

## Interpreting in a Legal Setting: A Guide for the Judge



Presented by the Bench and Bar Committee of the  
National Association of Judiciary Interpreters and Translators  
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## Interpreters and the Courts

### **The right to an Interpreter is Guaranteed by:**

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

## Interpreting vs. Translating

- **Interpreter:** transfers a verbal message from the source language into a verbal message in the target language
- **Translator:** 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 I

### **Certifications**

- Federal Court Interpreter Certification (3 Languages, testing currently only in Spanish)
- Consortium for Language Access in the Courts (Currently in 43 States and 18 Languages)
- NAJIT (Currently only in Spanish)
- ASL and other Signed Languages

## Qualifications and Standards of Practice II

### **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

## Qualifications and Standards of Practice III

### **Best Practices**

- Ensure Interpreter appearing is qualified according to your State's mandates
- Voir dire any interpreters w/out certification regarding their ability to interpret
- Never allow a family member, friend or a minor to interpret
- Never allow bilingual attorneys to interpret
- Provide coaching and training for 'impromptu interpreters' of uncommon and low demand languages

## 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

## 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



## Making a Record with the Court Interpreter I

### **Protocol**

1. Interpreter's Role
2. Oath (where necessary or required by Statute)
3. Remind all speakers to limit the length of utterances.

## Making a Record with the Court Interpreter II

### **Voir Dire of Interpreter**

- Where did you learn English?
- Where did you learn the foreign language?
- Did you have any formal training as an interpreter?
  - If so, where?
  - If not, how did you acquire the requisite understanding of American and foreign language legal terms?

## Making a Record with the Court Interpreter III

### **Problems to Spot**

- Judge should ask the non-English speaking person on the record if he/she understands the interpreter.
- Monitor interpreter's output to spot problems such as interpreter/party having a private conversation, interpreter not interpreting etc.

## Making a record on challenges – 1

### **Attorney Challenges and Objections**

- Ask attorneys and interpreter to approach the bench to discuss issue, or excuse jury from courtroom.
- Allow the interpreter to explain his/her reasoning for word choice.
- Ask the attorney to have the witness restate the utterance in question.
- DO NOT assume the interpreter is in error just because the interpreter is being challenged.

## Making a record on challenges – II

### **Interpreter Error**

- Correction of interpreter error on the record
- Interpreter becoming aware of interpreter error
- Replacement request of challenged interpreter
- Challenges by jurors
- Real vs. perceived error
- Error due to lack of information

## External Factors that May Affect Quality of Interpretation

- Interference
  - Multiple Voices
  - Background Noise
  - Physical Obstruction
  - Soft Voices
- Rate of Speed in Speech
- Telephonic Appearances
- The Mechanics of Relay Interpreting

## Awareness of Linguistic and Cultural Differences

- Awareness of linguistic differences
  - Structure of personal names
  - Pronouns, gender, passive voice
  - Vocabulary ambiguities
- Awareness of cultural differences
  - Body Language
  - Direct vs. indirect answers
  - Ignorance of American legal system
  - Deference to authority

## Awareness of interpreter needs

- 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.
- Explanation on the record of terms upon request by the interpreter
- Water for the interpreter



## 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

## Interpreters for Jurors

- States with Juror Statutes: New Mexico
- ASL interpreters for jurors – ADA issue, not interpreter issue alone
- Jurors excused due to lack of readily available interpreter for specific language

## Telephonic Hearings

- Appearance by the interpreter over the phone
- Appearance by the party over the phone
- Both parties appearing via phone
- Types of hearings NOT conducive to telephonic interpretation

## 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](http://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, [www.brennancenter.org](http://www.brennancenter.org)

## 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)
- Ling v. State, 288 Ga. 299, 702 S.E.2d 881 (2010)

## 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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