



Court Interpretation:

Model Guides for Policy and Practice in the State Courts





Court Interpretation:

Model Guides for Policy and Practice in the State Courts

by
William E. Hewitt

Project Staff:

William E. Hewitt

Project Director

R. Shedina Lockley

Administrative Secretary

Pamela Casey

Senior Research Associate

John Richardson

Research Analyst

This document was developed under a grant from the State Justice Institute (SJI-91-12A-B-087). Points of view and opinions stated in this report are those of the author and do not necessarily represent the official position or policies of the State Justice Institute nor any member of the project advisory committee.

**Copyright © 1995
National Center for State Courts**

300 Newport Avenue
Williamsburg, VA 23185

ISBN: 0-89656-146-1
Publication Number: R-167

ACKNOWLEDGMENTS

The project's primary debt is to its advisory committee. We thank the following members for sacrificing their personal time to attend the weekend meetings and review the project reports:

Project Advisory Committee

Justice Neil L. Lynch

Boston Supreme Judicial Court

Hon. Alfonso Fernandez

Judge, Santa Clara County Municipal Court

Hon. Lynn W. Davis

Utah Fourth Judicial District

Hon. Richard S. Brown

Court of Appeals of Wisconsin
District II

Dr. Virginia Benmaman

College of Charleston
Language Department

Ms. Marilyn K. Hall

State Court Administrator
Michigan Supreme Court

Ms. M. Eta Trabing

Federally Certified Interpreter

Mr. Robert Joe Lee, Supervisor

Court Interpreting Section
New Jersey Administrative Office of the Courts

Mr. Ed Baca

District Court Administration Division
Administrative Office of the US Courts

Mr. Paul Hofer

Senior Research Associate
Federal Judicial Center

Project Monitor
State Justice Institute
Ms. Cheryl D. Reynolds

A special thanks is owed to Robert Joe Lee of New Jersey and Joanne Moore of Washington who gave generously of their time and good counsel during the study, as they have to scores of court officials across the nation. New Jersey and Washington's interpreting programs are central models in this study.

Sarah Shew in Maricopa County, Arizona collaborated with the project staff during the internship phase of her course of study in the Institute for Court Management's Court Executive Development Program. Her telephone survey of 15 metropolitan courts was a valuable contribution to the project's research.

The work of Susan Berk-Seligson, author of *The Bilingual Courtroom*, and Roseann Gonzalez, Victoria Vasquez, and Holly Mikkelsen, authors of *Fundamentals of Court Interpretation*, is gratefully acknowledged. This publication scratches the surface of subjects which those volumes cover in depth.

Williamsburg Conferees

Supplementing the work of the advisory committee, eighteen individuals worked together in Williamsburg, Virginia for three days in July of 1993 to craft the Model Code of Professional Responsibility and the Model Court Interpreter Act. Robert Joe Lee, Judge Lynn Davis, and Ms. Eta Trabing represented the advisory committee during those meetings.

Laura Eastment

Federally Certified Court Interpreter
Arlington, MA

Honorable Irving Ettenberg

County Judge
Denver County Court, CO

Honorable Charles M. Grabau

Justice of the Superior Court
Commonwealth of Massachusetts

Holly Hitchcock

Administrative Office of the Court
Rhode Island Supreme Court

David King, Coordinator

Court Interpreter Training Project
International Institute of Buffalo, NY

Connie Llandro

Coordinator of Interpreting Services
District of Columbia Superior Court

Scott Loos

Chief Interpreter
Maricopa Superior Court, Arizona

Ben McClinton, Esq.

Staff Attorney
California Judicial Council (ret)

Patricia Michelsen

Federally Certified Court Interpreter
Richmond, VA

Holly Mikkelsen

Federally Certified Court Interpreter
Spreckels, CA

David Mintz

Spanish Interpreter-Translator
National Association of Judiciary
Interpreters and Translators

Hanne Mintz

Interpreter Trainer/Consultant
Los Angeles, CA

Joanne Moore, Program Director

Washington State Interpreter Certification
Program

Maribel Pintado-Espiet

Coordinator of Court Interpreter Services,
Massachusetts

M. Cristina Ruiz

Director of Interpreting Services
Circuit Court of Cook County, Illinois

Robin Shedina Lockley and Pamela Petrakis prepared this volume for publication.

LEXIS-NEXIS

A grant from LEXIS-NEXIS simplified our searches for statutes, case decisions and periodical literature.

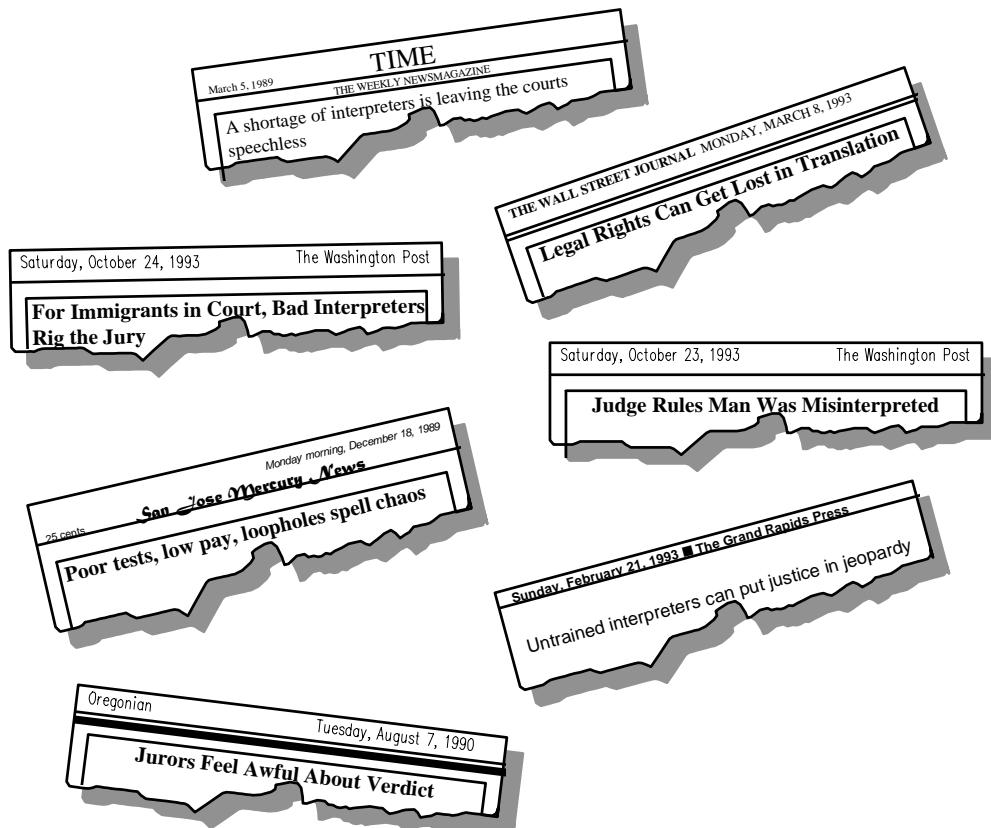


Table of Contents

Acknowledgments	iii
Introduction	
Court Interpretation: Challenge for the 1990s	1
Chapter 1	
The Increasing Importance of Language Interpretation as a Management Problem in the Courts	9
Chapter 2	
Interpreting Terminology.....	29
Chapter 3	
Job Analysis and Position Descriptions for Professional Court Interpreters	35
Chapter 4	
Training for Court Interpreters	51
Chapter 5	
Assessing Interpreter Qualifications: Certification Testing and Other Screening Techniques.....	87
Chapter 6	
Judges' Guide to Standards for Interpreted Proceedings.....	123
Chapter 7	
Visual Modes of Communication: Interpreting for Deaf Persons	155
Chapter 8	
Telephone Interpretation	177
Chapter 9	
Model Code of Professional Responsibility for Interpreters in the Judiciary.....	195
Chapter 10	
Model Court Interpreter Act	213
Chapter 11	
Action Plans for Strengthening Interpreter Services	235

INTRODUCTION

Court Interpretation: Challenge for the 1990s





INTRODUCTION

Court Interpretation: Challenge for the 1990s

Improving access to justice for linguistic minorities is but one of many challenges facing courts as the century draws to a close, and the financial capacity of most state courts is inadequate to address them all effectively. This resource book examines language interpretation problems and responses at several levels -- courtroom, local, state, and national. It contains model documents and recommended procedures and programs that will be useful for individual trial judges, administrators, program managers, and policy makers at each of those levels. It is the result of a study conducted between January 1, 1992, and July 31, 1994, by the National Center for State Courts to examine the nature and scope of management problems related to interpreter services in the state courts. The study identified strategies for transforming a bewildering array of problems into an action agenda of manageable proportion. *The cost to improve the quality of interpreter services is an issue of overarching concern.*

The central theme that emerged from the research is the need to achieve economies of scale in program management: *for most courts the problems related to interpreter services are beyond affordable solution at the individual trial court level due to inadequate expertise and financial capacity.* Creative policy and management strategies, the will to undertake a long-term initiative, and a pragmatic attitude about striking a balance between optimum and wholly unsatisfactory services are required to make progress. Court interpreting services lend themselves especially well to

Scarce resources--the limiting factor

Creative strategies are needed

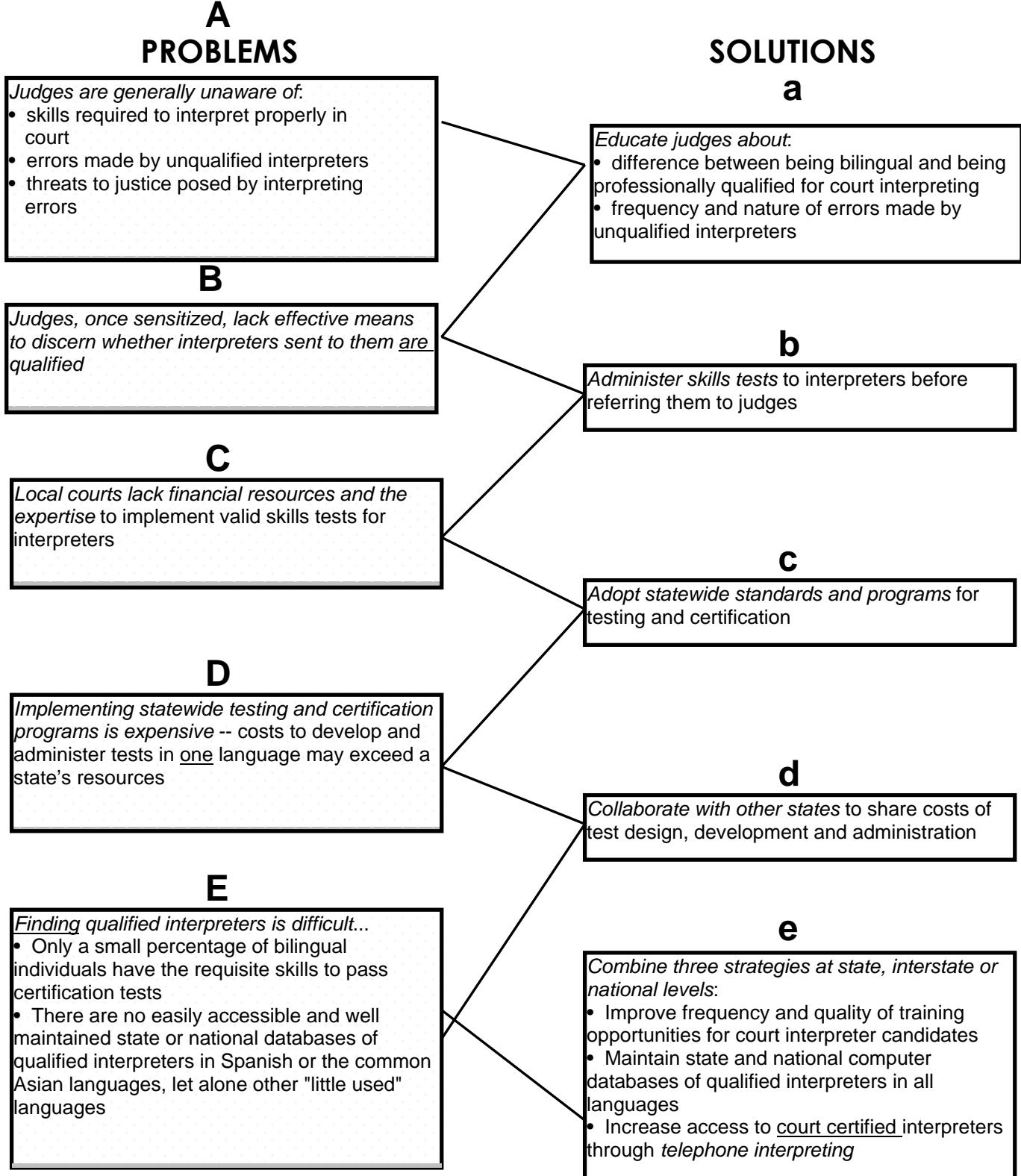
resource and service sharing regionally, statewide, interstate, and, where appropriate, across courts of state and federal jurisdiction.

One problem leads to another

Figure 1 depicts the major findings of the research regarding the problems that states face and solutions that have been successfully implemented in some states, or that are suggested by conclusions drawn from the research. Figure 1 also illustrates how solving problems at one level gives rise to the recognition of other problems that require solutions at a higher level.

Problem A, for example, is central and basic: at the courtroom level, judges (and others responsible for establishing expectations for the quality of interpreting services, e.g. lawyers, court administrators) are generally unaware that being bilingual is not a sufficient condition for being able to function adequately as a court interpreter. As a consequence, they do not realize how often errors committed by untrained interpreters distort evidence relied on by the court, mislead and threaten the fairness of proceedings and deny non-English speaking people equal access to justice. But if problem A is addressed by educating judges and other court officials about the skills required for court interpreting, a new problem becomes apparent: how does the now-educated and sensitized judge discern whether the bilingual person standing before her or him is qualified to perform adequately as an interpreter? While Chapter 6 of this publication discusses some ad hoc techniques that judges or court administrators can apply to screen out some clearly *unqualified* individuals, valid skills tests are the only reliable way to tell if an apparently competent person is qualified for court interpreting.

Figure 1
Improving Language Interpreting in the State Courts:
The Rationale for Local/State and Interstate Collaboration



As the figure suggests, however, skill testing is not something that the majority of trial courts can do on their own. It requires highly specialized expertise in the disciplines of measurement and testing, professional interpreting, and in the languages in question (the very things the court is without). As the figure shows, problems continue to stack up and call for solutions at levels that become more and more remote from the individual courtroom or courthouse, and where competition for scarce resources also occurs, albeit on a larger scale.

Ultimately, the central challenges to be faced and met regarding court interpretation are summarized as problem E in Figure 1 -- there is a scarcity of *qualified* court interpreters, and the problem of scarcity is compounded by the absence of resources to locate those interpreters who are qualified in a particular language. For example, a qualified local person who interprets in the Hmong language is unlikely to be found in Roseburg, Oregon. How does the court there go about finding a qualified Hmong interpreter?

Equally important, how does the court find the closest one, the one whose services can be obtained at the least expense?

Today, courts throughout the country generally settle for whomever is available. *Someone* is found who is reported to speak the language.

Because these problems appear so overwhelming and intractable, individual trial judges and local trial court managers may be predisposed to avoid a close scrutiny of what is taking place behind the language barrier. If the judge or court manager sees no practical alternative to current practice, what sense does it make to dwell on its problems and illuminate potential injustices?

The problems appear overwhelming

How this book can help

This set of model guides makes a modest contribution toward helping court managers, judges, and

policy makers address the problems identified in Figure 1 by providing concrete resource materials in a generic form that can be referred to as-is for planning guides, policy statements, or training materials. The model guides also offer a framework around which state and local policy and procedure can be further refined or expanded as the local context requires, expertise suggests, and financial resources permit.

First on the agenda, in Chapter 1, is a more complete but still brief account of why court interpreting is a significant management issue for the courts. Subsequent chapters offer the following practical resources:

- Chapter 2: a guide to interpreting terminology
- Chapter 3: a generic, but highly detailed account of the specific tasks that interpreters perform and the knowledge, skills, and abilities required to perform them;
- Chapter 4: guides for the design of training workshops for court interpreters;
- Chapter 5: an overview of standards for court interpreter proficiency testing and other approaches to assessing interpreter qualifications;
- Chapter 6: a judges' guide to recommended standards for the conduct of interpreted proceedings;
- Chapter 7: a judges' guide to special issues related to interpretation for people who are deaf or hearing impaired;

General resources for the court manager

Of special interest to judges & attorneys

State policy

- Chapter 8: a review of the promising but currently problematic options for securing interpreter services via telephone;
- Chapter 9: a recommended code of professional conduct for court interpreters, which is an essential element of court policy regarding interpreter services;
- Chapter 10: recommended basic elements that should be considered for inclusion in *state policy*, either in the form of statute or supreme court rule.

Where to start

The conclusion of the volume (Chapter 11), returns to practical considerations: what can state and local managers do *tomorrow* to begin strengthening interpreter services? What issues must they face as they begin their work?

CHAPTER 1

The Increasing Importance of Language
Interpretation as a Management Problem in the
Courts



CHAPTER 1



The Increasing Importance of Language Interpretation as a Management Problem in the Courts

Trends in Cultural Diversity

Among the nation's most significant trends for the 1990s and the next century are the interrelated ones of immigration and cultural diversity. The estimated number of home speakers of non-English languages in 1990 was nearly 32 million, approximately 12.6 percent of the total population.¹ **Table 1.1** at the end of the chapter shows the estimated populations of home speakers of non-English languages (NELS) by several major language groups for each state. **Table 1.2** ranks states by the total number of NELS in each state, and **Table 1.3** ranks the states by the *percentage* of NELS in the population of each state.

Moreover, equally important as the actual numbers of NELS are national trends. While the total population of the United States increased by 10 percent between 1980 and 1990,

- the nation's Asian and Pacific Islander minority populations increased by 108 percent;
- the nation's Hispanic population increased by 53 percent;
- other language minority populations increased by 45 percent.

This diversity makes it increasingly difficult for the criminal justice system to meet constitutional requirements of fundamental fairness (Fifth and Fourteenth

Nearly 13% of the U.S. population does not speak English at home.



Amendments), equal protection (Fourteenth Amendment), and the right to cross examine adverse witnesses (Sixth Amendment). Laws in most states also require that interpreters be appointed when witnesses and defendants in criminal cases can not speak English.² Language barriers and barriers erected by cultural misunderstanding can render criminal defendants virtually absent from their own court proceedings. In addition, they can result in misinterpretation of witness statements made to police or triers of fact during court proceedings and can deter minority litigants from the civil justice system as a forum for redress of grievances. This amplifies the significance of court interpretation as a management issue for the courts, which are increasingly compelled to use language interpreters in court proceedings.³ Often, however, interpreters used by the courts are not properly qualified for interpreting in court and justice system settings. While a majority of states have legislation that requires interpreters for deaf or hard of hearing persons to possess minimum qualifications and be certified for competency, few states have enacted legislation to establish qualifications for foreign language interpreters.⁴

Miscarriages of Justice

CASE: A defendant was convicted and served years of a lengthy prison term following a trial when the court interpreter spoke a *different language* than that of the defendant (interpreter spoke Spanish while the defendant's language was Mixtec). Following post-trial investigations and media attention, the defendant's sentence was commuted without an appellate review of the case.

At least 22 states have appointed bodies to study the concerns of linguistic, racial and ethnic minorities vis-à-vis the courts.⁵ Some of these studies were initiated specifically to look at the needs of linguistic minorities; others were focused more generally on racial and ethnic bias in the courts. In both cases, however, the published studies of these judiciary task forces and commissions have extensively documented widespread breakdowns in due process and equal protection for non-English speaking

litigants who appear before the courts (see **Figure 1.1**).

Other research studies and news media investigations also document alarming miscarriages of justice resulting from courts using improperly trained and unqualified interpreters (**Figure 1.2**). The causes of these problems are fourfold:

- underestimation and misunderstanding by the legal community of the skills required for court interpreting;
- absence of standards for court and legal interpreter qualifications;
- lack of effective and efficient mechanisms for locating qualified interpreters; and
- a shortage of qualified court interpreters.

To address the causes of problems with court interpreting, comprehensive, statewide mechanisms and procedures need to be formalized by statute and implemented by state court administrative offices to ensure that interpreters who possess the appropriate minimum skills for interpreting in court settings are available and used. Some states (notably California, New Jersey, Washington, and Massachusetts) stand out for their accomplishments in setting standards, developing test and certification programs, and implementing training programs for interpreters, judges, and other justice system personnel. Reforms are being publicly urged and are in progress or being contemplated in many other states, such as, Florida, Kansas, Michigan, Minnesota, Nevada, New York, Oregon, Utah, and Virginia. All states face similar problems to some degree.

Case: "[Jail inmate] Christopher Sanchez, who speaks Spanish, interpreted for the courts and the jail more than 20 times during his six months jail term ...

Once he even translated for a Laotian robbery suspect, just a month after Sanchez says he picked up some of that language from a fellow inmate.

.... Sanchez was called last year, still in his orange jail uniform -- to interpret in a bank robbery trial." Ken Kolker, *Grand Rapids Press*, February 21, 1993.

Figure 1.1
**Selected References to Task Force Studies That Document Problems with
Access to Justice by Linguistic Minorities**

Court Interpretation Studies

- California: *A Report to the Judicial Council on the Language Needs of Non-English Speaking Persons* (Three volumes, January 1976 May 1976 January 1977)
- New Jersey: *Final Report of the New Jersey Task Force on Interpretation and Translation Services* (May, 1985).
- New York: *Equal Justice and the Non-English Speaking Litigant: A Call for Adequate Interpretation Services in the New York State Courts*, Association of the Bar of the City of New York, Committee on Legal Needs of the Poor (undated).
- Utah: *Report on Interpretation and Translation in the Utah Court System* (January 8, 1993).
- Washington: *Final Report of the Court Interpreter Task Force* (April, 1989). *Court Interpreter Advisory Committee: Interim Report* (October 19, 1990).

Racial and Ethnic Bias Studies

- Idaho: *Report of the Fairness and Equality Committee of the Supreme Court of Idaho* (undated).
- Iowa: *Final Report of the Equality in the Courts Task Force* (February, 1993).
- Florida: *Report and Recommendations of the Florida Supreme Court Racial and Ethnic Bias Study Commission* (December 11, 1991).
- Massachusetts: *Supreme Judicial Court Commission to Study Racial and Ethnic Bias in the Courts: Program Report* (May, 1992).
- Michigan: *Final Report of the Michigan Supreme Court Task Force Racial/Ethnic Issues in the Courts* (December 1989).
- Minnesota: *Minnesota Supreme Court Task Force on Racial Bias in the Judicial System* (May, 1993).
- New Jersey: *Supreme Court Task Force on Minority Concerns* (June, 1992).
- New York: "Report of the New York State Judicial Commission on Minorities," *Fordham Urban Law Journal* (Vol. XIX No. 2, 1992).
- Washington: *Minority and Justice Task Force Final Report* (December, 1990).

Figure 1.2
Selected References to Scholarly Publications and Media Accounts of Problems with Language Interpretation in the Nation's Courts

Scholarly Publications

Astiz, Carlos, *Language Barriers in the Criminal Justice System*, U.S. Department of Justice, National Institute of Justice (Washington, D.C: 1993)

Berk-Seligson, Susan, *The Bilingual Courtroom: Court Interpreters in the Judicial Process*, University of Chicago Press (Chicago: 1990)

Davis, William, "Language and the Justice System," *Justice System Journal* (Winter 1985)

Gonzalez, Vasquez and Mikkelsen, *Fundamentals of Court Interpretation*, Carolina Academic Press, (Durham, NC: 1991)

Media Accounts

Boone, Jerry, "Migrant Worker Ventura is Enmeshed in a 'Twilight Zone', *Oregonian* (Sep. 27, 1990)

Ewell, M. and Schrieberg, D., "At the Mercy of Others' Voices," *San Jose Mercury News* (Dec. 17, 1989)

Farrell, Peter, "Clackamas Jurors Feel Awful About Verdict," *Oregonian* (Aug. 7, 1990)

Kolker, Ken, "Justice Lost in Translation," *Grand Rapids Press* (Feb. 21-23, 1993)

Hammond, Ruth, "Lost In Translation," *Twin Cities Reader* (Mar. 11, 1993)

Hammond, Ruth, "Lost In Translation," *Washington Post* (Oct. 24, 1993)

Woo, Junda, "Legal Rights Can Get Lost in Translation," *Wall Street Journal* (Mar. 8, 1993)

Most states, however, lack the necessary expertise and financial resources to match the accomplishments of California, New Jersey and Washington in the foreseeable future, without determined policy initiatives and creative strategies for interstate resource-sharing. One such initiative is now underway in Minnesota and Oregon, in collaboration with New Jersey and Washington, with substantial interest being shown by other states (See Chapter 5).

Court Interpretation: The Requirements

Court interpretation for foreign language speaking and deaf or hearing impaired individuals is a highly specialized form of interpreting that cannot be effectively performed without commensurate specialized training and skills. Arguably, it is the most difficult form of interpreting. Being bilingual, even fluently so, is insufficient qualification for court interpreting. Court interpreters must be able to preserve "legal equivalence" while interpreting. Moreover, they must be able to do this in each of three modalities: simultaneous interpreting, consecutive interpreting, or sight translating documents.

Interpreters must be able to translate with exactitude...while accurately reflecting a speaker's nuances and level of formality....The interpretation cannot be summary or convey only the gist of the original source message.⁶

Dr. Roseann Gonzalez, Director of the Federal Court Interpreter Certification Project, and her colleagues write that to maintain legal equivalence, the interpreter must ...interpret the original source material without editing, summarizing, deleting, or adding while conserving the language level, style, tone, and intent

of the speaker or to render what may be termed the **legal equivalence** of the source message.⁷

Legal equivalence also entails "conservation" of speech style:

It is important to remember that from the beginnings of judicial proceedings triers of fact (the judge or jury) have to determine the veracity of a witness's message on the basis of an impression conveyed through the speaker's demeanor. The true message is often in **how** something is said rather than **what** is said; therefore, the style of a message is as important as its content.

The interpreter is required to render in a **verbatim manner** the form and content of the linguistic and paralinguistic elements of a discourse, including all of the pauses, hedges, self-corrections, hesitations, and emotion as they are conveyed through tone of voice, word choice, and intonation; this concept is called **conservation**.⁸

If interpretation is improper, defendants may misunderstand what is taking place; the evidence heard by judge and jury may be distorted, if not significantly changed. When poor interpretation occurs, the English speaking members of the court and the non-English speaking litigants or witnesses virtually *do not attend the same trial.*

[When non-English speakers] tell their stories, it is more likely than not that significant portions of their testimony will be distorted by the interpreter omitting information present in the original testimony, adding information not present, or by stylistically altering the tone and intent of the speaker. Judges and juries are not given the opportunity to "hear" the testimony as it was originally spoken, and defendants and witnesses cannot fully comprehend the questions asked of them. This linguistic distortion compromises the fact-finding process....⁹

Writing in *The Bilingual Courtroom: Court Interpreters in the Judicial Process*, Dr. Susan Berk-Seligson also describes

the ways in which evidence may be distorted by the interpreter:

...an interpreter has the power to make a witness's testimony cast more (or less) blame than it did in the source language...and, alternatively, he/she can remove from the testimony any blame-laying strategies it may have contained. Moreover, an interpreter can make an attorney look more polite and less aggressive to a witness, and a witness more, or alternatively less cooperative to an attorney. Finally...interpreters often introduce an element of coercion into the examination process when they interpret for witnesses and defendants.¹⁰

In addition to highly specialized and demanding interpretation skills, court interpreters must adhere to strict codes of appropriate behavior and at times face unusual problems of law and ethics. For example, interpreters are often asked for legal or behavioral advice, which they must decline to give; they may overhear private conversations between foreign language speaking defendants that contain evidence; defendants may even "confess" to an interpreter during private moments.

Chapter 3 provides a detailed analysis of the job requirements and the knowledge, skills and abilities that interpreters must possess. The analysis will serve court managers as a basis for preparation of position descriptions and as a basis for validating tests of interpreter skills.

Judges' Dilemmas

First dilemma

In most states, there is no clear policy to guide judges regarding the qualifications of foreign language interpreters, yet it is the responsibility of the trial judges to determine whether a bilingual individual presented to assist them in court proceedings is qualified. The laws in Arizona, Colorado, Illinois, New Jersey, and Texas, which simply require that an interpreter take an oath of true

translation and "be qualified as an expert," are typical of the language of many state statutes. In many of these same states, however, the law is specific as to what constitutes "qualified" when it comes to interpreting for persons who are deaf or hearing impaired. In Texas, interpreters for deaf persons must have specific certifications issued by the National Registry of Interpreters for the Deaf (NRID), or by a Texas Board for Evaluation of Interpreters. Arizona, Colorado, Florida, New Jersey, and New York also have specific language in the state's laws that provides guidance to a trial judge regarding qualifications that interpreters for deaf persons must possess.

Moreover, the judges who must make these discretionary decisions are without appropriate guidance or training regarding the skills that are required for court interpreting and the damage that can be done by untrained and inadequately skilled individuals. Only a handful of the nation's trial judges and court administrative officials are enlightened about what should be required of a court interpreter and about what can and does go wrong when court interpreting is improper.¹¹

Unfortunately, because of general lack of understanding among the judiciary and the public concerning the consequences of not providing appropriate language services, interpreters have never been subject to uniform professional or legal regulation.¹²

When judges do become aware that court interpretation is a highly specialized skill and that miscarriages of justice may occur if interpreters are unqualified, they face another problem: how can they tell if an interpreter sent to them *is* qualified?

Second dilemma

Third dilemma

After judges or court administrative staff understand the problems associated with assessing interpreter qualifications and learn how to mitigate some of them, they face still another dilemma: finding qualified interpreters. Qualified interpreters in most languages except Spanish are scarce. Even for Spanish, the task of finding a qualified interpreter is not likely to be simple in many parts of the country. In some cases, qualified interpreters simply may not be available.

Consequently, through the years, the use of unqualified, untested, and untrained individuals as interpreters has led to a serious abridgment of due process rights for many United States citizens.

It is not surprising then, that anecdotal evidence, congressional testimony, and governmentally commissioned studies attest to the inadequacy of interpretation as practiced by the courts. ...What is clear from [a] brief glimpse of the legal literature is that the problem has been enduring and pervasive.¹³

What Is Needed

Four initiatives are needed to improve court interpretation practices:

Interpreter testing

□ expansion of testing programs to certify the competence of court interpreters, and to serve as the basis for recruiting and training individuals to become court interpreters;

Interpreter training

□ expansion of short-term basic training for interpreters on procedure and long-term training to improve their interpreting skills;

Referral databases

□ development of location and referral systems that are accessible and that maintain appropriate standards regarding interpreter qualification;

Judicial education

□ judicial education: sensitizing judges and attorneys to the issues and providing them with information about

standards for recruitment and selection to assure that the most qualified interpreters are used.

Many jurisdictions do not have a demand that is great enough to justify the expense of launching and completing these initiatives locally, or even at the state level. Resource sharing to achieve economies of scale can help make it possible to develop needed resources, however. Resource sharing can be accomplished at several levels.

The quality and reliability of interpreter services can be improved, and costs can be more effectively controlled, by implementing court interpreter programs that are used by all of the courts within the same county or in multicounty districts. In some cases, a statewide program of interpreter recruitment and assignment would be appropriate.

Few states have the demand, resources, or expertise to develop appropriate and reliable tests of competency for court interpreters in *any* language, much less in several. This needs to be done cooperatively, building on the expertise developed by court interpreter program managers in the states where high quality testing and certification programs have been implemented.

An interstate authority responsible for certification of state court interpreters, among other things, should be established. This interstate authority could:

- 1) provide oversight for the development of language certification tests;
- 2) design and oversee a test administration strategy to serve the state courts;
- 3) maintain a central, national registry of certified interpreters;

Local and statewide initiatives

Interstate/multistate initiatives

- 4) oversee a telephone interpretation program that is designed specifically for the needs of the courts; and
- 5) design and develop high quality educational materials suitable for use by any state.

Nationally: State/Federal coordination

One key advantage of an interstate authority is the potential it offers for joint planning and program and resource development between the state and federal courts.

Educational materials for judges and interpreters are needed in both state and federal courts. For example, a videotape, with an accompanying handbook that illustrates problems with using unqualified court interpreters, could be developed for national use in both state and federal judicial education programs. Why not create one excellent educational resource instead of having many less effective resources, or none at all?

The same principle applies to finding qualified interpreters, a major problem for both the state and federal courts. A national registry and database would serve the needs of both state and federal courts: why not have *one* primary source for referrals to the nearest qualified interpreter rather than several?

Finally, telephone interpretation is a strategy that offers substantial promise for reducing costs and increasing the availability of qualified interpreters in lesser-used languages. Experimentation has occurred in both state and federal trial courts using very different approaches. Valuable lessons have been learned, but additional work is needed to refine courtroom equipment, resolve policy questions, and design reliable procedures for reaching qualified interpreters by telephone in a timely manner. Once again, the benefits of a coordinated approach to developing this potentially powerful resource are

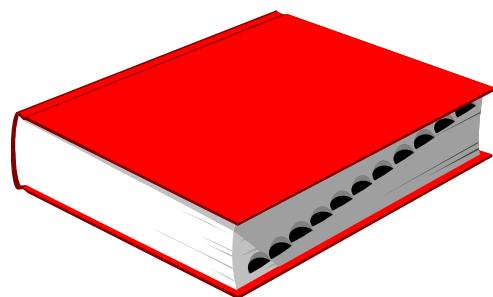
clear: why not share the costs and benefits of a telephone interpretation program among both state and federal courts?

Endnotes

1. Roseann Gonzalez presents these and other data in "Population Changes and Methods for State Court Response," an unpublished document of the Federal Court Interpreter Certification Project (University of Arizona, 1993). Sources cited by Gonzalez include: Waggoner, D. "Six States Have a Million Plus Speakers of Non-English Languages," *Numbers and Needs*, Vol. 3 No. 1, Jan. 1993, p.2, and 1990 Census Data, Bureau of the Census; cited in National Clearinghouse for Bilingual Education, Vol. XIV, No. 6, September 1991.
2. Information gathered by the National Center for State Courts, Research Division, 1992, as background data for the study.
3. The increased need for and use of court interpreters has been identified by some observers of important trends in the courts as fifth on a list of 24 important trends that are currently affecting the courts. See, for example, Schultz, W., Bezold, C. and Monahan, B., *Reinventing Courts for the 21st Century: Designing a Vision Process*, National Center for State Courts (Williamsburg, VA, 1993), p.82.
4. A review by NCSC project staff of legislation in effect in 1992 showed that a majority of the states had enacted legislation relating to qualifications for interpreters for deaf or hearing impaired individuals, while only five states had similar statutory language that applies to interpreters for non-English speaking persons.
5. Information gathered by the Information Service, National Center for State Courts, 1993.
6. Federal Judicial Center, "Court interpreter qualification process amended..." (1989-241-000006.) *The Third Branch: Bulletin of the Federal Courts*, Vol. 21 No. 6, p.7.
7. Roseann Gonzalez, Victoria Vasquez, and Holly Mikkelsen, *Fundamentals of Court Interpretation*, Carolina Academic Press (Durham, NC: 1991), p.16.
8. Id
9. Id, p.5
10. Berk-Seligson, Susan, *The Bilingual Courtroom*, University of Chicago Press (Chicago 1990).
11. For example, in a recent study conducted by the Georgia Supreme Court Commission on Racial and Ethnic Bias in the Court System, over 86% of judges responding to a survey said they were satisfied with the quality of interpreting services; while, at the same time, only 14% of the responding courts indicated that they required interpreters to have any form of training, prior court experience, or certification. (Unpublished interim report of the Commission, August 14, 1994.) Other studies involving direct observation of untrained and untested interpreters by expert professionals invariably reveal frequent, serious errors of interpretation and improper behavior (e.g., advising non-English speakers how to answer questions, how to plead, etc.)
12. Gonzalez, Id p.5.
13. Id

CHAPTER 2

Interpreting Terminology





CHAPTER 2

Interpreting Terminology

Technical terms used throughout this guide are defined and explained below. Terms are not presented alphabetically. They are arranged in an order that is more suitable for readers to learn the fundamentals of interpreting concepts, terminology, and procedure.

"Non-English speaking person" is the term used in the text to refer to any person who is unable to communicate in English or who has a *limited* ability to communicate in English. The term also applies when the language limitation arises due to deafness or being hard of hearing. The term generally refers to a principal party in interest or a witness in the case.

Non-English speaking person

Source language is the language of the original speaker. "Source language" is thus always a relative term, depending on who has spoken last.

Source language

Target language is the language of the listener, the language into which the interpreter is communicating the meaning of the words spoken in the source language.

Target language

Interpretation means the unrehearsed transmitting of a *spoken* or signed message from one language to another. Interpretation is distinguished from "translation," which relates to written language (see below). Two modes of interpreting are used in court by qualified interpreters -- "simultaneous" and "consecutive." A third common mode is

Interpretation

"summary" interpreting, which should not be used in court settings. These terms are also defined below.

Consecutive interpreting

Consecutive interpreting is rendering statements made in a source language into statements in the target language intermittently after a pause between each completed statement in the source language. In other words, the interpreter renders an interpretation after the speaker has stopped speaking.

When using this mode of interpreting, it may be necessary for the interpreter to signal a speaker to pause to permit a consecutive interpretation when the length of the utterance approaches the outer limits of the interpreter's capacity for recall. During consecutive interpreting, the interpreter should take notes to assist him/her in rendering the interpretation.

Simultaneous interpreting

Simultaneous interpreting is rendering an interpretation continuously at the same time someone is speaking. Simultaneous interpreting is intended to be heard only by the person receiving the interpretation and is usually accomplished by speaking in whispered tones or using equipment specially designed for the purpose in order to be as unobtrusive as possible.

Sight interpreting

Sight interpreting is more commonly referred to as "sight translation" (see below).

Summary interpreting

Summary interpreting is paraphrasing and condensing the speaker's statement. Unlike simultaneous and consecutive interpreting, this method does not provide a precise rendering of everything that is said into the target language. This is a mode of interpreting that should *not* be used in court settings.

Intermediary interpreting involves more than one interpreter to reach people who have idiosyncratic speech characteristics or (in the case of deaf people) who employ gestures or other signing varieties beyond the understanding of the primary interpreter. Intermediary interpreting should be undertaken with a trained primary interpreter, assisted by the secondary interpreter. Secondary interpreters may be deaf people holding the Reverse Skills Certificate (RSC) awarded by the National Registry of Interpreters for the Deaf, family members or friends of the person needing special communicative assistance, and professional service providers.

See Chapter 7 for more information about when relay interpreters are needed.

Intermediary interpreters must work with a primary interpreter who is a professional.

Translation is converting a written text from one language into written text in another language. The source of the message being converted is always a written language.

Sight translation is a hybrid type of interpreting/translating whereby the interpreter reads a document written in one language while translating it orally into another language. It is sometimes called sight interpreting. In this mode of interpreting a written text must be rendered orally without advance notice and on sight.

Functions of interpreting relate to the purpose or the setting in which interpreting occurs. It is important to understand the functions of interpreting because in some settings more than one interpreter will be required, depending on how many interpreting functions need to be carried out during the same proceeding.

Intermediary or "relay" interpreting

Translation

Sight translation

Interpreting functions

In some circumstances, two or more interpreters might be required during one trial in order to perform all of the required interpreting functions.

Proceedings interpreting

Proceedings interpretation is for a non-English speaking litigant in order to make the litigant "present" and able to participate effectively during the proceeding. This interpreting function is ordinarily performed in the simultaneous mode. The interpreter's speech is always in the foreign language, and is not part of the record of proceedings.

Witness interpreting

Witness interpretation is interpretation during witness testimony for the purpose of presenting evidence to the court. This interpreting function is performed in the consecutive mode; the English language portions of the interpretation are part of the record of the proceeding. A variant of "witness" interpreting is assistance provided by the interpreter during communications between the judge or other English-speaking official on the case and a non-English-speaking defendant or civil litigant. Typical examples are communications who occur during arraignments, plea or sentencing hearings.

Interview interpreting

Interview interpreting is interpreting to facilitate communication in interview or consultation settings. Interview interpreting may occur in conjunction with court proceedings or before or after court proceedings. Foremost among these are interviews or consultations that take place between attorney and client (sometimes referred to as "defense" interpreting) and between a non-English speaking person and bail screening or probation personnel.

Interview interpreting may be performed in either or both the simultaneous and consecutive modes during an interview, depending on the circumstances.

CHAPTER 3

Job Analysis and Position Descriptions for Professional Court Interpreters

3300 General Help Wanted

Court Interpreter-Works under direction of Trial Court Administrator. Translates forms, letters, and other court-related documents as needed. Oversees, evaluates and trains lower

CHAPTER 3



Job Analysis and Position Descriptions for Professional Court Interpreters

In most states, there are no qualifications required by law for foreign language court interpreters. (By contrast, laws in many states *do* specify the qualifications that interpreters for deaf or hearing impaired people must have.) A wealth of published research and systematic job analysis studies have extensively documented the core knowledge, skills, and abilities that *professional* court interpreters should possess, regardless of the specific conditions and location of their employment. This chapter provides a foundation for position descriptions, job announcements, and testing or other qualifications assessments for salaried or contract interpreters.

The chapter:

- summarizes the central findings of job analysis studies related to *interpreting*;
- notes other related language and communicative assistance tasks that interpreters are *de facto* expected to perform in many courts (e.g., document translation, tape translation), and
- provides samples of position descriptions used in two locations where interpreters are employed by the courts (one statewide system and one local court).

Summary Profile of the Qualifications of a Professional Interpreter

Professional court interpreters are individuals who possess educated, native-like mastery of *both* English and a second language; display wide general knowledge characteristic of what a minimum of two years of general education at a

college or university would provide; and perform the three major types of court interpreting: sight interpreting, consecutive interpreting, and simultaneous interpreting.

Court interpreters must perform each type of interpreting in a manner that includes everything that is said, preserves the tone and level of language, and neither changes nor adds anything to what is said. Interpreters deliver services in a manner faithful to all canons of a Code of Professional Responsibility and policies regarding court interpreting promulgated by the judiciary.

A detailed inventory of the tasks interpreters perform is presented in the next section. Several distinctions made in the task analysis are not usually found in interpreter job analyses and deserve a brief explanation. Their implications are important for testing and training.

- Work performed in court under the supervision of a judge is distinguished from work that is performed outside the judge's purview. The latter increases the opportunity for interpreters to act outside their proper role, as well as the likelihood of experiencing pressure to do so.
- The distinction between interpreting familiar versus unfamiliar documents is important, because interpreters with a limited vocabulary can study and *learn* the proper interpretation of familiar documents. It takes substantially more education and very broad vocabulary to interpret *unfamiliar* documents effectively.
- The distinction between interpreting (or sight translating) from English into the foreign language versus interpreting the other way is important for two related reasons: 1) the former occurs more frequently than the latter, and 2) there is less likelihood that improper or mistaken interpreting will be noticed by court officials.

Detailed Inventory of Tasks Interpreters Perform

The tasks described below appear in roughly the same order of frequency that interpreters perform them. For example, the various kinds of interpreting tasks, as a group, are performed more frequently than sight translations. Within interpreting, work in the simultaneous mode happens more often than work in the consecutive mode; and, sight translation from English to a foreign language is more frequent than sight translation from the foreign language into English.

- Provide simultaneous interpretation of oral communication *during court proceedings*, from English into the foreign language.
- Provide consecutive interpretation between the non-English speaking person and probation or social service officers *in interview settings*.
- Provide consecutive interpretation between the non-English speaking person and his or her attorney *in interview settings*.
- Provide consecutive interpretation of English questions and non-English language responses during examination of witnesses *in court proceedings*.
- Provide consecutive interpretation of colloquy between English-speaking court officials and non-English speaking litigants *during non-evidentiary proceedings*.
- Provide consecutive interpretation of all off-the-record oral communication between a non-English language speaking person and his or her English-speaking attorney *during court proceedings*, at the discretion of the parties.
- Out of the presence of the judge or counsel*, orally translates familiar official advisements from English into the foreign language:
 - to groups of individuals at the same time
 - individually

Interpreting

Sight translation from English into the foreign language

- Out of the presence of the judge or counsel*, orally translates unfamiliar investigation or diagnostic reports from English into the foreign language.
- During court proceedings*, orally translates *familiar* official advisements or other documents from English into the foreign language.
- During court proceedings*, orally translates *unfamiliar* reports or other documents from English into the foreign language.

Sight translations from the foreign language into English

- Off-the-record during interviews between counsel and client*, orally translates unfamiliar correspondence or other informal written communications, from the foreign language into English.
- Off-the-record during interviews between counsel and client*, orally translates unfamiliar official documents.
- For the record during court proceedings*, orally translates unfamiliar official documents from the foreign language into English.
- For the record during court proceedings*, orally translates unfamiliar correspondence or other informal written communications from the foreign language into English.

Related tasks many interpreters are expected to perform

- Translates written court documents from English into an equivalent document in a foreign language (notices, advisements, etc.).
- Transcribes and translates into written English tape recordings of foreign language conversational speech (often of poor technical quality and replete with slang idioms).

Other professional responsibilities

- Reviews relevant material prior to the assignment whenever possible.
- Educates non-English speaking persons about the interpreter role (i.e., that interpreter will not assist with preparation of the case or provide personal explanations or advice, that everything said will be interpreted).

- Refrains from inserting personal explanations or clarifications while interpreting or translating orally.
- Instructs non-English speaking persons to refer questions to their attorneys or court professionals involved and present in the matter at hand.
- Preserves the confidentiality of what is heard during interviews and privileged communications.
- Refrains from commenting on issues that are not related to providing accurate interpretations.
- Reports to attorney, judge, or hearing officer if the non-English speaking person does not appear to understand instructions or questions.
- Explains the reasons for an interpretation when requested by a judge
- Refrains from disclosing information about cases or assignments to unauthorized individuals, including testimony heard, identification of parties to the action, nature of the assignment; observes requirements of rule or law governing confidentiality and public disclosure of information obtained during the course of professional duties.

Knowledge Required by Interpreters

- Knowledge of standard grammar for English and the foreign language (e.g., verb agreement and conjugation, singular/plural forms, possessive case, correct syntax, gender).
- Knowledge of grammatical conventions observed during formal, consultative, and casual modes of oral communication in English and the foreign language.

Grammar

- Knowledge of English and the foreign language vocabularies typically used in formal, consultative, and casual modes of communication in justice system contexts, including colloquial slang, idiosyncratic slang, and regionalisms.

Vocabulary

- Knowledge of specialized vocabulary (terminology) in both English and the foreign language related to court and general administrative hearing procedures; legal and criminal justice system terminology; terms related to injury and physical and mental symptoms of illness; tests and laboratory analyses related to alcohol and drugs; ballistics and firearms; and slang expressions related to crime and drug use.
- Knowledge of the dialectical varieties of English and the foreign language.

General

- Knowledge of theory, skills, and techniques of interpreting.
- Knowledge of ethical codes for interpreters and protocol of interpreting.
- Knowledge of generally observed forms of justice system organization (organization of courts and their relationships to other agencies) and procedure.
- Knowledge of standards and laws pertaining to court interpreting and basic court procedure.

Skills and Abilities

Cluster 1 -- Oral English into oral foreign language

- Skill in comprehending varieties of spoken English.
- Skill in speaking a standard variety of the foreign language with correct pronunciation and inflection.
- Ability to speak the foreign language fluently, including regional colloquialisms and slang expressions.
- Ability to render precise, accurate interpretations from English into the foreign language without omissions or additions.
- Ability to maintain speaker's register (level and complexity of vocabulary and sentence construction) in the interpretation.
- Ability to render interpretations promptly without hesitation.

- Skill in comprehending varieties of the spoken foreign language.
- Skill in speaking standard English with correct pronunciation and inflection.
- Ability to speak English fluently, including regional colloquialisms, slang terms, and slang expressions.
- Ability to render precise, accurate interpretations from the foreign language into English, without omissions or additions.
- Ability to maintain speaker's register (level and complexity of vocabulary and sentence construction) in the interpretation from foreign language into English.
- Ability to render interpretations promptly without hesitation.

Cluster 2 -- Oral foreign language into oral English

- Skill in comprehending written English.
- Ability to read and understand technical material written in English such as legal documents, probation or social services reports, medical reports, etc.
- Ability to maintain writer's register (level and complexity of vocabulary and sentence construction) in the oral translation from English into the foreign language.
- Ability to render precise, accurate sight translations from English into the foreign language promptly without hesitation and without omissions or additions.

Cluster 3 -- Written English into oral foreign language

- Skill in comprehending the written foreign language.
- Ability to read and understand legal documents written in the foreign language.
- Ability to read and understand correspondence written in the foreign language that may be written in an archaic or illiterate manner.
- Ability to render precise, accurate sight translations from the foreign language into English promptly without hesitation and without omissions or additions.

Cluster 4 -- Written foreign language into oral English

**General requirements
for interpretation**

- Ability to interpret *simultaneously*.
- Ability to interpret *consecutively*.
- Ability to interpret every oral utterance, even those embarrassing to the interpreter or other court participants.
- Ability to monitor one's interpretations and correct one's own mistakes.
- Ability to conduct terminological research efficiently and effectively.
- Ability to perform interpreter services effectively under pressure of time constraints, adversarial settings, and in emotionally charged circumstances.
- Ability to comprehend and retain conversation and testimony as long as necessary to render an accurate interpretation.

General job skills

- Ability to follow written and oral instructions effectively.
- Skill in writing English (e.g., appropriate grammar, spelling).
- Skill in writing the foreign language (e.g., appropriate grammar, spelling)
- Ability to determine a speaker's language skills, country and region of origin, and dialects.
- Ability to provide equal service regardless of the race, national origin, gender, religion, physical abilities, or socioeconomic status of the non-English speaking persons or professionals; and ability to remain impartial in all cases.
- Ability to recognize and understand one's own motives, limitations, and prejudices.

Sample Job Descriptions

The following example job descriptions are nearly verbatim reproductions of two job titles used in the state of New Jersey and one title used in Maricopa County (Phoenix),

Arizona. Interpreter positions in New Jersey are *state* classified, and there are three levels (trainee, entry, and supervisor). Only the titles used for the highest and the lowest are reproduced below. The Maricopa title defines one county position, but includes within it provisions for three levels of interpreter.

Example I *CHIEF INTERPRETER OR SUPERVISING INTERPRETER*

DEFINITION

Under the general direction of the Trial Court Administrator or other high level official, interprets complex proceedings presided over by employees of the judiciary and other authorized persons. Translates forms, letters and other court-related documents as needed in the county for foreign language-speaking persons who have limited or no proficiency in English. *Oversees, evaluates and trains lower level court interpreters and coordinates all interpreting and translating services; does related work as required.*

EXAMPLES OF WORK

Interprets in simultaneous and consecutive modes complex proceedings, hearings, interviews, and other court-related communicative events.

Sight interprets foreign language or English documents as required during a proceeding, hearing, interview or other court-related communicative event.

Reviews translations of or translates into foreign language, official forms, documents, public signs, notices, posters, form letters, job applications, and correspondence.

Reviews translations of or translates into English letters, legal documents and other materials written in foreign language.

Oversees activities of all staff interpreters, supervising their interpreting and translating activities.

Performs evaluations, determining deficiencies, progress and training needs of all court interpreters.

Provides, arranges and/or develops proper on-going training for staff interpreters.

Evaluates overall needs of court interpreters and makes recommendations to the Trial Court Administrator.

Assures efficient administration of interpreting and translating services in consultation with the Trial Court Administrator, Presiding Judges, Case Managers, Clerks and Attorneys.

JOB SPECIFICATION - CHIEF INTERPRETER

Maintains files and records of interpreting and translating activities.

Coordinates the use of free-lance interpreters as needed.

Collects, interprets and analyzes data for the computation and submission of statistical records and reports.

REQUIREMENTS

Certification: Passage of a screening and certification test administered by [_____]

Experience: One year of experience as a full-time court interpreter. (**(CONTINUED....)**)

KNOWLEDGE AND ABILITIES

Thorough knowledge of the theory, method, techniques, ethics and standards of interpreting and translating.

Thorough knowledge of English and appropriate foreign language phonology, vocabulary, grammar and dialectology.

Thorough knowledge of the methods, techniques and procedures used in interpreting in simultaneous and consecutive modes.

Wide knowledge of English and appropriate foreign language legal terminology.

Ability to acquire a wide knowledge of the English-speaking cultures of the United States and specified foreign language-speaking cultures in [state].

Ability to acquire a wide knowledge of the court system and related agencies.

Ability to acquire a wide knowledge of the methods, techniques, and procedures used in evaluating the work of court interpreters.

Ability to interpret in consecutive and simultaneous modes complex hearings, interviews and other court related communicative events.

Ability to translate forms, letters and other court-related documents from English to specified foreign language and from specified foreign language to English.

Ability to sight interpret specified foreign language or English documents during a proceeding, hearing, interview or other court-related communicative event.

Ability to oversee and evaluate court interpreters and trainees.

Ability to determine deficiencies, needs, and progress of court interpreters and trainees.

Ability to evaluate and determine needs of the program and make necessary recommendations.

Ability to determine the need for training and to provide or arrange ongoing training for the court interpreters and trainees.

Ability to collect, interpret, and analyze data.

Ability to maintain clear, concise, and informative records and files.

Ability to read, write, speak, understand or communicate in English sufficiently to perform the duties of this position. American Sign Language or Braille may be considered as acceptable forms of communication.

Persons with mental or physical disabilities are eligible as long as they can perform the essential functions of the job after reasonable accommodations are made to their known limitations. If the accommodations cannot be made because it would cause the employer undue hardship, such persons may not be eligible.

NOTE: "Foreign language" is defined as any language other than English, including sign language.

EXAMPLE II
ENTRY LEVEL STAFF INTERPRETER

DEFINITION

Under the direction of a supervising interpreter, interprets proceedings of limited legal significance, held by employees of the Judiciary and other authorized persons. Translates forms, letters and other court-related documents. Does related work as required.

EXAMPLES OF WORK

Interprets proceedings of limited legal significance, such as hearings, interviews, weddings and other court related communicative events.

Sight interprets appropriate foreign language or English documents as required during a proceedings, hearing, interview or other court-related communicative event.

Produces initial drafts of translations into specified foreign language of official forms, documents public signs, notices, posters, form letters, job applications, correspondence written in English

Produces initial drafts of translations into English of letters, legal documents, and other materials written in specified foreign language.

Attends ongoing training provided or funded by the Administrative Office of the Courts.

Maintains records of interpreting and translating activities.

Collects, interprets and analyzes data for the computation and submission of statistical records and reports.

REQUIREMENTS

[Satisfactory performance] score on a screening and certification test administered by [_____]

Passage of the screening or certification test administered by [_____] within one year of appointment.

JOB SPECIFICATION - COURT INTERPRETER

KNOWLEDGE AND ABILITIES

Basic knowledge of theory, method, techniques, ethics and standards of interpreting and translating.

Basic knowledge of English and appropriate foreign language phonology, vocabulary, grammar and dialectology.

Basic knowledge of the methods, techniques and procedures used in interpreting in the simultaneous and consecutive modes.

Ability to acquire a basic knowledge of the English and specified foreign language legal terminology.

Ability to acquire a basic knowledge of the English-speaking cultures of the United States and the specified foreign language-speaking cultures of [state].

Ability to acquire a wide knowledge of the court system and related agencies.

Ability to interpret in consecutive and simultaneous modes for proceedings of limited legal significance, hearings, interviews, and other court-related communicative events.

Ability to translate forms, letters and other court-related documents from English to specified foreign language and from specified foreign language to English.

Ability to sight interpret specified foreign language or English documents during a proceeding, hearing, interview and other court-related communicative events.

Ability to keep, clear, concise and informative records and reports.

Ability to read, write, speak, understand or communicate in English sufficiently to perform the duties of this position. American Sign Language or Braille may be considered as acceptable forms of communication.

Persons with mental or physical disabilities are eligible as long as they can perform the essential functions of the job after reasonable accommodations are made to their known limitations. If the accommodations cannot be made because it would cause the employer undue hardship, such persons may not be eligible.

NOTE: "Foreign language" is defined as any language other than English, including sign language.

EXAMPLE III
GENERIC INTERPRETER POSITION TITLE (with three levels)

Title: Court Interpreter

Reports to: Judicial Services Administrator assigned to the Office of Court Interpreters (OCI). May also report to Senior Court Interpreter with regard to language and professional issues.

Summary of Responsibilities: Minimizes language obstacles between the Court and all parties to a legal proceeding.

Description of Duties:

- Interprets in Spanish and English a true, unbiased rendition of the entirety of court hearings and related interviews, both simultaneously and consecutively, for the interpreted subject and officers of the Court*, in and out of the courtroom, pacing the interpretation to match the flow of the language spoken. Comprehension is determined based upon feedback from parties being interpreted.
- Accurately translates correspondence and related documents arising out of assigned caseload. May also prepare written translations of forms and other documents for Court and county agencies. Accuracy is determined by periodic peer review.
- Maintains assigned caseload: adds and deletes assigned cases from the OCI's Active List; responds promptly to requests for interpreter assistance in hearings and interviews in efficient, effective and courteous manner; promptly and accurately enters interpreter appearances and minute entries in files; performs related work as requested.
- Calendars all appointments accurately and submits them for process in timely manner;
- Arrives at each scheduled interpreter site in timely manner;
- Maintains accurate statistics on interpreter appearances and submits them in timely manner;
- Maintains high level of language and court interpreter skill by both independent study and periodic exchange of vocabulary solutions among peers;
- Cooperatively shares interpreting assignments with peers as required to fulfill Office the Court Interpreter obligations;
- Adheres to OCI Policies, Procedures and Practices and Interpreter Code of Ethics as stated therein.

Knowledge, Skills and Abilities: Comprehensive knowledge of correctly-written and spoken Spanish; comprehensive knowledge of Spanish as spoken in Mexico; familiarity with Spanish as spoken in Spain and areas of Latin America. Ability to plan, organize and maintain work flow; ability to interpret simultaneously and consecutively; ability to communicate effectively in Spanish and in English orally and in writing; ability to establish and maintain effective working relationships.

Minimum Qualifications: At all levels, certification by appropriate agency, society or institution as a court interpreter is required. Additional requirements by level as follows: Interpreter I: One year of interpreting experience in Spanish; knowledge of legal terminology desirable; Interpreter II: One year of experience as Court Interpreter I; Interpreter III: Two years of experience as Court Interpreter II.

*Note: Hearing officers, lawyers, juvenile and adult probation officers, juveniles and relatives of juveniles, defendants, witnesses and investigators.

CHAPTER 4

Training for Court Interpreters





CHAPTER 4

Training for Court Interpreters

Introduction

Nationwide, there is an *urgent* need for formal training to improve the number and qualifications of practicing court interpreters. Two kinds of training are needed: 1) short, inexpensive and highly focused workshops to educate interpreters about the profession of court interpreting and its unique demands, and 2) longer term, formalized programs of education and training to improve interpreters' proficiency in applied interpreting skills. It is unrealistic for court policy makers and court managers to expect that the second type of educational initiative can be designed or paid for with court funds. Proficiency in applied interpreting skills involves the two-fold elements of a high level of mastery of two languages and specific performance skills in the modes of interpreting. Mastery of a language at the levels required for court interpreting requires reading and speaking the languages regularly in a wide variety of language contexts, and, usually, years of formal education. Acquiring the specific performance skills presupposes some element of innate ability and *practice, practice, practice*.

However, what courts *can* and should do to directly influence an increase in the number of qualified court interpreters is:

- provide basic training for interpreters *about* the profession of court interpreting and its unique demands,

Professional awareness workshops

Skills development

- offer instruction and study materials to improve interpreter's understanding of courts and the legal environment, and
- educate interpreter candidates or practicing interpreters *about* how they can improve their language proficiency, what techniques they can use to develop the specific skills required for interpreting, and where they can go to receive professional skills training in more formal, longer-term educational settings.

Contents of the chapter

Several ways of helping court managers accomplish these objectives are presented in this chapter. These include:

1. Description of two model workshops;
2. Discussion of qualifications for workshop instructors;
3. Discussion of basic information to include in local interpreter orientation;
4. Description of source materials for training workshops;
5. Resource lists for networking to identify experienced trainers;
6. Reproduction of a written quiz on ethics, procedure, and terminology that can be used to facilitate discussion during interpreter training.

Two Workshops -- An Overview of Recommended Court Programs

Two model workshops are described in this chapter. The workshops are recommended for inclusion in a state's overall program for improvement of court interpreter services. Both workshops are designed to be completed in two days and therefore are suitable for weekend scheduling. The model workshops reflect the basic elements included in actual workshops and training materials prepared for or offered by the California Judicial Council, the Administrative Office of the

New Jersey Courts, and the Office of the Administrator for the Courts of Washington State.

In most jurisdictions, *no* formal training is provided to interpreters who are used by the court. The first workshop, therefore, is a starting point in the process of increasing the level of professionalism among bilingual individuals who may work in courts from time to time but who have never received formal training in court interpreting. The primary goal of the introductory workshop is to improve court interpreters' understanding of the skills and appropriate conduct required of professional court interpreters, and to offer a basic orientation to courts and the justice environment.

The second workshop is more appropriate for interpreters who have received some formal training in court interpreting, or who have demonstrated a good working knowledge of courts and court procedure and the basic precepts of the interpreter's code of professional conduct as a result of their employment. The difference between the two workshops is the amount of time devoted to familiarizing participants with techniques and resources for expanding their technical vocabulary; increasing their ability to recognize and resolve ethical and professional dilemmas; and, especially, improving their technical interpreting skills.

State offices of judicial administration or local court managers should consider using the introductory workshop for one or more of the following purposes:

- Where states do not have formalized qualifications screening, testing and certification programs, the workshop may serve as a *mandatory qualifying requirement* for regular or per diem employment.

- Where states or local courts are planning the implementation of mandatory court interpreter qualifications screening, including testing and

NOTE: Completion of the introductory workshop is recommended as a *mandatory* requirement for all interpreters before they are allowed to work in courts.

NOTE: Completion of the intermediate workshop is recommended as a mandatory training requirement for interpreters who are employed regularly by the court.

certification, the workshop is useful to orient interpreters to the knowledge and skills they must master to obtain certification.

- In states where mandatory testing and certification programs are in place, the workshop is useful as a way to introduce bilingual individuals to the profession of court interpreting, and introduce them to what preparations they need to become qualified professional court interpreters.

Workshop One – Introduction to Court Interpreting

This workshop includes eight modules designed to train interpreting students at the most fundamental level. It is most appropriate for individuals who have little or no experience with courts or who may work regularly in courts but without having previously received any formal training.

Module 1.1 Overview of the profession

This module includes summary descriptions of the different types of interpreting (e.g., escort, conference, court, etc.) and emphasizes the distinct characteristics of court interpreting. This is the appropriate place to put the state's program in a national and historical perspective. It is also an appropriate place to introduce and discuss definitions and key terms related to court interpreting terminology. A presentation and discussion of the Code of Professional Conduct for Court Interpreters should be the main focus of this module.

At the beginning of this module, students might be given a pretest to measure their level of understanding of the code of conduct for court interpreters, basic job requirements, and basic concepts and vocabulary required for interpreting. An example is included at the end of this chapter. The test is

self-graded by the students and followed by a review to emphasize those aspects of court interpreting and court language that are most fundamental for court interpreters and to provide a lively transition to the lecture and discussion to follow.

This module should include lecture, demonstration, and opportunity for discussion of the three modes of interpreting (simultaneous and consecutive interpreting, and sight translation). Discussion of the modes of interpreting as they relate to the functions interpreters perform is appropriate at this point (e.g., proceedings, witness, interview interpreting).

Module 1.2 The skills and modes of interpreting

This module should include lecture and discussion of state and local court structure and the roles of court employees, including an overview of organization and roles of *related* justice system agencies (law enforcement, prosecutor, indigent defense services, probation, children's social services).

Depending on the training context, the module might include both generic materials that describe the state system and more specific information about how the state model actually takes shape in a local jurisdiction. An outline for the module might be the following:

- State court structure and organization (levels of court, geography, subject matter jurisdiction of different courts)
- Generic guide to justice system agencies (law enforcement, prosecutor, indigent defense services, probation, children's social services)
- Optional detail: for local jurisdictions:
 - Local court structure
 - Administrative organization of the local court

Module 1.3 Courts and the court environment

- Local criminal justice system agencies

Module 1.4 Court procedure

This module should include lecture and discussion of a graphic flow chart of criminal procedure, supplemented by explanations of how case processing and procedure for other case types varies in significant ways from the criminal case. At a minimum, the module should include names and explanations of various pre-trial procedures, describe the anatomy of a trial, and describe major kinds of post-trial events (sentencing, post-divorce custody hearings, etc.).

Module 1.5 The interpreter's role

In this module the interpreter is made familiar with how the stages of case processing relate to what interpreters will actually experience when they go to work. This module should briefly provide an overview of related settings to which the interpreter may be called, such as jails, hospitals, probation department, juvenile courts, and detention centers, etc.

Preparing interpreters for what to expect in jail and juvenile detention center interviews, which are a particularly important part of an interpreter's work, should be emphasized. During this module, the instructors should prepare interpreters for the phenomena of crowded high-volume courtrooms, practices followed in some courts that require interpreting legal or procedural advisements to groups of people, unpredictable court schedules, hallway conferences and interviews, etc.

Module 1.6 Court terminology and word research

This module should include a brief review and discussion of a glossary of court system and legal terminology. Such a glossary is an essential component of the workshop manual. Examples and discussion of some key problems and

characteristics of legal language should be discussed (e.g., common words with uncommon meanings). The module should also acquaint the students with material included in their manuals about how to research terminology.

This module should include an overview of self-study material and techniques. Lists of resources for most languages, including foreign language bookstores, publishing houses, magazines and newspapers, dictionaries and glossaries should be provided and discussed. The module should also include reference material about formal training courses, both those that are close to home (if any) and out-of -state courses, seminars and workshops.

This module should allow ample time for the instructors to review and discuss study groups, their purpose, and how to establish them. Plans for study sessions should be included in the workshop materials, and opportunity should be provided for practice.

If a state has or is planning to implement qualification procedures and testing, this module should describe the form, content and test administration procedures for the state's tests. If the state has no tests, which is more common, existing state tests of interpreter proficiency used in California, Washington, and New Jersey should be used as models, with reference also to the federal test program. This overview of the basic nature of court interpreter certification examinations also provides

Module 1.7 Self-study material, and practice sessions

Module 1.8 Certification examinations and self-assessment

Sample Agenda

Introductory Workshop on Court Interpreting**

Day 1

8:30 Registration
9:00 Introduction, Overview and Goals
9:30 Workshop Pretest
9:45 Review and discussion of Pretest
10:15 Break
10:30 The Role of the Interpreter and Introduction to Ethics
(lecture and demonstration)
11:05 Small Group Discussion of Ethical Issues (requires qualified small group leaders)
12:00 Lunch
1:00 The Skills and Modes of Interpreting:- simultaneous and consecutive interpreting and sight translation (lecture and demonstration)
2:00 Small Group Skills Practice, Discussion
2:30 Court and justice system structure
3:00 Break
3:15 The roles of court officials and related agencies
4:15 Review and question and answer
4:30 Wrap up

Day 2

9:00 Criminal procedure (and procedure in other case types) -- and the role of the interpreter (lecture and demonstration)
10:00 Interpreting in other settings: attorney/probation interviews, lock-up, jails, mental health, etc.(lecture and demonstration)
10:30 Break
10:45 Practical realities of courthouse and courtroom procedure
11:45 Terminology: introduction to common court terms, including advisements and forms
12:15 Lunch
1:15 Small group practice -- interpreting standard forms
1:45 Terminology: Resources and Research
2:15 Break
2:30 Overview of self study techniques and additional resources (lecture and discussion)
3:15 Study groups: small group practice
4:00 Certification examinations: what and why (lecture and discussion)
4:45 Wrap up

**Note: This example agenda is based on a workshop format prepared by Hanne Mintz, Paragon Language Services, Los Angeles, CA and Holly Mikkelsen, Acebo Language Arts, Spreckles, CA, for Court Interpreter Workshops for the States of Minnesota and Oregon.

Sample Agenda

Intermediate Interpreters

Day 1

8:30	Registration
9:00	Introduction, Overview
9:30	Principles of Simultaneous Interpreting (lecture and demonstration)
10:30	Break
10:45	Individual Practice (shadowing, paraphrasing, interpreting tapes)
12:00	Questions and Answers
12:15	Lunch
1:30	Principles of Consecutive Interpreting (lecture and demonstration)
2:30	Small Group Practice, (note taking)
3:30	Break
3:45	Small Group Practice (interpreting)
4:45	Questions and Answers

Day 2

9:00	Principles of Sight Translation (lecture and demonstration)
10:00	Small Group Practice
10:45	Break
11:00	Terminology: Resources and Research
12:00	Questions and Answers
12:15	Lunch
1:30	Ethical Issues (lecture and demonstration)
2:30	Small Group Discussion
3:30	Break
3:45	Professional Issues: Networking, Continuing Education, Study Groups
4:45	Questions and Answers
5:00	Wrap-up

explanations for the various aspects of language the tests measure and why they are important for interpreters.

This concluding module is designed to provide the basis for final recap and discussion about what the profession requires, to help students decide whether and how to proceed with continued pursuit of employment or a career as a court interpreter.

Workshop Two -- Intermediate Level Training

The intermediate level workshop is appropriate for interpreters who have completed the first workshop or received other formal training in court interpreting, or who have otherwise demonstrated a good working knowledge of courts and court procedure and the basic precepts of the interpreter's code of professional conduct. The intermediate workshop focuses on problem solving and skill building. It takes a detailed and intensive look at the knowledge, skills, and abilities required of the professional court interpreter and relies more heavily on exercises and practice using tapes and texts than does the introductory workshop. It also offers continuing exploration of professional conduct issues, terminology research, and resources.

Module 2.1 Overview of interpreting skills

This module should begin by emphasizing the importance of a broad vocabulary and being thoroughly conversant with commonly used court terms and specialized vocabularies (police and street jargon, firearms, forensic testing, medical terminology, etc.).

In addition to vocabulary and comprehension, other required skills that should be reviewed and explained in this introduction include: 1) listening and concentration, 2)

memory building, 3) note taking, and 4) analytical skills. During this module, exercises related to each skill are introduced and described.

In this module the purposes and settings in which simultaneous interpreting is practiced should be explained, along with descriptions of problems that may arise. The module emphasizes description, demonstration, and individual practice to familiarize students with techniques for improving their ability to interpret simultaneously. Several specific exercises to strengthen interpreters dual-tasking and *language analysis* abilities should be included. Dual-tasking exercises include shadowing (learning to talk and listen at the same time by repeating speech in the same language); shadowing while performing other tasks (writing, counting, counting backwards, etc.); and shadowing while writing down hard-to-remember items like names and numbers. Analysis exercises include paraphrasing, predicting the entire meaning of passages from parts of the passage, and actual practice interpreting simultaneously using tape-recorded passages.

Module 2.2 Simultaneous interpreting

In lecture format, the purposes and settings in which consecutive interpreting is practiced should be explained, along with descriptions of problems that may arise and the interpreter's responsibility for handling them. The importance of preserving both meaning and style of speech (register) should be emphasized by explaining how speech styles have an effect on how witness testimony is evaluated by fact-finders. The core of this module should be specific exercises to improve listening and memory building skills. The module should also put special emphasis on note-taking techniques, which are

Module 2.3 Consecutive interpreting
--

especially helpful in consecutive interpreting. The importance of understanding when and how interpreters may need to exert situational control over consecutive interpreting sessions should be introduced. (This subject, however, should be taken up in more detail during Module 2.6, “Ethical Issues and Professional Conduct”.)

Module 2.4 Sight translation

This module should explain the uses of sight translation in judicial settings and the types of documents that are most frequently encountered. Special emphasis should be placed on the need for the interpreter to distinguish properly between translating written documents and *explaining* documents, since interpreters are frequently asked to "read" advisements or procedural documents written in English to individuals and groups of non-English speaking individuals outside of the presence of the court or counsel. The module should stress opportunities for interpreters to take advantage of the highly predictable character of several types of written documents interpreters are often asked to sight translate from English into the foreign language, and include examples of standardized advisements, pleadings, and orders. Exercises for improving skills that should be presented during this module should include public speaking practice, techniques to improve ability to read ahead in text, and analytical skills appropriate to written language.

Module 2.5 Terminology and research resources

This module is a more comprehensive treatment of subjects covered in Module 1.6 of the introductory course, with glossaries of specialized terminology provided (e.g., weapons, ballistics, forensics, medical, social science).

This module includes lecture and demonstration of situational problems that interpreters frequently encounter and how to address them in a professional manner. Emphasis is placed on 1) proper representation of qualifications, 2) identifying and correcting errors, 3) balancing the interpreter's obligation to remain unobtrusive with the need to exercise situational control when necessary, 4) how to respond to problems arising from lack of understanding by judges, attorneys, and parties of the proper role of interpreters, the mental and physical demands of the work, and limitations inherent in language. Scenarios and suggestions for handling ethical conflicts should also be described and discussed.

Module 2.6 Ethical issues and professional conduct

This module includes discussion of networking, advantages of affiliation with professional organizations, continuing education opportunities, and study groups. Types and appropriate use of technical aids should also be discussed in this section, with emphasis on the use of simultaneous interpreting equipment, its advantages, and how to purchase it. An important element in the instructor's treatment of simultaneous equipment is how to explain and demonstrate to court managers, judges, or attorneys the equipment's advantages for increasing the unobtrusiveness of the interpreter and for reducing costs in some situations.

Module 2.7 Professional development

Local Court Programs: Practical Orientation

A fundamental goal of local training programs or materials for interpreters is to inform them about practical matters they will encounter when they accept an assignment to interpret in court. These often will vary from courthouse to

CAUTION: One training manual instructs the interpreter:

Report directly to the clerk of the assigned court and identify yourself, even if the court is in session, and be seated in the courtroom until called upon.

Is it always so obvious who the clerk is?

Is it always so easy for a stranger to the court to pass through the rail between the public portion of the courtroom and the litigation area and gain access to a courtroom official?

courthouse, and sponsors of training programs should be aware of and sensitive to these variations.

For the uninitiated individual, courthouses, especially courtrooms, are not friendly places. It is easy for "insiders" in the court to overlook the fact that the comfort and familiarity they have with courtroom behavioral protocol and the individuals who regularly appear in the court are not shared by newcomers. Courtrooms with closed, solid doors and no signs inviting entry from the hallway are intimidating. Once inside the courtroom, uninitiated individuals often confront a busy and confusing scene where no one takes notice of their presence and where the only people who appear to be "officials" are located behind a barricade. Approaching them without creating a disruption, or perhaps violating an important rule of behavior or security, appears impossible. Often, a "visitor" in the courtroom may be noticed but not spoken to by anyone.

Ideally, all interpreters called to court should be provided with specific answers to the questions outlined below. While interpreters who are "regulars" will find ways to get answers to these questions over time, first-time interpreters or interpreters who work only occasionally will appreciate having this information *before* their first assignment. Written information packets that address these questions will be useful. Moreover, the process of assembling the packets is likely to serve as a catalyst for trial courts to examine their practices: what *are* the procedures? How much do they vary from courthouse to courthouse, courtroom to courtroom? What training should *other* courthouse personnel receive about how to use interpreter services most effectively and efficiently?

The ba

- Where is the courthouse located? Are directions needed so that the interpreter can easily find the *correct* courthouse?
- Where will interpreters park? Is parking readily available? Are any permits needed? How much does parking cost?
- To whom should interpreters report when they show up at the courthouse?
- Who should the interpreters report to when they show up in the *courtroom*?
- How* should the interpreters make their presence known? How will they be recognized, or recognize the person to whom they should report?
- In general, *what rules of etiquette* does the interpreter need to observe when reporting for the job assignment at the courtroom?

Administration

- Who is in charge of interpreter services in the courthouse (Where does the buck stop)?
- Who authorizes the interpreter's work?
- To whom should questions be addressed regarding
 - Financial matters?
 - Problems encountered in the courtroom?
 - Problems with scheduling?

Compensation

- What are the policies governing rates for services?
- How is payment handled? What forms are required and what is the process for submitting invoices?
- How long does it take to be paid?
- What happens when a scheduled assignment is cancelled?

- If an interpreter schedules an appearance in court and the court cancels the assignment with very little notice, is the interpreter entitled to compensation? If so, what?

Qualifications for Trainers

Effective training workshops ultimately depend on the knowledge and skills of the workshop instructors. Thorough familiarity with the subject matter is important, but equally important are teaching skills and the ability to manage a tightly structured agenda. Workshop instruction is different than traditional classroom teaching. In workshop instruction, especially for adults who either take time from their jobs or sacrifice precious free time for professional improvement, making every minute count is of critical importance.

Instructor credibility is important

Workshops, also, are designed to provide *practical* education, not theory. Workshop instructors need to be credible to students: they must be able to defend what they teach on the basis of "being there" and having a substantial amount of practical experience in the field. In a field like court interpretation, where actual practice in the courts often varies so far from what practice *should* be, this is especially important. The workshop instructor must be thoroughly familiar with the realities of practice and be able to offer workable suggestions for what to do in difficult circumstances. The instructor should be a *role model* as well as a teacher.

In short, workshop instructors need to be carefully chosen. In a field like court interpretation, it may be necessary to begin developing a training capacity by going outside the district or even outside the state for qualified instructors. Part of the contract with consulting instructors then should be to help identify and train "local talent" to carry the programs forward after they are developed and modeled by experts.

- Thorough familiarity with the subject matter, drawn from experience -- the instructor should be a practitioner.
- Thorough familiarity with the theory and professional standards of the profession -- one of the instructor's primary responsibilities is to help students learn ways to *improve* practice, not merely perpetuate the status quo.
- Demonstrated effectiveness as an instructor.
- Demonstrated effectiveness at managing time in workshop settings -- sticking to the agenda, knowing how to politely deflect and abbreviate "war stories," manage questions, recognizing the need for adjustments to the agenda when appropriate, etc.

Summary of qualifications

CAUTION: All experienced trainers report that students are starved for opportunities to talk, ask questions and vent frustrations. It takes special skill for instructors to respond to these needs without losing control of the agenda.

One way for courts to assure themselves of getting a training program off to a good start is to speak with experienced practitioners about what approach to training would best fit the local circumstances and budget. At the end of the chapter, there is a resource list of court personnel and private consultants. The *court officials* shown below are known to us as having knowledge of local interpreter training programs. In the past, they have been helpful to colleagues in other courts. The *private individuals* shown below have come to our attention as having served as trainers in workshops sponsored by state or local courts. *We make no endorsements of these individuals; we merely report our knowledge that they have provided training as consultants for court-sponsored programs.*

Networking to identify experienced trainers

Training Manuals: Suggested Contents

Manuals to accompany training workshops should be developed that include materials similar to those described in this section. States or local courts that may not have the resources to sponsor formal workshops will benefit from compiling the materials for use as self study guides.

Information Service
National Center for State
Courts
300 Newport Avenue
Williamsburg VA 23185
Telephone: 804-253-2000

Most of the materials listed in this section are available for copying and distribution to courts on request from the National Center for State Courts (if the material is not copyrighted).

Code of Professional Conduct

- Model Code of Professional Conduct (Chapter 10 of this publication)
- "Practical Guidelines for Court Interpreters", in *Workshop for Court Interpreters (1992)*, Judicial Council of California
- "What Should I Do If..." in *Workshop for Court Interpreters (1992)*, Judicial Council of California
- Chapters 34 and 35 of *Fundamentals of Court Interpretation*, Gonzalez, Vasquez, Mikkelsen (Copyrighted material -- not available through the NCSC. Contact Carolina Academic Press, 700 Kent St, Durham NC 27701; 919-489-7486)
- Judicial Council of California's Training Manual entitled *Professional Ethics and the Role of the Court Interpreter*

Modes of interpreting and interpreter functions

- "Glossary of Interpreting Terminology" (Chapter 2 of this publication)
- Sec. 2 "Definitions", "Proposed Standards for Interpreted Proceedings" (New Jersey)
- "Modes of Interpreting" in "Judges Guide to Standards for Interpreted Proceedings" (Chapter 6 of this publication)

Courts and the Court Environment

Materials in this section should include combinations of graphics and text. The materials might include excerpts from published "citizen's guides to the court" or annual reports of the judiciary. Charts and text explaining the structure and roles of *related* justice system agencies should be created by court personnel, if suitable materials do not exist. The publication *The American Bench* (found in the reference section of most law libraries) is a good resource for maps and textual explanations of the structure and jurisdiction of each state's courts, if these are not otherwise conveniently available.

This section is also the appropriate place to include:

- names and descriptions of the major court case types, to support the discussion of subject matter jurisdiction of courts (e.g., traffic, misdemeanor, felony, domestic relations, juvenile, general civil);

For a good example of a detailed list of major case types (and their subtypes), see "Prototype of State Trial Court Statistical Profile" in *State Court Model Statistical Dictionary, 1989* (National Center for State Courts).

For a source of basic case type distinctions in a state, most states publish a statistical report on the workload of the courts that shows major case types and that may also include definitions each case type.

- flow charts of the stages in the case for traffic, misdemeanor, felony civil, domestic, and juvenile court matters.

For a good example of case processing charts, see *A Citizen's Guide to Washington Courts*.

- "Glossary", in *A Citizen's Guide to Washington Courts*
- "Glossary of Legal Terms", in *Workshop for Court Interpreters (1992)*, Judicial Council of California

Vocabulary and terminology

- "Legal Terminology", in *New Employee Orientation: Participant Materials*, Minnesota Supreme Court Continuing Education
- Bilingual Dictionary of Criminal Justice Terms (English-Spanish)*, Virginia Benmaman, et al., Gould Publications, Binghunter, New York (1991)
- Glossary of Selected Legal Terms (English-Vietnamese)*, Washington State Office of the Administrator for the Courts (1994)
- Glossary of Selected Legal Terms (English-Korean)*, Washington State Office of the Administrator for the Courts (1994)
- Glossary of Selected Legal Terms (English-Cantonese)*, Washington State Office of the Administrator for the Courts (1994)
- Glossary of Selected Legal Terms (English-Laotian)*, Washington State Office of the Administrator for the Courts (1994)
- Glossary of Selected Legal Terms (English-Cambodian)*, Washington State Office of the Administrator for the Courts (1994)
- "Glossary of Terms: Firearms", in *Workshop for Court Interpreters (1992)*, Judicial Council of California (reprinted from ACEBO training materials for court interpreters)
- The Interpreters Companion*, a collection of specialized glossaries (English-Spanish) including legal terms, drug terms, profanity and sexual slang, traffic and automotive, weapons, medical, etc. ACEBO Language Arts (copyright material for sale only).

Additional self-study material

- "Continuing Activities for Small Language Groups", in *Workshop for Court Interpreters (1992)*, Judicial Council of California
- "How to Research a Word", in *Workshop for Court Interpreters (1992)*, Judicial Council of California.

Texts describing skills enhancing exercises for interpreters in all languages are found in:

- The Federal Court Interpreter Certification Manual*
- Workshop for Court Interpreters* (1992), Judicial Council of California
- "Overview for Examinees Taking the Screening Test for Court Interpreting", New Jersey Administrative Office of the Courts
- The Federal Court Interpreter Certification Examination Manual* (copyright material, University of Arizona)
- "Overview for Examinees Taking the Screening Test for Court Interpreting" (New Jersey)
- "Information and Application Packet", California State Personnel Board Certification Packet (Spanish and languages other than Spanish)
- Candidate Practice Written Test Manual for the State of California Interpreter Certification Examinations*, Cooperative Personnel Services (Copyright publication, for sale only)
- "Procedure, Protocol and Ethics Quiz", in *Workshop for Court Interpreters* (1992), Judicial Council of California
- "Testing Programs" in "Assessing Interpreter Qualifications", Chapter 5 of this publication

Court Interpreter Proficiency Tests

Resource Lists for Networking

State Level

Sandy Claire
Administrative Office of the Courts
California Judicial Council
303 2nd Street, South Tower
San Francisco, CA 94107
415-396-9112

Robert Joe Lee or Ellie de la Bandera
Court Interpreting, Legal Translating
and Bilingual Services Section
Administrative Office of the Courts
Trenton, NJ 08625
609-984-5024 or 9512

Connie Landro
Coordinator of Interpreting Services
Superior Court of the District of Columbia
500 Indiana Avenue, N.W., Room 312
Washington, D.C. 20001
202-879-4828

Maribel Pintado-Espiet
Coordinator of Court Interpreter Services
Administrative Office of the Trial Court
2 Center Plaza
Boston, MA 02108
617-742-8383

Mike Miller
Deputy Director for Personnel
Office of Court Administration
270 Broadway
New York, NY 10007
212-417-4404

Joanne Moore
Program Director
Interpreter Certification Program
Office of the Administrator of the Courts
1206 S. Quince Street
Olympia, WA 98504
206-753-3365

Local Level

Hinke Boot, Director
International Institute of Buffalo
864 Delaware Ave.
Buffalo, NY 14201
716-833-1900

Christina Ruiz
Director of Court Interpreting Services
Circuit Court of Cook County
2650 S. California Avenue, Suite 4B02
Chicago, IL 60608
312-890-3210

Patricia Martin
Staff Assistant
Reporters, Interpreters and Electronic Recording
Monitors
Los Angeles Superior Court
213-974-6708

Bruce T. Downing, Associate Professor
Department of Linguistics
University of Minnesota
Minneapolis, MN 55455
612-624-3528

Scott Loos
Maricopa Superior Court
Office of the Court Interpreter
Central Court Building
Phoenix, AZ 65003-2205
602-506-7890

Gloriela Webster
Interpreter Coordinator
Multnomah County Courthouse
1021 S. W. Forest
Portland, OR 97204
503-248-3515

Martha Cohen or Susana Sawrey
King County Superior Court
516 Third Avenue
Seattle, WA 98104
206-296-9305

Private Training Consultants

Allee Alger-Robbins
Federally Certified Interpreter/Consultant
909 Hoffman St.
San Diego, CA 92116-1028
619-294-7477

Sarah Hart
Federally Certified Interpreter/Consultant
53 Blackburn Court
New Hartford, NY 13413
315-734-0437

Gay Koenemann
NRID Certified Sign Language
Interpreter Consultant
55 Miko Road
Edison, NJ 08817-4080

Anna Witter-Merithew
NRID Certified Sign Language
Interpreter/Consultant
P.O. Box 669401
Charlotte, NC 28266
704-334-7149

Patricia Michelsen
Federally Certified Interpreter/Consultant
3023 Kensington Avenue
Richmond, VA 23221
804-359-3447

Holly Mikkelson
Federally Certified Interpreter/Consultant
Acebo Language Arts
P.O. Box 7485
Spreckels, CA 93962
408-455-1507

Greg Miller
Federally Certified Interpreter/Consultant
Box 1357
Alhambra, CA 91802-1357
818-458-0515

Hanne Mintz
Paragon Language Services
6500 Wilshire Boulevard
Suite 300
Los Angeles, CA 90048

Dagoberto Orrantia or Mirta Vidal
Federally Certified Interpreter/Consultant
420 6th. Avenue #1
Brooklyn, NY 11215
718-499-1891

Eta Trabing
Federally Certified Interpreter/Consultant
Route 1, Box 281, Cokesbury Road
Fuquay-Varina, NC 27526
919-557-1298

Interpreter Training Programs in Academic Institutions

Following is a list of institutions known or believed to offer specialized training in interpretation. None of these programs have been evaluated by the authors and no particular program is endorsed.

Institute for Court Interpretation
(Summers only)
University of Arizona
Modern Languages Bldg., Room 456
Tucson, AZ 85721

School of Languages & Linguistics
Georgetown University
Division of Interpretation and Translation
Washington, DC 20007

Program in Interpretation/Translation
San Diego State University/Imperial Valley
720 Heber Avenue
Calexico, CA 92231

Program for Court Interpretation & Translation
University Extension at U.C./Davis
Davis, CA 95616

Court Interpretation Program
University Extension X-001
University of California
La Jolla, CA 92093

Interpretation/Translation Program
UCLA Extension
Humanities Department
10995 LeConte Avenue
Los Angeles, CA 90024

Court Interpreting (Summers only)
Monterey Institute of International Studies
425 Van Buren Street
P.O. Box 1987
Monterey, CA 93940

East Los Angeles College
1301 Brooklyn Avenue
Monterey Park, CA 91754

California State University Northridge
18111 Nordhoff Street
Northridge, CA 91325

Riverside City College
4800 Magolia Avenue
Riverside, CA 92506

San Bernadino Valley College
701 S. Mount Vernon Avenue
San Bernadino, CA 92410

Interpretation/Translation Program
University of Delaware
Department of Linguistics
Newark, DE 19716

Court Interpretation Program
Florida International University
Department of Modern Languages
Tamiami Campus
Miami, FL 33199

Court Interpretation Program
Miami Dade Community College
11011 SW 104th Street
Miami, FL 33176

Interpretation/Translation Program
Barry University
11300 NE 2nd Avenue
Miami Shores, FL 33161

College of Language, Linguistics and Literature
University of Hawaii
Interpretation and Translation Center
Webster 203, 2528 The Mall,
Honolulu, HI 96822

Interlingual Communication Program
William Paterson College
Wayne, NJ 07470

Legal Interpreting Program
Jersey City State College
Jersey City, NY 0705-1597

Center for Legal Translation & Interpretation
Studies
John Jay College of Criminal Justice
445 East 59th Street
Room 1269
New York, NY 10019

Graduate School
City University of New York
33 W. 42nd Street
New York, NY 10036

Certificate Program in
Translation/Interpretation
San Diego State University
Department of Spanish and Portuguese
San Diego, CA 92182

Program in Translation/Interpretation
University of California Extension
Carriage House
Santa Cruz, CA 95064

Foreign Languages
New York University
2 University Place
Room 55
New York, NY 10003

Interpretation/Translation Program
Courses for Adults
Marymount-Manhattan
221 E. 71st Street
New York, NY 10021

Master of Arts in Legal Interpreting
College of Charleston
66 George Street
Charleston, SC 29424-0001

WORKSHOP FOR COURT INTERPRETERS PROCEDURES, PROTOCOL AND ETHICS QUIZ

Note to instructors:

This quiz was developed for use in California. Some questions should be omitted or modified for use in other states

For each statement below, please select the best answer and circle the corresponding letter on the answer sheet.

1. Which of the following skills is **LEAST** important in interpreting?
 - a. memory
 - b. bilingualism
 - c. native accent
 - d. intelligence

2. The preferred method for interpreting at the witness stand is
 - a. simultaneous
 - b. consecutive
 - c. summary
 - d. paraphrase

3. A **source language** means
 - a. a native language
 - b. an official language used in the courts
 - c. a dead language from which a modern language is derived
 - d. a language from which one translates

4. If an attorney is speaking too fast or too softly, you must
 - a. continue interpreting the best you can so as not to interrupt the proceedings
 - b. raise your hand to get the speaker's attention
 - c. immediately inform the court
 - d. stop interpreting

5. **Paraphrase** or **summary** interpretation may be used
 - a. when other interpreting modes are impossible
 - b. usually during consultation in chambers
 - c. at no time
 - d. in lock-up or jail interviews only

6. A notepad and pencil shall
 - a. always be carried
 - b. never be used at the witness stand
 - c. only be used during consecutive interpreting
 - d. always be kept out of sight.
7. An interpreter may accept payment from a defendant in a criminal case
 - a. when he works past 5 p.m.
 - b. only if he wins the case
 - c. under no circumstances
 - d. if he does extra interpreting, such as assisting an attorney to communicate with family members
8. To become familiar with the particulars of a case, the interpreter must
 - a. take time to personally interview the defendant
 - b. request and review the case file
 - c. obtain the points of view of both defense and prosecuting attorneys
 - d. talk with family members
9. At the arraignment, the defendant is
 - a. confronted with the witnesses testifying against him
 - b. informed of the charges against him and asked to enter a plea
 - c. interviewed about the facts of the case
 - d. sentenced
10. During a jury trial, the court interpreter is approached by a newspaper reporter who wishes to discuss the case. The interpreter should
 - a. answer any questions the reporter has
 - b. refuse to talk to the reporter under any circumstances
 - c. explain to the reporter that she is not allowed to discuss a pending case
 - d. inform the reporter that there will be a fee for interview regarding this case because such work goes beyond that which the interpreter is normally required to do
11. A court interpreter is interpreting for the defendant on the witness stand. At some point he realizes that a translation error was made earlier in the testimony. The interpreter should
 - a. immediately inform the court of the error
 - b. wait until the next break and discuss the problem with the defendant's attorney
 - c. wait until the next break and inform the judge of the problem in chambers
 - d. take no action, but make sure the mistake does not happen again

12. When attorney says to the court, "Your Honor, my client is willing to plead to count 3," she means

- a. the client wants to stand trial on count 3
- b. the client wishes to plead not guilty on count 3
- c. the client wishes to plead guilty on count 3
- d. the client wishes a continuance to enter a plea to count 3

13. The ***burden of proof*** refers to the fact that

- a. the defendant may take the stand and testify if she wishes
- b. the prosecutor must prove the case against the defendant
- c. witnesses must testify under oath
- d. police may not search a residence without a warrant

14. If a witness uses a term an interpreter is unfamiliar with, the interpreter should

- a. make an educated guess based on the context
- b. ask the witness what he meant and inform the court
- c. skip the unknown term and continue interpreting
- d. inform the court of the problem and ask permission to consult a dictionary or inquire with the witness

15. The difference between ***probation*** and ***parole*** is that

- a. ***probation*** is served in lieu of a maximum jail term and ***parole*** is served in conjunction with early release from prison
- b. ***probation*** is for first-time offenders and ***parole*** is for multiple offenders
- c. ***probation*** is for misdemeanors and ***parole*** is for felonies
- d. ***probation*** refers to time off for good behavior and ***parole*** refers to restrictions on behavior

16. The court interpreter has an obligation to

- a. make sure the defendant understands everything that is going on in this trial
- b. inform the court if an attorney's question is likely to be too difficult for the defendant to understand
- c. interpret everything just as it is said, without explaining or simplifying
- d. explain complex legal concepts to the defendant

17. When an attorney cites ***points and authorities***, she

- a. tells the court what precedent decisions it must follow in deciding the case
- b. informs the court of the expert witnesses who will be testifying in the case
- c. challenges the credibility of prosecution witnesses
- d. explains to the defendant the charges that have been filed against him

18. If counsel misstates the facts the interpreter should
- correct the attorney
 - tell the judge
 - interpret the misstatement
 - tell the defendant
19. If the defendant asks what the consequences are for pleading guilty, the interpreter must
- answer the question **only** if she knows the answer
 - immediately refer to the "Criminal Code Reference Book"
 - inform the defendant that he will find out when the time comes
 - refer the question to the attorney
20. The interpreter is free to speak with any member of the jury
- when the jury has been impaneled
 - when the jury has been dismissed
 - only if the juror questions the interpretation
 - when court is not in session
21. The interpreter may give legal advice
- in a limited way, under certain circumstances
 - never under any circumstances
 - when the defendant explicitly asks for help
 - when the defendant is indigent
22. **Angel Dust** is
- cocaine
 - heroin
 - pulverized marijuana
 - PCP
23. **Horse** is
- cocaine
 - heroin
 - LSD
 - opium
24. A **lid** is
- a measurement for buying and selling marijuana
 - a Peruvian strain of cocaine
 - a narcotic informant
 - a gag used to quiet unruly prisoners

25. A **mule** is

- a. stubborn person who will not confess
- b. a person who transports narcotics for others
- c. a person who suffers the severest penalty for drug violations
- d. a powerful narcotic with a strong kick or effect

26. A **pop** is

- a kilo of marijuana
- b. "noseful" of cocaine
- c. a piece of narcotic paraphernalia
- d. a narcotic injection

27. A defendant who represents himself is designated

- a. improper
- b. "in camera"
- c. "in loco parentis"
- d. "in propria persona"

28. **Counts** in an indictment or information are

- a. the number of victims in a case
- b. the allegations of distinct offenses
- c. the number of potential witnesses in a matter
- d. the counter-charges involved in the case

29. At a preliminary hearing the magistrate may not

- a. dismiss the case
- b. release the defendant if the evidence is insufficient
- c. release the defendant if the evidence was illegally obtained
- d. determine the guilt or innocence of the defendant

30. A **bench officer** is

- a. any member of the sheriff's department or marshal's office assigned to a courtroom
- b. an officer of the court
- c. any judge, commissioner or referee
- d. a person officially permitted to appear before the bench

31. **Probable Cause** is

- a. a feasible excuse or reason for committing a crime
- b. a requisite element of valid search and seizure or arrest
- c. a precedent source of case law to support an argument
- d. a fact, not in evidence, from which another fact, in evidence can be derived

32. A ***motion to strike priors*** is made in order to

- a. dismiss the case
- b. reduce the severity of the matter
- c. simplify the matter for the court
- d. suppress the evidence

33. To plead ***straight up*** is

- a. to plead to the indictment or information as charged
- b. to tell the truth
- c. to plead guilty while standing at the counsel table
- d. to plead guilty knowing you will go straight to prison

34. An ***adjudication hearing*** is

- a. a term used for a settlement hearing between parties
- b. a term used for an allocation dispute
- c. a term used for a juvenile trial
- d. a term for division of property adjudication

35. A "voir dire" interrogation is made

- a. to hear and see prosecution witnesses
- b. prior to the field sobriety test
- c. to determine if the witness is lying
- d. to determine qualifications or competency

36. A ***Diversion Program*** is

- a. work camp for juvenile offenders
- b. a recreation program for juvenile drug offenders
- c. an education program for mentally disordered sex offenders
- d. a program to obviate criminal prosecution

37. The Municipal Court does not handle

- a. murder trials
- b. felony preliminary hearings
- c. civil matters
- d. hit and run cases

38. To ***impanel*** a jury is

- a. to sequester a jury
- b. to swear in a jury
- c. to choose a jury
- d. to disqualify a whole jury

39. "Nolo contendere" means

- a. I won't answer
- b. I won't fight the case
- c. I won't do it again
- d. I cannot understand (the proceedings)

40. To **impeach** a witness is

- a. to excuse a witness
- b. to badger a witness
- c. to discredit a witness
- d. to qualify a witness

41. A **cursory search** is

- a. a superficial search
- b. a house search
- c. an area search
- d. a detailed search

42. To **waive** means

- a. to prove
- b. to relinquish
- c. to justify
- d. to use

43. A **rebuttal** is

- a. a rebuke
- b. a refutation
- c. a rebuff
- d. a rescission

44. To **remand** a defendant is

- a. to send back into custody
- b. to interrogate
- c. to release on certain conditions
- d. to strip-search

45. To **serve a subpoena** means

- a. to comply with a subpoena
- b. to deliver a subpoena
- c. to accept a subpoena
- d. to prepare a subpoena for service

46. ***Summary Probation*** is

- a. a short probation
- b. probation under the supervision of the Probation Department
- c. probation without the supervision of the Probation Department
- d. Probation without conditions

47. ***The defense rests*** means

- a. the defense cannot proceed for lack of witnesses
- b. the defense moves for a brief recess
- c. the defense has finished presenting its defense
- d. the defense is finished with the cross-examination of the prosecution witnesses

48. To **sustain** an objection means

- a. to uphold an objection
- b. to make an objection
- c. to suffer an objection
- d. to withdraw an objection

49. A **987.5 attorney** is one who

- a. charges under \$1000 for his services regardless of the time it takes to represent his client
- b. is voted into office by the State Bar Association
- c. is in private practice, but is appointed to represent indigent defendants
- d. is authorized to act as either District Attorney or Public Defender as the need arises

50. ***To be held to answer*** in Superior Court means

- a. to be compelled to give a response
- b. to be brought to trial
- c. to remain in custody
- d. to be sentenced in Superior Court

CHAPTER 5

Assessing Interpreter Qualifications: Certification Testing and Other Screening Techniques



CHAPTER 5



Assessing Interpreter Qualifications: Certification Testing and Other Screening Techniques

Introduction

Three propositions establish the context for this chapter on certification testing and other methods for assessing the qualifications of interpreters.

1. Optimally, all interpreters assigned to a court should be screened for their qualifications prior to sending them to a courtroom.
2. Determination of interpreter qualifications should be conducted by individuals who are trained in language and interpreting proficiency screening techniques, and who are responsible for maintaining a roster or list of "approved" or "certified" interpreters.
3. Formalized testing of language and interpreting proficiency (certification testing) is the best way to assess interpreter qualifications. In the absence of certification tests, however, other orderly and documentable procedures are available and should be used to gauge the qualifications of interpreters before they are sent into court.

The chapter is based on the premise that it is unreasonable to expect trial judges to be the sole determiners of an interpreter's qualifications, based on the limited information they can obtain in the context of a specific court proceeding. A corollary to that premise therefore is that a service needs to be available at the local or state level for testing or otherwise assessing the qualifications of interpreter candidates. While such a "central" service with appropriately trained personnel might be housed at a local level in very large

metropolitan courts, in most states it would be preferable to locate the responsibility for screening interpreters in the state's administrative office of the courts. In this way, screening can be conducted by individuals with specialized training, and a statewide register of qualified interpreters can be maintained for the use of all of the state's courts.

Interpreter Proficiency Testing: A Glance at the National Landscape

Formalized testing of interpreting proficiency as a prerequisite for employment is unusual in state courts in the United States. The Federal Court Interpreter Certification Examination program (FCICE) is the best known among the formalized testing programs used by courts. Between its inception in 1979 and the end of 1993, the FCICE program developed and administered tests in Spanish, Navajo, and Haitian Creole. In 1994 the program introduced written screening tests that will lead to certification in two languages (Cantonese and Mandarin), and that will be prerequisite for achieving "qualified" status in six other languages (see **Table 5.2**, page 93. The FCICE tests are carefully constructed, and interpreters who pass the Spanish language FCICE are highly regarded. However, the program is maintained at cost of approximately \$400,000 annually, which is well beyond what state court systems in even the largest states can afford, and is unimaginable for the majority of states.

State-sponsored testing occurs in some languages in six states (California, Massachusetts, New Jersey, New Mexico, New York, and Washington), and several very large metropolitan courts use some form of testing to screen their interpreters (e.g., Chicago, Los Angeles, Miami, and Phoenix). However, only the states of California, New Jersey, and Washington operate statewide testing programs that meet four

**Federal courts
pioneered testing**

Three states stand out

criteria used here to recommend them for consideration as model interpreter proficiency tests:

- 1) candidates must demonstrate proficiency in all three modes of interpreting (simultaneous, consecutive, and sight),
- 2) the tests are developed under the auspices of legislative or policy mandates that apply statewide,
- 3) the tests have undergone scrutiny by independent researchers or panels of professionals (including legal professionals, language specialists, professional interpreters and testing experts) who have published studies describing their content, test administration procedures, and scoring practices in detail, and
- 4) data are maintained by the administering agency regarding their validity and reliability.

The national landscape, however, is changing its appearance substantially as the need for interpreting services increases in the state courts, as the problems become better understood, and as the lessons and accomplishments of the states with model programs become more widely known.

Strategies for sharing those lessons and accomplishments are beginning to emerge and be discussed among court leaders across the nation, with the assistance of the National Center for State Courts and the State Justice Institute. For example, the states of Minnesota and Oregon have begun a collaborative effort with New Jersey and Washington to agree on standards for test structure, content and administration procedures; to share test development and modification costs; and to agree on principles to govern expansion of the collaboration to include other states. It is anticipated that by the end of 1995 an institutionalized program for court interpreter testing and

Recommendation: It is recommended that any interpreter certified by the federal courts, California or Washington; or any interpreter who has passed New Jersey's screening test, be recognized as a qualified professional interpreter in any other state.

Note: Interpreters who have passed these rigorous examinations are "registered" on rosters maintained by the state's administrative office or by the AOUSC.

Interstate test sharing is on the horizon

Table 5.1:
Interacting Forces In Designing And Administering Credentialing Exams For Court Interpreting

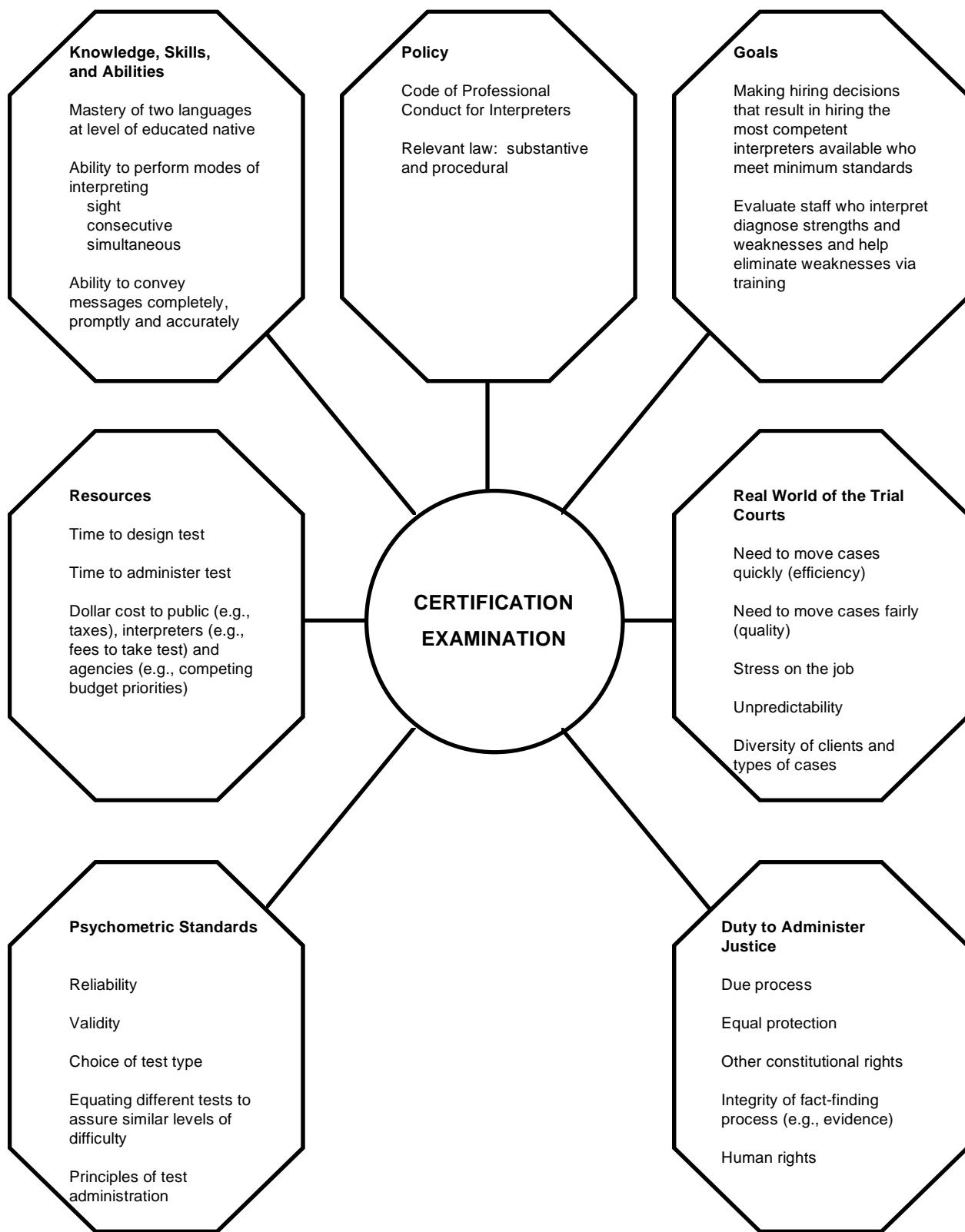


Table 5.2
Languages Included In Court Interpreter Testing Programs
In CA, NJ, WA, And The Federal Courts

	Language	Federal Courts	CA	NJ	WA
1	Spanish	C	C	C	C
2	Arabic	**	C		
3	Cambodian				C
4	Cantonese	*	C		C
5	Haitian Creole	C		C	
6	Hebrew	**			
7	Hmong				
8	Italian	**			
9	Japanese		C		
10	Korean		C		C
11	Laotian				C
12	Mandarin	*			
13	Mien	**			
14	Polish	**			
15	Navajo	C			
16	Portuguese		C	C	
17	Tagalog		C		
18	Russian	**			
19	Vietnamese		C		C

KEY

C = Certification test in use

***** = Language test proposed or in development for federal certification

****** = Language proposed by the federal courts for inclusion in procedures for restablishing an "otherwise qualified" status among interpreters, using a test of English skills, professional experience evaluation, and performance on a "back translation" test.

certification in 8 to 10 languages will be available to any state at an affordable cost.

**California, New Jersey,
Washington, and the
federal court tests**

Federal law and laws in California and Washington require the administrative offices of the courts to designate languages for which "certification" of interpreters is required. Federal law and the California law also require the administrative office of the courts to develop standards for determining qualifications of interpreters in languages that are not designated for certification.¹ In New Jersey, no statutory requirements govern interpreter qualifications or certification. Instead, policies adopted by the Administrative Office of the New Jersey Courts require that the Court Interpreting, Legal Translation, and Bilingual Services Section establish standards for screening interpreters for their eligibility for employment in the courts. These standards are implemented in the form of a statewide testing program in designated languages.

The FCICE, California, New Jersey, and Washington interpreter tests are quite similar in their structure. The FCICE, however, is generally thought to have a higher degree of difficulty than the state tests, owing to different policy decisions made by federal and state court officials regarding testing objectives and the weight the architects of the respective tests placed on different aspects of job analysis research findings.² All four of the tests are criterion referenced; that is, the passing scores are predetermined and do not change with different populations of test takers. The tests share other important procedural and structural components.

1. There is a "screening phase" and a "final phase" of the complete testing cycle. Candidates appear for a screening test that is relatively easier and less expensive to administer than the final phase; only candidates who pass the screening phase are eligible for the final phase. (The specific nature of the exams used

in the screening phase varies substantially among the tests, however).

2. To pass the tests, all candidates must demonstrate proficiency in the following:
 - simultaneous interpretation from English to the foreign language (FL)
 - consecutive interpretation, English to the FL and FL to English
 - sight interpretation of English documents into the FL
 - sight interpretation of FL documents into English
3. The final test content is based on language derived from court transcripts, modified if necessary to maintain consistency among test versions and languages tested, and to include an array of predetermined scoring units, which reflect various types of language phenomena that interpreters must be able to correctly interpret.

The key differences among the tests show-up in their screening instruments. The FCICE, California, and Washington all use a written test for screening candidates. New Jersey does *not* use a written test, but screens candidates based on their performance on the simultaneous interpretation modules. Moreover, among the written tests there are differences in structure, content, and degree of difficulty.

By contrast, differences in the oral skills test are not so apparent. This is significant, since it is the oral skills test that directly measures the knowledge and skills required to be a court interpreter.

Experience in the FCICE and in the states has consistently demonstrated that a very high percentage of candidates for court interpreter certification fall short of possessing the required knowledge, skills, and abilities for

Written vs. oral screening tests

court interpreting. Since valid tests of interpreter minimum qualifications require individualized administrations and are not machine scorable, cost is an important factor in testing program design. When the number of candidates to be tested is high, it is economically unfeasible to administer a complete oral performance skills test to candidates whose qualifications fall very short of the requirements. Historically, the solution to the problem has been to use a machine scorable written language test as a screening device to establish candidate eligibility for the oral test, to reduce the number of candidates to whom the more expensive oral performance test is administered.

**Written screening tests
are used to lower test
administration costs**

But, nevertheless, interpreting is an activity that primarily requires comprehension of *oral* language; sight translation of *unfamiliar* written documents is required of interpreters relatively infrequently. While there is a correlation for most individuals between their ability to comprehend language in the written mode and comprehension of language in the oral mode, the two abilities are *not* identical. Being able to hear, analyze and faithfully render meaning from one language to another in the oral mode requires different cognitive processes and skills than the ability to read and analyze written passages correctly. Therefore, the use of multiple choice machine scorable written tests of vocabulary and reading comprehension as a screening device that excludes some candidates from demonstrating their interpreting proficiency may not be the optimal approach to testing.³

**New Jersey takes a
different approach**

The New Jersey test for interpreter qualifications, by contrast with the other federal and state testing programs, does not employ a written component. New Jersey's test measures only oral performance skills, and recently New Jersey has adopted a policy of administering the oral test in two phases, using simultaneous interpreting from English to

the foreign language as a threshold test of qualifications. Candidates who do not achieve a minimum qualifying score in the simultaneous interpreting mode are not given the remainder of the skills test. This approach has evolved in New Jersey because test data maintained for every individual who has taken the test show that more candidates achieve passing scores on the sight and consecutive interpretation subtests than do on the simultaneous monologue portion of the exam.⁴ Candidates who successfully pass the simultaneous portion of the exam, therefore, are very likely to pass the other portions.

Table 5.3 shows the structure and some of the key characteristics of the four tests. ("Scoring units," one of the elements on the table, are explained later in the chapter.)

Summary comparison of the model tests

A Generic Model for Developing a Standardized Interpreter Test for the State Courts

Court interpreting test design, development, and administration is a complex process that involves striking a balance among the interacting forces illustrated in **Figure 5.1** on page 92. The process requires multidisciplinary expertise relating to courts and legal process, court administration, language and interpretation, and testing. This section presents a summary guide for developing tests of interpreting proficiency that could be used by any state. It draws upon a large body of previous work on the subject, including:

- ❑ documentation pertaining to existing tests and testing programs, and in some cases, examination of the tests themselves;
- ❑ published studies analyzing the language used in courts and how it relates to interpreting;

Introduction

Table 5.3
Comparison of Basic Structure of Four Spanish Oral Performance Exams

Test Segment	California	New Jersey ¹	Washington	Federal Court ²
Simultaneous -- monologue				
Time required	3.5 minutes	8-10 minutes	5 minutes	7 minutes
Length of passage	380-450 words	787 words	544 words	840 words
Rate of speech	120-140 words/minute [30] ³	121 words/minute	120 words/minute	120 words/minute
No. of scoring units		74	45	70
% of total test ⁴	25%	34%	25%	32%
Description of passage	Closing statement to jury; jury instructions	Lawyer's arg. to court; closing to jury	Closing statement to jury	Closing statement to jury
Simultaneous -- witness testimony				
Time required	not used	not used	2 3/4 minutes	4 minutes
Length of passage			312 words	365 words
Rate of speech			125-135 (w/ pauses between)	160 wpm
No. of scoring units			25	40
% of total test			14%	18%
Desc. of passage			Witness testimony	Witness testimony
Consecutive				
Time allowed	No limit (approx. 15-17 minutes)	limit 20 minutes	(untimed -- about 10-15 minutes)	15 minutes
Length of passage	(approx) 800 words	730 words	806 words	800 words (approx)
Length of utterances	1-40 words	1-42	1-49	Details not available
No. of scoring units	[50]	99	70	66
% of total test	42%	41%	39%	30%
Desc. of passage	Witness testimony	Witness testimony	Witness testimony	Witness testimony

Table 5.3 con't.

Test Segment	California	New Jersey	Washington	Federal Court
Sight -- English to F-L				
Prep time	1 minute	2 minutes	NA	NA
Time allowed	4 minutes	4 minutes	5 minutes	5 minutes
Length of passage	200 words	237	170 words	230 words
No. scoring units	[20]	30	20	22
% of total test	17%	13%	11%	10%
Description of passage	Motor vehicle driving privilege advisement; Waiver of rights; Probation report	Police report	Information (charging document)	Informal language
Sight -- F-L to English				
Prep time	1 minute	2 minutes		
Time allowed	4 minutes	4 minutes	5 minutes	5 minutes
Length of passage	200 words	230 words	200 words	230
No. scoring units	[20]	30	20	22
% of total test	17%	13%	11%	10%
Description of passage	Witness deposition; attestation to facts of marriage/divorce	Letter to judge; affidavit re: probation conditions	Summary of judgment of foreign court re: custody	Formal language
<p>1. The New Jersey data are based on test version number 2. Differences between test versions currently in use are modest.</p> <p>2. Data provided by staff of the Administrative Office of the U.S. Courts.</p> <p>3. The California exam relies less heavily on scoring units for performance rating than do the NJ, WA and federal exams. One authority says that in the California exam "[t]he scoring system is subjective and has no objective scoring units." Gonzalez, Roseann, et. al., <i>Fundamentals of Court Interpretation</i>, Carolina Academic Press (Durham, NC: 1991), p.543.</p> <p>4. "% of total test" means the percent of scoring units included in the test segment.</p>				

- interpreting job analysis literature; and
- field observations of interpreting in several states.

The first step in test development is the articulation of general principles to govern the overall approach to the work, including program goals and objectives and general test design principles. Formation of an expert test development oversight committee should precede this effort. Other steps involve:

1. selection of consultants to develop and administer the tests,
2. general test design specification,
3. writing and piloting tests,
4. training test administrators and raters,
5. preparing ancillary test documentation (candidate information packets, protocols for test rater training, protocols for test administration),
6. administering tests,
7. test results monitoring, and
8. continuing test maintenance (creating multiple versions of tests).

Recommended goals of a model testing program

A testing program designed to meet the basic needs of all state courts in the area of interpreting services should reflect the following goals:

- Identify individuals who are ready to work in courts as qualified court interpreters and certify their competence through a testing program.
- Establish and maintain confidence among interpreters and users of interpreter services that the testing procedure used is fair and appropriate.

- Maintain a pool of certified interpreters that is large enough to provide qualified interpreters to the courts in a timely manner.
- Identify individuals who appear to have high potential for acquiring the qualifications to work in courts as a court interpreter.
- Encourage individuals to develop the knowledge, skills, and abilities required for court interpreting.
- Establish and maintain an effective program at the lowest possible cost to the public and interpreter candidates.
- Establish standards for the minimum acceptable level of competence for court interpreting.
- Develop a testing procedure that is valid and complies with relevant employment-related law.⁵
- Design the test components and scoring system so that the examination has utility for diagnostic evaluation of candidate strengths and weaknesses as well as for summative (pass/fail) evaluation.⁶
- Inform candidates and users of interpreter services of the names and credentials of all individuals involved in the testing development and administration process.
- Derive test source materials exclusively from specimens of court and related justice system language.
- Utilize a test scoring procedure that is readily perceived to be objective and unaffected by personal bias.⁷

Recommended objectives of a model testing program

It is recommended that the following principles be observed in the development and administration of tests of interpreter proficiency. These principles have, in fact, been observed in the development of the FCICE and the California, New Jersey, and Washington examinations (with two exceptions, noted below.)

General test design principles

- Tests should be designed in accordance with generally accepted standards for professional and occupational licensing and certification tests.⁸
- Tests should be scored primarily on the basis of correct answers or interpretation of preselected items (scoring units), rather than on the basis of subjective rating systems. (California's exam does not strictly adhere to this requirement.)
- Test design should be a product of the combined work of teams of subject matter experts (languages and interpretation), experienced test developers, and court policy makers familiar with the work required of interpreters. (California's tests, until recently, were not subject to development oversight by court officials.)
- Test content should be derived directly from specimens of spoken and written language used in court and related justice system proceedings.
- Test modules should be standardized for all language tests.

Specific language test development teams

The development of each specific language test involves the collaboration of a court interpreter testing specialist and experts in the language to be tested. The criteria for choosing the language specialists will vary with the language.

Whenever possible, such specialists should be recruited from working interpreters who are: 1) certified for court interpreting (federal, state, or local), 2) credentialed by respected interpreting professional associations or organizations, or 3) possess advanced academic degrees in the language to be tested.

The test development teams are responsible for the choice of test content materials, modification of materials as necessary to conform to the test design specifications, designation of scorable test items, and definition of acceptable and unacceptable responses for each item.

Test raters

Test raters are experts in the languages to be tested who are chosen according to criteria established by a test development steering committee. As with the test developers, these criteria may vary with the language, but in general the individuals used for test raters must possess qualifications similar to those required for the test development team.

Test raters must be trained by the testing consultant to apply consistent and uniform rating criteria for each test item and each examination. This ensures that each candidate is evaluated according to the same standards, regardless of who is scoring the test (interrater reliability).

It is recommended that the following standards be observed in the test rating process:

- One individual should be designated as the chair of each test rating team; team chairs should be selected on the basis of prior experience.
- A minimum of two raters should score each test, with arrangements made when necessary to consult with a third panelist.
- Raters should score each test independently and compare results for each item.
- Items that are not scored the same by the raters should be discussed.
- The chair of the test rating team should maintain a record of unanticipated responses that the team agrees are either acceptable or unacceptable for the item in question and report these to the testing consultant. These responses should be incorporated into a test rating dictionary maintained for each test item.
- The chair of the test rating team should maintain a record of test items that members of the rating team agree are inappropriate or ambiguous and report these to the testing consultant.

Scoring units

Scoring units represent objective characteristics of language that the interpreter must understand and render appropriately during the interpretation. Operationally, a scoring unit is a preselected portion of the exam material that is underlined in a rater's transcript of the test text. Each scoring unit is a word or phrase that captures a logically complete linguistic unit. The definition and selection of scoring units requires linguistic experience and expert judgment. The scoring units described in **Figure 5.4** are suggested based on language transcript analyses and review of other tests and studies.⁹

Scoring units are objective

The use of scoring units adds to the objectivity and efficiency of exam rating and is an aid to preserving comparability among different test editions. Each test edition will have a similar number of each type of scoring unit. Selection of the number of different types of scoring units reflects informed decisions by the design team about the relative weight that different linguistic features should have in the overall assessment of interpreter performance. In the screening phase of a test, for example, there might be no scoring units that relate to conservation of legal register or knowledge of technical vocabulary, if that portion of the test is designed to measure general language knowledge and interpreting skills.

The selection of exam material and the identification of scoring units are loosely interdependent -- the number and types of scoring units that naturally appear in a transcript passage or document are related to the language context from which the passage is taken. The exam material should then be modified by the test design team as necessary to include the

Table 5.4
Scoring Units

Test Item	Description
General vocabulary	Words and phrases identified by the test developers as ordinary usage. Items must be found in the database of transcript samples used by the test developers.
Legal/ technical vocabulary	Words and phrases that are uncommon in general usage but are commonly encountered in the context of the court and justice system. In addition to legal terminology, words and phrases related to weapons, alcohol or drug testing, and medical terminology may be included.
Common words with uncommon meanings	Words like "record," "counsel," "continue," "party," "diversion" occur relatively frequently in legal usage, and their meanings vary from more common usage.
Idioms	Idioms are fixed phrases with meaning in the source language that cannot be inferred from knowing the meaning of all the individual words. Idioms rarely can be translated literally from one language to another (e.g., "right off the top of my head," "what's up?").
False cognates	Words that are similar in appearance but have different meanings in the two languages.
Grammar	Verb tense, subject-verb agreement, noun-pronoun agreement, proper use of prepositions.
Interference	Terms or phrases that are likely to result in awkward or improper phrasing in the target language due to interference from the source language (e.g., target and source language word order differences).
Numbers and names	Accurate rendering of numbers (e.g., dates, times, quantity, etc.) and names (e.g., street, person, building, city, etc.)
Preservation of detail in modifiers and emphasis	Accurate use of adjectives and adverbs; doublets, (e.g., "swear and affirm," "knowledge and belief," "aid and abet"); emphasis, (e.g., "solemnly swear," "in fact," "whole truth")
Conservation of register	Characteristics of speech typical of different levels of formality that are reflected by word choice (e.g., "granted" rather than "given," "observe" instead of "see," "thereafter" rather than "after that"); or grammatical style (e.g., avoidance/use of contracted forms "I do not" v. "I don't"), use of hyper-formal grammatical constructions ("It would be he") or ungrammatical constructions ("He don't never give me any money", "She and him went to the bar").
Colloquial, informal usage; slang, impolite usage, profanity	While idiomatic speech (accounted for above) is also usually colloquial, included here are expressions that are typical of informal usage ("yeah," "OK," "you bet"), slang ("a twenty," "my piece," "scag," "on the nod"), impolite speech ("got screwed"), and profanity.
Embeddings/position	Words or phrases that are likely to be omitted because of their location in a sentence (e.g., parenthetical in the middle of a sentence or tag-ons).

desired number of scoring units of each type, as appropriate for the testing objectives for the subtest. During test development, scoring units must be reviewed by each member of the test development team to establish agreement that the unit is appropriate for the linguistic feature it represents and is not ambiguous in meaning or with respect to what constitutes correct interpretation. A list of acceptable and unacceptable interpretations (a "scoring dictionary") is initially developed for each scoring unit, and the list is expanded as experience with the test yields previously unpredicted ways to interpret the item correctly or incorrectly.

When the test is scored, raters score the candidate's performance based on the scoring units, with some component of subjective assessment related to language pronunciation, fluency, and professionalism. When the objective method of scoring is used, it is possible for candidates to misinterpret a part of the test that precedes or follows a scoring unit but interpret the scoring unit correctly. When this occurs, the candidate is not penalized in scoring. Overall, however, candidates who misinterpret non-scored passages will also proportionally misinterpret scored passages if scoring units have been appropriately chosen.

Recommended Model for a Standardized Test

A model for a standardized test is recommended here that represents a blend of testing practices followed by New Jersey and Washington. When there are large numbers of candidates to be tested, it is recommended that the test be administered in two phases -- a screening phase and a final certification phase. Separating the testing phases is not a necessary part of the testing approach, however. It is simply

an efficiency measure that saves on the costs of test administration.

The proposed examination is a criterion-referenced test rated by objective scoring units. It consists of five oral test modules or subtests and a written test covering the Code of Professional Conduct and knowledge of key legal concepts and court terminology. The first module (Module I) tests simultaneous interpreting of monologue speech, based on an attorney's closing argument to a jury. It may be used for a screening phase of the examination. Modules II-V test consecutive interpreting skills, sight translation from English to the foreign language, sight translation from the foreign language to English, and simultaneous interpreting using witness testimony as source material. These modules are administered in the final testing phase, if Module I is used for a screening phase. **Table 5.5** provides an overview of the basic structure of the proposed examination.

Together, the five oral test modules and the written test cover all of the essential elements of interpreter knowledge and skills. In combination, they measure:

- understanding of professional responsibilities and court procedure,
- command of English and the foreign language in both oral and written forms, and
- performance skills in each of the three modes of interpretation.

Knowledge of ethics, professional conduct, court procedure, and basic legal concepts are requirements for court

Test overview

NOTE: A recent comprehensive job analysis and examination of the language used in court was conducted by the National Center for State Courts and Dr. Susan Berk-Seligson of the University of Pittsburgh in 1993-1994 on behalf of the California Judicial Council. The language analysis portion of the study was based on what may be the largest and most varied collection of court transcript data ever compiled for research of this kind. The database includes 3.7 million words in the form of transcripts of proceedings presided over by 85 different judges in 22 different courts. It is a mix of general and limited jurisdiction cases in criminal, civil, and domestic relations matters. It includes jury trials, bench trials, motions, preliminary hearings, plea hearings, and sentencing matters.

Two papers summarizing the results of the study are available from the National Center for State Courts, with permission from the California Judicial Council.

**Written test:
professional conduct
and court procedure**

Table 5.5
Summary of Proposed Oral Performance Exam

Test Segment	Module I Simultaneous monologue	Module II Foreign language sight	Module III Consecutive	Module IV English sight	Module V Simultaneous witness
Approximate time required	10 minutes	5 minutes	15 minutes	5 minutes	5 minutes
Length of source document	700 words	200 words	800 words	200	300
Rate of speech	125 words per minute	NA	125-135 (approx), with pauses between	NA	125-135 (approx), with pauses between
Length of utterances -- witness testimony ¹	NA	NA	70% of scorable items should be in 11-40 word units	NA	characteristics of passage should be similar to Module III)
Approximate number of scoring units	60	20	70	25	25
Approximate percent of total test	30	10	35	12.5	12.5
Description of source material	Attorney's closing statement to jury	Letter to judge by educated correspondent (e.g., character reference)	Witness testimony (layperson)	Legal advisement document (e.g., advisement of rights on plea of guilty)	Witness testimony (police officer)

1. Length of utterances means the number of words in each uninterrupted exchange between attorney and witness. The length of these utterances needs to be considered in test design and kept uniform on all test versions.

interpreting, but opinions among experts differ about whether these elements should be included in an interpreter proficiency exam. Some experts believe it is not necessary to test for knowledge of appropriate professional conduct in a proficiency exam. They argue that the most important objective of testing is to identify individuals who have the necessary language knowledge and interpreting proficiency. Acquisition of the specific knowledge required of court interpreters, they argue, is safely handled through training requirements or on-the-job supervision.¹⁰ Others argue that the purpose of the testing program is to formally assure members of the court community that interpreters already possess all of the required knowledge, skills and abilities.

It is recommended here that a standardized model testing program should include knowledge of the code of professional conduct and court procedure, measured through a machine-scorable written examination. The examination could be administered to candidates during the screening phase of the testing process or during the final testing phase. If the examination is administered during the screening phase, no candidate who passes the oral performance examination but fails the written test should be excluded from advancing to the final phase. Instead, the candidates should be required to retake and pass the test prior to certification.

Screening phase

The screening phase of the exam consists of simultaneous interpretation of an attorney's argument to the jury (Module I.) There are two reasons for using this test module as a screening phase of the exam. First, because the objective of counsel during arguments to the jury is to maintain effective communication with a panel of lay individuals, the speech they use is not heavily laden with legal terminology or

syntactic constructions typical of "legalese."¹¹ Candidates will therefore not fail the screening exam for want of technical vocabulary that they can study and learn, if other basic skills are in place. Secondly, simultaneous interpretation of monologue speech is procedurally the simplest part of the exam to administer. It is accomplished by playing a prerecorded passage that the candidate listens to on a headset, while interpreting the passage aloud into a tape recorder. It is not necessary to have language experts available during this part of the test, and test scoring may be done remotely, if necessary, by sending the tapes to qualified test raters. The time required to administer the screening test should not require more than 20 minutes per person, including transition, introduction and "warm-up" time.

Final phase

The final phase would include the remaining required elements of language knowledge and interpreting skills, including consecutive interpretation (English to foreign language and foreign language to English), simultaneous interpreting of colloquy, and sight translation (from English to the foreign language, and from the foreign language to English).

The final certification test would be administered to candidates individually, with test raters present and serving as role players in the simulation of witness testimony. The final phase modules of the certification test are based on materials that include higher concentrations of technical vocabulary, idiomatic expressions, and complex sentences than are found in the screening phase test materials.

Candidates who may have taken and failed the written test of knowledge of professional conduct and court procedure

during the screening phase may again be afforded the opportunity to take the written test during this phase.

Subjective assessment

Elements of subjective assessment of interpreter performance skills are used in all existing interpreter examinations.

General agreement has it that an interpretation act is greater than the sum of its parts and ... an objective tally [does] not measure important considerations such as pronunciation, degree of accentedness, fluency, delivery, adaptability to speaker's language usage, resourcefulness, poise, etc. (Arjona 1985, p. 194)

Reliance on subjective assessments to determine pass/fail scores varies among the exams. It plays a major role in the California exam, constitutes 25 percent of the total test score in Washington State's exam, and plays a relatively minor role in the FCICE and the New Jersey examination.

New Jersey and the FCICE require raters to score candidates on three dimensions as either "superior," "acceptable," or "unacceptable."¹² The dimensions are pronunciation and fluency in English and the foreign language, and "professionalism." The subjective scores are used in the FCICE to resolve cases where objective scores place the candidate on a borderline between passing and failing.¹³ In New Jersey, the subjective scores are only referred to by administrative officials for the purpose of hiring decisions.

An approach similar to that used for the FCICE is recommended for this examination. New Jersey's manual of instructions for test raters includes guidelines for making subjective determinations of pronunciation and fluency, and it is recommended that similar guidelines be established for a

standardized test. Of particular importance is the degree to which accent and articulation of words interferes with comprehension of the meaning or requires substantial effort on the part of the listener to be able to understand fully what is being said.¹⁴

Test Rating, Results Reporting, and Establishing Passing Scores

Test rating procedures and the calculation of passing scores are interrelated in establishing the criteria for determining pass/fail standards. A general approach to test rating and scoring is recommended below, but specific pass/fail standards must be set as part of the detailed test design process, subject to approval by a test design steering committee.

Scoring and reporting

During candidate performance rating and test scoring, it is recommended that the following principles be observed.

1. The measurement of candidate performance (except for the subjective portion of the assessment), should be made on the basis of scoring units only. Errors of interpretation which occur on portions of the test not designated as scoring units should not be counted or reported.
2. Each candidate's test scores should be reported as a numerical and percentage value reflecting correct interpretations of the scoring units. A score should be reported for each test module, in addition to an overall score. Subjective assessment ratings should be reported on the same form but as a separate assessment.
3. Pass/fail decisions should be made on the basis of the percent of correct responses to the scoring units included in each test. The subjective ratings of the candidates' pronunciation, fluency of speech, and professionalism should be used only to decide borderline pass or fail situations.

Particulars of the test design and data from pilot tests should be considered prior to making final decisions on pass/fail standards. Three general approaches to establishing pass/fail criteria might be considered:

Pass/fail criteria

1. The candidate must achieve a specific minimum percentage of correct interpretations of scoring units for every test module (e.g., 70 percent correct responses). Using this approach, a candidate who does not achieve a passing score on any one test module is considered not to have passed the test. For example, a candidate who had a score of 65 percent on sight interpretation of the foreign language to English test module, but scores of 75 percent to 85 percent on all other modules would not be certified. This approach excludes an otherwise qualified candidate from certification on the strength of a relatively weak test performance in just one of the required skill areas.
- 2) The candidate must achieve a minimum *average* percent score across all portions of the exam. In this case, a candidate might score as low as 50 percent correct responses in the sight interpretation test module and still pass the test if scores on the other modules are high enough to offset the low scores.
- 3) The candidate must achieve an overall average score (e.g. 70 percent) *and* scores on each test module which do not fall below a predetermined minimum (e.g., 60 percent).

While reasonable arguments can be made for each of the preceding three approaches, we recommend option 3 because it allows for relative weakness in one skill area while establishing limits on the extent of the weakness. It achieves a balance between flexibility and limited tolerance for poor performance in any essential skill area. It is consistent with the testing goals previously articulated.

If the recommended approach (option 3) is adopted, candidates who score at or above the fixed *minimum* on one or more portions of the *screening test* should be considered eligible

to take the remainder of the certification exam, since it is mathematically possible that their final average score will be high enough overall for the candidate to pass the test. An approach similar to this is used in New Jersey, where candidates are permitted to score as low as 50 percent correct responses on the simultaneous interpreting screening test and still be allowed to take the remainder of the examination.¹⁵

Test documentation

To achieve fairness and test reliability, all candidates must have access to the same information about the testing procedure; and test administration and scoring must be consistent for all test takers. In addition, the testing program goals and objectives imply that virtually all test procedures, materials and sources of expertise be documented and made available to interested inquirers. As part of the test development process, therefore, the following documentation should be prepared:

- A description of the test design process (who participated, what steps were followed, how decisions were made, etc.);
- a training manual and written protocols to be followed during test administration;
- a training manual and written procedures to be followed by all individuals involved in test scoring, including clerical tasks associated with recording and compiling test scores from rating sheets;
- an explanation and rationale for determining pass/fail scores;
- a description of procedures for appeal and review of test results, and
- a candidate's information and orientation booklet.

These materials should be in hand before a test is administered, and they should be periodically updated to reflect adjustments as they occur.

Other Methods for Assessing Interpreter Qualifications

For the foreseeable future, it is unlikely that valid and reliable tests of interpreter proficiency similar to those used in California, New Jersey, and Washington will be developed in more than a handful of the most common languages that courts encounter. While this presents a difficult problem for officials in charge of interpreter recruitment and assessment, it is possible to employ a set of strategies to determine basic language skills in English, to indirectly make an assessment of skills in the other language, and, to a limited degree, acquire some indication of a person's interpreting skills. Roseann Gonzalez, Victoria Vasquez, and Holly Mikkelsen describe these strategies in detail in Chapter 15 of *Fundamentals of Court Interpretation*. The techniques described in *Fundamentals* fall into three categories:

- 1) assessment of relevant personal background and English language proficiency,
- 2) assessment of cognitive and motor skills that are prerequisite for interpreting, and
- 3) assessment of the candidate's proficiency in the foreign language, through "back-translation."

The following summary is intended to provide a general overview of the techniques described in *Fundamentals*. It is not a substitute for the detailed, step-by-step guides to their application that *Fundamentals* provides.

NOTE: *Fundamentals of Court Interpretation* can be obtained from Carolina Academic Press, 700 Kent St., Durham, NC 27701, Telephone 919-489-7486.

**Personal background
and English language
proficiency**

The interview

A structured interview conducted by a supervisory interpreter or other language professional is a way to determine the candidate's background while affording an opportunity to assess whether the candidate's English comprehension and verbal production skills are commensurate with the demands of the court. The technique described in *Fundamentals* takes the candidate through four levels of questioning, "organized so that the content and complexity progress from simple, casual chatting, to a discussion of linguistically and intellectually more complex issues (p. 193)." At the fourth level, the interviewer asks questions about the candidate's understanding of the United States' form of government or judicial system, which requires discussion of abstract concepts and may reveal something about the candidate's legal knowledge or vocabulary. "Obviously a candidate who cannot reach Level 4 is to be considered suspect. It is doubtful that a candidate whose English proficiency is that limited would be successful at interpreting the highly technical language of the courtroom (p. 193)."

The written biographical sketch

To supplement the interview, the evaluator may also require the candidate to write a first-person narrative on personal background. "The exercise requires no preparation or special knowledge...(but) provides the interviewer with insight into the candidate's sophistication in English by evaluating the variety of the vocabulary and syntactic structures employed (p. 194)."

Standardized written proficiency examination

Fundamentals also describes the variety of commercial

tests of language proficiency that are available in English and in some foreign languages, and offers suggestions about how they may be acquired and administered (p. 194). The section also cautions that, because interpreting is a position that relies on aural-oral skills, "no selection procedure should depend solely on a written assessment."

Cognitive and motor skills

Interpreters must have an excellent short-term memory and be able to listen and speak at the same time, while accurately preserving the message that they hear. It is possible to simulate the way interpreters must employ these skills, using English language exercises only.

Shadowing

"Shadowing" refers to the activity of repeating a narrative simultaneously, word-for-word, in the same language as it is heard. The exercise closely parallels the simultaneous mode of interpreting, without the need to transfer from one language to another. The technique described in *Fundamentals* calls for the use of a tape recorder, head phones and a prerecorded monologue. Detailed instructions are also provided for how to administer and score the exercise. If done properly, the shadowing technique provides a fair assessment of one essential component of simultaneous interpreting. "A candidate who is unable to shadow with utmost precision would certainly be unable to cope with the complex semantic, syntactic, and terminological problems of actual simultaneous interpretation (p. 195)."

Memory test

Fundamentals also provides samples of questions and answers of variable length and complexity that can be read to a

candidate in English and used to measure the candidate's short-term memory. After the passage is read, the candidate is required to repeat it verbatim. The texts used for the exercise have specific words and phrases underlined that represent typical language problems interpreters encounter. The scoring units provide an objective basis for measuring the candidate's performance.

Back-translation

Back-translation is a technique in which a candidate interprets or translates English into the foreign language in question and then, after the passage of time, interprets or translates her or his own foreign-language version of the passage *back* into English. The interpreted or translated English version is then compared to the original English to determine how faithfully the original message has been preserved. Allowing at least an hour between the original and the back-translation is important, because the results of the exercise can be misleading if the candidate relies on memory of the original English, rather than on the interpreted foreign language version when the back-translation occurs. This technique has the obvious advantage of allowing someone who does not speak the foreign language to make an assessment of the candidate's ability in that language. If the source message is significantly distorted when it is changed from English to the foreign language, the effects of the distortion will be apparent when it is subsequently returned into English.

The proper procedure for administering and scoring the back-translation exercise is described fully in *Fundamentals*, including 10 sample questions and statements with underlined scoring units.

Endnotes

1. Public Law 95-539, "Court Interpreters Act" and "Court Interpreter Amendments Act of 1988"; California Statutes of 1992, Chapter 770; RCW 2.43.
2. A full discussion of the differences is beyond the scope of this manual, and no in-depth research has been conducted to assess the relative degree of difficulty of the federal and state tests. Briefly, however, the federal testing philosophy tends to emphasize the more difficult types of language interpreters encounter, while the state tests tend to gear their tests toward language that is more routine and typical.
3. In our opinion it is possible that some individuals who could pass the oral test are precluded from taking it because they do not pass the written exam. We are unaware of any research that compares an individual's performances on both a written exam and an oral performance exam for the same population of test takers.
4. For example, 9% perform at the passing level for simultaneous monologues, while 26% and 17% pass the sight and consecutive subtests. Statistical data provided by the New Jersey AOC, March 8, 1994.
5. For example, "Uniform Guidelines on Employee Selection Procedures" (1978), which relates to Title VII of the 1964 Civil Rights Act and related case law. For discussion of the basic issues and trends in case law, see *Educational Measurement Issues and Practice*, Vol. 9, No. 4, Winter 1990, especially Faggen, Jane "The Profession's Evolving Standards" and Kuehn, Stallings and Holland, "Court Defined Job Analysis Requirements for Validation of Teacher Certification Tests."
6. Some candidates for the test may have substantial experience interpreting in court settings and consistently perform well on test items where familiarity with courts, court procedure, and the language of the courts gives them an advantage, while performing inadequately on test items that measure more general language skills. (Both areas of competency are required for court interpreting.) Conversely, some candidates may perform well on items that measure general language skills, but perform poorly on items that are directly related to more specific technical knowledge of courts and court language. The ability to distinguish such patterns when they occur is useful both to individual candidates for efficient remediation of deficiencies and for informing policy makers regarding needs and priorities for education and training.
7. This and the preceding three objectives are consistent with the goal of ensuring confidence in the validity and fairness of the certification process. Confidence will be increased in proportion to the openness of the process and the extent that candidates and users of interpreter services can readily obtain information about the test

developers and test raters, be shown a direct connection between test-item content and actual job tasks, and perceive an objective technique for scoring test items.

8. See for example, Chapter 11, "Professional and Occupational Licensure and Certification", in American Education Research Association, American Psychological Association, and National Council on Measurement in Education, *Standards for Educational and Psychological Testing* (1985)

9. Arjona, E., "The Court Interpreters Test Design", in L. Elias-Olivares, et.al (Eds.), *Spanish Language Use and Public Life in the United States*, Mouton de Gruyter (Berlin, 1985); Lee, Robert Joe "Credentialing Court Interpreters", Administrative Office of the Courts, (New Jersey 1990); Berk-Seligson, Susan "A Linguistic Analysis of Selected Proceedings in the Courts of California", Judicial Council of California (1994).

10. Some prominent experts in the field maintain that while knowledge of professional conduct is a vital component of an interpreter's qualifications, the knowledge need not be measured as part of a certifying examination process. Robert Joe Lee of New Jersey is among these individuals. The view appears to be shared by the Administrative Office of the U.S. Courts, since these matters are not covered by the FCICE.

11. Dr. Susan Berk-Seligson describes characteristics and differences in the types of languages used in various stages of court proceedings in "A Linguistic Analysis of Selected Proceedings in the Courts of California," available through the National Center for State Courts, with permission from the California Judicial Council.

12. New Jersey also includes a fourth level, a "minimally acceptable" rating.

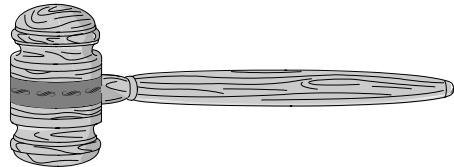
13. "Although this subjective rating is not an integral part of the passing score, it can be a determining factor in borderline cases." Arjona, p. 194.

14. For example, during job analysis interviews with judges in California conducted by staff of the NCSC, reference was frequently made to encounters with interpreters whose ability to speak English clearly was markedly deficient, and, in some cases, interpreters often could not be understood.

15. The low cut-off point established by New Jersey reflects policy decisions that permit the hiring of salaried interpreters for a probationary period of time if they fail the test but score in a "critical range" which suggests that the interpreter is likely to improve her or his skills and pass the test at a later date.

CHAPTER 6

Judges' Guide to Standards for Interpreted Proceedings



CHAPTER 6



Judges' Guide to Standards for Interpreted Proceedings

This chapter presents recommended standards for governing the use of interpreters in trial courts. The recommendations are based on published rules, administrative policies, and articles prepared by experienced judges, lawyers, and administrative personnel. A list of references is included at the end of the chapter.

Figures referenced in bold type (**Figure XX**) are found at the end of the chapter, following the standard references.

When Should an Interpreter be Appointed?

Many individuals have enough proficiency in a second language to communicate at a very basic level. But participation in court proceedings requires far more than a very basic level of communicative capability. Consider that in order for non-English speaking criminal defendants to testify in their own defense they must be able to:

- accurately and completely describe persons, places, situations, events;
- tell "what happened" over time,
- request clarifications when questions are vague or misleading, and
- during cross-examination:
 - ◆ recognize attempts to discredit their testimony,
 - ◆ refuse to confirm contradictory interpretations of facts, and
 - ◆ defend their position.

Moreover, for defendants to evaluate and respond to adverse testimony of witnesses, and assist in their defense, they must comprehend the details and the subtle nuances of both questions and answers spoken in English during the testimony of adverse witnesses, and, at appropriate times, secure the attention of counsel and draw attention to relevant details of testimony.

In non-evidentiary proceedings that involve determination of custodial status, advisement of rights, consideration of sentences, and articulation of obligations and responsibilities established in orders of the court, non-English speaking persons must receive the same consideration as native speakers of English.

It is recommended that judges presume a bona fide need for an interpreter when a representation is made by an attorney or by a pro se litigant that a party or witness has limited proficiency in English and requests an interpreter.¹

Assessing the need for an interpreter

When a party does not request an interpreter but appears to have a limited ability to communicate in English, the court should conduct a brief voir dire to determine the extent of the disability. Such a voir dire should avoid questions that can be appropriately answered with "yes" or "no". The voir dire should include "wh- questions" (what, where, who, when) and questions that call for describing people, places or events or a narration (tell what happened.) A model for such a voir dire is illustrated in **Figure 6.1**.

When any doubt exists about the ability of persons to comprehend proceedings fully or adequately express themselves in English, interpreters should be appointed.

Great caution should be exercised before permitting waiver of a right to an interpreter. The judge should not allow a person who has limited proficiency in English to waive the use of an interpreter unless the person requests a waiver in writing *and* in the person's native language.

- ❑ At any stage of the case or proceeding, a person who has waived an interpreter should be allowed to retract a waiver and receive the services of a proceedings interpreter for the remainder of the case or proceeding.
- ❑ Deliberations made on matters of waiver or retracting of waiver should be on the record.²

Waiver of interpreter

CAUTION: Acquiring interpreters through private interpreter agencies should not be relied on by court management personnel as presumptive evidence of an interpreter's qualifications for court interpreting.

Use of Qualified Interpreters

All interpreters appointed by the court should be as highly qualified as possible. It is inefficient for trial judges to be responsible for the *ad hoc* determination of interpreter qualifications in the courtroom, and the results of in-court voir dires (described below) remain problematic in the best of circumstances. Trial judges should urge that a coordinator of interpreter services be designated whose responsibilities include meaningful screening and assessment of interpreters' skills before placing their names on a roster of court interpreters who may be called to interpret on a regular basis in the court. Chapter 8 details the options and recommended approaches to establishing the qualifications of interpreters *before* they are assigned to a courtroom.

Circumstances frequently arise, however, when a judge is asked to accept the services of an individual whose language skills have not been previously evaluated.

When the court is obliged to use an interpreter whose skills are untested, it is recommended that the

CAUTION: the term "certified" is often used by interpreters or private interpreting agencies when the interpreter has received only a rudimentary orientation to the profession. Judges and court managers should not assume that interpreters who claim to be "certified" have *demonstrated* their competence in language or interpreting skills through formal testing or any other effective means of establishing functional proficiency. *See Chapter 5.*

judge establish on the record that the proposed interpreter:

- communicates effectively with the officers of the court and the person(s) who receive(s) the interpreting services;
- knows and understands the Code of Professional Responsibility for Interpreters;
- will comply with the Code of Professional Responsibility, noting on the record any of its provisions that cannot be honored; and
- takes the same oath that all interpreters must take in a court proceeding.

CAUTION: While an in-court voir dire is useful to identify interpreters who are obviously unqualified, such techniques do not establish whether the interpreter actually possess the desired level of functional proficiency.

Figure 6.2 illustrates a basic format for an in-court voir dire that judges may use to make these determinations, before allowing the interpreter to assist the court. Judges may also wish to establish a policy of securing written affidavits from interpreters before conducting the voir dire. The affidavit should be substantially similar in content to the suggested voir dire. If an affidavit is used, it is recommended that it be briefly reviewed on the record and its truthfulness attested to by the interpreter.

Interpreters' Oath

Every interpreter used in the court should be required to swear an "oath of true interpretation." Some form of an oath, in fact, is required in the statutes of most states. A recommended model oath is presented in **Figure 6.3**.

Interpreters who are court employees

For the sake of expediency, interpreters who are full or part-time employees of the court are often sworn with an oath that binds them throughout their employment by the judiciary, and the oath is not

administered again for each proceeding. Many courts, however, rely primarily on contract or per diem interpreters who are used regularly but who are not court employees. When this is the case, these courts also may find it expedient to administer an oath that is kept on file, and thereafter to establish on the record for each proceeding that the oath is on file.

In the case of trials, however, experienced judges recommend that the oath always be administered orally to interpreters in the presence of the jury to reinforce the jury's awareness of the role of the interpreter.

For interpreters who are not employees of the court and who are used intermittently or rarely, it is recommended that the interpreter be sworn at the beginning of the proceeding (in which instance the oath extends for the duration of that case) or at the beginning of a day's work in a given courtroom (in which case the oath extends for the duration of the day's services in that courtroom).

Interpreters who are not court employees

General Clarification of Interpreter's Role

The judge should explain the role and responsibilities of interpreters to all the courtroom participants in any court proceeding. The explanation should be given before the proceedings begin. For example, the judge may include these remarks at the beginning of a session of court, or at the beginning of each separate proceeding if all or most of the participants change between proceedings. The clarification should include the following points:

- The interpreter's only function is to help the court, the principal parties in interest, and attorneys communicate effectively with one another;
- The interpreter may not give legal advice, answer questions about the case, or help anyone in any other way except to facilitate communication;
- If a person who is using the services of the interpreter has questions, those questions should be directed to the court or an attorney through the interpreter; the interpreter is not permitted to answer questions, only to interpret them;
- If someone cannot communicate effectively with or understand the interpreter, that person should tell the court or presiding officer.

Figure 6.4 provides suggested text for this advisement.

Special clarification of interpreter's role to sworn witnesses

The judge should advise every witness of the role of the interpreter immediately after the witness is sworn and before questioning begins. As the judge gives the advisement, the interpreter simultaneously interprets it for the witness. The clarification should cover the following points:

- Everything the witness says will be interpreted faithfully;
- The witness must speak to the person who asks the question, not to the interpreter. If the witness needs a question to be clarified, the witness must ask for clarification from the person who asked the question;
- The witness should respond only after having heard the entire question interpreted into his or her own language;
- The witness should speak clearly and loudly so everyone in the court can hear; and

- If the witness cannot communicate effectively with the interpreter, she or he should tell the court or presiding officer.

Figure 6.5 provides suggested text for this advisement.

Any time an interpreter is required for a jury trial, the judge should advise the jurors of (1) the role and responsibilities of interpreters and (2) the nature of evidence taken through an interpreter. Several specific and different advisements may be called for at different stages of the proceeding.

When a case involves a non-English speaking party, the judge should instruct the panel of jurors before voir dire begins that an interpreter is sitting at counsel table to enable the party to understand the proceedings. It is also important to determine whether prospective jurors are affected by the presence of an interpreter: do they hold prejudices against people who don't speak English? Do they speak a foreign language that will be used during the proceeding? If so will they be able to pay attention only to the interpretation?

After a jury is impaneled and before a trial begins, the judge should instruct jurors as part of the pre-trial instructions that they may not give any weight to the fact that a principal party in interest has limited or no proficiency in English and is receiving the assistance of a interpreter.

Figure 6.6A provides suggested text for this advisement.

Clarification of the role of the interpreter to jurors

Impaneling a jury

Before the trial begins

When a trial involves witness interpreting

When the trial involves witness interpreting, the judge should give instructions to jurors before the witness interpreting begins that include the following points:

- Jurors must treat the interpretation of a witness's testimony as if the witness had spoken English and no interpreter were present;
- Jurors must not evaluate a witness's credibility positively or negatively due to the fact that his or her testimony is being given through an interpreter;
- Jurors who speak a witness's language must ignore what is said in that language and treat as evidence only what the interpreter renders in English. Such jurors must ignore all interpreting errors they think an interpreter may have made.

There are several reasons for this last instruction, which may seem preposterous to some jurors, and judges may wish to elaborate by explaining them. All of those reasons underscore the need for professional interpreters. First, the record of the proceedings is only in English, and it is the recorded testimony that constitutes evidence in the case. Second, jurors may mishear what is said; the interpreter (like the court reporter!) is a trained listener. Finally, ordinary individuals and even trained interpreters may disagree about the correct interpretation of an expression, even if they hear the same words. Once again, interpreters are the court's experts in language, and their interpretation must be presumed reliable.

Figure 6.6B provides suggested text for this advisement.

Maximizing Communication During Interpreted Proceedings

As in any proceeding, the judge should keep the room in which sessions are held as quiet as possible and allow only one person to speak at a time. These normal rules are especially important in interpreted proceedings. Interpreters should never use the pronoun "I" to refer to themselves when speaking. The reason for this is to avoid any possibility of confusion during the proceeding and in the record between interpreted utterances and statements that the interpreter may need to make to the court during the proceeding. For example, the interpreter should say: "Your honor, the interpreter was unable to hear the question and respectfully requests that it be restated," rather than "Your honor, I was unable to hear the question." The latter could be confused in the record with statement by the witness. Therefore, the judge should always:

- Remind the interpreter and court participants that the interpreter, when addressing the court on her or his own initiative, should always speak in the third person and identify her or himself as "the interpreter" or "this interpreter."

Other procedures the judge should observe during interpreted proceedings include the following:

- Speak and assure that others speak at a volume and rate that can be accommodated by the interpreter.
- Permit witness interpreters to use appropriate signals to regulate speakers when the length of an utterance approaches the outer limit of the interpreters' capacity for recall.
- Make certain that the interpreter can easily hear and see the proceedings.

CAUTION: When setting the pace of speech during interpreted proceedings, do not assume that the interpreter can work at the same speed as the court reporter. The court reporter works in shorthand and does not need to transfer meaning from one language to another.

- The judge should ensure that the interpreter has conversed briefly with the non-English speaking person to be certain that interpreter and the party or witness are able to communicate adequately.

Interpreter's responsibility

With the knowledge and consent of the attorneys, the interpreter should briefly interview the non-English speaking person before the proceeding begins to become familiar with his or her speech patterns and linguistic traits, and any other traits (e.g., mental retardation, speech impairments) that may bear upon assisting the party.

CAUTION: There are documented cases that have gone to trial and resulted in verdicts and sentences where it was later discovered that the interpreter spoke a different language than the defendant.

Interpreters should advise the court or presiding officer any time during a proceeding or case whenever they believe they are or may be in violation of any part of the Code of Professional Responsibility or if they discover that they cannot communicate effectively with the non-English speaking person.

Attorneys' responsibility

CAUTION: One interpreter recounts being asked to interpret witness testimony in the case of a female defendant without being advised that the person had undergone a sex change operation between the time of the events in question and the trial. Imagine the interpreter's confusion regarding gender references during witness testimony!

The attorneys should advise the interpreter, as far in advance of the proceedings as possible, of any special concerns they may have related to the particulars of the case or any peculiar linguistic characteristics or other traits their non-English speaking client may present. Attorneys should give interpreters access to documents or other information pertaining to the case.

Record of Interpreted Testimony

The record of the case made by a court reporter in interpreted proceedings consists only of the English language spoken in court. (Obviously a court reporter can not preserve any of the non-English language for

review.) If questions arise during the trial regarding the faithfulness of the interpretation, the quality of interpretation therefore cannot be evaluated after the fact by the trial judge, or later on appeal. Because of this, an audio or audio/video record to supplement the court reporter's transcript is desirable. Making a tape recording is recommended if there is interpreted witness testimony, since errors on the part of the interpreter alter the evidence presented to the judge and jury.

Judges who regularly hear interpreted matters should explore the feasibility of making tape recordings of all witness interpreting and, as a second priority, of proceedings interpreting. (Proceedings interpreting in the simultaneous mode is done quietly at counsel table or with interpreting equipment and would require special arrangements for recording.) In most courtrooms for the foreseeable future, this may not be feasible. In the alternative, however, it is strongly recommended that an audio or audio/video record be made in the following circumstances:

- In all capital cases, regardless of the qualifications of the interpreters, a record should be made of all sworn witness testimony and its interpretation;
- In proceedings involving interpretation by a noncertified interpreter, especially those in which the non-English speaking person is at risk of incarceration, a record should be made of all sworn witness testimony and its interpretation;
- In felony proceedings involving entry of a guilty plea that are interpreted by an unqualified interpreter, a permanent record should be made of the proceedings interpretation and statements made to the court by the non-English speaking person.

Audiotaping interpreted testimony is recommended

- When testimony is verbal, the record may be made with audio recording only; when the testimony is conveyed in a sign language, the testimony and the interpretation of questions posed to the witness require videotape.

Errors During Witness Interpreting

Interpreting is an extraordinarily demanding activity and cannot be error-free. Appreciation of this reality should be extended to the interpreter during any allegations of inaccurate interpretation. Moreover, professional interpreters are trained to understand and act on their obligation to correct any errors that they might make during a proceeding. The court should allow the following precautions to be taken.

Error by witness interpreter

When a witness interpreter discovers his or her own error, the interpreter should correct the error at once, first identifying him/herself in the third person for the record (e.g., "Your honor, the interpreter requests permission to correct an error"). If the interpreter becomes aware of an error *after* the testimony has been completed, he or she should request a bench or side bar conference with the court and the lawyers to explain the problem. The court can then decide whether a correction on the record is required.

Discovery of error by others

When an error is suspected by the judge, an attorney, or another officer of the court besides the interpreter, that person should bring the matter to the attention of the judge at the earliest convenient opportunity. If testimony is still being taken, the problem should be raised before the witness is released. In the case of a jury trial, the problem and its resolution

should be handled at a side bar conference. The following steps are recommended for the trial judge:

- The judge should determine first whether the issue surrounding the allegedly inaccurate interpretation is substantial or potentially prejudicial and requires determination.
- If the judge agrees that the error is substantial or could be prejudicial, then the judge should refer the matter first to the interpreter for reconsideration. If this does not resolve the problem, evidence from other expert interpreters or any other linguistic expert the judge may select should be sought. In extreme circumstances it may be appropriate to permit attorneys from both sides to submit an expert.
- The judge should make a final determination as to the correct interpretation. If the determination is different from the original interpretation, then the court should amend the record accordingly and advise the jury.

Modes of Interpreting

The mode of interpreting to be used at any given time (consecutive or simultaneous) depends on the types of communication to be interpreted within a proceeding and not on the types of proceeding. In fact, both the simultaneous and consecutive modes will often be appropriate within a proceeding. For example, interpreting would be simultaneous when a judge is making a defendant aware of his or her rights, and consecutive when the judge begins to question the defendant. The following guidelines for modes of interpreting are suggested.

The simultaneous mode of interpreting should be used for a person who is listening only. This is the normal mode for proceedings interpreting. Accordingly,

CAUTION: If an interpreter referred to the court is unable to interpret competently in either the consecutive or simultaneous modes, the interpreter is not qualified for court interpreting.

Simultaneous mode

an interpreter should interpret in the simultaneous mode in situations such as the following:

- for a defendant when testimony is being given by another witness,
- for a defendant or witness when the judge is in dialog with an officer of the court or any person other than the defendant or witness,
- for a defendant when the court is addressing the jury or gallery or any other persons present in the courtroom, or
- for any non-English speaking party when the judge is speaking directly to the person without interruption or regular call for responses (e.g., lengthy advisements of rights; judge's remarks to a defendant at sentencing).

Consecutive mode

The consecutive mode of interpreting should be used when a non-English speaking person is giving testimony or when the judge or an officer of the court is communicating directly with such a person and is expecting responses (e.g., taking a plea). This should be the normal mode for witness interpreting.

The summary mode

The summary mode of interpretation should *not* be used. It is most often resorted to only by unqualified interpreters who are unable to keep up in the consecutive or simultaneous modes. Qualified interpreters may report the need to use summary interpreting if they are called upon to interpret highly technical testimony of expert witnesses which they do not understand or have the vocabulary to interpret. The judge should specifically instruct all interpreters to report if it is necessary to resort to summary interpreting. In circumstances when the problem does not involve unusual and highly technical language, the

preferred course of action is to dismiss and replace the interpreter if there are other interpreters available who do not need to use the summary mode. Any time the judge determines that the proceedings must continue even if summary interpreting is being used, the judge's consent should be part of the record of the proceedings.

CAUTION: Summary interpreting should never be permitted during witness interpreting, regardless of the immediate lack of availability of a replacement interpreter.

Multiple non-English Speaking Defendants in the Same Trial

When two or more defendants who need an interpreter speak the same language, interpreting equipment should be used to provide simultaneous interpretation of the proceedings. This equipment permits a single interpreter to convey interpretation to several parties through the use of headsets with earphones and small mouthpiece microphones. This technique obviates the need to have more than one proceedings interpreter working at the same time for multiple defendants in criminal cases, or the undesirable technique of relying on physical proximity of the interpreter for multiple defendants.

NOTE: It is suggested that judges become familiar with how interpreting equipment works and the advantages it offers in any proceeding where interpreters engage in simultaneous interpretation. Use of the equipment allows the interpreter and the court flexibility to maximize communication with minimal disruption.

Preventing Interpreter Fatigue

The United Nations standards for conference interpreting (simultaneous mode interpreting) call for replacing interpreters with a co-interpreter every 45 minutes. Conference interpreting is arguably a less demanding activity than is simultaneous court interpreting. If a proceedings interpreter believes that the quality of interpretation is about to falter due to fatigue, the interpreter should inform the court, and a recess should be taken or a replacement obtained. For

any proceeding lasting longer than thirty minutes of continuous simultaneous interpretation, two interpreters should be assigned so they can relieve each other at periodic intervals to prevent fatigue. A similar standard should be observed for continuous witness interpreting.

Use of Languages Other Than English by Judges, Attorneys or Other Participants

Some judges and attorneys are bilingual and are able to communicate in the language of the non-English speaking person. In these situations it may be tempting for the judge to address the non-English speaking person in her or his language, to act as interpreter, or to allow or require counsel to substitute for a qualified interpreter. It is *strongly recommended* that these practices be avoided, and that courts observe the following guidelines regarding the use of languages other than English during court proceedings:

- Judges should not function as interpreters during proceedings.
- Judges and other court participants should speak in English at all times during proceedings.³
- Attorneys should use English during all proceedings at all times, except in confidential communications with a client.
- Attorneys should not be permitted to function as interpreters for parties they represent.⁴
- If, contrary to these recommended standards, attorneys or any other courtroom participant are permitted to function as interpreters, they should be appointed subject to the same standards related to qualifications for interpreting that are applied to professional interpreters.

Judges who speak the language of a non-English speaking person often (and admirably) wish to make the person feel more at ease in the courtroom through some form of direct communication in the person's native language. A very brief greeting, announced beforehand on the record, might be used in such situations (e.g., "Please note for the record that the court will greet the defendant in the _____ language.") Such a greeting might then be followed by informing the person *in English through the interpreter* of the reasons why the judge will refrain from communicating in the shared language.

Use of Multiple Interpreters

There are three basic functions an interpreter serves during court proceedings. In some circumstances, it is physically impossible for one interpreter to fulfill more than one of the functions at the same time.

- *Proceedings interpreting:* The most frequently encountered function an interpreter performs is to enable a non-English speaking person who is the subject of litigation understand the proceedings and communicate with the court when necessary. In short, "proceedings interpreting" makes the defendant or other litigant effectively *present* during the proceedings. It is conducted in the simultaneous mode.
- *Witness interpreting:* This function of the interpreter is to secure evidence from non-English speaking witnesses that is preserved for the record. It is sometimes called "record" interpreting, and it is conducted in the consecutive mode.
- *Interview interpreting:* This function of the interpreter is to facilitate communication between a non-English speaking person and her or his attorney to ensure the effective assistance

of counsel, or to perform similar duties in any other interview setting associated with a court proceeding. (When an interpreter is used to assist in attorney-client consultations, the term "*defense*" interpreting is sometimes used.) Interviews may use both simultaneous and consecutive interpreting, depending on the circumstances.

When there is only one non-English speaking defendant and no non-English speaking witnesses, one interpreter is all that is needed. (If the hearing is lengthy, one interpreting team will be required.) If there are non-English speaking defendants and other non-English speaking witnesses, two interpreters will be needed during the witness testimony -- the proceedings interpreter who is interpreting the English questions for the defendant (and who is able to assist the defendant with attorney-client communication), and the witness interpreter.

When there are multiple non-English speaking defendants, must there be an interpreter for each person? For proceedings interpreting (making the defendants present), there need not be: one interpreter (or interpreting team) using headset equipment can interpret at the same time for all of the defendants.

For defense interpreting, however, at least one additional interpreter needs to be available in multi-defendant cases so that defendants can communicate with counsel when necessary during the trial.

Some courts appoint an interpreter for each defendant so that each defendant's interpreter can provide proceedings interpreting and defense interpreting when necessary. As noted above, this may be an unnecessarily expensive alternative. If the parties agree, two interpreters can trade off providing

proceedings interpreting for all of the defendants and the "resting" interpreter can be signaled and used by any defendant to communicate with counsel as necessary.

In cases where a trial involves more than one defendants whose interests are in conflict with each other, counsel and the parties may be uncomfortable using the same interpreter for privileged communications. If this becomes an issue, the court may have no choice but to provide interpreters for each defendant. The practice should not be *presumed* necessary, however, because trained and qualified interpreters are under oath to protect confidentiality of communications and to refrain from communicating directly with any court participant except when they are engaged in interpretation.

WHAT COURT INTERPRETERS WOULD TELL JUDGES IF THEY COULD SPEAK FROM THEIR HEARTS

The following document has been made available to the court community and the NCSC by the Court Interpreting, Legal Translating and Bilingual Services Section of the Administrative Office of the New Jersey Courts in September 1988. It has undergone several revisions since that time. The most recent revisions were contributed by Margot Revera, Court Interpreter, Union County, New Jersey (Feb. 1993) and by staff of the National Center for State Courts, for use in this publication.

1. Please take some time to become familiar with my profession. I'd like very much for you to understand the professional services I am responsible for rendering. When you do that, you will be more likely to respect and treat me as a professional. It may be a helpful guide if you would treat me the way you tend to treat your reporter.

Once you understand my job better, here are some things you will no longer do. Please understand that this isn't just me talking. The following examples represent the best thinking of judges, lawyers and court administrators who have pondered the role of the interpreter in great depth. These examples are based on the Code of Professional Responsibility I'm expected to follow.

- A. Please don't ask me to explain or restate what you say. I can only put in another language exactly what you say.
- B. Please don't allow attorneys appearing before you to ask me to explain or restate what they or you say. When I decline to perform this task for them, please support me and do not expect me to undermine the Code.
- C. Please don't let two or more people talk at the same time. There's no way I can interpret everything that's being said!
- D. Please don't ask me not to interpret something. I'm professionally and ethically bound to interpret everything that's said.
- E. Please understand that there are many situations in which I'm professionally and ethically bound to interpret in the simultaneous mode. If this bothers you, please let me know in advance so I can make arrangements to be as unobtrusive as possible. Sometimes I can use equipment that will not interfere at all with the proceedings.
- F. When an attorney or someone else alleges that I have made an error in interpretation, please don't automatically assume that I have made one. Remember that the attorney is in an adversary relationship and I am not. I occasionally do make mistakes and as a professional interpreter, I will be the first person to admit a mistake. But please ask me if I agree with an attorney's allegation before concluding that I have actually made a mistake. As a neutral party and a linguist, I should have more credibility before the court than others in matters of language.

- G. Please don't talk to me when you are really talking to a witness or someone else. If you say, "Ask him if..." or "Tell him that....," remember that I am required to say exactly that in the interpretation or to remind you to talk directly to the person. If I do the former, the person with whom you are attempting to communicate will almost certainly be confused. If I do the latter, you may get upset.
2. It takes more words to say in Spanish what you're saying in English, and other languages have their own unique features. Please be sensitive to that by avoiding rapid-fire delivery of what to you is very routine stuff and helping attorneys avoid excessively fast speech. Be patient and understanding if I have to keep reminding you or others to slow down.
 3. I need breaks every bit as much as your reporters do, maybe even more. I am often the only person in the courtroom who is talking all of the time. While everyone else is only having to understand what is being said, I have to be both understanding it and putting it into another language. This is very demanding work.
- Furthermore, if the proceeding I am interpreting involves simultaneous interpreting for more than an hour, two interpreters should be assigned to the case. We should be able to switch off every thirty minutes or so.
4. Understand the human limits of my job. My main interest here is that you comprehend the fact that no person knows all of the words in any one language, much less all of the words of all the dialects of that language or all of the words of any two languages. Sometimes I need to obtain clarification. It is unethical for me to make up an interpretation or guess at an interpretation of something I do not understand. Instead of viewing such a request as casting doubt upon my professional credentials, consider viewing it in terms of my commitment to accuracy.
 5. Many of my colleagues are not professional interpreters and want very much to improve their interpreting skills. They need support for attending courses and professional seminars. Please do everything you can to enable them to attend educational events. You may even be a good source for on-the-job training, so do not hesitate to take them under your wing from time to time.
 6. Please make efficient use of my services. I have other commitments to attend to when I finish interpreting for the case before you for which you have summoned me. If you take my case as quickly as possible you will prevent incurring the extra costs of having me wait and inconveniencing the other courts that may be waiting for my services.

Suggestions for Further Reading

Copies of the following documents are available by special request from the Information Service, National Center for State Courts

"Proposed Standards for Interpreted Proceedings"

Court Interpreting, Legal Translating and Bilingual Services Section,
Administrative Office of the New Jersey Courts (Working Draft, January 1994).

"Using an Interpreter in Court"

Hon. Heather Van Nuys and Ms. Joanne Moore, *Washington State Bar News*, Vol. 41 No. 5, May 1987.

"Standards for Determining the Need for a Court Interpreter"

California Rules of Court, Rule 985, Standards of Judicial Administration, Section 18.

"Interpreted Proceedings: Instructing Participants on Procedure"

California Rules of Court, Rule 985, Standards of Judicial Administration, Section 18.1.

"Lessons in Administering Justice: What Judges Need to Know About The Requirements, Role and Professional Responsibilities of the Court Interpreter"

Hon. Lynn W. Davis, paper in preparation for publication in the *Harvard Latino Law Review*.

"Attorney as Interpreter: A Return to Babble"

Bill Piatt, *New Mexico Law Review*, Winter 1990.

"How Best to Use an Interpreter in Court"

Alexander Rainoff, *California State Bar Journal*, May 1980.

"Suggestions for Working with Court Interpreters: YOU ARE IN CONTROL!"

Hon. Charles M. Grabau, paper presented to Judges of the Eighth Judicial District, New York, training sponsored by the International Institute of Buffalo, October 20, 1994.

Figure 6.1
Model Voir Dire for Determining the Need for an Interpreter

In general: *Avoid any questions that can be answered with "yes - no" replies.*

Identification questions:

"Ms. ___, please tell the court your name and address."

"Please also tell us your birthday, how old you are, and where you were born."

Questions using active vocabulary in vernacular English:

"How did you come to court today?"

"What kind of work do you do?"

"What was the highest grade you completed in school?"

"Where did you go to school?"

"What have you eaten today?"

"Please describe for me some of the things (or people) you see in the courtroom."

"Please tell me a little bit about how comfortable you feel speaking and understanding English."

Figure 6.2

**Information that Should be Secured to Establish the Qualifications of
Interpreters When No Court Testing or Other Prior Screening Standards
Exist**

At minimum, court or counsel should ask the following questions of a proposed interpreter:

1. Do you have any particular 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?
17. Are you able to interpret consecutively?

**Figure 6.3
Interpreter's Oath**

Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and [the code of ethics for legal interpreters]*; follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?

*It is important that states adopt a code of ethics for court interpreters. In the absence of a state code, trial courts may adopt one. The Model Code of Professional Responsibility (Chapter 3) has been developed to simplify this process.

Figure 6.4
**Suggested Text for Judge's Statement in
Court to Clarify the Role of the Interpreter**

We are going to have an interpreter assist us through these proceedings, and you should know what [she] can do and what [she] cannot do. Basically, the interpreter is here only to help us communicate during the proceedings. [She] is not a party in this case, has no interest in this case, and will be completely neutral. Accordingly, [she] is not working for either party. The interpreter's sole responsibility is to enable us to communicate with each other.

The interpreter is not an attorney and is prohibited from giving legal advice. [She] is also not a social worker. [Her] only job is to interpret, so please do not ask the interpreter for legal advice or any other advice or assistance.

Does anyone have any questions about the role or responsibilities of the interpreter?

If any of you do not understand the interpreter, please let me know. Is anyone having difficulty understanding the interpreter at this time?

Figure 6.5
Suggested Text for Clarifying the Interpreter's Role to the Witness

I want you to understand the role of the interpreter. The interpreter is here only to interpret the questions that you are asked and to interpret your answers. The interpreter will say only what we or you say and will not add, omit, or summarize anything.

The interpreter will say in English everything you say in your language, so do not say anything you do not want everyone to hear.

If you do not understand a question that was asked, request clarification from the person who asked it. Do not ask the interpreter.

Remember that you are giving testimony to this court, not to the interpreter. Therefore, please speak directly to the attorney or me, not to the interpreter. Do not ask the interpreter for advice.

Please speak in a loud, clear voice so that everyone and not just the interpreter can hear.

If you do not understand the interpreter, please tell me. If you need the interpreter to repeat something you missed, you may do so, but please make your request to the person speaking, not to the interpreter.

Finally, please wait until the entire question has been interpreted in your language before you answer.

Do you have any questions about the role of the interpreter? Do you understand the interpreter?*

*Note that the interpreter is simultaneously interpreting this advisement while the judge is speaking, and therefore the witness has an opportunity to recognize any problems with communication.

Figure 6.6
Suggested Text for Clarifying the Interpreter's Role to the Jury

6.6A Proceedings interpreting

This court seeks a fair trial for all regardless of the language they speak and regardless of how well they may or may not speak English. Bias against or for persons who have little or no proficiency in English because they do not speak English is not allowed. Therefore, do not allow the fact that the party requires an interpreter to influence you in any way.

6.6B Witness interpreting

Treat the interpretation of the witness's testimony as if the witness had spoken English and no interpreter were present. Do not allow the fact that testimony is given in a language other than English to affect your view of [her] credibility.

If any of you understand the language of the witness, disregard completely what the witness says in [her] language. Consider as evidence only what is provided by the interpreter in English. Even if you think an interpreter has made a mistake, you must ignore it completely and make your deliberations on the basis of the official interpretation.

Endnotes

1. See Model Court Interpreter Act, § 4A.
2. See Model Court Interpreter Act § 5.
3. A full discussion of the problems associated with judges speaking directly to litigants in non-English languages is beyond the scope of these guidelines. Briefly, however, direct communications in a non-English language between judge and litigants or witnesses cannot be made part of the record and are functionally equivalent to ex parte communications. Judges who serve as interpreters, moreover, become participants in the case themselves, since it is their English interpretation that is evidence in the case.
4. From time-to-time attorneys who also possess non-English language proficiencies appear in court expecting to proceed without the benefit of a court interpreter. They reason that because of their language skills, a court interpreter is unnecessary. Judges, eager to save tax resources, frequently welcome this arrangement. Of equal concern, judges routinely appoint "bilingual" attorneys to represent non-English speaking defendants. Moreover, bilingual attorneys, by court order, are sometimes forced to represent clients without the benefit of a interpreter.

The attorney-interpreter appointment, however well-intentioned by the court or counsel, poses potential problems that are legion and insurmountable. The roles are both ethically and practically incompatible. For example, how can counsel be an effective advocate and yet interpret at the same time? Counsel cannot effectively meet the demands of both roles. Furthermore, interpreting is a highly complex and mentally demanding task. When the duty of advocacy is burdened with the additional duty of court interpretation, one role or both will suffer.

If the court allows this arrangement or compels it, the court must consider the language competence and qualifications of the attorney on the record. If extensive prequalification voir dire is required, it is difficult to eliminate the incompatibilities of the two roles even at the preliminary stages of the case.

Regardless of the language expertise of the attorney, this arrangement should be rejected. It immediately places both the court and counsel on the horns of an ethical dilemma with competing allegiances and incongruent role expectations. It is important to emphasize that this conflict cannot be avoided either by stipulation of respective counsel or by waiver of the client.

For more detailed discussion of these issues see Honorable Lynn W. Davis, "Lessons in Administering Justice-What Judges Need to Know About the Requirements Role and Professional Responsibilities of the Court Interpreter", paper in preparation for the *Harvard Latino Law Review*, 1995.

See also Bill Piatt, "Attorney as Interpreter," New Mexico Law Review, Winter, 1990.

CHAPTER 7

Visual Modes of Communication: Interpreting for Deaf Persons



CHAPTER 7



Visual Modes of Communication: Interpreting for Deaf Persons

At some time, most people experience what it is like to be unable to hear -- no sound from the television, or loud background noise that interferes with hearing what someone is saying. Imagining deafness based on these experiences helps a hearing person to understand what it is like for persons who lose their hearing after growing up in a hearing world. But this kind of imagining may also contribute to misunderstanding the communication barriers related to deafness that are experienced by people who are born deaf or who become deaf early in life. Why is this? Because the imaginings are those of people who share a common oral/aural language and culture, who, for a few moments, lose their sense of hearing. But absence of the sense of hearing interferes with communication in ways that are more profound than simply not being able to hear. Equally important are cultural barriers erected between hearing and non-hearing people by the culturally dominant society of hearing individuals.¹ These barriers arise out of misinformation and misunderstanding of the visual modes of communication relied on when deaf individuals communicate with each other, and when deaf people communicate with hearing people.

Misunderstanding of visual modes of communication is prevalent

This chapter offers a very basic look at cultural issues related to deafness, at the mechanics of visual modes of communication, and at problematic practices that experienced interpreters for the deaf routinely encounter and urge the courts to remedy. Five propositions summarize the central lessons of the chapter:

- Members of deaf culture, and deaf individuals who are minimally language competent, are often mistrustful of hearing society. This can profoundly influence their behavior in court. Certified interpreters are the persons who are best equipped to minimize communication breakdowns that fear and distrust can engender.
- American Sign Language is the language of members of deaf culture. It is a fully developed language, which differs from other languages only in its medium, not in its richness or communicative capacity. However, many deaf people are neither members of deaf culture nor fluent in the use of American Sign Language.
- Fluency in American Sign Language is required for individuals who are certified as interpreters for deaf individuals, but because many deaf individuals rely on other visual modes of communication, a certified interpreter may require additional assistance to ensure that communication is occurring.
- A certified interpreter is an expert resource that courts should rely on to determine the most effective way to communicate with deaf persons in the court setting.
- Deaf individuals and their interpreters rely exclusively on visual information that is communicated through facial grammar, "body language," pantomime, or demonstrations. Restrictions placed on the interpreter's use of visual modes of conveying information reduces communication.

Cultural Issues Related to Deafness

**Deaf Culture:
Misunderstanding and
bias**

In the United States there is a deaf culture which has its own language. The language of members of the American deaf community is American Sign Language (ASL), which is discussed in more detail below. Being audiologically deaf does not make a person a member of the culturally deaf community. Most members of the deaf community are "prevocationally" deaf; that is, they suffered hearing loss before the end of adolescence.² There are negative connotations associated with being deaf that result from the tendency among hearing people

to consider oral language as the only *legitimate* form of communication, and to believe that sign language is a poor substitute for oral language. There is also a strong inclination to equate spoken communication skills with intellectual capacity. Within the wider hearing society, the inability to express oneself in articulate, Standard English can result in labeling people unintelligent or mentally defective. For example, inarticulate speech of deaf persons (who cannot hear the sounds they make), may be interpreted as a sign of low intelligence or a form of mental disorder.

By contrast, culturally deaf individuals recognize that ASL is equal to spoken languages in its richness and utility, and members of the culturally deaf community view deafness as a "disability" only in contexts where communication is required with individuals who are *not* members of the deaf culture. When culturally deaf people communicate *with each other*, no adaptive mechanisms or interpreters are required.

Because members of the deaf culture are "outsiders in a hearing world," members of the deaf community are often suspicious and wary of hearing people. That wariness and distrust stems from a history of misunderstanding and injury to members of the deaf community by the wider dominant hearing society, even in the relatively enlightened setting of a court of law.³ One compelling example of profound and hurtful misunderstanding is evident when judges and lawyers ask ASL interpreters, and at times order them, to refrain from using facial grammar and body movements that are essential to ASL language. Such requests and orders are issued on the grounds that the movements are "distracting" to other court participants.⁴ If interpreters are constrained in this way, they cannot fully communicate, and facts may be lost or distorted. Such rulings reinforce the deaf person's sense that the

Inappropriate negative labelling

courtroom is a hostile environment rather than a neutral forum.

Deaf people in the hearing society

Larger than the society of members of the deaf culture is the group of people who, despite deafness or being hard of hearing, maintain a primary language and cultural affiliation with the oral language speaking community. These individuals almost always developed their hearing impairment or deafness later in life, or were raised as children by hearing parents who did not expose them extensively to members of the culturally deaf community. This group of individuals, having grown-up in the hearing world, tends to prefer the society of hearing persons to that of the culturally deaf community. Hearing aids, cochlear (inner ear) implants, and intensive training in lip-reading are among the adaptive mechanisms that help late-deafened people preserve their established ties to the hearing community.

Among deaf individuals who are not members of the culturally deaf community, the phrases "hearing impaired" or "hearing disabled" may be preferred to the word "deaf." One purpose these phrases serve is to include hard of hearing people as well as people who cannot hear at all among their referents. But their use also sometimes reflects an effort to avoid labeling and negative connotations traditionally associated with deafness, while, at the same time, making clear that deaf people are entitled to both special consideration under laws and programs designed to afford disabled or handicapped individuals equal access to public services.

Deaf individuals who are members of the hearing society are more likely than culturally deaf individuals to rely on other languages or modes of communication than ASL.

Some deaf people have never been afforded the opportunity to forge meaningful ties in either the culturally deaf or the oral language cultures. They are people who have learned so little language that they are identified as "minimally language competent" (MLC). MLC deaf people have *no* systematic means of communicating ideas or feelings through the use of conventionalized signs. They have no ability to communicate in American Sign Language or in Sign English; they have no lip-reading abilities, and they cannot read or write English. MLC people communicate through idiosyncratic gestures created by that individual and which are usually unfamiliar to anyone but the MLC deaf person and his or her family or others with whom the MLC deaf person has substantial contact. MLC individuals may know isolated signs or be able to write or recognize a few specific written English words, but they have no meaningful access to books, telecaptioning, or newspapers. Their world is restricted to personal experience and, therefore, communication is subject to the confines of a limited and personal frame of reference. Consequently, the ways in which MLC deaf people communicate vary widely, reflecting modes specific to each individual's frame of reference.

The inability of MLC people to communicate meaningfully excludes them from membership in both the deaf and hearing communities. While some MLC people may not be totally isolated from a deaf community, others may have no contact with a deaf community whatsoever.

**Minimally language
competent individuals**

Note: This section relies extensively on a draft document entitled, *Working With Minimal Language Competent People in Court*, prepared by the Court Interpreting, Legal Translating, and Bilingual Services Section of the New Jersey Administrative Office of the Courts, May, 1989. Also see Sharon Neumann Solow "Interpreting for Minimally Linguistically Competent Individuals", *Court Manager*, Spring 1988, for detailed information about working with MLC individuals.

MLC people require special consideration for them to communicate with and receive information or direction from the court. Even when special consideration is given, however, MLC deaf people are often unable to access court proceedings or assist counsel to any meaningful degree given their limited ability to understand a concept, process, or action. In fact, it is unlikely an MLC deaf person will understand the purpose of an oath; the function of the judge, attorneys (including the distinction between a defense attorney and prosecutor), or the jury; the roles of ancillary courtroom personnel, including interpreters, courtroom clerks or court reporters; or the meaning and practical significance of probation, parole and diversionary programs.

Establishing meaningful communication with MLC individuals, especially in a court setting, therefore requires extraordinary measures that are beyond the scope of this paper to describe. However, professionally trained interpreters for the deaf are able to identify MLC individuals and advise the court about the best ways to establish communication.⁵ The use of "relay" or intermediary interpreters will always be required. Relay interpreters may be either lay people who have special knowledge of the "home signs" of a MLC person, or they may themselves be deaf individuals who have special training and skills in both ASL *and* in other modes of visual communication.

Modes of Communication

What people who cannot hear have in common is that they rely on "information they can see" to communicate.⁶ Beyond that, it is difficult to generalize. The preferred or most effective means of communication for deaf people varies widely. The variation relates to the age at onset of hearing loss, the

severity of the loss, how the person has been educated in language after the hearing loss, and, importantly, what languages or modes of communication the people in a given setting have in common.

There are several recognized methods or modes of communication used by deaf and hard of hearing individuals. These include speechreading or lip-reading; gesturing (the most primitive and limited form of communication with deaf persons); written communication, including computer-aided real-time transcription; and sign language. There are many forms of sign language, but among them, ASL appears to have the greatest inherent capacity for effective and efficient communication.

Sign language is the use of visual signs to convey information and ideas. The most advanced forms of sign language are not just manual representations of oral language; they are independent languages. When combined with facial grammar and body shifting, as in ASL, sign language conveys rich meaning, humor, pathos, and many other subtleties of communication.

Sign language

Sign languages have a structure of comparable complexity to spoken and written language and perform a similar range of functions. There are rules governing the way signs are formed, and how they are sequenced --rules that have to be learned, either as children (e.g., from deaf parents) or as adults (e.g., when working with deaf persons).⁷

Beyond the issues surrounding the complexities of any single sign language is the fact that there are many sign languages, just as there are many oral languages.

As a result of linguistic change and independent creation in different parts of the world, no single

sign language exists. There are many such languages (e.g., American, English, French, and Danish), and they are not mutually intelligible. They use different signs and different rules of sign formation and sentence structure. Even within an area that uses the same spoken language, the differences may be so great as to preclude mutual comprehension -- as happens, for example, between British and American Sign Language.⁸

The range and complexity of sign language communication make it apparent that interpreters need to be extremely knowledgeable and adept at recognizing and overcoming barriers to communication. This is what certified interpreters for deaf persons are trained to do.

American Sign Language (ASL)

ASL is a highly developed language with a structure that can be described in its own terms. The vocabulary, grammar, idioms, and syntax of ASL are completely different from English. The linguistic units and structure of ASL are comprised of facial expressions, body posture, and shapes and movements of hands, arms, eyes, and head. About 4,000 signs are used in ASL. ASL is the language of the American deaf community, and learning ASL is prerequisite for certification as an interpreter for the deaf.

Reminder: Good interpretations are often *not* "word-for-word."

Question: Suppose the interpreter repeats the English version of witness testimony about an employer as "he fried my squid." What is the witness actually saying? What is the equivalent expression in English?

Answer: "He canned me."

Misinformation and misconceptions about ASL like the following are not uncommon among court officials who have some involvement in or knowledge of court interpretation:

American Sign Language is not word-for-word, and should cause concern as to its use for a verbatim record [SIC].⁹

The foregoing comment illustrates two prevalent misconceptions, the first about ASL specifically, and the second about language and interpreting generally. The first misconception is that ASL is some form of "shorthand English," rather than a language of its own. The second is that proper

interpretation between *any* two languages should always be "word for word." Despite legal language that is often phrased to the contrary, acceptable interpretation from one language to another is *often* not "word-for-word." In fact, some word-for-word translations between languages result in nonsense or, at least, in the loss or distortion of meaning. Idiomatic expressions are good examples of this. One of the specific abilities that interpreters are tested for is whether they *can conserve meaning* in such situations, rather than resorting to nonsensical or misleading word-for-word interpretations.

These misconceptions interfere with the best practices that courts should follow to facilitate communication when a deaf person is involved in court proceedings. Contrary to popular belief, a person who is fluent in ASL is more likely able to participate fully, and more efficiently, in court proceedings, than a hearing impaired person whose primary language is English and who does not also know ASL.

Several different systems of Manually Coded English (MCE) have been developed with the aim of reflecting the structure of spoken English and improving the academic achievement of deaf students in a hearing culture. MCE systems are typically used in educational settings with children rather than in social interactions among deaf adults. Other similar language systems are Seeing Essential English and Signed English.

Manually Coded English (MCE)

This is a signing system in which each letter of the ordinary alphabet has its own sign. This principle can be applied to any language that has developed an alphabetic writing system. The main strength of finger spelling is its scope and flexibility. It is quick to learn and can then be used

Finger spelling

to sign an indefinite number of words. It is a particularly useful system for signing proper names, which are not given their own signs in other sign systems. However, it is a slow system to use, rarely exceeding 300 letters per minute (about 60 words). Moreover, it cannot be used at all unless one is able to spell (a problem for young children, who also have difficulty controlling the hand shapes required). From the receiver's point of view, it is difficult to distinguish the hand shapes at a distance. If the rate of signing speeds up in response to rapid speech, the signer will begin to omit letters, and the receiver may begin to lose comprehension. Finger Spelling is best thought of as an auxiliary signing system, a convenient bridge between spoken or written language and sign language proper.¹⁰

**Oral language:
Speechreading or lip-
reading**

A deaf person may or may not be able to speech read (commonly referred to as *lip-reading*). Under normal conditions, deaf people will be unable to comprehend most of what is being said if they rely solely on speech reading, because only 26 percent of speech is visible on the lips.¹¹ Facility in speech reading also varies, as does facility in any mode of communication: given two equally intelligent people with identical training, one may be an excellent speech reader, the other poor.

Hearing impaired persons who prefer speechreading as their chosen mode of communication may require "oral interpreters." Oral interpreters are professionals who are specifically trained to present information through mouth movements only. Oral interpreters do not use sign language, instead they use clear mouth movements and rephrase words that are difficult to speech read. For example, the words "green" and "red" sound different, but they look the same on

the lips. If the words red and green appeared in the same sentence or paragraph, an oral interpreter might replace the word red with maroon, mauve, dark pink, or another synonym for red.

Written communication is a way to communicate with a deaf person, providing that the deaf person knows English (or some other oral and written language) *and can read*.

(Communication by means of drawing pictures is a separate mode of communication, used most often to communicate with people who have not developed language skills.) Because English may be a second language for many deaf persons, some have limited competence in writing and reading English. Their writing style may be similar to others for whom English is a second language. In these cases, the use of concrete images and simple sentence structures is important. A deaf person will usually want important information, such as appointment dates and times, confirmed in writing.

With computer-aided transcription, a skilled court reporter keys the shorthand notes of spoken language into a stenotype machine, and the words spoken in court are concurrently translated into English text. CART systems send the shorthand output from the stenotype machine directly into a personal computer that translates the shorthand instantaneously and displays it on a monitor. This makes it possible for courtroom observers to read a written version of courtroom speech while the record is being made. It also makes it possible to print the transcript at a moment's notice.

This method of communication is both efficient and effective for hearing impaired individuals who are comfortable reading English. Courts need to be vigilant, however, to avoid

**Written Communication
in English**

**Computer-aided real-time transcription
(CART)**

a misuse of CART. CART work is usually done by court reporters. If CART communicative assistance is done by the same person who is the official court reporter, special arrangements will be required for the hearing impaired person to communicate with counsel during the proceeding. The official reporter cannot both make the record and assist the deaf person. This is not a problem if a special reporter is brought in solely for the purpose of assisting the hearing impaired person.

Gestures

Gesturing is far less systematic and comprehensive than sign language. While sign language can express the same range of meaning as would be achieved by speech, gesturing is far less systematic and comprehensive. There are very few hand gestures and these are used in an ad hoc way to express a small number of basic notions.

Note: A thorough description and discussion of relay interpreting is found in "Working With MLC People In Court (see previous reference)." This is *must* reading for the judge who may encounter an MLC litigant or witness.

Some deaf persons have no formalized communication system (e.g., MLC individuals). They may express themselves in a variety of ways, such as gestures, pictures, pantomime, or by pointing to objects. Other deaf persons may have developed home signs to communicate with family members. These signs are generally understood only by the family members with whom the deaf person regularly interacts. When a deaf person uses home signs, a qualified family member may prove helpful, but when this is done, the family member should not be a substitute for a certified interpreter. Instead, the family member should work as part of a "relay" team under the supervision of the interpreter.

Certification of Interpreters for the Deaf

In contrast to foreign language interpretation, most states have specific laws that establish standards for qualifications of interpreters for deaf individuals. Many of these states specifically require certification of interpreters.

Standards for certification of interpreters for deaf individuals in all of the language modalities used by deaf persons are set by the National Registry of Interpreters for the Deaf (NRID).

National Registry of Interpreters for the Deaf (NRID)

NRID certification is based on a rigorous evaluation of the candidate's interpretation skills and knowledge of the NRID Code of Ethics by a group of professional peers. The NRID certification system establishes minimum levels of achievement, representing a starting point for interpreters, varying according to certification area and level of competence. Certified interpreters are expected to continue to improve their skills by attending workshops and training seminars and through frequent use of sign language.

Current NRID certificates include the following:

Certificate of Interpretation (CI): ability to interpret between ASL and spoken English in both sign-to-voice and voice-to-sign.

Certificate of Transliteration (CT): ability to transliterate between signed English and spoken English in both sign-to-voice and voice-to-sign.

A series of other certification classifications has been used in the past by NRID. While these certificates are no longer being awarded under the new testing system, they continue to be recognized as valid assessments of specialized skills.¹²

State standards

Many states refer to the NRID certification in their laws, and NRID certification is generally recognized in the policies of agencies that are responsible for establishing standards for the qualification of interpreters for deaf persons.

In Massachusetts and New Jersey, for example, NRID certification is used as the basis for general interpreter certification. When an individual applies to work as an interpreter for the deaf in these states and does not hold a valid NRID certificate, the agencies screen the interpreters using their own screening standards. Standards for referrals to interpret in court and legal settings usually exclude interpreters who do not hold an NRID certificate. In Massachusetts, for example, for court and legal interpreting referrals, the standards require:

- NRID certification
- graduation from a interpreter training program (preferably 2-4 year bachelor degree program),
- several years of interpreter experience, and
- completion of specialized, intensive, legal interpreting training.

California's *Guidelines for Approval of Certification Programs for Interpreters for Deaf and Hard of Hearing Persons* define a qualified court interpreter as someone who has been certified as competent to interpret court proceedings by a testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests to court interpreters for the deaf and hard of hearing.¹³ The certification process stresses a comprehensive knowledge of all aspects of the court interpreting process including:

1. Translation and transliteration competency that includes:

- a. American Sign Language competency.
 - b. English Language competency.
 - c. Competency in interpreting language and terminology common to court proceedings.
2. The role, function, and techniques for working with an intermediary interpreter or other intermediaries, or for working as an intermediary interpreter.
 3. The understanding of social, cultural, and linguistic aspects of the local, state, and national communities of deaf people.
 4. The role and function of court interpreters, including court etiquette.
 5. The various court proceedings that commonly and frequently require the use of an interpreter or interpreters.
 6. A code of conduct and professional ethics.

Four Special Problems

Some judges and lawyers judges do not understand the seemingly strange physical behavior of deaf persons as they “speak,” and they restrict an interpreter’s use of facial grammar or body shifting. This seriously interferes with communication during the proceeding, and facts may be lost or distorted. Such rulings limit the effectiveness of the interpreter's professional language skills, and thus limit the effectiveness of the court.

There are two categories of facial grammar (often incorrectly referred to as facial expressions). The first category refers to the messages that are conveyed by different parts of the face. The upper part of the face conveys syntax and the type of sentence that is being communicated (e.g., interrogative, declarative, imperative). The lower part of the

Problem 1 – Inappropriate behavioral restrictions on interpreters

Caution: Restricting the facial or other body movements of sign language interpreters is like asking an oral language interpreter to omit voice inflection or to always avoid certain parts of speech.

face conveys descriptors such as adjectives and adverbs.

Finally, the shifting of the head, torso, and eyes can designate subject, object, and prepositions as well as references to things present and not present. The second category of facial grammar is referred to as effective display or emotions. This is the manner in which humor, anger, sadness, or even sarcasm is communicated.

Problem 2 -- Mistrust

Trust is an important concept within deaf culture. Most interpreters are hearing people, and they are commonly perceived by members of deaf culture as part of the hearing society, which does not understand them. Deaf defendants, who must rely on the services of the interpreter in what they already perceive as a hostile atmosphere, are especially vulnerable to mistrust, since the court system is dominated by hearing persons. For individuals who are members of non-white racial or ethnic backgrounds, these problems are compounded, because the vast majority of court interpreters are white. The number of interpreters from various racial and ethnic backgrounds needs to be increased significantly. The dynamics of race and ethnicity, as well as the interactions between hearing and deaf cultures, can profoundly undermine the level of trust between the interpreter and the deaf person. This, in turn, inhibits communication.

Problem 3 -- The shortage of *qualified* interpreters

As is true for interpreters of all languages, there is an extreme shortage of *competent* court interpreters for the deaf. Because many states establish requirements for the qualifications that interpreters for the deaf must possess (often NRID certification), the highly skilled and certified interpreters are in great demand. Advance notice of several weeks is usually required to secure the services of a qualified

interpreter. The longer the proceeding, the more notice is required.

As is also true in the case of foreign language interpreters, courts often compromise best practice and use individuals who have no formal training in legal procedure or interpreting for deaf persons. This adds to the distrust and alienation that deaf persons generally feel when they are thrown into unavoidable communication with hearing society and culture. This mistrust affects communication and the quality of evidence during the proceedings. The irony here is that use of an incompetent interpreter could result in having a deaf person *talking down* to the court. For example, if a deaf person determines that the interpreter is minimally skilled or incompetent, they may try to help the interpreter by avoiding the use of linguistic complexities. The deaf person may also attempt to aid the interpreter by leaving out details, subtleties, nuances, or even sub-textual information, knowing that the interpreter is likely to misunderstand what they are communicating, or even render an inaccurate translation or miscommunication.

A problem related to using unqualified interpreters is that intermediary interpreters are not used enough when they are needed. Most highly-skilled interpreters will request or insist upon having them when necessary, but less-skilled professional interpreters often will not. It is suspected that less-skilled interpreters avoid the use of relay interpreters because they believe the use of a relay interpreter could be misconstrued as a sign of incompetence.

Caution: If unqualified interpreters are used, deaf people may compensate for the interpreter's lack of skill by oversimplifying their statements or avoiding important nuances of detail for fear that they may be misinterpreted. In effect, the deaf person talks down to the court.

Problem 4 -- Failure to use intermediary interpreters when they are needed

Conclusion

Judges routinely contend with cultural differences among people who come before them, and they cannot be experts on all of them. However, judges are better prepared to ensure the fairness and integrity of court proceedings when they understand the impact that cultural factors have on how people communicate. In particular, judges will recognize the importance of securing the services of properly trained sign language interpreters and relying on them for advice regarding how communication with deaf persons can best be effected.

Endnotes

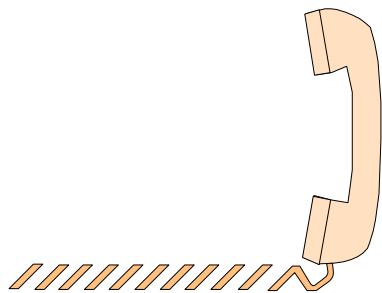
1. For a brief but excellent account of the impact of deafness, see "Deafness and Interpreting", New Jersey Department of Human Services, Division of the Deaf and Hard of Hearing, October, 1991 (hereafter, New Jersey, Division of the Deaf and Hard of Hearing).
2. Paul C. Higgins, "Outsiders in a Hearing World", *Urban Life*, Vol. 8 No. 1, April 1979, Sage Publications, p. 5.
3. For example, in a letter addressed to the interpreter coordinator for the State of Michigan, attorney Roger A. Lange recounts examples of parental rights of deaf parents being terminated almost immediately after the birth of the child, solely on the basis of their deafness. He also describes a felony case in which child abuse was alleged, which "degenerated into a trial by innuendo, myth and stereotype, and included a pattern of attacks on ASL and deaf culture by the prosecutor. During this case, a deaf witness was portrayed as 'stupid.' The prosecutor equated deaf family dynamics with a mother to be feared by the child. The prosecutor portrayed the defendant as a person making outlandish statements because she used common signs for 'I heard', which no deaf person associates with hearing or vocal speech." Letter dated December 29, 1992, copy on file with author Hewitt.
4. This problem was strongly emphasized, with numerous examples, in interviews conducted by staff of the National Center for State Courts with M. J. Bienvenue and Gay Koenemann, both highly skilled interpreters. Ms. Bienvenue is deaf and a member of the deaf culture; Ms. Koenemann is a hearing person who is "wise" in the ways of deaf culture.
5. For detailed information about working with MLC individuals, see Sharon Neumann Solow "Interpreting for Minimally Linguistically Competent Individuals", *Court Manager*, Spring, 1988; and Court Interpreting, Legal Translating, and Bilingual Services Section of the New Jersey Administrative Office of the Courts, *Working With Minimal Language Competent People in Court*, (draft document), May, 1989.
6. Rita Jo Scarella, SCS "Professional Sign Language Interpreters", *New Jersey Lawyer*, Spring, 1987 (No 119, May 1987).
7. David Crystal, *The Cambridge Encyclopedia Of Language*, Cambridge University Press, Cambridge, 1987: p. 220.
8. Id..
9. Gary Cramer (Court Reporter, Los Angeles Municipal Court), personal correspondence with author Hewitt, December 22, 1992. The comment is intended to support an assertion that communicating with deaf individuals with the use of computer-aided real-time transcription should be preferred over the use of ASL.
10. Crystal, p. 225.
11. New Jersey, Division of the Deaf and Hard of Hearing, p. 4.

12. For a detailed review of these certificates, see New Jersey, Division of the Deaf and Hard of Hearing, pp. 15-17.

13. The guidelines referred to for this chapter are based on an undated report obtained from the Judicial Council, on February 24, 1993.

CHAPTER 8

Telephone Interpretation





CHAPTER 8

Telephone Interpretation

Telephone interpretation is a promising approach for improving access to interpretation services, but courts need to be wary about the limitations of services that are currently available. The potential value of telephone interpreting is greatest in courts where interpreter services are rarely needed, and for interpreter services in languages that are infrequently encountered.

Without substantial modifications to current practice, however, telephone interpretation serves to *mask* the central problem with interpreting services in courts -- the use of unqualified interpreters.

This chapter explores both the potential benefits of telephone interpretation and its pitfalls. It presents:

- a description of the minimum requirements for telephone interpreting;
- a review of AT&T Language Line Services;
- recommendations for how to avoid misuse of AT&T Language Line Services;
- a description of how the federal courts use telephone interpreting;
- a description of promising prototype equipment that can enhance the use of telephone interpreting; and
- a brief proposal describing a strategy for developing a telephone interpretation service that is tailored for court needs.

A promising option for some proceedings...

...but courts should approach it with caution.

An ordinary telephone line attached to a speaker phone in court is the only technological requirement for making use of

Minimum equipment requirements

interpreting services via telephone. This basic system works adequately to conduct court proceedings where everything said in court is heard by the interpreter and then repeated back into the interpreter's handset and broadcast in the courtroom over the speaker phone. This is interpreting in the consecutive mode, which is normally used by qualified court interpreters only for witness testimony. Conducting court proceedings exclusively in the consecutive mode of interpretation is slow, but it can get the job done.

AT&T Language Line Services (LLS)

In practice, telephone interpreting as described above is nearly synonymous with AT&T Language Line Service. All that is actually required for telephone interpreting, however, is locating and establishing telephone communication with a qualified interpreter and making arrangements to pay the interpreter for the service.

AT&T Language Line Services (LLS) is designed to provide very rapid access by customers to interpreting services in more than 140 languages. The service operates 24 hours a day, every day. To access the service, calls are placed on an 800 telephone number to the services operations center in Monterey, California. From there an operator establishes a connection between the client and an interpreter who may be located anywhere in the United States or Canada. In the great majority of cases (about 98 percent), the connection is established within a minute of receiving the service request. Because of its emphasis on speed and the diversity of languages for which service is available, LLS is very attractive to public sector emergency-services programs. Most 911 services in the nation's major metropolitan areas now subscribe.¹

LLS is used by an unknown number of individual trial courts in several states. Published accounts about its use are brief and largely anecdotal.² In general, testimonials in favor of the service compare it to less desirable alternatives: keeping a defendant in jail until an interpreter can be located; or using friends, relatives, court employees, and even jail inmates as interpreters.³ In the Eighth Judicial Circuit of Florida (Gainesville), the court "was just looking for someone to tell people what's happening in an early court event ... at initial appearance and at arraignments." The court administrator views the service as "'a Band-Aid' -- an alternative to someone spending three days in jail and the court's spending \$500 to find and fly in a bilingual from the University of Florida."⁴ Judge Kenneth Post, Hudsonville (MI) District Court, uses the service as an alternative to relying on "whatever I could find ... I know (the interpreter) is not a relative, not a friend, not a court employee."⁵

Use in the state courts

LLS uses the standard telephone line and speaker phone combination. In practice, interpreters sometimes do not hear or cannot accurately discern everything that is said because the acoustical properties of the courtroom, the speaker phone quality, or the behavior of the court participants are not properly matched. The seriousness of this problem varies with the acoustics of each court, with the kind of hearings the service is used for, the way the hearings are conducted, and the frequency that the service is used. Relatively speaking, these are minor problems that can be corrected by improved equipment or behavioral adjustments.

Technological limitations

The intractable limitations of telephone interpreting are its slowness and that it does not allow private conversations

between the interpreter and anyone in the courtroom. In particular, it does not allow a foreign language defendant to consult with counsel.

LLS interpreters are not qualified as court interpreters

LLS acknowledges that its interpreters are neither specifically trained nor tested as court interpreters.⁶ Published promotional material like the following, however, creates some misimpression about the qualifications of LLS interpreters and the testing and training programs it uses:

[LLS interpreters]... undergo special training to ensure their skill at understanding -- and accurately interpreting -- nuances of language and culture. Interpreters are pre-screened by linguistic experts and must pass the same rigorous language proficiency exam required by many government agencies.⁷

One court manager, however, expresses the following reservations about the training and testing, and recommended against LLS use by the court:

Promotional material may be misleading

[AT&T's] court interpreter training is conducted by phone, by those with unknown credentials, and it is optional for the interpreter. AT&T's language proficiency exam is a graded exam intended to determine whether someone can have a conversation with a speaker of the foreign language -- it is not an interpreter proficiency exam.⁸

Concern about the lack of training or testing of LLS interpreters for court work is usually expressed in terms of problems the interpreter will have with legal language.

Most, if any, interpreters probably will not have had legal training or experience, so be prepared to explain some legal words or expressions in lay terms so the interpreter can correctly translate them.⁹

But the lack of training in court interpretation also shows up as a lack of understanding of the basic responsibilities of a court interpreter. Some LLS interpreters, for example, do not understand that they have an obligation to interpret everything the judge says during the proceeding, regardless of the person to whom the statements are directed.¹⁰ A trained court interpreter, by contrast, knows that everything court officials and lawyers say in the presence of the defendant in open court is to be interpreted. Some other interpreters appear to have inadequate mastery of the language, notwithstanding the LLS program for screening interpreters. A judge in Michigan, for example, reported that an interpreter and the defendant "couldn't understand each other" because "the defendant spoke a Mexican form of Spanish" and the "interpreter spoke Puerto Rican Spanish."¹¹

The foregoing "two forms of Spanish" example is especially noteworthy because it is both a clear indication that the interpreters who pass the LLS screening examination are *not* adequately tested, and because it illustrates popular misconceptions about Spanish language, bilingualism, and the requirements for professional interpreting. While there are important dialectical differences in Spanish, this is true of any language. "Mexican Spanish" and "Puerto Rican Spanish" are not two different languages. Professional interpreters are expected to be conversant with dialectical variations; this is why there are tests for interpreters.

Be prepared to compensate for lack of professional training

A popular misconception

CAUTION: The following language is found in the disclaimer clause of the standard AT&T Customer Interpreter Services Agreement, in boldface type:

CUSTOMER RECOGNIZES THAT INTERPRETATIONS MAY NOT BE ENTIRELY ACCURATE IN ALL CASES.

CUSTOMER ALSO RECOGNIZES THAT INTERPRETATIONS CONCERNING SPECIALIZED OR TECHNICAL SUBJECTS ARE EVEN MORE PRONE TO ERROR. ACCORDINGLY,

CUSTOMER SHALL NOT INCUR ANY OBLIGATION (INCLUDING...LEGAL..MATTERS) IN RELIANCE UPON INTERPRETER SERVICE OR THE ACCURACY OF INTERPRETATION (emphasis added).

Despite the problems with LLS, when the trial judge is faced with a choice between using an LLS interpreter and someone else whose skills are equally unknown, or who may be a friend, relative, police officer or even a jail inmate, LLS may be the lesser of two evils. If judges do use LLS, however, they should be aware of the specific disclaimer and conditions found in the "Additional Terms and Conditions" of the LLS Customer Service Agreement that warn customers of the risk of inaccuracies and enjoin customers from incurring obligations (including legal decisions) in reliance on the accuracy of LLS interpretation.¹²

LLS anonymity policy – problems for courts

By corporate policy, the identities of LLS interpreters are closely guarded. Interpreters are identified to the customer only by a company ID number. This applies even in the context of court settings.¹³ The reasons for the policy are not altogether clear;¹⁴ but whatever the reasons may be, they are problematic in the court setting where the appearance of unidentified, unsworn experts is a departure from preferred, if not required, practices.

Professional court interpreters are required to report accurately the qualifications they bring to the assignment; they are required to disclose any relationship they have to the parties or lawyers in the case, and to acknowledge under oath that they understand and will abide by the elements of professional responsibility of interpreters in the state in question. At a minimum, interpreters employed by the court are required to be sworn in as experts.

Setting aside legal questions pertaining to the use of unsworn experts, the anonymity policy of LLS shields interpreters individually from accountability for their interpreting in a legal setting. Interpreters who appear

personally in court and whose livelihood depends on their reputation and performance are accountable in ways that LLS interpreters are not.

LLS Service Programs and Costs

LLS is offered to customers in two forms: 1) a subscription service, and 2) a personal line service. The services vary only in the per-minute cost of the service and the billing procedure LLS uses.

With the subscription service, there is an initial service connection fee of \$499 and a monthly minimum charge of \$50. The subscriber is provided with an ID number and a personal access code. The \$50 monthly minimum fee covers the cost of up to approximately 22 minutes of interpreting service at a rate of \$2.25 per minute for Spanish, and approximately 20 minutes of interpreting at a rate of \$2.55 per minute for other languages. Once the charges for service exceed the \$50 minimum, the charges are \$2.25 or \$2.55 per minute, depending on the language.

The cost of the initial hook-up is the same, regardless of the number of stations installed (e.g., 5 judges and 5 courtrooms cost the same as 1 judge and one courtroom). Thus the vendor's policy creates a small but appreciable incentive for users to reduce the per-user cost by increasing the number of users who have convenient access to the system. The client will still pay the same per minute fee once the \$50 monthly charge is exceeded. The fees are the same nationwide.

The personal line service requires no initial subscription fee and no monthly base charge. The service is accessed in the same way, but the caller is required to provide a credit card

Subscription service

Personal line service

number for billing. The costs for the service are billed at a flat rate of \$3.50 per minute. In the first year of operation, a court would save money by using the personal line service if usage is less than 314 minutes ($\$1099/3.50$ per minute.) After the first year, the costs of the personal line service exceed those of the subscription service after 171 minutes of usage. A court likely to use the LLS service only occasionally during a year (less than about 3 hours total, or an average of about 14 minutes per month), will be better served by the personal line service.

Summary of advantages

In summary, the advantages of LLS are:

- it provides access to interpreters on very short notice;
- interpreters in a very wide range of languages are available;
- interpreters will not have any connection with the case or the parties.

Summary of limitations

The limitations of LLS include the following:

- the knowledge and interpreting skills of the interpreters is uneven, and sometimes inadequate to the task;
- the approach does not allow private communications between defendants and counsel;
- the quality of the speaker phone equipment and courtroom acoustics determines how well the interpreter can hear what is said in court, and how close to the speaker phone participants need to be;
- the service is restricted to interpreting in the consecutive mode, which substantially lengthens proceedings; and
- the per-minute cost of the interpreting service is high.

Telephone Interpreting: The Federal Court Experience

Telephone interpreting was conducted experimentally in the federal courts from 1990 to 1993 and is now authorized by the Judicial Conference of the U.S. Courts. *The rules established by the Judicial Conference, however, require that all interpreters must be certified or determined to be otherwise qualified by the Administrative Office of the U.S. Courts.* This restriction therefore excludes the use of a service like LLS in the federal courts. Telephone interpreting services in the federal courts have been provided in formal court settings and for out-of-court interviews, ranging in duration from a few minutes to several hours.

While telephone interpreting using basic speaker phone equipment is possible in the federal courts, a more sophisticated approach that allows simultaneous interpreting by telephone is a hallmark of the federal program.

Simultaneous interpretation is not possible with ordinary telephone equipment, because ordinary telephone lines do not separate incoming and outgoing signals. For the interpreter to hear over the line from the courtroom, the line must remain open continuously, and the sound of the interpreter's voice is picked up along with the incoming signal from the courtroom. This

Equipment used in the federal courts

creates a 'babble barrier' that quickly reduces any attempt at simultaneous interpreting to incoherence. This jumble of source and target languages is what rules out simultaneous interpreting during ordinary conference calls.¹⁵

Special equipment used in the federal courts, however, allows the interpreter to suppress the sound of her or his own

voice in the phone lines while using the system for simultaneous interpreting.

The federal court equipment requires two phone lines

The federal court approach requires two telephone lines in the courtroom and specialized equipment in the office of the interpreter, which the interpreter operates. Using two telephone lines and the specialized equipment, it is possible for simultaneous interpretation to take place and also to accommodate private conversations between defendant and counsel. The first telephone line is attached to a speaker phone in court. This allows the interpreter to hear what is said in court. The second telephone line is attached to a handset provided to the defendant. The interpreter listens to the signal coming in on the first line and speaks into the second line, which only the defendant can hear. (Extensions on the line would allow more than one defendant to listen to the interpreter.) By placing a handset extension of the speaker phone line on counsel table, this system also permits the defendant and counsel to conveniently conduct private consultations. All it requires is for the courtroom clerk to temporarily turn off the speaker phone and for the attorney to pick up the handset extension. The attorney and client can then conduct a private, interpreted conference without the need to clear the courtroom.

National Center for State Courts Equipment Experiment

The equipment tested did *not* require two phone lines

In 1994, the National Center for State Courts tested a prototype speaker phone designed and fabricated by Jefferson Audio/Video Services of Louisville, Kentucky, which appears to make simultaneous interpretation possible with only a single telephone line. The test was conducted in the NCSC Court Technology Laboratory in Williamsburg, Virginia, with the cooperation of a federally certified Spanish interpreter working

from her home in Richmond. No special equipment was required at the interpreter's end of the telephone line. The test involved a simulation of courtroom proceedings that involved both simultaneous and consecutive modes of interpretation. In the consecutive mode, the interpreter's voice could be heard by the "defendant" over a headset and by the other courtroom actors over a loudspeaker. During simultaneous interpreting, the interpreter's voice was heard only in the headset by the defendant. The equipment includes a second headset that may be worn by counsel for the defendant. Both headsets have microphone attachments to enable defendant and attorney to communicate privately with each other through the interpreter.

The prototype equipment was designed so that only someone in the courtroom could control switching between private and public modes. This proved unworkable, because the interpreter could not initiate communication during the simultaneous mode with anyone in the courtroom except the defendant, who always wears the headset. If the interpreter has a problem (inaudible speech, speech that is too fast, unfamiliar language), there is no way for the interpreter to inform the judge, except through the defendant, which is unworkable. However, this problem appears to be simple to remedy, by providing the interpreter with a means to control the public/private mode settings on the speaker phone.

**Headsets were available
for defendant and counsel**

**A design flaw became
apparent**

Suggestions for Minimizing Potential Problems with Telephone Interpreting

Telephone interpretation should not be used as a substitute for other court activities -- state or local -- to develop an adequate court interpretation program on a statewide or regional basis. Moreover, existing LLS services should not be viewed as the only alternative to having interpreters in court.

Courts that use LLS could also access other services

With some advance preparation, a court that is equipped to use LLS service -- which means that it has an adequate speaker phone in court -- is just as well equipped to conduct telephone interpreting by locating and using an interpreter who is known to be experienced in court interpreting.

Importance of immediacy vs risk of substantive injustice

The most appropriate uses of LLS, in the absence of other reasonable alternatives, would seem to be for required procedural hearings that are likely to result in the release of a defendant from jail, or, in general, as a way for court officials to inform the defendant generally about what is occurring. Faced with a need, where no qualified interpreter is available locally, courts should weigh the need for immediacy in conducting a hearing against the potential compromise of due process, or the potential for substantive injustice, if interpreting is inadequate. Some delay and higher cost for unusual circumstances might be more appropriate than the use of LLS.

For rare languages where there may be some doubt about what language a defendant actually speaks or can best communicate in, LLS service appears to be an excellent resource. Once having identified with reasonable certainty what language is needed, courts are in a better position to look for a qualified interpreter elsewhere in their own or in other states.

Before using an LLS interpreter, the judge should inquire whether the interpreter is familiar with the professional responsibilities of interpreters, and understands them. *The interpreter should be asked about her or his background and qualifications for the assignment, in the same way this is done before the court uses interpreters who appear in person.* The purpose of the hearing -- including possible consequences for the defendant -- should be explained to the interpreter before the hearing proceeds. These inquiries and

explanations should be on the record. A standard form inquiry should be prepared for this purpose

Strategies for Developing Improved Telephone Interpreting Capacity

It appears that one of two strategies should be pursued to make telephone interpreting an appropriate and effective alternative resource when it is not possible to have a qualified interpreter in the courtroom:

- commercial services like LLS should create special options that are responsive to court requirements, or
- courts should cooperatively develop their own services.

The LLS commercial service could improve if it employed interpreters who are trained and certified for court interpreting, and if it instituted a program for assigning calls from courts to these interpreters. This could be done in one of two ways:

- implementing a training and certification program for existing LLS interpreters that is publicly documented and conducted by trained court interpretation professionals; or
- securing the services of interpreters who are tested and certified by federal or state programs.

Whether AT&T has a financial incentive to tailor a part of its services to meet the special needs of courts is unknown, however. Court use of the service is probably a very small part of the entire market.

In the alternative, individual states or, more likely, a consortium of states, could initiate a telephone interpreting service that employs only certified or otherwise qualified interpreters. Done on a statewide or interstate basis, there seems to be no reason why qualified interpreters in many languages could not be identified and placed "on-call" for

AT&T may have no financial incentive to tailor its services to court needs

Courts may need to develop their own resources

telephone interpreting. There are now enough states and local courts who use qualified interpreters in many languages to permit the creation of a central telephone interpreter assignment service. Qualified interpreters could usually be made available within minutes or hours or in exceptional cases, within 24 or 48 hours. Such a program of telephone interpreting organized and operated exclusively for courts could use equipment similar in function to that used in the federal courts (or to the prototype equipment tested by the NCSC) to provide simultaneous as well as consecutive interpretation.

Endnotes

1. The source of the foregoing information is AT&T published marketing literature and personal communications between the author and Jeffrey J. Munks, Director of Marketing and Sales, September 9, 1993.
2. The most detailed published account of the use of LLS is found in O'Reilly, Ann, "On Call Translators: AT&T Language Line", *The Judges' Journal*, Summer, 1993. The National Center for State Courts *Technology Bulletin* (Nov/Dec, 1992) describes how the system has been used in Gainesville, Florida. An *Atlanta Constitution* article reports its use in Gwinnett, Georgia (Rankin, Bill "Language of Justice Expands", May 13). A videotape made by Judge William Kelly, Kentwood, Michigan Circuit Court, shows how he uses the system.
3. See Ken Kolker, *Grand Rapids Press* series, February 21, 22, and 23, 1993, for accounts of the use of jail inmates in interpreted proceedings.
4. Sarah Shew, Memorandum to Gordon Griller, Court Administrator, Maricopa County Arizona Superior Court, November 25, 1992, quoting Ted McFetridge, Senior Deputy Court Administrator, Alachua County, Florida (on file with the author).
5. Kolker, Ken "Courtroom Electronics One Solution", *Grand Rapids Press*, Feb. 23, 1993.
6. Personal communications between the author and officials of LLS: Harry Moedinger (National Sales Representative) on July 14, 1993, and Jeffrey Munks (Director of Marketing and Sales), on September 23, 1993, and March 25, 1993, Williamsburg VA.
7. Undated fact sheet included in LLS marketing literature.
8. Shew, Id. See also O'Reilly for additional detail.
9. Tracy P. Williamson (Trial Law Clerk), "AT&T Language Line Translation Services for First Appearance and Arraignments", Memorandum to Circuit and County Court Judges in Alachua County (FL), April 24, 1992. See also Kolker, Ken "Courtroom Electronics One Solution", *Grand Rapids Press*, Feb. 23, 1993, for similar remarks by Shannon McFarlin, AT&T spokesperson.
10. Harry Moedinger (AT&T National Sales Representative), July 14, 1993, in an address to participants at a court interpreting workshop, Williamsburg, VA.
11. O'Reilly, Id.
12. AT&T Customer Interpreter Service Agreement, "Additional Terms and Conditions", Paragraph 8.
13. Even for research purposes, LLS would not disclose to the NCSC source lists from which confidential interviews with some of its interpreters could be arranged, nor would it allow the NCSC to conduct interviews of *any* kind that were not monitored by LLS corporate personnel.

14. One explanation offered by LLS officials for these policies is that interpreters fear that their personal safety may be endangered if their identities are known (hardly applicable to the research request). Another explanation is that revealing the identity of their interpreters could expose LLS to "raids" on its personnel by other private and public agencies who provide interpreting services. (One of the hallmarks of LLS is its success in locating and recruiting bilingual individuals who reside in the U.S. and who are willing to work as telephone interpreters, at relatively low rates of compensation.)

15. Chandler Thompson, "A Short Guide to Court Interpreting by Telephone" (p.1), appendix to "Evaluation of Telephonic Court Interpretation", Memorandum to the Committee on Court Administration and Case Management dated November 4, 1993, by Paul Hofer, Federal Judicial Center.

CHAPTER 9

Model Code of Professional Responsibility
for Interpreters in the Judiciary





CHAPTER 9

Model Code of Professional Responsibility for Interpreters in the Judiciary

Introduction

The following document is a Model Code of Professional Responsibility for Interpreters in the judiciary. The Model Code presents key concepts and precepts, which over the years have emerged in statutes, rules, case law, and professional experience. Like the Model Court Interpreter Act (Chapter 10), it has been prepared in consultation with an advisory group of individuals who have special expertise in court interpretation. The advisory group included the judges, lawyers, court administrators, and state and federally certified professional interpreters who are named in the acknowledgements for this publication.

Purposes of the Model Code

The purposes of the Model Code are threefold:

- 1) to articulate a core set of principles, which are recommended for incorporation in similar codes that may be adopted in the several states or local jurisdictions;
- 2) to serve as a reference, which may be consulted or cited by interpreters, judges, and court managers where no other authoritative standards have been adopted, and
- 3) to serve as a basis for education and training of interpreters and other legal professionals.

Research has shown that courts must often rely on interpretation services of bilingual individuals who have received no specific training about the requirements, role and responsibilities of a court interpreter. Research has also shown that many judges and attorneys are also unaware of the professional responsibilities of the interpreter and how these translate into highly demanding technical skill requirements. At the very least, anyone serving as a court interpreter should be required to understand and abide by the precepts set out in this Model Code. Judges and attorneys should also become familiar with the code and expect conduct from interpreters that is consistent with it.

CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE JUDICIARY

PREAMBLE

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier.¹ As officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively.

Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

APPLICABILITY

This code shall guide and be binding upon all persons, agencies and organizations who administer, supervise use, or deliver interpreting services to the judiciary.

Commentary:

The black letter principles of this Model Code are principles of general application that are unlikely to conflict with specific requirements of rule or law in the states, in the opinion of the code's drafters. Therefore, the use of the term "shall" is reserved for the black letter principles. Statements in the commentary use the term "should" to describe behavior

¹ A non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence.

that illustrates or elaborates the principles. The commentaries are intended to convey what the drafters of this model code believe are *probable* and *expected* behaviors. Wherever a court policy or routine practice appears to conflict with the commentary in this code, it is recommended that the reasons for the policy as it applies to court interpreters be examined.

CANON 1: ACCURACY AND COMPLETENESS

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

Commentary:

The interpreter has a twofold duty: 1) to ensure that the proceedings in English reflect precisely what was said by a non-English speaking person, and 2) to place the non-English speaking person on an equal footing with those who understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral interpretations are not appropriate when they distort the meaning of the source language, but *every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted.* This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (e.g., a term or phrase with no direct

equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions, or dramatic gestures.

Sign language interpreters, however, *must* employ all of the visual cues that the language they are interpreting for requires -- including facial expressions, body language, and hand gestures. Sign language interpreters, therefore, should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct.

The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding. Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

CANON 2: REPRESENTATION OF QUALIFICATIONS

Interpreters shall accurately and completely represent their certifications, training, and pertinent experience.

Commentary:

Acceptance of a case by an interpreter conveys linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that interpreters present a complete and truthful account of their training, certification and experience prior to appointment so the officers of the court can fairly

evaluate their qualifications for delivering interpreting services.

CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

Commentary:

The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties.

The interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Interpreters should maintain professional relationships with their clients, and should not take an active part in any of the proceedings. The interpreter should discourage a non-English speaking party's personal dependence.

During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, refrain from casual and personal conversations with anyone in court that may convey an

appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Should an interpreter become aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the appropriate judicial authority and counsel.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. Before providing services in a matter, court interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information.

The following are circumstances that are presumed to create actual or apparent conflicts of interest for interpreters where interpreters should not serve:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;
2. The interpreter has served in an investigative capacity for any party involved in the case;
3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;
4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case;
5. The interpreter has been involved in the choice of counsel or law firm for that case.

Interpreters should disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case.

Interpreters should not serve in any matter in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney should not serve in both capacities in the same matter.

CANON 4. PROFESSIONAL DEMEANOR

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary:

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enable them to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible.

Interpreters should work without drawing undue or inappropriate attention to themselves. Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court.

Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings. However, interpreters who use sign language or other visual modes of communication must be positioned so that hand gestures, facial expressions, and whole body movement are visible to the person for whom they are interpreting.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

CANON 5: CONFIDENTIALITY

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary:

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of her or his duties. It is especially important that the interpreter understand and uphold the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.

In the event that an interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to an appropriate authority within the judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in professional responsibility.

CANON 6: RESTRICTION OF PUBLIC COMMENT

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

CANON 7: SCOPE OF PRACTICE

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Commentary:

Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy

an assignment competently. In such instances they should make it clear that they are speaking for themselves.

An interpreter may convey legal advice from an attorney to a person only while that attorney is giving it. An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may translate language on a form for a person who is filling out the form, but may not explain the form or its purpose for such a person.

The interpreter should not personally serve to perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation counselors.

CANON 8: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

Commentary:

If the communication mode or language of the non-English-speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room is not quiet enough for the interpreter to hear or be heard by the non-English speaker, more than one person at a time is speaking, or principals or

witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret). Sign language interpreters must ensure that they can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movement, as well as hand gestures.

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even competent and experienced interpreters may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter (e.g., the unscheduled testimony of an expert witness). When such instances occur, interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters should feel no compunction about notifying the presiding officer if they feel unable to perform competently, due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

Interpreters should notify the presiding officer of any personal bias they may have involving any aspect of the proceedings. For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

CANON 9: DUTY TO REPORT ETHICAL VIOLATIONS

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Commentary:

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should turn to a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

CANON 10: PROFESSIONAL DEVELOPMENT

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.

Commentary:

Interpreters must continually strive to increase their knowledge of the languages they work in professionally, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judiciary that relate to the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

Additional References

The following sources were used as references when the Model Code was originally drafted for discussion by the work group of judges, interpreters and interpreter program administrators in Williamsburg, Virginia, in July, 1993. Source materials marked with an asterisk are recommended as supplementary references.

California	Standards of Judicial Administration-Section 18.3, <i>Standards of Professional Conduct for Court Interpreters</i> (See California Rules of Court, Rule 985)
	*Judicial Council of California, Administrative Office of the Courts Workshops For Court Interpreters (Training Manual), <i>Professional Ethics and the Role of the Court Interpreter</i>
	California Court Interpreters Association, <i>Code of Ethics</i>
Federal Courts	<i>Code of Professional Responsibility of the Official Interpreters of the United States Courts</i>
Massachusetts	*Office of the Chief Administrative Justice, Massachusetts Trial Court, <i>Code Professional Conduct for Court Interpreters of the Trial Court</i>
New Jersey	*Administrative Office of the Courts, Court Interpreting, Legal Translating and Bilingual Services Section, <i>Recommended Code of Professional Responsibility for Interpreters, Transliterations and Translators</i>
Washington	*Rules of Court, General Rule 11.1, <i>Code of Conduct for Court Interpreters</i>
Registry of Interpreters for the Deaf, Inc.	<i>Code of Ethics</i>
Texts	*Chapter 34, "Ethical Principles and Standards" in Gonzalez, Roseann; Vasquez, Victoria; and Mikkelsen, Holly, <i>Fundamentals of Court Interpretation</i> , Carolina Academic Press, 1991.

CHAPTER 10

Model Court Interpreter Act





CHAPTER 10

Model Court Interpreter Act

Background

The Model Court Interpreter Act is based on a review and synthesis of federal law and statutes in states where comprehensive study and reform of practices and laws relating to the use of interpreters has occurred. The Act and its accompanying commentary are also based on analysis of legal and professional issues that have emerged in recent years through practical experience and research in the states. The document was prepared in cooperation with an advisory group of individuals who have special expertise in court interpretation. The advisory group included the judges, court administrators, and state and federally certified professional interpreters who are named in the acknowledgments for this publication.¹

A Note on the Purposes of the Act and How it May be Used

The following Model Court Interpreter Act and commentary is provided as a guide to assist policy makers who are engaged in any of the following tasks:

- Writing or updating court interpreter statutes;
- Preparing statewide rules of court for the administration of interpreter services;
- Preparing local rules of court or administrative policy to govern interpreter services in the absence of comprehensive state policy in the form of law, rule or administrative procedures.

It is recognized by the drafters of this Model Act that many states will be without the necessary financial, expert, and administrative resources to summarily adopt legislation substantially similar to it in all respects. Implementing a statewide interpreter program involves designating languages for which certification programs will be established, establishing standards and procedures for testing and certifying language interpreters, adopting programs for interpreter recruiting, training, continuing education, and interpreter evaluation. A statewide program must also provide for allocating the cost of interpreter services between government and private individuals and establish mechanisms to provide revenue for the development of the interpreter programs and services.

It is desirable and within the capacity of most states, however, to plan and enact a legislative agenda that sets policy goals consistent with the Model Act and establishes procedures and timetable for implementing them.

Model Court Interpreter Act

§ 1. POLICY DECLARATION

It is hereby declared to be the policy of this state to secure the rights, constitutional and otherwise, of persons who, because of a non-English speaking cultural background, are unable to understand or communicate adequately in the English language when they appear in courts or are involved in justice system proceedings.

It is the intent of this Act to provide for the certification, appointment, and use of interpreters to secure the state and federal constitutional rights of non-English speaking persons in all legal and administrative proceedings.²

Commentary:

A statutory preamble, introduction, or policy declaration should articulate with precision the purpose of the Act and the policy which the Act is designed to implement and support.

§2. DEFINITIONS

For the purpose of this Act, the following words have the following meaning:

A. "Appointing authority" means a trial judge, administrative hearing officer or other officer authorized by law to conduct judicial or quasi-judicial proceedings.

B. "Non-English speaking person" means any principal party in interest or witness participating in a legal proceeding who has limited ability to speak or understand the English language.

C. "Legal proceeding" means a civil, criminal,³ domestic relations, juvenile, traffic or an administrative proceeding in which a non-English speaking person is a principal party in interest or a witness.

D. "Certified interpreter" means a person who: (1) is readily able to interpret⁴ simultaneously and consecutively and to sight translate from English to the language of the non-English speaking person or from the language of that person into English; (2) is certified according to procedures approved by the Supreme Court; and (3) satisfies the standards prescribed and promulgated pursuant to this Act and the Code of Professional Responsibility for Interpreters established in this state.⁵

E. "Principal party in interest" means a person involved in a legal proceeding who is a named party, or who will be bound by the decision or action, or who is foreclosed from pursuing his or her rights by the decision or action which may be taken in the proceeding.⁶

F. "Witness" means anyone who testifies in any legal proceeding.

Commentary:

The Act should define with precision the terms used in the policy declaration and throughout the Act. These definitions should identify those individuals for whom an interpreter is required, state clearly the proceedings in which an interpreter should be used, and establish what is meant by a certified interpreter.

Court interpretation is a specialized and highly demanding form of interpreting. It requires skills that few bilingual individuals possess, including language instructors.

The knowledge and skills of a court interpreter differ substantially from or exceed those required in other interpretation settings, including social service, medical, diplomatic, and conference interpreting. Interpreters who routinely work non-court settings often cannot perform adequately as a court interpreter.

The term "certified interpreter" is broadly defined to allow flexibility in the certification standards which may vary for particular languages according to the extent of their usage within each state, the availability of bilingual persons to serve as interpreters, and other practical considerations.

This Act establishes criteria *only* for "certified interpreters." There is no use of, reference to, or definition of the term "qualified interpreter." Attempting to define a level of interpreter below that of a "certified interpreter" is problematic and unworkable.

§3. IMPLEMENTING RESPONSIBILITIES

A. The Supreme Court shall be responsible for ensuring language interpreter certification, continued proficiency, and discipline. The Supreme Court shall prescribe standards and procedures for the recruitment, testing, certification, evaluation, compensation, duties, professional conduct, continuing education, certification renewal, and other matters relating to interpreters as prescribed in this Act.

Commentary:

The establishment of a comprehensive court interpreter program is a significant undertaking requiring specialized experience and expertise. The Supreme Court should understand the size and complexity of the undertaking and be prepared to provide the support and encouragement required to see the establishment of such a program to its conclusion.

Neither the Supreme Court nor the typically configured state administrative office has the expertise or experience in language interpretation to develop, on its own, detailed policies and procedures required to implement a state wide interpreter program. That specialized expertise must be recruited and used to develop and recommend to the Supreme Court the standards for the appointment of interpreters, as well as the criteria for interpreter qualifications, duties, professional conduct, and compensation. Such expertise is available in most states from professionals employed in the fields of languages, interpreting, occupational testing, and from judges and attorneys who have worked extensively with interpreters.

Experience in states with well-developed programs suggests that the advice and services of such individuals can be obtained *pro bono* through the formation of a Court Interpreter Advisory Panel. Expertise and assistance can also be obtained from the administrative offices of the courts in some states (e.g., California, Massachusetts, New Jersey, Washington) and from the National Center for State Courts.

B. Staff and administrative support required by the Supreme Court to implement the interpreter certification program shall be provided by the administrative office of the courts.

Commentary:

The establishment and implementation of a statewide interpreter program is a substantial undertaking. It is recommended that the state Supreme Court initiate such an effort through the establishment of a Court Interpreter Advisory Panel made up of a broad range of trial and appellate judges, court administrative staff, lawyers, court interpreters practicing in the state; and experts in linguistics, interpretation, education, and occupational testing and certification. Such a panel, in conjunction with the administrative office of the courts, should conduct studies of the language interpreter needs of the courts of the state and make recommendations to the Supreme Court and to the administrative office of courts concerning interpreter needs and interpreter program implementation. The recommendations should address such matters as: (1) the designation of those languages for which there should be certification programs; (2) the establishment and monitoring of a statewide interpreter testing and certification program; (3) the establishment of periodic interpreter certification renewal requirements, (4) the promulgation of guidelines to assist judges in determining when a non-certified interpreter may be permitted to act as an interpreter in the absence of a certified interpreter, and (5) the establishment of statewide standards of practice and appropriate professional conduct for interpreters.

The Court Interpreters Advisory Panel, in conjunction with the administrative office of the courts, should assist in developing policies regarding interpreter training, mandatory continuing education, and recruitment of potential interpreters.

Of primary significance is the initial determination by the Court Interpreters Advisory Panel of those languages

which, because of their predominance, require a testing and certification program. These determinations may require surveys of individual court needs for interpreters and the examination of demographic trend data.

It is anticipated that this Advisory Panel would be reimbursed only for travel expenses related to attendance at Advisory Panel meetings. The panel would rely on the state court administrative office for staff and clerical support.

Special note on testing and certification programs.

There is growing recognition among the states and the professional community of court interpreters for the need to develop interstate testing and certification programs as a way to make testing and certification in many languages affordable for all states. The standardized tests can be shared among states and incorporated by reference into state laws, rules promulgated by supreme courts, or by administrative regulations of administrative offices of the courts. Prior to drafting legislation or rules, policy makers in the states should explore whether progress has been made toward establishing programs and standards that can be adopted by reference or used as the foundations for state programs.

C. Pursuant to Supreme Court rule, the administrative office of the courts shall administer and manage the operations of the State Court Interpreter Program.

Commentary:

The administrative office of the courts must undertake to develop the structure and the mechanics necessary to administer a court interpreter program. The specific responsibilities of the AOC should be established by Supreme Court rule and may include some or all of the following:

- (1) To establish interpreter proficiency standards;

- (2) To designate languages for certification;
- (3) To establish programs for the recruitment, training, legal orientation, testing, evaluation and certification of interpreters consistent with the proficiency standards;
- (4) To develop resources for interpreter continuing education and recertification;
- (5) To establish, maintain, and publish a current directory of certified interpreters;
- (6) To adopt and disseminate to each court an approved fee schedule for certified and non-certified interpreters;
- (7) To set interpreter certification fees as may be necessary;
- (8) To establish procedural standards and guidelines for in-court interpreted proceedings to address such matters as: modes of interpreting, appropriate procedure for correcting interpretation mistakes, interpreter fatigue and time limits for continuous in-court interpretation, and when the use of multiple interpreters working in shifts or concurrently is indicated;
- (9) To establish, administer or recommend a process to review and respond to allegations of violations the code of professional conduct for interpreters, including decertification or other disciplinary measures.

The certification process encompasses recruitment, training, testing, and evaluation of interpreters. The specialized language proficiency standards, testing criteria, and evaluation processes clearly require detailed language expertise.

Part of the certification process should involve a comprehensive orientation of interpreters to the judicial system to ensure their familiarity with the legal system, including the nature of the various criminal, civil, and other judicial proceedings, legal terminology, and the roles of officials involved in various legal settings.

Furthermore, a court interpreter program should include a component responsible for the continuing education or recertification of existing interpreters. Ideally, this program should include a system for evaluating and monitoring interpreter performance and should have the capacity to evaluate any questions of conflict of interest or ethical violations involving certified court interpreters.

In addition, the administrative office of courts must maintain and disseminate a current list of certified interpreters to the courts throughout the state. This certification list should be updated on a regular basis to be a reliable source for courts in appointing certified interpreters.

The administrative office of courts may also establish and promulgate standards or recommended guidelines and set forth appropriate levels of compensation that should be paid to interpreters, either in the form of salary or fees. Such standards or recommended guidelines may include salary schedules, rates for per diem or contract interpreters, and minimum compensation standards for an appearance in court. Rules that govern travel expense reimbursement for other court employees, or in exceptional cases for expert witnesses, should also apply to court interpreters. The compensation schedule may be standard for all jurisdictions throughout the state, or it may reflect cost of living differentials or other relevant local conditions. Regardless of the method employed to compensate interpreters, the compensation standards should be adequate to ensure the availability of interpreters.

D. The director of the administrative office of the courts shall collect and analyze statistics pertinent to interpreter utilization. This report may be made a part of the annual report of the judiciary, and contain

analyses and recommendations for the improvement of the court interpreter program.

Commentary:

It is important to have an accurate overview of the extent of the need for and use of certified and non-certified interpreters statewide for both management and budgetary reasons. Collecting data regarding the *need* for interpreters is complex, since records are not normally kept of services that can not be provided. Data regarding the actual *use* of interpreters should be more readily available. The interpreter services programs should maintain records regarding the number of salaried interpreter employees, if any, and the number and cost of each interpreter appointment. In any case, the cost of interpreter services for each jurisdiction and statewide, and trends in interpreter requests and use rates, should be monitored for program management and planning purposes.

§4. CERTIFIED INTERPRETER REQUIRED

A. When an interpreter is requested or when the appointing authority determines that a principal party in interest or witness has a limited ability to understand and communicate in English, a certified interpreter shall be appointed.

Commentary:

The right to an interpreter accrues to the "party in interest." Recognition of the need for an interpreter may arise from a request by a party or counsel for the services of an interpreter, from the court's own voir dire of a party or witness, or from disclosures made to the court from parties, counsel, court employees or other persons familiar with the ability of the person to understand and communicate in English. When

a judge recognizes that a "party in interest" requires an interpreter, an interpreter shall be appointed.

This portion of the Act embodies and implements the policy declaration set out in §1 of the Act: to provide certified interpreters in all state legal and administrative proceedings where the services of an interpreter are required to secure the rights of non-English speaking persons or for the administration of justice. As a result of that policy declaration, the statute is unequivocal in asserting that an individual who has a limited ability to speak or understand the English language, who is a party in interest or a witness, is entitled to the assistance of a certified interpreter throughout the legal proceeding, or for the duration of the witness' testimony. Events included in legal proceedings encompass interviews between counsel and client, advisements regarding procedure or rights that are conducted out of the presence of counsel or the judge, and readings or other translations of court documents that are evidence in the case or that are relied on for dispositional decisions by the court.

B. The appointing authority may appoint a non-certified interpreter only upon a finding that diligent, good faith efforts to obtain a certified interpreter have been made and none has been found to be reasonably available. A non-certified interpreter may be appointed only after the appointing authority has evaluated the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence involved.

Commentary:

Allowance is made for the appointment of a non-certified interpreter, but only after diligent, good faith efforts are made to secure a certified interpreter. A provision for the use of a non-certified interpreter reflects the practical realities of court operations. The exception to the general rule that certified interpreters must be provided acknowledges that jurisdictions may not have access to certified interpreters in all languages for all cases. The uniqueness of the language required, the geographical location of the court, the season of the year, and dozens of other reasons may militate against the availability of a certified interpreter for a particular language on any given date and time. The non-certified interpreter alternative should be used only as a rare exception to the general rule requiring certified interpreters.

A review of the totality of the circumstances is required, because whether a certified interpreter is "reasonably" available depends as much on the gravity of the proceeding and the jeopardy the party is placed in, as on how difficult it is to locate and obtain the services of a certified interpreter. For example, for a felony criminal trial a certified interpreter residing in a distant jurisdiction might be considered "reasonably available"; whereas in a misdemeanor case, or in a procedural hearing required to consider the release of a defendant from jail, "reasonable" availability may extend only to the geographic boundaries of the court.

C. Before appointing a non-certified interpreter, the appointing authority shall make a finding that the proposed non-certified interpreter appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court or administrative hearing setting, and that the proposed

non-certified interpreter has read, understands, and will abide by the Code of Professional Responsibility for language interpreters established in this State.

Commentary:

In order for a non-certified interpreter to be appointed, the judge or administrative hearing officer must inquire and be assured that the proposed non-certified interpreter appears to have the requisite knowledge and skills to perform adequately the task for which he or she is appointed. Equally important, the inquiry into the interpreter's skills and experience must include a verification that the interpreter has read, understands, and will abide by the requirements of the Code of Professional Responsibility established for interpreters.

It is recommended that the administrative office of the courts develop and make available a standard voir dire guide for use by the court for the purpose of inquiring into the experience and qualifications of non-certified interpreters.⁷

D. A summary of the efforts made to obtain a certified interpreter and to determine the capabilities of the proposed non-certified interpreter shall be made on the record of the legal proceeding.

Commentary:

The requirement to make these findings on the record not only underscores the importance of using certified interpreters whenever possible, but provides a ready record for review of the circumstances under which a non-certified interpreter was used.

It is recommended that standard language for this voir dire and finding be developed for use by the judge when inquiring into the efforts made by court administrative personnel to secure the services of a certified interpreter.

§5. WAIVER OF INTERPRETER

A. A non-English speaking person may at any point in the proceeding waive the right to the services of an interpreter, but only when (1) the waiver is approved by the appointing authority after explaining on the record to the non-English speaking person through an interpreter the nature and effect of the waiver; (2) the appointing authority determines on the record that the waiver has been made knowingly, intelligently, and voluntarily; and (3) the non-English speaking person has been afforded the opportunity to consult with his or her attorney.

B. At any point in any proceeding, for good cause shown, a non-English speaking person may retract his or her waiver and request an interpreter.

Commentary:

The intent of this portion of the statute is to ensure that the non-English speaking parties or witnesses are made fully aware of their right to an interpreter. The waiver of the right to an interpreter must be knowing and voluntary, and with the approval of the judge or administrative hearing officer.

States may wish to develop a list of questions, analogous to the questions that are asked when a criminal defendant waives his or her rights to a jury trial and enters a plea of guilty, to demonstrate the knowing and voluntary waiver of the right to an interpreter.

§6. INTERPRETER OATH

All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession.

Commentary:

This is standard statutory language that appears in a variety of current statutes. An interpreter should take an oath for the same reason that any person testifying in court takes an oath--to safeguard against the possibility of knowing and willful falsification of testimony.

The Code of Professional Responsibility addresses the various ethical responsibilities of interpreters for accuracy and completeness, impartiality, confidentiality, and other matters relating to the professional conduct of interpreters. The appointing authority should be alerted to potential conflicts of interest or other violations of the Code of Professional Responsibility that may arise. The sanction of removal is justified for any violations of that Code.

It is common practice for such oaths to be sworn to and maintained on file for all interpreters who are regularly employed by a court. This simplifies the court's inquiries on the record during procedural hearings. It is recommended, however, that an oath be read and sworn to in open court in all proceedings conducted before a jury.

§7. REMOVAL OF AN INTERPRETER IN INDIVIDUAL CASES

Any of the following actions shall be good cause for a judge to remove an interpreter:

- Being unable to interpret adequately, including where the interpreter self-reports such inability;**
- Knowingly and willfully making false interpretation while serving in an official capacity;**
- Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;**
- Failing to follow other standards prescribed by law and the Code of Professional Responsibility for interpreters.**

Commentary:

It is important to recognize that interpreters are sometimes called to court to interpret for someone who speaks a different language from that spoken by the interpreter. This section authorizes the appointing authority to remove interpreters who are not competent to interpret for a case for this or any other reason, or who violate the Code of Professional Responsibility which each state should adopt as a companion to legislation. For a more complete discussion of the elements of such a code see the Model Code of Professional Responsibility published by the National Center for State Courts as a companion to this Model Act.

Appointing authorities should guard against appointing interpreters who may have an interest, or the appearance of an interest, in the outcome of the legal proceedings in which the interpreter is serving. A conflict of interest exists when an interpreter acts in a situation where the interpreter may be affected by an interest in the outcome of the case or is otherwise biased. For example, an interpreter should not serve as an interpreter for someone with whom the interpreter has a familial relationship, for someone with whom the interpreter has shared a residence, or for someone with whom the interpreter has a continuing business or professional relationship. The trial court must be assured of interpretations

that reflect the precise language of questions and answers of the witness. The interpretation should not be affected by any personal interest of the interpreter in the witness' case.

§8. COST OF INTERPRETER SERVICES

In all legal proceedings, the cost of providing interpreter services shall be borne by the court or administrative agency in which the legal proceeding originates.

Commentary:

A wide variety of funding mechanisms for courts and ancillary court services are used throughout the country. The Model Act takes the position that providing a certified interpreter is a basic and fundamental responsibility of the court, and that the court should bear the burden of the costs associated with providing an interpreter, as a cost of the court proceeding.

This approach does not foreclose subsequent assessments of costs for interpreter services to parties when that is appropriate, according to the same standards or rules that are applied to court costs in other litigation.

Drafters of this statute considered and rejected an approach that attempts to initially allocate the responsibility for acquiring and paying for the cost of the interpreter to the governmental entity which initiates the proceeding, for example, a local prosecutor, state's attorney, public defender, legal services office, or welfare service agency.

§9. APPROPRIATION

To achieve the purposes of this Act, \$____ is appropriated for the administrative office of courts to establish and operate a statewide court interpreter program.

Commentary:

Funding is sure to be a difficult and contentious issue. As with indigent defense, however, the costs of an interpreter program are essential to the administration of a fundamentally fair justice system.

A realistic assessment of the start-up costs of an interpreter program should be made by the administrative office of the courts. Efforts should be made to enlist the voluntary service of available experts to serve on the Court Interpreters Advisory Panel. Courts should also look to other states for program models and for the formation of interstate or other interjurisdictional service agreements. Nevertheless, AOC staff and administrative support will require state funding during the implementation stage. As with all court appropriations, this expenditure will require detailed and specific justification and substantiation.

To defray some of the costs of administering the interpreter certification program, the administrative office of courts should be authorized to assess a court interpreter certification fee or fees if necessary. Such fees may be designed to operate the court interpreter testing program on a self-sustaining basis once the start-up costs secured through a state appropriation are expended. Certification fees may cover administrative costs of testing, certification, and recertification.

Endnotes

¹ NCSC staff prepared for the work by compiling and summarizing statutes from all of the states. Statutes from states where laws have been enacted to develop statewide standards for interpreter services in the courts were then identified (e.g., Arkansas, California, New Mexico, Massachusetts, Washington), and their key concepts were extracted and summarized to provide a foundation for a discussion document. The discussion document drafted by NCSC staff was presented on July 14-16, 1993 in Williamsburg VA at a workshop attended by representatives of state and local courts and the interpreter profession throughout the country. The discussion draft was studied, critiqued, and redrafted by the conferees and NCSC staff to create a second draft document which was then submitted to the project Advisory Committee for additional review and comment. The resulting Model Act, therefore, is based both on existing state laws and the professional opinion of a broadly representative group of experienced judges, court administrative professionals, and interpreters. The individuals who contributed to the work are listed in the acknowledgments pages of this publication.

²Administrative hearings, although executive branch functions, are regularly appealed to the state court system where the reviewing court's decision is based on the administrative hearing record, including interpreted testimony. In addition, courts may require that administrative hearing litigants be accorded the same rights, constitutional and otherwise, as are accorded to criminal and civil litigants. This is a sensitive separation of powers matter, and some states may choose not to include administrative hearings within the ambit of their interpreter statutes.

³Criminal proceedings are intended to encompass grand jury proceedings and judicial inquests.

⁴ Although the term "translate" is frequently used interchangeably with or instead of "interpret," the activities are distinct and require different skills. Interpreting is oral rendering of one spoken language into another, while translation is the rendering of a written document from one language into a written document in another language. The Model Act recognizes that court interpreters will be required to perform *sight translations*, which involves reading and orally translating a written document.

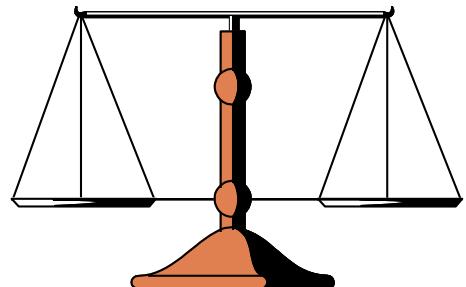
⁵ See the Model Code of Professional Responsibility for Interpreters, which is a companion publication to this Model Court Interpreter Act.

⁶ It is the intent of this act to include parents of juveniles involved in court proceedings among principal parties in interest.

⁷ A model voir dire for this purpose has been developed by the California Judicial Council. A similar generic model is published by the National Center for State Courts (see Chapter 6, Figure 6.2).

CHAPTER 11

Action Plans for Strengthening Interpreter Services



CHAPTER 11



Action Plans for Strengthening Interpreter Services

There is no best approach for improving interpreter services. States vary in their needs, resident expertise, and administrative contexts. However, scarce financial resources are an acknowledged obstacle to making much-needed improvements to court interpreter services in all states. Courts are therefore urged to explore opportunities to pool expertise and share resources at local, state and interstate levels. The purposes of this concluding chapter are to identify key issues, describe options that courts should consider in developing action plans at state or local levels, and recommend some priorities.

Program Foundations

A code of professional responsibility for interpreters is a substantial and relatively cost-free component of a state's action plan for strengthening interpreter services. Once drafted and adopted, the code serves as a cornerstone for training and testing interpreters: it sets the court's expectations regarding technical proficiency and defines appropriate conduct for interpreters. By distributing the code to all interpreters who work in the court, a small but concrete step is taken toward formalizing interpreter training. Including questions about the code in employment interviews or tests takes the process another step. Questions about the code can also be incorporated into voir dire examinations

Policy foundation: an affordable step for any court

conducted by judges to establish the qualifications of interpreters whose credentials are unknown.

Ideally, a code should apply statewide. Consequently, the state's administrative office of the courts should initiate action to secure its adoption in the form of court rules or administrative orders. The Model Code of Professional Responsibility found in Chapter 9 substantially simplifies the work and reduces the costs associated with preparing the required court rule or administrative policy. Most states should be able to accomplish this step with existing resources.

**Operational foundation:
securing professional
expertise**

Hiring at least one professionally trained expert is the most effective operational step that state administrative offices or local courts can take to strengthen interpreter services. The preferred qualifications of a manager of interpreter services will vary according to the operational priorities of the office. Offices established to provide direct services in the trial court should employ at least one certified interpreter. In addition to providing interpreting services, the presence of an expert professional on staff increases the capacity for effective recruiting, screening and training of other salaried or freelance interpreters. A certified interpreter will also command a measure of respect and credibility with members of the bench and bar that is an important ingredient for effective training and policy support. To find certified interpreters, courts should look to the federal courts, and state courts of California, New Jersey and Washington.

When the central responsibilities of the manager are to establish and manage programs at the state level, the relevant qualifications are court management experience, language aptitude, knowledge of the professional duties of interpreters, and dedication to the program's goals. The directors of the state programs in California, New Jersey, Massachusetts, and

Washington are not themselves interpreters. However, many federally or state certified interpreters are employed in those states and are used by the state office to serve as trainers, test developers, and evaluators of test candidates.

If certified interpreters are not employed in the state's trial courts, it is recommended that a state office of interpreter services include at least one certified professional interpreter.

In many metropolitan areas, the combined need for interpreter services among all of the area's courts is sufficient to warrant establishing a professionally staffed local office. Outside of the metropolitan areas, courts may be able to secure professional services by establishing regionalized or district-wide service areas. To accomplish this in county-funded court systems, court managers should explore inter-county service contracts or state-funded programs in which counties can participate. Those approaches can be combined in the form of state subsidies designed to encourage inter-county service agreements. In state-funded court systems, metropolitan court programs might serve as resource centers for surrounding counties, and district offices might be established to serve more remote areas where interpreters are needed infrequently.

In states where demand for interpreter services is low it may be possible to establish a single statewide office of interpreter services. Such an office could employ one or more qualified interpreters and assume responsibility for recruiting and managing the scheduling and assignment of free-lance interpreters. State court administrators in rural areas with an infrequent need for interpreters should not overlook the option of relying on a central state office to make professionally trained interpreters available to trial courts by telephone. This is preferable to using commercial telephone interpreting services.

Is professional management affordable?

**Beyond scheduling:
responsibilities of an
office of interpreter
services?**

In most courts, attention by management to interpreter services is limited to scheduling and assigning interpreters to court proceedings. This task is often assigned to clerical personnel who follow routine procedures and principles of expediency in locating and arranging for interpreters to be present in court. One expert observer, Robert Joe Lee of New Jersey, has coined the term "appearance standard" to describe how the qualifications and preferred standing on the scheduler's roster are usually determined. The "appearance standard" consists of five criteria: 1) the person is available, 2) the person shows up on time, 3) the person dresses appropriately and appears professional; 4) the person appears to be bilingual, and 5) no one complains about the person.

The task of scheduling interpreters, although critical, is only a part of the operational and management support required for interpreting services. State, district or regional offices that are distant from the trial courts that they serve may or may not be involved in daily interpreter scheduling tasks, depending on the frequency that interpreters are needed.

To advance beyond the appearance model for interpreter qualifications, offices of interpreter services should provide the following services to support trial court operations:

- outreach and recruitment of interpreter candidates;
- training for interpreters (Chapter 4);
- proficiency testing and the use of other techniques for assessing interpreter qualifications (Chapter 5);
- education for judges and attorneys about interpreting, the professional responsibilities of interpreters, and the qualifications that interpreters should possess;
- maintaining rosters of qualified interpreters, organized by geographic location and language;
- determining what operational data are needed for planning and budgeting and arrange for effective data collection; and

- analyzing patterns of interpreter usage (by individuals and languages), and consulting with trial court judges and managers regarding how to use interpreters most efficiently.

Identifying and recruiting individuals to the profession is vital for improving interpreter services. The task involves reaching out to linguistic minority communities and establishing linkages with language departments in higher education institutions to encourage interest in the interpreting profession among bilingual individuals. Assistance to help bilingual individuals develop the required interpreter knowledge and skills may be required. Effective recruitment also entails maintaining communications with professional associations and other offices of interpreter services as sources of referrals to qualified interpreters.

Importance of recruitment

Qualified interpreters are a scarce resource, more difficult to find than lawyers and court reporters. Inefficient scheduling practices contribute to compromises in the quality of interpreter service that the court receives, adds to delay, and results in unnecessary expense. Court and lawyer time is wasted when scheduled proceedings must be continued because no one arranged in advance for an interpreter. Providing clear direction to law enforcement officers, prosecutors and private counsel about the court's policies regarding interpreter appointments helps to alleviate this problem. Costs are unnecessarily high when interpreters wait hours to assist in a 5 minute proceeding, or appear for a proceeding that is eventually continued after a long wait.

Efficient use of interpreter services

Figure 11.1

Scheduling Data

Interpreter Services Request Form

Request date:	1/15/94
Requesting court or agency:	District Attorney
Name of requesting person:	Miranda Gideon
Telephone number:	397-7793
Case name:	Hopewell
Case number:	CR-94-0200
Date interpreter needed:	2/15/94
Start time:	10:00 am
Language:	Vietnamese

Required Invoice data

Agency name and address:	Viet Pham 100 Cherry Street Philadelphia, PA 19017
Agency tax identification number	N/A
Case name:	State v. Hopewell
Case number:	CR-94-0200
Location:	Courthouse, Department Z
Date:	2/15/94
Start time:	10:00 AM
End time:	11:30 AM
Total time charged:	1.5 hours
Language:	Vietnamese
Interpreter name:	Viet Pham
Interpreter Social Security Number:	557-58-7592

FIGURE 11.2

**Interpreter Services Management Information Report Illustrations
(Spanish language interpreters not included)**

Question	Answer		
How many cases required interpreters in fiscal year 1994?	1614 cases		
How did those cases break down by language?	<u>LANGUAGE</u>	<u>NUMBER</u>	<u>PERCENT</u>
	Korean	366	23%
	Vietnamese	289	18%
	Sign	163	10%
	Cambodian	157	10%
	Cantonese	81	5%
	etc.....		
What was the average cost per case and the total cost for the languages used most frequently?	<u>LANGUAGE</u>	<u>AVERAGE COST</u>	<u>TOTAL COST</u>
	Korean	\$118	\$43,188
	Vietnamese	\$123	\$35,547
	Sign	\$142	\$23,146
	Cambodian	\$121	\$18,997
	Cantonese	\$103	\$8,343
Would it be more cost-effective for the court to hire a salaried interpreter in any of these languages than to continue paying an agency to send free-lance interpreters?	<p>Probably in Korean, and possibly in Vietnamese. There would be no immediate cost savings, but the court would get better service.</p> <p>It would add to the court's costs to hire staff interpreters in other languages.</p>		
How many different individuals interpret in the court?	189 individuals		
Who interprets most often?	<p>9 people do 40% of the work ; 18 people do 62% of the work.</p> <p>94 individuals are used between 2 and 15 times a year.</p>		
What should we do this year to improve our program?	<ol style="list-style-type: none"> 1. Evaluate the skills of the 18 interpreters who do most of our work. 2. Train interpreters who are used most often in the four major Asian languages. 3. Require all interpreters who want to remain on our free-lance roster to attend a 2-day training workshop. 		
Other issues?	<ol style="list-style-type: none"> 1. Analysis of invoices shows that we spent \$5,500 for free-lance interpreting services in Spanish. Why are we not able to cover these cases with our nine salaried interpreters? 2. Analysis of the locations of interpreting assignments shows that we paid for interpreters to work 57 times during the year (\$ 5, 450) in non-court facilities. Who authorizes these assignments? 		

Based on a report prepared for the First Judicial District of Pennsylvania (Philadelphia)

Timely communication between in-court personnel, case scheduling clerks and the interpreter scheduling coordinator is a partial remedy for some of these problems.. More specific practices courts that courts should consider include:

- marking case files and scheduling documents with “interpreter needed” designations;
- including advisements on notice and summons documents issued to lawyers and pro se litigants that they must notify court personnel immediately if an interpreter is needed, and providing simple instructions for notifications;
- including data elements in case management systems to indicate whether litigants or witnesses need interpreters;
- keeping track of interpreter usage, by language;
- concentrating interpreting work with as few individuals as possible;
- calling interpreter cases promptly so the interpreter can move on to other courtrooms;
- scheduling interpreter cases in the same courtroom on specific days of the week or at specific times of the day; and
- implementing mechanisms for improved statistical reporting, including both data collection and its analysis for management purposes.

Vital management data – service requests and invoices

Aggregate information about annual expenditures for interpreters is of little use for management, except to observe a pattern of steadily rising costs! By contrast, information that can be analyzed at the individual assignment level has substantial utility. Data that are recorded to schedule interpreting assignments and to prepare payment invoices for free-lance interpreters include essential management information data elements. Figure 11.1 on page 242 illustrates a typical service request form and invoice form with the data that accounting offices require to process payments. If these

data are recorded and maintained in a computerized data file, analyses can easily be performed to produce useful reports like those shown in Figures 11.2 on page 243.

State Plans in Minnesota and Oregon -- An Example of Interstate Collaboration

The five-steps described below are the common elements of state programs currently being implemented in Minnesota and Oregon. In formulating and implementing the plans, state court officials consulted with directors of the interpreter services programs in New Jersey and Washington, and also with the National Center for State Courts. Experienced training and testing consultants from other states will be used during the initial implementation stages. Once a base of experience and expertise is developed within these states, the consulting help will no longer be necessary. Agreements are nearing completion among court officials in the four states to develop a coordinated program for sharing existing interpreting proficiency tests and developing new ones. The agreements will make tests in ten to fifteen languages available to the collaborating states. Elements of the Minnesota and Oregon plans can be replicated by other states, including participation in the "testing bank".

The five components of the Minnesota and Oregon programs are:

- a court rule establishing a code of professional conduct for interpreters;
- mandatory basic orientation and training workshops for interpreters;
- interpreting proficiency tests for Spanish language interpreters;
- a written test in English for interpreters in all languages that covers knowledge of professional responsibility,

comprehension of basic legal terms and technical vocabulary, and court procedure;

- expanding the testing program in subsequent years to include the five to ten most frequently encountered languages other than Spanish.

Code of professional conduct

The first step is adapting the Model Code of Professional Responsibility to meet state-specific concerns and needs. An advisory committee of appellate and trial judges, lawyers and interpreters is convened to assist in the review and revision process. Study and discussion of the code is a featured element in the state's training programs for interpreters. Familiarity with the code will be one of the requirements for certification.

Mandatory orientation and training workshops

The second step in the program is to offer and require all court interpreters to attend a two-day basic orientation and fundamentals training workshop, patterned after the model presented in Chapter 4. Offering such workshops is a significant step in the process of improving the qualifications of interpreters. Implementing the orientation workshops in advance of certification testing provides a forum for explaining the reasons for the testing program. It also provides an opportunity to explain the general nature and content of the test, how it will be conducted, and how interpreters can prepare for it.

Minnesota and Oregon have elected to secure the services of professional trainers to conduct the initial workshop program. A two-person faculty team will conduct the workshops, augmented by volunteer assistants who reside in the state. This approach helps to prepare local talent to assume responsibility for continuing the programs on a regular basis. In Minnesota and Oregon, the workshops will be repeated about six times in different parts of the state.

Following the orientation workshops, Minnesota and Oregon will begin a Spanish testing program in mid 1995. The test instrument will be similar to the test model described in Chapter 5.

Spanish testing

The Spanish testing procedure will also follow the model described in Chapter 5. Candidates for certification will first be tested using the simultaneous interpreting module, which serves as a screening step to establish the eligibility of candidates to take the remaining test modules. States should anticipate that a relatively small percentage of the test takers will perform well enough on the screening exam to qualify for taking the other exam modules. However, those candidates who show promise of passing the screening exam can be targeted by the state for additional educational and training support.

In the final test phase, the candidates will be tested for consecutive interpreting and sight translation skills.

The oral proficiency tests Minnesota and Oregon will use for certifying interpreters are not heavily laden with legal or other technical language often encountered in the courts. They also do not include state-specific legal usage. The central testing objectives are to assess the breadth of the candidates' general vocabulary and the candidates' interpreting proficiency. To assess interpreters' familiarity with legal and technical vocabulary, local legal procedure, and specific provisions of the code of professional responsibility, Minnesota and Oregon have elected to commission the development of a written test, in English, covering these job requirements.

Written test – professional responsibility and the court environment

Initially, the written test will be administered to interpreters who pass the oral proficiency test. As the program continues, the written test can be incorporated into the

procedure for evaluating the qualifications of interpreters in languages for oral proficiency tests are not available.

Expanding the testing program

Plans are underway in Minnesota and Oregon to form a consortium with the states of New Jersey and Washington to establish a "test bank" that will include oral proficiency tests in 10 to 15 languages. The National Center for State Courts will serve as the repository for the tests and will coordinate the activities involved in test administration for Minnesota and Oregon. These activities include securing qualified test raters, providing for rater training prior to administration, and compiling and reporting test results to the states. As the states acquire experience and local expertise in testing for each language, some or all of these responsibilities will be assumed by the states themselves.

Steering Committee – standards for interstate test sharing

A steering committee chaired by the state court administrator of Minnesota has been formed to prepare agreements governing conditions for access to the shared test bank. The agreements include standards for test content and administration, test security, priorities for new test development and contributions each state will make to the program. The steering committee members include Oregon's Acting State Court Administrator; and the directors of the state interpreter programs in New Jersey and Washington.

Conclusion: Summary and Future Prospects

Equal access to justice is fundamental to courts in the United States. For our large and growing population of linguistic minorities, obtaining access to the courts is only possible through the voices of court interpreters. Increasingly, courts are recognizing that the use of untrained interpreters

significantly distorts communications in the courtroom and places linguistic minorities at a disadvantage. Moreover, the use of untrained and unqualified interpreters is widespread, more the rule than the exception. The challenges involved in improving interpreter services are not easy ones to overcome, but progress is possible and is being made.

State courts in California, New Jersey and Washington, in particular, have followed an effective strategy of borrowing from the accomplishments of each other and the federal courts, and adapting them to meet their own needs. By drawing on the collective experience and expertise developed in the states and local trial courts which have pioneered improvements in court interpretation policy and practice, this report helps other courts to join in that strategy. Minnesota and Oregon's current initiatives illustrate one way in which the lessons of this study are being applied and the resources it offers are being used.

As a supplement to this manual, two training videotapes have been produced by the Office of the Administrator for the Courts in Washington State. Both tapes are useful to enhance educational programs for interpreters, judges and lawyers. The tapes depict courtroom scenes in which interpreters are used, with subtitles to show the English equivalent of what interpreters are saying. The first tape, "Interpreters: Their Impact on Legal Proceedings" (16 minutes), emphasizes the professional responsibilities of interpreters and is most appropriate for use during orientation and basic training programs for interpreters. It is also effective for sensitizing judges and lawyers to some of the most fundamental ways that due process and equal protection of linguistic minorities is jeopardized by untrained interpreters. The second videotape, entitled "Working with Interpreters" (22 minutes) is most appropriate for use in educational programs

Training videotapes

designed to illustrate steps that judges can take to minimize the disadvantages that linguistic minorities face when they come to court.

A form for ordering the videotapes is included on the last page of this publication.

Expanding the scope of the test-sharing program

Efforts are underway by the National Center for State Courts and the state court administrative offices the courts of Minnesota, Oregon, New Jersey and Washington to expand the scope of the test sharing program to make it available to any state. State officials who have an interest in becoming members of the test-sharing coalition are invited to request additional information about the status of the effort. A form for this purpose is provided on the last page of this publication.

Telephone interpreting pilot project

The State Justice Institute has recently invited the National Center for State Courts to submit an application for funding to design and operate an experimental pilot project to provide courts with access by telephone to court-certified interpreters. Courts that have an interest in participating in the project as experimental users of the system should notify the NCSC of their interest as soon as possible. Notices received prior to May 10, 1995, will be taken into account in the project design and application. The form provided on the last page of this publication may also be used for this purpose.