by counsel re: interpreter's role



Challenges Facing the Interpreter

- Fatigue
- Multiple voices
- Physical and mental interference (poor acoustics, visual obstruction, mumbling, speed of speech)
- Relay interpreting (both spoken languages and ASL)



Strategies for Working with Interpreters, Part 1

- Interpreter's role in court
- Interpreter's role in out-of court settings (depositions, interviews, mediation)
- Awareness of cultural differences
 - 1. Body language and eye contact
 - 2. Direct vs. indirect answers
 - 3. Ignorance of American legal system
 - 4. Deference to authority



Strategies for Working with Interpreters, Part II

- Awareness of linguistic differences
 - Structure of personal names
 - Pronouns, gender, passive voice
 - Vocabulary ambiguities
- Attorney's responsibility
- Interpreter Registry



Interpreters for the Deaf and Hard of Hearing

- Licensure
- Differences between ADA and Civil Rights Act in court's responsibility to provide access
- SC:L, CART, CDI (Relay interpreting)
- Code of Ethics



Interpreter Errors

- Real and perceived errors
- Interpreter errors due to lack of information
- The interpreter's position in the adversarial system
- Method of challenging errors to preserve them on the record



Issues on Appeal

- Case law examples:
 - Failure to appoint an interpreter
 - Shared or borrowed interpreter
 - Confidentiality
 - Attorney serving as an interpreter
 - Accuracy of interpretation



Questions and Comments





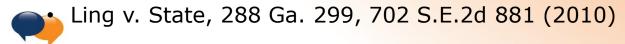
Resources

- www.najit.org
- 65 AmJur Trials 1
- 30 NENGLR 227
- 54 SDLR 33
- People v. Redgebol, 184 P.3d 86 (Colo. 2008)
- Evolving Views of the Court Interpreter's Role: Between Scylla and Charybdis, http://www.acebo.com/papers/evolve.htm
- Brennan Center for Justice: Language Access in State Courts, by Laura Abel, <u>www.brennancenter.org</u>



Cases Cited

- Meyer v. Nebraska, 262 U.S. 390 (1923)
- U.S. ex rel. Negrón v. State of New York, 434 F.2d 386, 390-91 (2d Cir. 1970)
- Court Interpreters Act. Public Law No. 95-539, 92 stat. 2040 (1978)
- Court Interpreter Amendments Act. Public Law No.100-702, 102 Stat. 4654-4657 (1988) (Codified at 28 U.S.C. 604(a)14, 604(a)(15), 604(f) 1827 and 1828)
- Civil Rights Act (1964) Title VI, 42 U.S.C.A. 2000d.
- Lau v. Nichols, 414 U.S. 563 (1974)
- Americans With Disabilities Act (1990), 42 U.S.C.A. 12101
- Towne v. Eisner, 245 U.S. 418 (1918)
- U.S. v. Hasan, 526 F.3d 653, (10th Cir.(Okla.) May 20, 2008)



Cases Cited, contd.

- U.S.v. Lim , 794 F.2d 469 (9th Cir. 1986)
- Washington v. Jairo Gonzales-Morales, 138 Wash.2d 374, 979 P.2d 826 (1999)
- State of New Mexico v. Xuan Nguyen, 144 N.M. 197, 185 P.3d 368 (N.M.App., 2008)
- U.S. v. Salamanca, 244 F.Supp. 2d 1023 (D.S.D.,2003)
- U.S. v. Bailon-Santana, 429 F. 3d 1258 (9th Cir. 2005)
- García v. State Not Reported in S.W.3d, 2002 WL 84403 (Tex.App.-Dallas)
- Gopar-Santana v. State, 862 So. 2d 54 (Fla. App. 2 Dist., 2003)
- Holliday v. State, 588 S.E. 2d 833 (Ga. App. 2003)



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