

APPENDIX

A. STATUTES, RULES & RESOURCES

**MINNESOTA STATUTES 1998
& RULES**

546.42. Persons handicapped in communication; interpreters

For the purposes of sections 546.42 to 546.44, a person handicapped in communication is one who, because of a hearing, speech or other communication disorder, or because of difficulty in speaking or comprehending the English language, is unable to fully understand the proceedings in which the person is required to participate, or when named as a party to a legal proceeding, is unable by reason of the deficiency to obtain due process of law.

546.43. Proceedings where interpreter appointed

Subdivision 1. In a civil action in which a handicapped person is a litigant or witness, the presiding judicial officer shall appoint a qualified interpreter to serve throughout the proceedings.

Subd. 2. In a proceeding before a board, commission, agency, or licensing authority of the state, or of a political subdivision of the state, where a witness or the principal party in interest is a handicapped person, all of the proceedings that are pertinent shall be interpreted in a language the handicapped person understands by a qualified interpreter appointed by the board, commission, agency, or licensing authority.

546.44. Qualified interpreter

Subdivision 1. No person shall be appointed as a qualified interpreter pursuant to sections 546.42 to 546.44 unless that person is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the officials before whom the proceeding is taking place.

Subd. 2. A qualified interpreter appointed pursuant to the provisions of sections 546.42 to 546.44, before entering upon any duties shall take an oath promising, to the best of skill and judgment, to make a true interpretation to the handicapped person being examined of all the proceedings, in a language which the person understands, and that the interpreter will repeat in the English language the statements of the handicapped person to the court or other official before whom the proceeding is taking place.

Subd. 3. The fees and expenses of a qualified interpreter shall be determined by the presiding official and paid by the court, board, commission, agency or licensing authority before whom the proceeding is taking place.

Subd. 4. Disclosure. A person serving as an interpreter pursuant to sections 546.42 to 546.44, shall not, without the consent of the person handicapped in communication, be allowed to disclose any privileged communication made by the person or any privileged information gathered from the person which was communicated or gathered during the time of service as the interpreter.

Rules of Civil Procedure

Rule 43.07 Appointment and Compensation of Interpreter

The court may appoint an interpreter of its own selection and may fix reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as a cost, in the discretion of the court.

611.30 Right to interpreter, state policy

It is hereby declared to be the policy of this state that the constitutional rights of persons handicapped in communication cannot be fully protected unless qualified interpreters are available to assist them in legal proceedings. It is the intent of sections 611.30 to 611.34 to provide a procedure for the appointment of interpreters to avoid injustice and to assist persons handicapped in communication in their own defense.

611.31 Handicapped person

For the purposes of sections 611.30 to 611.34, “person handicapped in communication” means a person who: (a) because of a hearing, speech or other communication disorder, or (b) because of difficulty in speaking or comprehending the English language, cannot fully understand the proceedings or any charges made against the person, or the seizure of the person’s property, or is incapable of presenting or assisting in the presentation of a defense.

611.32 Proceedings where interpreter appointed

Subdivision 1. **Proceedings and preliminary proceedings involving possible criminal sanctions or confinement.** In any proceeding in which a person handicapped in communication may be subjected to confinement, criminal sanction, or forfeiture of the person’s property, and in any proceeding preliminary to that proceeding, including coroner’s inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the person handicapped in communication and any witness handicapped in communication throughout the proceedings.

Subd. 2. **Proceedings at time of apprehension or arrest.** Following the apprehension or arrest of a person handicapped in communication for an alleged violation of a criminal law, the arresting officer, sheriff or other law enforcement official shall immediately make necessary

contacts to obtain a qualified interpreter and shall obtain an interpreter at the earliest possible time at the place of detention. A law enforcement officer shall, with the assistance of the interpreter, explain to the person handicapped in communication, all charges filed against the person, and all procedures relating to the person's detention and release. If the property of a person is seized under section 609.531, subdivision 4, the seizing officer, sheriff, or other law enforcement official shall, upon request, make available to the person at the earliest possible time a qualified interpreter to assist the person in understanding the possible consequences of the seizure and the person's right to judicial review. If the seizure is governed by section 609.5314, subdivision 2, a request for an interpreter must be made within 15 days after service of the notice of seizure and forfeiture. For a person who requests an interpreter under this section because of a seizure of property under section 609.5314, the 60 days for filing a demand for a judicial determination of a forfeiture begins when the interpreter is provided. The interpreter shall also assist the person with all other communications, including communications relating to needed medical attention. Prior to interrogating or taking the statement of the person handicapped in communication, the arresting officer, sheriff, or other law enforcement official shall make available to the person a qualified interpreter to assist the person throughout the interrogation or taking of a statement.

611.33 Qualified interpreter

Subdivision 1. No person shall be appointed as a qualified interpreter pursuant to sections 611.30 to 611.34 unless said person is readily able to communicate with the handicapped person, translate the proceedings for the handicapped person, and accurately repeat and translate the statements of the handicapped person to the officials before whom the proceeding is taking place.

Subd. 2. Every qualified interpreter appointed pursuant to the provisions of sections 611.30 to 611.34, before entering upon duties as such, shall take an oath, to make to the best of the interpreter's skill and judgment a true interpretation to the handicapped person being examined of all the proceedings, in a language which said person understands, and to repeat the statements, in the English language, of said person to the court or other officials before whom the proceeding is taking place.

Subd. 3. The fees and expenses of a qualified interpreter shall be fixed and ordered paid by the presiding official before whom the proceeding is taking place out of the general revenue fund of the county in which the proceeding occurs.

Subd. 4. An interpreter pursuant to sections 611.30 to 611.34 shall not, without the consent of the person handicapped in communication, be allowed to disclose any privileged communication made by the person or any privileged information gathered from the person which was communicated or gathered during the time of service as an interpreter.

611.34 Applicability to all courts

The provisions of sections 611.30 to 611.34 shall apply to all courts in this state and political subdivisions thereof.

See Also

MS 256.C.25 Interpreter Services

Establishes under commission of human services statewide interpreter referral services for hearing impaired persons.

MS 125.1895 Skilled School Interpreters

Requirements for interpreters hired in school districts to assist hearing impaired students.

MS 15.44 Aides for Handicapped at State Meetings

Requires state agencies to provide interpreter or other auxiliary aids for effective participation in meetings by hearing impaired or otherwise physically handicapped individuals.

MS 15.441 Communication Services

Requires hiring of bilingual employees or interpreters by state agencies.

Title II of the Americans with Disability Act, 42 U.S.C. §§ 12131-12134

Requires local and state courts to provide qualified sign language interpreters or other auxiliary aids.

Minnesota Human Rights Act, Minn. Stat. 363

Prohibits public services from discriminating against any person in access to public services.

Court Interpretation: Model Guides for Policy and Practice in the State Courts, by William E. Hewitt (1995).

Fundamentals of Court Interpretation: Theory, Policy and Practice, by Roseann D. Gonzalez, Victoria C. Vasquez, and Holly Mikkelsen, (Durham, N.C.: Carolina Academic Press, 1991).

Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, “Final Report”, May 1993.

B. RULE 8 OF THE
GENERAL RULES OF
PRACTICE
FOR THE
DISTRICT COURTS
REGARDING
INTERPRETERS

GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

RULE 8 INTERPRETERS

Rule 8.01 Statewide Roster

The State Court Administrator shall maintain and publish annually a statewide roster of interpreters, which shall include:

- (a) **Certified Court Interpreters:** This shall be a list of certified court interpreters who have satisfied all certification requirements pursuant to the Minnesota Supreme Court's Rules on Certification of Interpreters.
- (b) **Non-certified Court Interpreters:** This shall be a list of non-certified court interpreters, not including sign language interpreters, who have not satisfied the requirements of the Minnesota Supreme Court's Rules on Certification of Court Interpreters, but who may possess interpreting credentials from other governmental agencies or professional associations and who have: (1) completed the interpreter orientation program sponsored by the State Court Administrator; (2) filed with the State Court Administrator a written affidavit agreeing to be bound by the *Code of Professional Responsibility for Interpreters in the Minnesota State Court System* as the same may be amended from time to time; and (3) received a passing score on a written ethics examination administered by the State Court Administrator.
- (c) **Non-certified Sign Language Court Interpreters:** This shall be a list of non-certified sign language court interpreters who have satisfied the requirements set forth in Rule 8.01(b) and possess, at a minimum, both a Certificate of Transliteration and a Certificate of Interpretation from the Registry of Interpreters for the Deaf or an equivalent certification from the Registry of Interpreters for the Deaf or another organization that is approved by the State Court Administrator.

Advisory Committee Comment 1997 Amendment

It is the policy of the state to provide interpreters to litigants and witnesses in civil and criminal proceedings who are handicapped in communication. Minn. Stat. §§ 611.30 - .32 (1996); Minn. R. Crim. P. 5.01, 15.03, 15.11, 21.01, 26.03, 27.04, subd. 2; Minn. Stat. § 546.44, subd. 3 (1996); *see also* 42 U.S.C. § 12101; 28 C.F.R. Part 35, § 130 (prohibiting discrimination in public services on basis of disability).

To effectuate that policy, the Minnesota Supreme Court has initiated a statewide orientation program of training for court interpreters and promulgated the Rules on Certification of Court Interpreters. Pursuant to Rule 8.01 of the General Rules of Practice for the District Courts, the State Court Administrator has established a statewide roster of court interpreters who have completed the orientation program on the Minnesota court system and court interpreting and who have filed an affidavit attesting that they understand and agree to comply with the Code of Professional Responsibility for Court Interpreters adopted by the Minnesota Supreme Court on September 18, 1995. The creation of the roster is the first step in a process that is being undertaken to ensure the competence of court interpreters. To be listed on the roster, a non-certified court interpreter must attend an orientation course provided or approved by the State Court Administrator. The purpose of the orientation is to provide interpreters with information regarding the Code of Professional Responsibility, the role of interpreters in our courts, skills

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required of court interpreters, the legal process, and legal terminology. Merely being listed on the roster does not certify or otherwise guarantee an interpreter's competence.

In 1997, two key changes were made to this rule. First, interpreters are now required to receive a passing score on the ethics examination before they are eligible to be listed on the Statewide Roster. This change was implemented to ensure that court interpreters on the Statewide Roster have a demonstrated knowledge of the Code of Professional Responsibility.

Second, to be eligible to be listed on the Statewide Roster, non-certified sign language court interpreters are required to possess certificates from the Registry of Interpreters for the Deaf (RID), which demonstrate that the interpreter has minimum competency skills in sign language. This change was recommended by the Advisory Committee because of reports to the Committee that courts were hiring sign language interpreters who completed the orientation training, but who were not certified by RID. This practice was troubling because prior to the promulgation of Rule 8, courts generally adopted the practice of using only RID certified sign language interpreters to ensure a minimum level of competency. Unlike most spoken language interpreting fields, the field of sign language interpreting is well established with nationally developed standards for evaluation and certification of sign language interpreters. Because of the long history of RID, its certification program, the availability of RID certified sign language interpreters in Minnesota and the recent incidents when courts have deviated from their general practice of appointing RID certified sign language interpreters, the Advisory Committee determined that it is appropriate and necessary to amend Rule 8 to maintain the current levels of professionalism and competency among non-certified sign language court interpreters.

RULE 8.02 APPOINTMENT

(a) **Use of Certified Court Interpreter.** Whenever an interpreter is required to be appointed by the court, the court shall appoint only a certified court interpreter who is listed on the statewide roster of interpreters established by the State Court Administrator under Rule 8.01, except as provided in Rule 8.02(b) and (c). A certified court interpreter shall be presumed competent to interpret in all court proceedings. The court may, at any time, make further inquiry into the appointment of a particular certified court interpreter. Objections made by a party regarding special circumstances which render the certified court interpreter unqualified to interpret in the proceeding must be made in a timely manner.

(b) **Use of Non-certified Court Interpreter on Statewide Roster.** If the court has made diligent efforts to obtain a certified court interpreter as required by Rule 8.02(a) and found none to be available, the court shall appoint a non-certified court interpreter who is otherwise competent and is listed on the Statewide Roster established by the State Court Administrator under Rule 8.01. In determining whether a non-certified court interpreter is competent, the court shall apply the screening standards developed by the State Court Administrator.

(c) **Use of Non-certified Court Interpreter Not On The Statewide Roster.** Only after the court has exhausted the requirements of Rule 8.02(a) and (b) may the court appoint a non-certified interpreter who is not listed on the Statewide Roster and who is otherwise competent. In determining whether a non-certified court interpreter is competent, the court shall apply the screening standards developed by the State Court Administrator. In no event shall the court appoint a non-certified sign language interpreter who does not, at a minimum, possess both a Certificate of Transliteration and a Certificate of Interpretation from the Registry of Interpreters for the Deaf or an equivalent certification from the Registry of Interpreters for the Deaf or another organization that is approved by the State Court Administrator.

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Advisory Committee Comment 1997 Amendment

Rule 8.02(a) requires that courts use certified court interpreters. If certified court interpreters are not available or cannot be located, courts should next use only interpreters listed on the statewide roster maintained by the State Court Administrator. Rule 8.02 recognizes,

however, that in rare circumstances it will not be possible to appoint an interpreter from the statewide roster. Non-roster interpreters and telephone interpreting services, such as AT & T's Language Lines Service, should be used only as a last resort because of the limitations of such services including the lack of a minimum orientation to the Minnesota Court System and to the requirements of court interpreting. For a detailed discussion of the issues, see Court Interpretation: Model Guides for Policy and Practice in the State Courts, chapter 8 (National Center for State Courts, 1995), a copy of which is available from the State Court Administrator's Office.

To avoid unreasonable objections to a certified court interpreter in a proceeding, the rule makes a presumption that the certified court interpreter is competent. However, the rule also recognizes that there are situations when an interpreter may be competent to interpret, but not qualified. Examples of such situations include when an interpreter has a conflict of interest or the user of the interpreter services has unique demands, such as services tailored to a person with minimal language skills, that the interpreter is not as qualified to meet.

Rule 8.02(b) requires that courts make "diligent" efforts to locate a certified court interpreter before appointing a non-certified court interpreter. Because the certification process is still in an early stage and because it is important to ensure that courts use competent interpreters, courts should seek the services of certified court interpreters who are located outside the court's judicial district if none can be found within its own district. In addition, courts should consider modifying the schedule for a matter if there is difficulty locating a certified interpreter for a particular time.

Because the certification program being implemented by the State Court Administrator is still new, interpreters are being certified in only certain languages at this time. The Advisory Committee recognizes that it may be some time before certification is provided for all languages used in our courts. However, the committee feels strongly that for those languages for which certification has been issued, the courts must utilize certified court interpreters to ensure that its interpreters are qualified. If a court uses non-certified interpreters, court administrators should administer the screening standards prior to hiring an interpreter. However, the presiding judge is still primarily responsible for ensuring the competence and qualifications of the interpreter. A model voir dire to determine the competence and qualifications of an interpreter is set forth in the State Court Administrator's Best Practices Manual on Court Interpreters.

Rule 8.03 Disqualification From Proceeding

A judge may disqualify a court interpreter from a proceeding for good cause. Good cause for disqualification includes, but is not limited to, an interpreter who engages in the following conduct:

- (a) Knowingly and willfully making a false interpretation while serving in a proceeding;
- (b) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
- (c) Failing to follow applicable laws, rules of court, or the *Code of Professional Responsibility for Interpreters in the Minnesota State Court System*.

C. STATEWIDE ROSTER OF COURT INTERPRETERS



MINNESOTA COURT INTERPRETER PROGRAM
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25 CONSTITUTION AVENUE
ST. PAUL, MN 55155-1500
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INTRODUCTION TO THE
STATEWIDE ROSTER OF COURT INTERPRETERS

Published by the State Court Administrator

The Statewide Roster of Court Interpreters is available for individuals connected to the court computer network at the following Courtnet address: <http://courtnet.courts.state.mn.us>. Select “Interpreters Roster.”
The Statewide Roster is available to the public at <http://www.courts.state.mn.us>. Select “Court Interpreter.”

The Statewide Roster includes interpreters who have fulfilled the Supreme Court requirements for eligibility to work in the state court system. An explanation of the requirements for inclusion on the Statewide Roster are available on the web page. Also included is a list of world languages found on the Roster, with special information regarding variants of the languages, alternate names and related dialects. Note, for example, that “Cambodian” interpreters can be found under “Khmer, Central” and that three distinct Chinese dialects are now included on the Roster.

The Statewide Roster on the Web provides users with the ability to query and search for interpreters by language, jurisdiction, or last name. Certified Court Interpreters are distinguished by the notation “Minnesota Court Certified”.

Feel free to contact the Minnesota Court Interpreter Program with questions or comments on the Statewide Roster.

MINNESOTA COURT INTERPRETER PROGRAM

RULE 8 OF THE GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS REGARDING INTERPRETERS

STATEWIDE ROSTER

In 1995, the Minnesota Supreme Court adopted Rule 8 of the General Rules of Practice for the District Courts regarding interpreters. The Rule requires the State Court Administrator to maintain and publish a Statewide Roster (list) of interpreters eligible to work in the state court system. The courts are required to use interpreters from the Statewide Roster unless none are available.

General Requirements

To be included on the Statewide Roster an interpreter must:

1. receive a passing score on a written Ethics Test administered by the State Court Administrator;
2. complete the interpreter Orientation Program sponsored by the State Court Administrator; and
3. file a written Affidavit agreeing to be bound by the *Code of Professional Responsibility for Interpreters in the Minnesota State Court System*.

To implement the Ethics Test requirement, the Minnesota Court Interpreter Program periodically administers a test based upon the Code of Professional Responsibility. Interpreters who have not attended the Orientation Program are required to pass the Ethics Test before they will be admitted to the Orientation. Interpreters who attended an Orientation Program prior to 1998 must pass the Ethics Test in order to be included on the Roster.

The two-day Orientation Program is an introduction to court interpreting. During the Orientation, the Code of Professional Responsibility is analyzed; the role of the court interpreter is discussed; legal system, procedure and terminology are reviewed; and interpreting skills and techniques are modeled. The program does not evaluate interpreting proficiency or fluency in English or any other language.

Sign Language Requirements

Sign language interpreters only, must additionally be certified by the *Registry of Interpreters for the Deaf* (RID), with the following generalist certificates:

- a. CI&CT - Certificate of Interpretation *and* Certificate of Transliteration; *or*
- b. CSC - Comprehensive Skills Certificate; *or*
- c. CDI or CDIP – Certified Deaf Interpreter (Provisional)

before being included on the Statewide Roster. Sign language interpreters may take the court interpreter Ethics Test, attend the Orientation and file an Affidavit before *or* after being certified by RID. All sign language interpreters listed on the Roster have the required certification from RID and have fulfilled the general requirements above. If no sign language interpreters are available from the Roster, the rules of court nonetheless require sign language interpreters *not* on the Roster to possess the above generalist certification from RID in order to be eligible to work in court.

Inclusion on the Statewide Roster only indicates that an individual has met the minimum requirements listed above. It does not guarantee competency or proficiency in the specialized skills of court interpreting.

REQUIREMENT TO APPOINT CERTIFIED COURT INTERPRETERS

Rule 8 requires the courts to appoint only Certified Court Interpreters whenever they are available, in those languages for which the Court Interpreter Program has issued certification. For languages in which no certification is available through the Court Interpreter Program, the courts are required to use only interpreters listed on the Statewide Roster, unless none are available.

SUPREME COURT RULES ON CERTIFICATION OF COURT INTERPRETERS

In 1996, the Supreme Court adopted Rules on Certification of Court Interpreters that outline requirements to achieve the status of Minnesota Certified Court Interpreter. In addition to completing all requirements for inclusion on the Statewide Roster, to be certified an interpreter must establish to the satisfaction of the State Court Administrator:

1. age of at least 18 years;
2. good character and fitness; and
3. passing score on a legal interpreting proficiency examination administered or approved by the State Court Administrator's Office.

To implement its certification program, Minnesota participates in the nationwide *State Court Interpreter Certification Consortium*. The Consortium develops rigorous proficiency exams using legal and forensic terminology in English and another language. Different parts of the exam evaluate simultaneous, consecutive and sight interpretation skills*. The Minnesota Court Interpreter Program has administered Consortium proficiency exams and certified interpreters in *Spanish* and *Russian*. Training and exams for Supreme Court certification will continue to be offered by the Minnesota Court Interpreter Program in these and other languages in the future. The Statewide Roster distinguishes interpreters who have achieved the status of Minnesota Certified Court Interpreter by listing them first in the Spanish and Russian languages.

***Partial Minnesota Court Certified - The State Court Administrator issues "partial" Minnesota Court Interpreter Certification in simultaneous and consecutive interpretation for candidates who qualify to be exempted from sight interpretation testing. Partial Minnesota Court Certified interpreters shall be presumed as competent as fully certified court interpreters, to provide simultaneous and consecutive interpretation in all court proceedings. However, Partial Minnesota Court Certified interpreters have not been tested or certified in sight interpretation of documents.**

The Roster also notes two other certificates:

***Federal Court Certified - The State Court Administrator has determined that passing a federal court interpreter certification exam in a specific language shall be considered equivalent to, or more difficult than, passing a legal interpreting proficiency examination developed by the State Court Interpreter Certification Consortium.**

***Legal Specialist Certificate (SC:L) in Sign Language – The State Court Administrator has recognized the Legal Specialist Certificate as the highest level of certification currently available from the *Registry of Interpreters for the Deaf* in this area of specialization. The SC:L is awarded to sign language interpreters who have demonstrated entry level legal interpreting competence by passing written and performance exams administered by RID. RID recommends that interpreters working in legal settings hold the SC:L. Holders of the SC:L should be considered more qualified to interpret in legal settings than sign language interpreters holding generalist certificates only.**

Only the certification process pursuant to the Supreme Court Rules on Certification of Court Interpreters, including court interpreter proficiency exams, provides assurance of competency.

LIST OF LANGUAGES REPRESENTED BY AN INTERPRETER ON THE MINNESOTA STATEWIDE ROSTER

1/16/01

<i>NAME OF LANGUAGE</i>	<i>USE:</i>
AMHARIC	---
ARABIC - STANDARD	---
ARABIC - SUDANESE	---
BEHDINI	---
BENGALI	---
BERBER	---
BHOJPURL	---
BOSNIAN	use SERBO-CROATIAN
BYELORUSSIAN	---
CAMBODIAN	use KHMER, CENTRAL
CANTONESE	use CHINESE, YUE
CASTILIAN	use SPANISH
CHINESE, MANDARIN	---
CHINESE, MIN NAN	---
CHINESE, YUE	---
CROATIAN	use SERBO-CROATIAN
DUTCH	---
ETHIOPIAN	use AMHARIC
FARSI, EASTERN	---
FINNISH	Use DUTCH
FUCHIENESE	use CHINESE, MIN NAN
FRENCH	---
GERMAN, STANDARD	---
GUJARATI	---
HEBREW	---
HINDI	---
HMONG	---
INDONESIAN	---
ITALIAN	---
JAPANESE	---
KHMER, CENTRAL	---
KONKANI	---
KOREAN	---
LAO	---
LINGALA	---
LITHUANIAN	---
MANDARIN	use CHINESE, MANDARIN

MARATHI	---
OROMO, BORANA-ARSI-GUJI	---
PERSIAN	use FARSI, EASTERN
POLISH	---
PORTUGUESE	---
PUNJABI	---
ROMANIAN	---
RUSSIAN	---
SANGO	---
SERBO-CROATIAN	---
SHAN	---
SIGN LANGUAGE - AMERICAN	---
SOMALI	---
SPANISH	---
SWAHILI	---
SWEDISH	---
TAI SHAN	Use SHAN
TAIWANESE	---
TELUGU	---
THAI	---
TIGRINYA	---
UKRAINIAN	---
URDU	---
VIETNAMESE	---

* Source: Barbara F. Grimes, ed. ETHNOLOGUE: LANGUAGES OF THE WORLD. Thirteenth Edition. Companion volume ETHNOLOGUE LANGUAGE NAME INDEX at <http://www.sil.org>

D. CODE OF PROFESSIONAL
RESPONSIBILITY FOR
INTERPRETERS IN THE
MINNESOTA STATE COURT
SYSTEM

CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE MINNESOTA STATE COURT SYSTEM

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. 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 within the Minnesota State court system.

Commentary

The use of the term “shall” is reserved for the black letter principles. Statements in the commentary use the term “should” to describe behavior that illustrates or elaborates upon the principles. The commentaries are intended to convey what the drafters of this code believe to be 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 or practice as it applies to court interpreters be reviewed for possible modification.

CANON 1: ACCURACY AND COMPLETENESS

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

Commentary

The interpreter has a twofold duty:

- 1) to ensure that the proceedings reflect, in English, 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 faithfully preserve 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 what was said in 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 any statement or elaboration of their own. 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. Spoken language 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 and body language, in addition to hand gestures. Judges, therefore, should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct. Any challenge to the interpreter’s conduct should be directed to the judge.

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

The ethical responsibility to accurately and completely interpret includes the responsibility of being properly prepared for interpreting assignments. Interpreters are encouraged to obtain documents and other information necessary to familiarize themselves with the nature and purpose of a proceeding. Prior preparation is especially required when testimony or documents include highly specialized terminology and subject matter.

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 of record 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 of record should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. Official functions may include an informal pre-appearance assessment to include the following:

1. culturally appropriate introductions;
2. a determination of variety, mode, or level of communication;
3. a determination of potential conflicts of interest; and
4. a description of the interpreter's role and function.

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.

Any condition that interfered with the objectivity of an interpreter constitutes a conflict of interest and must be disclosed to the judge. The interpreter should only divulge necessary information when disclosing the conflict of interest. The following are circumstances that create potential conflicts of interest that must be disclosed:

1. the interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;
2. the interpreter or the interpreter's friend, associate, or relative has a financial interest in the subject matter in controversy, a financial interest in a party to the proceeding, or any other interest that would be affected by the outcome of the case;
3. the interpreter has served in an investigative capacity for any party involved in the case at issue;

4. the interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;
5. the interpreter has been involved in the choice of counsel or law firm for that case at issue;
6. the interpreter is an attorney in the case at issue;
7. the interpreter has previously been retained for private employment by one of the parties to interpret in the case at issue; or
8. for any other reason, the interpreter's independence of judgment would be compromised in the course of providing services.

The existence of any one of the above-mentioned circumstances does not alone disqualify an interpreter from providing services as long as the interpreter is able to render services objectively. An interpreter may serve if the judge and all parties consent. If an actual or apparent conflict of interest exists, the interpreter may, without explanation to any of the parties or the judge, decline to provide services.

Should an interpreter become aware that a non-English speaking participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the judge.

CANON 4: PROFESSIONAL DEMEANOR

Interpreters shall conduct themselves in a manner consistent with the dignity of the court.

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 enables them to be heard and understood throughout the courtroom. If an interpreter is not actively interpreting, the interpreter should not engage in any distracting activity in the courtroom such as reading newspapers or magazines or engaging in conduct that may call inappropriate attention to the interpreter. 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, but should be appropriately positioned to facilitate communication. Interpreters who use sign language or other visual modes of communication must, however, be positioned so

that signs, facial expressions, and whole body movements are visible to the person for whom they are interpreting.

Interpreters are encouraged to avoid personal or professional conduct, which could discredit the court.

CANON 5: CONFIDENTIALITY

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary

Interpreters must protect and uphold the confidentiality of all privileged information obtained during the course of their duties. It is especially important that the interpreter understand and uphold the attorney-client privilege that 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 indicates probable 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 the presiding judge. If the judge is not available, the interpreter should disclose the information to an appropriate authority in the judiciary.

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, except to facilitate training and education.

Commentary

Generally, interpreters should not discuss outside of the interpreter's official duties, interpreter assignments, persons involved or the facts of the case. However, interpreters may share information for training and educational purposes. Interpreters should only share as much information as is required to accomplish their purpose. An interpreter must not reveal privileged or confidential information.

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, including official functions as described in the commentary to Canon 3. Interpreters, however, may be required to initiate communications during a proceeding when they find it necessary to seek direction from the court in performing their duties. Examples of such circumstances include seeking direction from the court 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 or contents 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 should not explain the form or its purpose for such a person.

While engaged in the function of interpreting, interpreters should not personally 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 variety of the non-English-speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority, which includes a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters.

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 courtroom 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 judge of the need to take periodic breaks in order 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 competently those assignments.

Even competent and experienced interpreters may encounter situations where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter, e.g., the unscheduled testimony of an expert witness. When such situations occur, interpreters should request a brief recess in order to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the judge.

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 notify the judge if they feel unable to perform competently, due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

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 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 law, rules, regulations, or policies governing court interpreters. It is incumbent upon the interpreter to explain their professional obligations to the user. 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 strive to 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 improve their interpreting skills and increase their knowledge of the languages they work in professionally, including past and current trends in technical terminology and social and regional dialects as well as their applicable within court proceedings.

Interpreters should keep informed of all statutes, rules of court and policies of the judiciary that govern 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.

E. RULES ON
CERTIFICATION OF COURT
INTERPRETERS

Rules on Certification of Court Interpreters

DEFINITIONS

These definitions apply to the Rules of the Supreme Court for certification as a court interpreter.

1. “Advisory Committee” means the Minnesota Court Interpreter Advisory Committee.
2. “Court” means the Minnesota Supreme Court.
3. “Coordinator” means the Court Interpreter Program Coordinator assigned to the State Court Administrator’s Office.
4. “Good Character” means traits that are relevant to and have a rational connection with the present fitness or capacity of an applicant to provide interpretation services in court proceedings.

RULE I. GENERAL REQUIREMENT FOR COURT INTERPRETER CERTIFICATION

- A. **Eligibility for Certification.** An applicant is eligible for certification upon establishing to the satisfaction of the State Court Administrator:
1. age of at least 18 years;
 2. good character and fitness;
 3. inclusion on the Statewide Roster of court interpreters maintained by the State Court Administrator’s office in accordance with Rule 8 of the General Rules of Practice for the District Courts;
 4. passing score on legal interpreting competency examination administered or approved by the State Court Administrator’s Office; and
 5. passing score on a written ethics examination administered by the State Court Administrator’s Office.

RULE II. EXAMINATION FOR LEGAL INTERPRETING COMPETENCY

- A. **Examination.** Examinations for legal interpreting competency in specific languages, approved by the Advisory Committee, shall be administered at such times and places as the Coordinator may designate.
1. **Scope of Examination.** Applicants for certification in interpreting in a spoken or sign language may be tested on any combination of the following:
 - a. Sight Interpretation.
 - b. Consecutive Interpretation;
 - c. Simultaneous Interpretation; and
 - d. Transliteration (when applicable).

2. **Denial of Opportunity to Test.** An applicant may be denied permission to take an examination if an application, together with the application fee, is not complete and filed in a timely manner.
3. **Results of Examination.** The results of the examination, which may include scores, shall be released to examinees by regular mail to the address listed in the Coordinator's files. Statistical information relating to the examinations, applicants, and the work of the Advisory Committee may be released at the discretion of the Advisory Committee.
4. **Testing Accommodations.** A qualified applicant with a disability who requires reasonable accommodations must submit a written request to the Coordinator at the same time the application is filed. The Coordinator will consider timely requests and advise the applicant of what, if any, reasonable accommodations will be provided. The Coordinator may request additional information, including medical evidence, from the applicant prior to providing accommodations to the applicant.
5. **Confidentiality.** Except as otherwise provided in Rule II.A.3, all information relating to the examinations is confidential. The State Court Administrator's Office shall take steps to ensure the security and confidentiality of all examination information.

Drafting Committee Comment - 1996

The Minnesota Supreme Court is one of the founding states of the State Court Interpreter Certification Consortium. It is the function of the Consortium to develop tests for court interpretation in various languages and administration standards, and to provide testing materials to individual states and jurisdictions. The Minnesota State Court Administrator's Office will, in most circumstances, utilize tests and standards established by or in conjunction with the Consortium.

RULE III. APPLICATION FOR CERTIFICATION

- A. **Complete Application.** An applicant desiring legal interpreting certification in a particular language shall file with the coordinator a complete and notarized application on a form prepared by the State Court Administrator's Office and pay the application fee established by the State Court Administrator's Office.
- B. **Certification Standards.**
 1. **Screening.** State Court Administrator's Office shall administer character, fitness and competency screening. It shall perform its duties in a manner that ensures the protection of the public by recommending for certification only those who qualify. A court interpreter should be one whose record of conduct justifies the trust of the courts, witnesses, jurors, attorneys, parties, and others with respect to

the official duties owed to them. A record manifesting significant deficiency in the honesty, trustworthiness, diligence or reliability of an applicant may constitute a basis for denial of certification.

2. **Relevant Conduct.** The revelation or discovery of any of the following should be treated as cause for further inquiry before the State Court Administrator's Office decides whether the applicant possesses the character and fitness to qualify for certification to interpret in the courtroom:

- a. conviction of a crime which resulted in a sentence or a suspended sentence;
- b. misconduct involving dishonesty, fraud, deceit or misrepresentation;
- c. revocation or suspension of certification as a interpreter, or for any other position or license for which a character check was performed in this state or in other jurisdictions; and
- d. acts that indicate abuse or disrespect for the judicial process.

3. **Evaluation of Character and Fitness.** The State Court Administrator's Office shall determine whether the present character and fitness of an applicant qualifies the applicant for certification. In making this determination, the following factors should be considered in assigning weight and significance to prior conduct:

- a. the applicant's age at the time of the conduct;
- b. the recency of the conduct;
- c. the reliability of the information concerning the conduct;
- d. the seriousness of the conduct;
- e. the factors underlying the conduct;
- f. the cumulative effect of the conduct;
- g. the evidence of rehabilitation;
- h. the applicant's positive social contributions since the conduct;
- i. the applicant's candor in the certification process; and
- j. the materiality of any admissions or misrepresentations.

C. **Notification of Application for Certification.** The Coordinator shall notify applicants in writing and by regular mail of the decision on the applicant's request for certification.

D. **Information Disclosure.**

1. **Application File.** An applicant may review the contents of his or her application file, except for the work product of the Advisory Committee, the Coordinator and the State Court Administrator's Office, at such times and under such conditions as the Advisory Committee may provide.

2. Investigation. Information may be released to appropriate agencies for the purpose of obtaining information related to the applicant's character and competency.
3. Confidentiality.
 - a. Investigative Data: Information obtained by the Advisory Committee, the Coordinator and the State Court Administrator's Office during the course of their investigation is confidential and may not be released to anyone absent a court order. The court shall consider whether the benefit to the person requesting the release of the investigative data outweighs the harm to the public, the agency or any person identified in the data.
 - b. Applicant File Data: All information contained in the files of applicants for court interpreter certification in the State Court Administrator's Office except as otherwise provided in Rule III.D.3 of these rules is confidential and will not be released to anyone except upon order of a court of the competent jurisdiction or the consent of the applicant.
 - c. Examination Information: Examination Information shall be available as provided in Rule II.A.

Drafting Committee Comment - 1996

The primary purpose of character, fitness and competency screening is to ensure equal access to justice for people with limited English proficiency, or speech or hearing impairments. Such screening also ensures the efficient and effective operation of our judicial system. Our judicial system is adequately protected by a system that evaluates the character, fitness and competency of an interpreter as those elements relate to interpreting in the courtroom. The public interest requires that all participants in the courtroom be secure in their expectation that those who are certified interpreters are competent to render such services and are worthy of the trust that the courts, witnesses, jurors, attorneys and parties may reasonably place in the certified interpreter.

RULE IV. APPEAL OF DENIAL OF CERTIFICATION

- A. **Appeal of Certification Denial.** Any applicant who is denied certification by the State Court Administrator's Office may appeal to the chair of the Advisory Committee by filing a petition for review with the Chair of the Advisory Committee within twenty (20) days of receipt by the applicant of a final decision by the State Court Administrator's Office. The petition shall briefly state the facts that form the basis for the complaint and the applicant's reasons for believing that review is warranted. A copy of the petition must be provided to the State Court Administrator's Office.
- B. **Response From State Court Administrator's Office.** The State Court Administrator's Office shall submit to the Chair of the Advisory Committee a response to the applicant's

appeal of the denial of certification within a reasonable time after receipt of a copy of the applicant's petition for review. The response should set forth the reasons for the denial of certification.

- C. **Decision by Chair of the Minnesota Court Interpreter Advisory Committee.** The Chair shall give such directions, hold such hearings and make such order as he/she may deem appropriate.

RULE V. COMPLAINTS AND INVESTIGATION

- A. **Complaints:** All complaints of alleged unprofessional and unethical conduct by certified court interpreters in the performance of their duties in the courtroom shall be submitted in writing to the Coordinator.
- B. **Determination to Investigate:** The Coordinator shall review each complaint and determine whether there is sufficient cause to believe that a certified court interpreter has engaged in unprofessional or unethical conduct. If sufficient cause exists, the Coordinator shall investigate the complaint or refer the investigation to a qualified agency or individual.
- C. **Submission of Investigative Report to State Court Administrator:** The investigator shall submit a report of his/her findings to the State Court Administrator for review.

Drafting Committee Comment - 1996

This complaint procedure is not intended as a means for appealing claims of error by a court interpreter. This complaint procedure is available to address unprofessional or unethical conduct by certified court interpreters. Consequently, in the absence of fraud, corrupt motive, bad faith, or pattern of established interpreter error, the Coordinator is not likely to initiate an investigation of a complaint of an error of a court interpreter.

RULE VI. SUSPENSION OR REVOCATION OF CERTIFICATION

- A. **Persons subject to Revocation or Suspension of Certification:** The certification of a certified court interpreter in Minnesota is subject to suspension or revocation by the State Court Administrator's Office.
- B. **Grounds for revocation or suspension of certification includes:** Unprofessional or unethical conduct, including, without limitation, a conviction of a crime resulting in a sentence or a suspended sentence, or conduct that violates the Minnesota Code of Professional Responsibility for court interpreters.
- C. **Disposition of Criminal Charges:** A conviction, acquittal or other disposition of any criminal charge filed against an interpreter shall not preclude an investigation by the Coordinator or action by the State Court Administrator with respect to the conduct upon which the charge was based.

- D. **Evaluation of Investigator's Report and Determination of Appropriate Action:** Upon receipt of the investigator's report on conduct that might constitute grounds for revocation or suspension of a court interpreter's certification, the State Court Administrator shall evaluate the report and determine whether the court interpreter's certification shall be temporarily or permanently revoked.
- E. **Confidentiality:** All complaints and investigations shall be confidential, except that when a final determination is made to suspend or revoke an interpreter's certification, the final disposition, including the grounds for suspension or revocation and the facts cited in support of the disposition, shall be accessible to the public. For purposes of this rule, a final determination occurs at the conclusion of the appeal proceedings before the Chair of the Advisory Committee, under Rule VII, or upon failure of the interpreter to appeal the State Court Administrator's decision to revoke or suspend within the time provided by Rule VII.

Drafting Committee Comment - 1996

It is contemplated that the power to revoke or suspend interpreter certification will be exercised sparingly and when exercised, consideration will be given to the appropriate procedure and the giving of notice and an opportunity to be heard if such process is due the interpreter.

RULE VII. APPEAL OF STATE COURT ADMINISTRATOR DECISIONS

An interpreter may appeal the State Court Administrator's decision to revoke or suspend certification to the Chair of the Advisory Committee within twenty (20) days of a final decision by the State Court Administrator. The State Court Administrator shall submit to the Chair of the Advisory Committee a response to the appeal within a reasonable time after receipt of a copy of the petition for review. The Chair of the Advisory Committee shall give such directions, hold such hearings and make such order as s/he may deem appropriate.

RULE VIII. EXPENSES AND FEES

The expenses for administering the certification requirements, including the complaint procedures, may be paid from initial application, examination fees and renewal fees. The fees shall be set by the State Court Administrator's Office and may be revised as necessary with the approval of the Supreme Court.

RULE IX. CONTINUING EDUCATION REQUIREMENTS

The State Court Administrator's Office may establish continuing education requirements for certified court interpreters with the approval of the Supreme Court.

F. INTERPRETER OATHS AND AFFIRMATIONS

OATH

Minnesota Statutes provide that the court must administer an oath “substantially in the following form” to interpreters for court proceedings:

You do swear that you will truly and impartially interpret to this witness [defendant] the oath about to be administered to the witness [defendant], and the testimony the witness [defendant] shall give relative to the cause now under consideration. So help you God.¹

The following is a more comprehensive version of the statutory oath that may also be used:

You do swear that you will truly and impartially interpret to this witness [defendant] the oath about to be administered to the witness [defendant], and the testimony the witness [defendant] shall give relative to the cause now under consideration. You do further swear that you will not disclose any privileged communication made by this person or any privileged information gathered from this person which was communicated or gathered during your time of service as an interpreter, without this person’s consent. So help you God.

¹ Minn. Stat. § 358.07(8) (1998)

Oaths in Criminal Cases

The statutes governing interpreters for communication of handicapped criminal defendants also provide that the interpreter “shall not, without the consent of the person handicapped in communication, be allowed to disclose any privileged communication made by the person or any privileged information gathered from the person which was communicated or gathered during the time of service as an interpreter.”² Accordingly, it would be appropriate to incorporate this confidentiality aspect into an interpreter’s oath given in criminal cases:

Oath:

You do swear that you will truly and impartially interpret to this witness [defendant] the oath about to be administered to the witness [defendant], and the testimony the witness [defendant] shall give relative to the cause now under consideration. You further do swear that you will not disclose any privileged communication made by this person or any privileged information gathered from this person which was communicated or gathered during your time of service as an interpreter, without this person’s consent. So help you God.

Affirmation:

You do affirm that you will truly and impartially interpret to this witness [defendant] the oath about to be administered to the witness [defendant], and the testimony the witness [defendant] shall give relative to the cause now under consideration. You further do affirm that you will not disclose any privileged communication made by this person or any privileged information gathered from this person which was communicated or gathered during your time of service as an interpreter, without this person’s consent. This you do under the penalties of perjury.

*Note: Oaths should be adapted to the circumstances. For example, a deaf person may be participating in the proceedings as an attorney or a guardian-ad-litem, not as a party.

² Minn. Stat. § 611.33, subd. 4

**INTERPRETER'S OATH FOR DEAF AND HARD-OF-HEARING JURORS;
DELIBERATIONS**

You do swear that you will accurately interpret to Ms./Mr. (juror's name) in understandable language all that is said by all other jurors and any bailiff from now until the jury's verdict is returned in open court and that you will repeat in English to all the other jurors all statements made by Ms./Mr. (juror's name) during jury deliberations. Further, that you will not by word or expression otherwise participate in the deliberations of the jury and that you will not disclose to anyone, except this Court, anything which you may learn during those deliberations, so help you God?

Written by:

Judge George O. Petersen
Second Judicial District

G. SCREENING
STANDARDS FOR COURT
INTERPRETERS

SCREENING STANDARDS FOR COURT INTERPRETERS

Determination of Initial Qualifications by Court Administrators

A. Availability to Interpret in a Proceeding

1. Are you available to be *present* at the hearing on (date & time)?
2. Are you familiar with the (name specific) case or any of the (name specific) parties, attorneys or participants?

B. Certification

1. Are you certified by the Minnesota Court Interpreter Program, pursuant to the Supreme Court's Rules on Certification of Court Interpreters?

(If yes, presumed competent. Refer to Judge to establish qualifications for particular proceeding through voir dire.)

2. If you are not certified pursuant to the Supreme Court's Rules on Certification of Court Interpreters, have you done the following:
 - a. Completed the interpreter Orientation Program sponsored by the State Court Administrator?
 - b. Filed a written affidavit with the State court Administrator agreeing to be bound by the *Code of Professional Responsibility for Interpreters in the Minnesota State Court System*?
 - c. Received a passing score on a written ethics examination administered by the State Court Administrator?
3. Are you certified by any other body, group, or organization?
 - a. By whom?
 - b. Explain the certification process.

4. For Sign Language Interpreters Only

Do you possess:

- a. A Certificate of Transliteration (CT) **AND** Certificate of Interpretation (CI) **OR**
- b. A Comprehensive Skills Certificate (CSC) **OR**
- c. A Certified Deaf Interpreter (CDI) or CDI-P (provisional) certificate from the Registry of Interpreters for the Deaf?

(If no to 4. a, b and c, the interpreter does not meet Rule 8.02(c) requirements.)

C. Mastery of Languages - Questions for interpreters who are not certified by the Minnesota Court Interpreter Program, pursuant to Supreme Court's Rules on Certification of Court Interpreters

Fluency:

1. In which languages can you effectively communicate and interpret?
2. How did you learn these languages?
3. What language do you consider your first or strongest language?
4. In what country did you grow up?
5. How many years did you live there?
6. Have you formally studied these languages as part of a curriculum?
7. What is the last grade of study you completed in those languages?
8. What formal language training have you received?
9. How long have you been communicating in these languages?
10. How often do you communicate in these languages?
 - a. Daily? How many hours per day?
 - b. Weekly? How many hours per week?
 - c. Monthly? How many hours per month?

Interpretation Skills:

11. Do you have any formal interpreter training?
 - a. When did you take the training?
 - b. How long did the training last?
 - c. What did the training entail?
12. In what settings have you interpreted?
 - a. Courts
 1. What form of interpretation did you use in court?
 - i. simultaneous

- ii. consecutive
 - iii. sight interpretation of documents
- 2. How many times have you interpreted in court?
- 2. For what type of proceedings?
 - i. civil proceedings
 - ii. criminal proceedings
 - iii. family court
 - iv. traffic court

b. Other settings

- 1. What form on interpretation did you use?
 - i. simultaneous
 - ii. consecutive
 - iii. sight interpretation of documents
- 2. How often?

H. VOIR DIRE

VOIR DIRE FOR JUDGES

Establishing Interpreter's Qualifications

A. Communication Needs

1. Have you had the opportunity to speak with the person in need of your services in this matter?
2. What kind of language skills does this person have?
3. Based upon the conversation, do you feel that you can communicate clearly with one another?
4. How could you determine that you understood each other?
5. Are you familiar with any dialect or idiomatic peculiarities of the language used by the person in this case?
6. Are you able to communicate despite these idiosyncrasies?
7. Are you able to interpret simultaneously without leaving out or changing anything that is said?
8. Are you able to interpret consecutively?
9. Are you able to do sight interpretation of documents?
10. **For Sign Language Interpreters Only**
 - a. What communication mode does this person prefer? (I.e., American Sign Language, Tactile Communication, a form of Signed English)
 - b. Does this person require the use of a deaf relay interpreter?
 - c. Does this person require the court to provide any special equipment to aid in the understanding of this proceeding? (Amplification, Real Time Captioning)

B. Conflicts of Interest

1. What do you know about this case?
2. Have you ever interpreted for any of the parties or witnesses in this case?
3. Have you interpreted in any incident related to this case?
4. Do you anticipate being called as a witness?
5. Are you aware of any potential conflict of interest as defined by the *Code of Professional Responsibility for Interpreters in the Minnesota State Court System*?
6. Do you feel that you could remain fair and impartial in relationship to the parties and witnesses in this case?
7. Can you remain objective based upon the subject matter of this case?

C. Ethics

1. Have you read the *Code of Professional Responsibility for Interpreters in the Minnesota State Court System*?
2. Do you understand your duties with respect to the Code of Professional Responsibility?
3. Do you promise to adhere to the Code of Professional Responsibility during these proceedings?

D. Mastery of Languages

1. Are you a *Minnesota Certified Court Interpreter*, certified pursuant to the Supreme Court's Rules on Certification of Court Interpreters?

If yes, proceed to Section E.

For interpreters who are not certified by the Minnesota Court Interpreter Program, pursuant to the Supreme Court's Rules on Certification of Court Interpreters

2. Are you on the Statewide Roster of Court Interpreters?
3. What languages do you interpret?
4. What language do you consider your first or strongest language?
5. How long have you been communicating in these languages?

6. What formal language training have you received?
7. Have you taken any formal interpreter training?
 - a. When did you take the training?
 - b. How long did the training last?
 - c. What did the training entail?
8. Do you possess interpreter certification from a group or organization other than the Minnesota Court Interpreter Program?
9. In what settings have you interpreted?
 - a. What form of interpretation did you use in these settings?
 - i. simultaneous
 - ii. consecutive
 - iii. sight interpretation of documents
 - b. How many times have you interpreted in these settings?

E. Other

1. Have you ever been disqualified from interpreting in any court or administrative proceeding? Why?
2. **Judge to parties:**
Does either party have any questions for the interpreter?
3. **Judge to client/witness/defendant**
Do you understand the interpreter who has been assigned to you?

JUS COMPREHENDII:

ACCESS TO JUSTICE FOR NON-ENGLISH SPEAKERS

BY ROBERTA J. CORDANO

Increasing numbers of Minnesotans enter our courts without the ability to speak English. What is our responsibility to ensure that these people understand proceedings involving them, and how can we ensure the qualifications of courtroom interpreters?

Last July, the story of deaf Mexicans being smuggled into the United States for slave labor made national headlines. One fascinating, yet little-discussed aspect of that case was the problem law enforcement had in communicating with the deaf victims. The police obtained sign language interpreters fluent in Spanish, but they found that many of the deaf Mexicans, who were uneducated and even unsocialized, spoke a kind of pidgin sign language that stymied the sign language interpreters. One official commented that "[i]t was excruciatingly difficult to deal with these people's disability. . . . This thing to me was worth two Golden Ventures in difficulty."¹ (He was referring to the ship that ran aground off Queens that was filled with Chinese immigrants.)

Although situations of this magnitude have not yet occurred in Minnesota, increasingly our courts are facing difficulties in providing qualified interpreters for court proceedings involving defendants, parties, or witnesses who do not speak English, whether because of a disability or a cultural difference. In fact, this issue was highlighted by the Minnesota Supreme Court, through its Task Force on Racial Bias in the Judicial System, four years ago. In its report, the Court declared that:

... [N]otwithstanding the existence of a strong statute governing the management of this issue ... there is much to be done and a long way to go before full compliance with existing law can be achieved This extremely important and fundamental issue has been allowed to become a "stepchild" of the justice system: understudied, underfunded, and in terms of its ultimate impact, little understood.²

Although the Minnesota Supreme Court has elevated the issue of providing qualified court interpreters from its status as a "stepchild" of the judicial system in recent years, much still needs to be done to increase understanding of this issue among attorneys, judges, court personnel, advocates, and people who require interpreter services. We must also continue to examine how our courts can improve access for people traditionally underserved by our judicial system.

GROWING NEED FOR QUALIFIED INTERPRETERS

In the last decade, Minnesota has seen a continuing influx of immigrants and refugees. In 1990, the U.S. Census showed that there were nearly 80,000 people in Minnesota who did not speak English very well.³ According to a recent report, from 1990 to 1995, the number of children in public schools who do not speak English at home has nearly doubled from 20,000 to 38,000 children.⁴ Based upon these data, the report concluded that there has been a large increase in the number of people with a limited command in English in this state.⁵ In Minnesota, the largest number of people who do not speak English at home are Southeast Asians and Hispanics, however, Africans and Eastern Europeans comprise a rapidly growing segment of this group.⁶

The growth of these populations has led to a rapid increase in the demand for interpreters. Mayo Clinic expected to have 90 interpreters available this summer to serve approximately 8,000 non-English speaking patients who come to that clinic, with a growing number of non-English speaking patients coming from the Rochester area.⁷ Hennepin County Medical Center has a combined full-time and freelance staff of 40 interpreters, assisting 4,000 patients a month, 48,000 patients a year.⁸ In 1996,

Hennepin County District Court received 5,122 requests for interpreters (including sign language interpreters), and 47 different language interpreters were used.⁹ Hennepin County's annual budget for interpreters during fiscal year 1996 was \$227,623.¹⁰ Throughout Minnesota, 65 out of 87 trial courts in ten judicial districts reported that they used interpreters in court proceedings in 1994.¹¹

RIGHTS OF NON-ENGLISH SPEAKING PERSONS

Since 1969, Minnesota has had a strong statewide policy that requires courts to provide interpreters for persons who are "handicapped in communication" in civil and criminal court proceedings. The Legislature declared that it is "the policy of this state that the constitutional rights of persons handicapped in communication cannot be fully protected unless qualified interpreters are available to assist them in legal proceedings."¹² A person "handicapped in communication" is a person who, because of difficulty in speaking or comprehending English, is unable to fully understand the legal proceeding or any charges made against the person, or the seizure of the person's property, or is incapable of presenting or assisting in the presentation of a defense, and cannot obtain the due process of law.¹³ This definition includes not only people who speak only a foreign language, but also people who are deaf or hard of hearing or have speech impediments. For purposes of this article, these people will be referred to as "non-English speaking people."

The Legislature has also dictated circumstances under which interpreters must be appointed in criminal and civil proceedings. In criminal matters, an interpreter must be obtained "at the earliest time at the place of detention."¹⁴ Law enforcement officials are required to use interpreters to explain the charges against the person and the procedures for detention and release. They must also use interpreters to assist with interpreting during an interrogation or the taking of a statement.¹⁵ In civil matters, interpreters must be appointed in actions where a litigant or a witness is handicapped in communication.¹⁶

The statutes related to the appointment of interpreters also provide that when interpreters are used in a criminal proceeding or in a civil proceeding where a litigant or witness is handicapped in communication, the fees and expenses of a qualified interpreter shall be determined by the presiding official and paid for by the county, court, board, commission, agency or

licensing authority.¹⁷ In addition, the Minnesota Rules of Civil Procedure grants the court the discretion to direct whether the interpreter costs will be paid from "the funds provided by law, or one or more of the parties" as a cost of the civil proceeding.¹⁸

Although judges have some discretion under the rules of civil procedure to assess the parties in civil proceedings for the cost of interpreters, this discretion must be exercised in accordance with other federal and state laws prohibiting discrimination on the basis of disability. Specifically, the Americans with Disabilities Act and the Minnesota Human Rights Act require courts to provide access to people with disabilities. In most cases, such access will require that the courts pay for the costs of interpreter services or other reasonable accommodations.¹⁹

TASK FORCE ON COURT INTERPRETERS

Following the recommendations of the Racial Bias Task Force, on September 15, 1994, the Minnesota Supreme Court created an Advisory Committee on Court Interpreters to begin to address issues related to the quality of interpreter services in our courts. The formation of this committee coincided with Minnesota becoming one of the founding members of the State Court Interpreter Certification Consortium, a national consortium of states formed through the National Center for State Courts to establish and coordinate court interpretation test development and administration standards.²⁰

Figure 1

**"Now, Mrs. Pena,
you indicated that you live in East
Orange, at 5681 Grand Street"**

*"5681 Grand Street" was interpreted correctly
by 32% of the people who took this test*

Translations:

1. "You say that you live in East Orange?"
2. "You told me that you lived in the west of Orange, at 56 Grand Street."
3. "Now, you told me that you lived at 4581 East Orange."
4. "Em, em, I live at 58 on, on, Hunt Street."
5. "I understand that you said that you lived in West Orange."
6. "And tell me whether you live on, on

Grand Street, Senora Pena."

7. "You live in East Orange at 81 Grand Street."

8. "You indicated earlier that you lived at 5681 Grant Avenue in East Orange. Is that right?"

9. "I understand that you live in East Orange, on the street, at number 5681."

10. "You say that you were eating an orange?"

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The Advisory Committee on Court Interpreters has led this state in an effort to establish rules and procedures to certify and appoint court interpreters and to develop a better understanding among judges and court personnel of the needs of non-English speaking people. This effort has been greatly assisted by the creation of a full-time Statewide Court Interpreter Coordinator position in the State Court Administrator's office with funding from the Legislature. Based upon recommendations from the Advisory Committee, the Minnesota Supreme Court has promulgated three significant rules related to court interpreting:

■ **CODE OF PROFESSIONAL RESPONSIBILITY FOR COURT INTERPRETERS:** All court interpreters are now required to adhere to the canons of the Code, which includes an obligation to render a complete and accurate interpretation of the proceeding;

■ **RULES ON CERTIFICATION OF COURT INTERPRETERS:** These rules require every interpreter to successfully complete orientation training, an ethics examination, competency tests, and good character screening before becoming certified as a court interpreter; and

■ **RULE 8 OF THE GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS:** Effective January 1, 1998, all courts will be required to appoint certified court interpreters unless none are available after a diligent effort has been made to locate one. If a certified interpreter is not available, a court may appoint a non-certified interpreter.

Finally, and perhaps most significantly, in Minnesota we now have 18 people who have been certified as Spanish language court interpreters and two people who have been certified as Russian language court interpreters.

The demands created by improving the availability of qualified court interpreters will continue to burden already strapped budgets and

staff of courts throughout the state. As a result, bureaucratic

Figure 2

Q. "Now, at that time, or shortly thereafter, did anything unusual occur?"

A. "It sure did! I heard a loud crash, that seemed to have occurred right there."

"It sure did" was interpreted correctly by 37% of the people who took the test

Translations:

1. "I believe so."
2. "Yes, I believe."
3. "She says yes, obviously there was . . ."
4. "I, 1, yes, I believe so."
5. "Yeah."
6. "Yes, I believe that."

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demands and budgets may still override the need to provide equal access to the courts to people who do not speak English. This reality places the burden upon judges, prosecutors, attorneys, public defenders, court administrators, and advocates to be aware of the rights of non-English speaking people who use interpreters and to be prepared to ensure that their rights are upheld in our court system.

COURT INTERPRETERS: FRIEND OR FOE?

There are typically two views of interpreters. One is that they are a nuisance: they complicate and slow down proceedings and are expensive. This sentiment is often exacerbated by frustration at not being able to assess the work of the interpreter due to a lack of knowledge of the foreign or sign language that the interpreter is using. The countervailing view is that qualified interpreters are professionals who help move proceedings involving non-English speaking people along much more effectively and efficiently. Accordingly, the cost of the interpreter in the short run is perceived to be less than the cost of not using one at all or using one who is not qualified.

To be sure, it is not inexpensive to use court interpreters. A 1994 survey done by the Minnesota Court Interpreter Training and Certification Program reported that the range of interpreter costs was

between \$16 and \$100 per hour, not including mileage and cancellation fees. However, the average hourly rate was somewhere between \$25 and \$60 per hour. Out of the 87 trial courts that participated in the survey, 65 trial courts reported that they used court interpreters. Based on reports from courts that kept records of interpreter costs, the total expenditure on court interpreters statewide in Minnesota during fiscal year 1994 was \$455,290.²¹

While the cost of hiring interpreters is tangible, other costs are not. The intangible costs of failing to hire interpreters or using unqualified interpreters include unnecessary appeals, mistrials, wrongful convictions, or wrongful acquittals. The Fifth Judicial District has reported that between 1993 and 1995 there were at least two trials that ended in a mistrial because the interpreter was accused of not interpreting correctly.²² Unfortunately, no documentation seems to exist on the number of trials that have ended in mistrials because of interpreting problems. If the problems in the Fifth Judicial District are any indicator, mistrials have probably occurred in other judicial districts that use interpreter services extensively. Furthermore, we are also unaware of cases that perhaps should have been declared as mistrials because of interpretation problems, but were never appealed or challenged because the errors were never known.

Figures 1 and 2 provide examples of the types of errors that have been committed by interpreters while taking certification tests. These examples show how easily interpreters can change the meaning or intent of a question or statement by simply misinterpreting one word or concept.

The consequences of an interpreter's failure to interpret a legal proceeding accurately and fairly are severe. A poor interpretation by an interpreter can fail to capture the eloquence of a judge, attorney, or witness. Questions and testimony can be distorted, leading a judge or jury to be confused or uncertain. And, particularly in criminal matters, a poor interpretation can result in a wrongful conviction or acquittal. The consequences can also extend beyond the particular proceeding and compromise the integrity of the judicial system.

ASSESSING INTERPRETERS' COMPETENCE

Court personnel, lawyers, and judges are often swayed by an interpreter's claims to be qualified based upon years of interpreting experience or bilingual ability. While these can be helpful indicators of a person's interpreting skills, they are by no means necessarily accurate or reliable indicators of the person's ability to interpret court

proceedings. Figures 3 and 4 are examples of interpretations by a person with many years of interpreting experience and by one who is bilingual.

The results of the tests in the examples are not encouraging. However, these examples should not be used to cast doubt on *all* of the interpreters who have been serving as interpreters in Minnesota courts for many years or who are bilingual. If anything, the results reinforce the need for more formal training for court interpreters and for the continued implementation of Minnesota's certification program for court interpreters. Perhaps more importantly, these examples serve as a reminder that judges, attorneys, and court personnel must be vigilant in verifying the qualifications of court interpreters to ensure that proceedings are interpreted completely and accurately.

SKILLS OF QUALIFIED INTERPRETERS

As we have learned from the report of the Racial Bias Task Force, the laws and rules related to the appointment of court interpreters are only as good as the qualifications of the court interpreters used by the courts. Interpreting a court proceeding is a complex task. Interpreters must simultaneously perform many complex cognitive and linguistic skills while interpreting. Although the description below of the various skills that an interpreter must perform is oversimplified, it aptly identifies the types of tasks interpreters perform when working. While speaking and listening for the next segment of language to process and while monitoring his or her own output, an interpreter must:

1. Listen
2. Comprehend
3. Abstract the message from the word and word order
4. Store ideas
5. Search for conceptual and semantic matches
6. Properly reconstruct the message in the other language²³

We expect still more from court interpreters. Court interpreters must deal with complex subjects, legal terminology, different speaking styles, and different levels of phonality during court proceedings. (E.g. judges and attorneys may speak more formally than witnesses.)²⁴ In addition, interpreters must grapple with the difficult challenges of translating idioms, slang, and obscenity from one language into another language.

The following text is from an actual trial transcript. It clearly illustrates the challenges

presented by the use of idioms, slang, and obscenity in court proceedings:

The third time he goes up to him, he gives him the finger. I mean, this is not somebody who's trying to *remain cool*. What he did, he *gets into the fray, right in the guy's face, nose to nose* with him, and says, 'You're a *punk, mother fucker!*'²⁵

How does an interpreter ensure that the idioms will be properly conveyed in another language that does not have any direct equivalents? How should the interpreter preserve the use of obscenity? This text is only one example of the difficult grammatical, syntactical, and linguistic decisions an interpreter must make. Moreover, in a court proceeding, the interpreter must retain subsequent information uttered by the speaker while making these complex decisions. This type of work clearly requires a skilled, well-trained professional.

The certification tests developed by the State Court Interpreter Certification Consortium have been designed to test the wide range of skills required of court interpreters. In order to become certified as court interpreters, interpreters must demonstrate mastery of two languages at the level of an educated native speaker, interpret in the simultaneous, consecutive and sight

essentially composed of three parts: (1) sight interpretation of court documents (foreign language to English and English to foreign language); (2) consecutive interpretation of testimony; and (3) simultaneous interpretation of an attorney's opening and closing arguments to a judge and jury. In addition, all applicants for certification in Minnesota must successfully complete an ethics examination, and a character, fitness, and competency screening administered by the State Court Administrator's Office.²⁶

IMPROVING ACCESS TO THE COURTS

Ensuring that court interpreters are qualified is an important part of making sure that courts are accessible to people who do not speak English. Another part requires ensuring the availability of interpreter services to people who do not speak English when they enter the courtroom. Currently, under our state and federal laws, people who speak only a foreign language who are not defendants, litigants, or witnesses do not have access to our courts. From the perspective of a person who speaks only a foreign language, who is a parent, relative, or close friend of a person going through a criminal or civil proceeding, this is a glaring omission.

An English-speaking person can walk in and observe most trials or court proceedings open to the public at any time. Under the Americans with Disabilities Act, a deaf or hard of hearing person who wants to observe a court proceeding open to the public has a right to request an interpreter or another reasonable accommodation.²⁷ The court must pay for the cost of providing access to the deaf or hard-of-hearing person.²⁸ While English-speaking and deaf and hard-of-hearing people thus have access to court proceedings, a person who speaks only a foreign language does not. Such a family member or friend of a defendant in a criminal proceeding or a party in a civil proceeding is not guaranteed access to our courts. Typically people who speak only a foreign language will bring a family member who speaks or understands some English to summarize what is happening for them. Most often the information they are getting is not accurate or reliable. These family members and friends do not have access to a proceeding that will likely have a profound effect on their lives.

Should interpreters be made available to observers of court proceedings who speak only a foreign language, particularly those who are related to, or have a close relationship with the defendant, victim, or litigant? From the perspective of the family member or friend who speaks a foreign

Figure 3

Salaried staff interpreter with 38 years of experience

Overall test score: 44% correct scoring units

Text to be Interpreted

Now, there were no *injuries* in this accident.
... but *thought nothing of it*.
It *had to be* dark.
... continuing to *harass* him.

Interpretation

Now, there were no *insults* in this accident.
... but *did not think about it at all*.
It was dark.
... continuing to *offend* him.

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translation modes, and convey messages accurately, completely and promptly. The certification tests are

language and cannot have access to a court proceeding, the answer is clearly "yes."

However, English is also a centerpiece of our American institutions. Generally, people who speak only a language other than English when they move to this country are expected to learn English quickly. Indeed, little empathy is often shown for people who do not speak English who are first-generation immigrants or refugees who have been in this country only a short time.

It appears that providing access to deaf and hard of hearing people is more universally acceptable because they are perceived as having a physical condition that cannot change. Deaf people cannot exercise a "choice" to hear. This perception does not hold true for refugees or immigrants. They can hear and they can speak. Therefore, they are perceived to have a "choice." If a person does not comprehend English or speak it, they are subject to an unrealistic expectation that they can become fluent in English overnight and be able to follow a court proceeding without assistance. This unrealistic expectation is a barrier that prevents foreign-speaking members of our communities in Minnesota from being able to participate equally in our judicial system.

There is no quick or easy answer to this issue. As a matter of policy, we must decide whether the process of administering justice is limited to those who are defendants, litigants, or witnesses. We must determine whether observers who speak only a foreign language are among the court's consumers. We must also examine what, if any, justification exists for excluding a group of people from observing court proceedings that may have an impact on their lives? And, of course, we must examine how much expanding access would cost and whether the benefits outweigh the costs.

Figure 4

Lawyer and freelance interpreter with 12 years of experience

*Overall test score (too test twice):
41% and 41% correct scoring units*

Text to be Interpreted

I met Mr. Torres five years ago ...
I looked for a jacket that I had just bought,
hadn't put it on yet, and it was missing.
Well, because at one time we were *sweet-hearts*.
\$3,500

Interpretation

I knew Mr. Torres five years ago ...
I picked up a jacket which I had not worn then
And I put it on.
Yes, we were *friends* at the time.
\$35,000

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In Minnesota, we have made significant strides in recognizing the need to improve access to our courts. We have moved from having a strong, but unfulfilled, interpreter policy for our courts to witnessing the certification of the first group of certified court interpreters and the implementation of rules addressing issues related to court interpreters.

Bettering the *quality* and *availability* of interpreters in our courts is a critical goal that is being achieved. Perhaps the next challenge for Our courts will be to better the access to our courts for all members of our communities, particularly people who speak only a foreign language who wish to observe a court proceeding.□

NOTES

- 1 Deborah Sontag, "7 Arrested in Abuse of Deaf Immigrants," July 21, 1997, *New York Times*, p. 15.
- 2 Minnesota Supreme Court, Minnesota Supreme Court Task Force on Racial Bias in the judicial System, Final Report, May 1993, p. 69.
- 3 William J. Craig, "New Languages in Minnesota," *CURA Reporter, Center for Regional Affairs, University of Minnesota*, Vol. 27, No. 1, p. 6, April 1997.
- 4 *Id.* at p. 7.
- 5 *Id.* at p. 9.
- 6 *Id.* at p. 9
- 7 *Id.* at p. 6.
- 8 *Id.* at p. 6.
- 9 Minnesota Supreme Court hearing on amendment to Rule 8 of General Rules of District Court, June 11, 1997, Testimony by Mary Gagne, Hennepin County District Court manager.

10 *Minnesota Supreme Court hearing on amendment to Rule 8 of General Rules of District Court, June 11, 1997, Testimony by Mary Gagne, Hennepin County District Court manager.*

11 *Office of the State Court Administrator, Court Interpreter Survey, Initial Report, February 1996, February 1996.*

12 *Minn. Stat. §611.30 (1996) and Minn. Stat. §546.42 (1996).*

13 *Minn. Stat. §611.31 (1996).*

14 *Minn. Stat. §611.32, subd. 2 (1996).*

15 *See State v. Marin, 541 N.W.2d 370 (Minn. App. 1996), pet. for rev. denied.*

16 *Minn. Stat. §546.43 (1996).*

17 *Minn. Stat. §611.33, subd. 3 and Minn. Stat. §546-44, subd. 3 (1996).*

18 *Minn.R.Civ.P. 43.07 (1996).*

19 *See 28 C.F.R. 35.160 (and its counterpart in the regulations under the Rehabilitation Act of 1973, 29 U.S.C. 794, 56 Fed. Reg. 35705-06 (July 26, 1991) and Minn. Stat. §363.03, subd. 4 (1996).*

20 *Four states, Minnesota, New Jersey, Oregon and Washington, founded this consortium with the involvement of the National Center for State Courts. Since its origin, five other states have become members: Delaware, Maryland, New Mexico, Utah and Virginia. Other states that have confirmed an intention to join include Colorado, Florida, Hawaii, Idaho, Illinois, Nebraska, Nevada, New York, and Wisconsin. Approximately 8 states are members of the consortium now, with several others considering membership. Sue Dosal, the Minnesota state court administrator, is currently the chair of the four-person steering committee of the consortium.*

21 *Court Interpreter Survey, supra.*

22 *Jon Erickson, "Mistrials: Local Courts Make The Best of Interpreting Troubles," Daily Globe, March 2, 1995. (Approx. date).*

23 *"Behind the Language Barrier, or 'You Say You Were Eating an Orange?'" by William E. Hewitt and*

Robert Joe Lee, State Court Journal, Volume 20, Number 1, p. 24, 1996.

24 *Id. at p. 24.*

25 *Quoting a California municipal court transcript, id. at p. 24.*

26 *Rule 1A, Rules on Certification of Court Interpreters.*

27 *28 C.F.R. §35.160.*

28 *Supra at note 19.*

29 *Figures are reprinted by permission from Hewitt and Lee, supra at note 23.*

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J. ARTICLES FROM STATE COURT JOURNAL

Court Interpreting: View from the Bench

Charles M. Grabau

Introduction

The appointment of a court interpreter is a discretionary duty of a judge. The judge decides who is to receive the services of an interpreter and whether an interpreter is qualified. This duty is very important, as the selection of an unqualified court interpreter can have a profound effect on the rights of everyone involved in either a civil or criminal case.

Unfortunately, many judges lack the knowledge to perform this duty properly. They must frequently rely on "interpreters" who have received little or no training in the skills needed to be a qualified court interpreter. Judges who are unfamiliar with the skills necessary to court interpretation could fall prey to three prominent misconceptions:

Misconception Number 1: If a person is bilingual, the person is able to interpret. A bilingual individual is not necessarily qualified to interpret in court. Court interpreting requires additional knowledge and skills.

Misconception Number 2: The appointment of a bilingual attorney will solve the language problem in the courtroom. An attorney cannot both represent a client and interpret in the courtroom at the same time.

Misconception Number 3: Defendants have little to contribute in their own defense. A defendant has the constitutional right to the effective assistance of counsel and therefore *must* be able to

communicate with his or her attorney.

What does a judge need to know before appointing a court interpreter? For instance, what is a court interpreter? What are a court interpreter's responsibilities as a professional? What should a judge expect from a qualified, certified court interpreter? The purpose of this article is to answer these and other questions pertaining to court interpretation.

What Is the Role of a Court Interpreter?

A court interpreter is a "language mediator"¹ or "language conduit"² whose participation allows an individual who does not speak or understand English to participate meaningfully in a judicial proceeding. An interpreter conveys the meaning of a word or a group of words from a source language (e.g., Spanish) into the target language (e.g., English). Colloquial expressions, obscene or crude language, slang, and cultured or scholarly language have to be conveyed in accordance with the usage of the speaker.

A court interpreter's job is not to tone down, improve, or edit any statements; instead, he or she must maintain the same register, or level of language spoken, and style of the speaker. There are three different modes of court interpretation:

Simultaneous Interpretation: The interpreter speaks contemporaneously with the speaker. This mode of interpreting is often used when the court interpreter is seated at counsel table assisting a non-English-speaking party.

Consecutive Interpretation: The interpreter listens and speaks in a sequential manner after the speaker has completed a thought. The speaker may pause at regular intervals to facilitate the conveyance of his or her statements through the interpreter.

Sight Translation: The interpreter reads and translates a written document orally in court.³

Another mode of interpreting - summary interpretation - should never be used in court.

¹Roseann D. Gonzalez, Victoria F. Vasquez, and Holly Mikkelson, *Fundamentals of Court Interpretation: Theory, Policy and Practice* (Durham, N.C.: Carolina Academic Press, 1991).

²*United States v. Nazemian*, 948 F.2d 522 (9th Cir. 1991), cert denied 113 S. Ct. 107 (1992).

³It is important that a judge know the difference between an interpreter and a translator. A *translator* translates a written document in one language into a written document in another language. Translation requires different skills than those used by an interpreter.

Summary Interpretation: The interpreter summarizes the statements of the speaker.

A court interpreter is an officer of the court who must comply with a code of professional responsibility, which imposes ethical responsibilities relating to the interpreter's conduct. The court interpreter should take an oath in open court before every proceeding to faithfully, accurately, and impartially interpret the proceedings using his or her best skill and judgment.⁴ A court interpreter is neither a witness nor an expert witness.⁵

⁴I suggest that in a busy arraignment session, in order to save time, the interpreter be sworn only at the beginning of the session. However, it is advisable for the judge or the session clerk to indicate on the record that the interpreter has previously been sworn.

⁵*Commonwealth v. Belete*, 37 Mass. App. Ct. 424, 426 (1994). However, an exception is made in circumstances in which a judge has to resolve a dispute about an interpretation to which an attorney or a juror has objected. *Commonwealth v. Festa*, 369 Mass. 419, 429-430 (1976). In these circumstances, the judge should appoint a second, certified court interpreter to resolve the dispute about the interpretation given by the first court interpreter. The second court interpreter acts as an expert witness by providing an opinion as to the correct usage of or meaning of a word or expression that is in dispute. The judge can believe or disbelieve the opinion of the expert witness about the interpretation provided by the first interpreter. The first interpreter should not later perform interpreter services in that same case. Many jurisdictions will not

be able to assign different court interpreters because of a limited number of qualified interpreters. This is another reason to train interpreters and to insist that they understand and comply with the Code of Professional Responsibility for Interpreters in the judiciary.

When an interpreter is used by a defense attorney to interview the defendant, the attorney-client privilege applies. When a suspect is interrogated through an interpreter by a police officer, courts have held that the interpreter is a joint agent of the parties. *U.S. v. DaSilva*, 725 F.2d 828 (2d Cir. 1983). "When two persons who speak different languages and who cannot understand each other converse through an interpreter, they adopt a mode of communication in which they assume that the interpreter is trustworthy, and which makes his language presumptively their own. Each acts upon a theory that the interpretation is correct. Each impliedly agrees that his language may be received through the interpreter. If nothing appears to show that their respective relations to the interpreter differ, they may be said to constitute him their joint agent to do for both that in which they have a joint interest." *Commonwealth v. Vose*, 157 Mass. 393, 394-395 (1892); *Camerluni v. Palmer Company*, 83 Mass. (10 Allen) 539 (1865); *People v. Romero*, 575 N.Y. S.2d 802 (Ct. App. 1991); *U.S. v. Beltran*, 761 F.2d 1 (1st Cir. 1985). The court interpreter plays an important role in protecting the rights of a non-English-speaking person.⁶ A non-English-speaking person is "any principal party in interest or witness participating in a legal proceeding who has limited ability to speak or understand the

⁶In 1970, the Second Circuit Court of Appeals held that the Sixth Amendment right of confrontation, applicable to the states through the due process clause of the Fourteenth Amendment, required non-English-speaking defendants the right of an interpreter at the government's expense. *U.S. v. Negron*, 434 F.2d 386 (2d Cir. 1970).

English language."⁷ It also includes parents of minors who are parties in a civil case. A judge cannot be expected to train a court interpreter. The office of court interpreter services should be responsible for the training and certification of the court interpreters in your jurisdiction.

What a Judge Can Expect from a Certified Court Interpreter

Many jurisdictions distinguish between a certified interpreter and a noncertified interpreter. A certified interpreter is an individual who has passed an oral examination, such as the federal court interpreter's examination, or an examination administered by a state court or a recognized international agency (e.g., the United Nations) that has been shown to be valid and reliable.⁸ There is a growing recognition among professional groups of court interpreters of the need for standardized interstate testing and certification programs.

A court interpreter will speak clearly, in a manner that reflects but does not minimize the tone and emotions of the speaker. A court interpreter should never simplify the questions or statements for a non-English speaker even when the interpreter believes the non-English speaker cannot understand the questions or statements. It is not the obligation

of the court interpreter to request an explanation or simplification of the question or statement.

⁷Model Interpreter Act, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* (Williamsburg, Va.: National Center for State Courts, 1995).
8See *Seltzer v. Foley*, 502 F.Supp. 600 (S.D.N.Y. 1970).

The court interpreter must not correct factual errors made in questions put to the non-English speaker and must not correct the testimony of non-English speakers, even if errors are obvious.

As an officer of the court, the court interpreter must remain impartial. A court interpreter is not a liaison or social worker. There should be no unnecessary discussions with the attorneys, parties, or witnesses, either inside or outside the courtroom.

A certified court interpreter will always refer to himself or herself as the "interpreter" when addressing the court. This practice is followed to avoid confusion on the record. For example, if the interpreter did not hear the question posed by the attorney to the witness, the court interpreter will raise his or her hand and address the judge and state, "The interpreter did not hear the question. Would the Court order the attorney to repeat the question?" The judge should then order the attorney to stop turning his or her back to the witness when he or she asks the question and order him to repeat the question. A court interpreter also is obligated to interrupt the proceeding whenever he or she is unable to understand a word or phrase. Again, the court interpreter will signal the court and inform the judge of the problem. The judge can order the attorney to rephrase the question.

If an error occurs in interpretation during a jury trial, the court interpreter should avoid alerting the jury of the problem. In most situations, the problem can be resolved with a brief sidebar conference. The interpreter can explain the problem to the attorneys and the judge. Perhaps the problem can be solved by the judge ordering the attorney to rephrase the question or to simplify the words used in the question. Sometimes, the court interpreter needs to consult a dictionary and may ask, "Your Honor, may the interpreter consult a dictionary (or other source) to clarify the meaning of the word?" The judge can, if necessary, request the services of a second interpreter to resolve the problem. The judge should record and preserve the words or phrases of the foreign language that are in contention for the record. A hearing should be conducted to hear the opinion of the second court interpreter, who in this case acts as an expert witness. The judge has to rule, in view of the evidence, as to the correct interpretation. If the correct interpretation is different from the original interpretation, the judge must instruct the jury to disregard the first interpretation. The attorney can then repeat the question originally posed to the non-English speaker so that the jury can hear the correct interpretation. Curative instructions will be necessary to inform the jury that the misinterpreted answer is no longer evidence and must be disregarded.

Whenever an objection is made, the court interpreter must interpret everything that is said by the attorney who made the objection and must instruct the witness by a hand gesture not to speak until the court has ruled on the objection. The interpreter must

interpret what the attorney or attorneys state to the judge as well as the judge's ruling on the objection. A non-English-speaking witness or party in a civil or criminal case is entitled to hear everything that everyone else hears in the courtroom.

Working with a Court Interpreter

When Should an Interpreter Be Appointed?

An interpreter should be appointed as soon as possible. Frequently, a judge learns that an individual needs an interpreter from court personnel, the session clerk, a probation officer, or the attorneys in a case. The judge should conduct a brief voir dire of the individuals needing the interpreter. The judge should *not* ask questions that require yes or no answers. I do not ask if they speak English. The judge should ask the persons needing the interpreter questions such as where they live, if they work and what kind of work they do, and how long they have lived in the state. One question the judge should *not* ask is whether they speak English. The judge should assume that if he or she is alerted about a language problem, the probability is that the assistance of a court interpreter is needed. There are times when the judge may suspect that an individual may be hiding behind an alleged language barrier. It is still best to err on the side of appointing the interpreter rather than risk depriving individuals of their day in court.

Orienting the Court Interpreter

It is good practice, when possible, to allow the court interpreter to speak to the attorney

who requested the interpreter so that the interpreter may orient himself or herself regarding the specific vocabulary to be used during the trial or hearing. The interpreter will be better prepared if he or she knows the nature of the case, the charges or claims being tried, and who needs the interpreting—a witness, a party in a civil case, or a defendant in a criminal case. The interpreter may request a photocopy of the charges or complaint, grand jury minutes, deposition transcripts, police reports, medical records, or other documents. The judge should inform the attorney representing the party needing the interpreter that the court interpreter has requested an examination of the documents. The interpreter may also want to briefly speak to the party or witness, in the presence of the attorney, to determine the source language, dialect, idioms, and colloquialisms that the witness may use while testifying. It is important for the court interpreter to assess the witness's level of education, accent, and intelligence, which will be helpful in reproducing testimony later in English.

Preparation is especially important in lengthy, complex cases. If the court interpreter makes a request to prepare for the hearing or trial, both parties should be notified.

Location and Placement of the Interpreter

It is the court interpreter's responsibility to place himself or herself so that the interpreter can perform the interpretation comfortably and inconspicuously. The interpreter must be able to see and hear the attorneys and the witness and has an obligation to inform the court if he or she has difficulty hearing because of the

noise level in the courtroom. The judge, in turn, has the responsibility to support and assist the interpreter. The judge may ask the attorney to repeat a question or raise his or her voice or may order the attorneys to speak one at a time. If the court interpreter is interpreting for a party at counsel table and the attorney is monolingual, the court interpreter should be seated between the attorney and the party.

The Fatigue Factor

It is very tiring to interpret for long periods of time. If a court interpreter believes that he or she is not able to provide accurate interpretation because of fatigue, it is the obligation of the interpreter to inform the court. The judge should then call a 15-minute recess to allow the interpreter to rest. Some jurisdictions provide for teams of two court interpreters when the proceeding will be longer than two hours. Two court interpreters can relieve each other at periodic intervals and prevent fatigue and delays.

Conducting Proceedings Involving Court Interpreters

Take Command of the Proceedings!

In closing, what follows is a list of what a judge can do to take command of proceedings involving interpreters in court and some recommendations on how to improve court interpretation locally. Remember, the judge is in charge!

1. Advise the non-English speaker not to engage in conversation with the interpreter and to answer only the questions asked. If the non-English speaker does not understand the question,

he or she should simply state, "I do not understand the question."

2. Advise the jury at the beginning of the case that the court has assigned an interpreter to assist the defendant or witness who does not speak or understand English.

3. If problems develop during the hearing or trial, require the attorneys to use short sentences. Do not allow the attorneys to show off their command of the English language. Keep it simple!

4. Allow only one attorney to speak at a time.

5. Avoid jargon, slang, colloquialisms, and technical terms: for example, "What score does one have to get on the exam to cut the mustard?"

6. Avoid rhetorical questions and negatives, such as "Did you not ... ?"

7. Never allow the attorneys to ask compound questions.

8. Discourage questions that begin "Isn't it true that ... ?"

9. Do not allow anyone, including a judge, to put questions to the interpreter. Questions are put to the witness.

10. Do not allow the witness to enter into a conversation with the interpreter. Instruct the witness not to converse with the interpreter.

11. Do not allow the use of double negatives in questions.

12. If a language problem occurs in a jury trial, use a sidebar conference with the attorneys with the court interpreter present. If the

problem appears to be complex, call a recess!

13. Allow the court interpreter to use appropriate hand signals with a witness to regulate the speaker during a lengthy answer.

This is necessary for the interpreter who has to use short-term memory to remember a lengthy response.

Recommendations:

1. Adopt a local court rule to require the attorneys to notify the clerk's office or the person in charge of assigning interpreters of the need for a court interpreter.

2. Adopt a code of professional responsibility for court interpreters.

3. Require court interpreters to pass a validated certification examination.

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The Courtroom Interpreter: A User's Guide and Checklist

This piece is adapted from an article by
Judge Lynn W. Davis,
Utah Bar Journal 9 (February 1996): 26.

Pretrial Conference Considerations:¹

- Appoint interpreters at the earliest stage to afford preparation.
- Consider the possible need for multiple interpreters.²
- Remember the fatigue factor and necessity of recesses.
- Be aware of and caution the participants regarding speed and simultaneity of conversation.
- Discuss interpreter modes-simultaneous, consecutive, and sight translation.
- Allow the interpreter contact with the accused in order to:
 1. Explain the interpreter role, including the fact that everything will be interpreted, including vulgarities;
 2. Confirm education level;
 3. Become familiar with dialects, jargon, regionalisms, and colloquial expressions; and
 4. Explain the role of the interpreter and emphasize that interpreting is not an advocate role.
- Supply to the interpreter all written documents that will need to be sight translated at trial and advise the interpreter of experts who will testify at trial.
- Lawyers representing non-English speakers should always determine the immigration/naturalization status of their clients. (What appears as a great plea bargain for the moment may result in the deportation of the client or otherwise disturb the client's legal status.)

¹It is invaluable to include the interpreter at pretrial. While it may not be as necessary for a routinized arraignment, preparation for a hearing, motion, or trial is imperative. Inclusion of an interpreter at pretrial allows her to understand the case, examine the file, examine written documents, and be advised of the extent of expert witnesses and field of technical language. At pretrial an interpreter can be advised of specific documents that might be used at trial, such as written confessions or affidavits.

²Multiple interpreters are necessary in lengthy or complex cases. Many states now use two courtroom interpreters: one for client-attorney conversation and the other to interpret for the record. It is also obvious that multiple interpreters are necessary with multiple non-English-speaking defendants. The number of interpreters can be reduced by the use of headsets.

Trial Considerations:

- Provide necessary physical accommodations. Microphone and sound equipment may be needed to hear speakers. Interpreters should stand or sit where they will not block the view of the judge, jury, counsel, or accused and must be able to hear every speaker.³
- Certify or qualify and voir dire interpreter.
- Administer oath (see upper-right).
- Allow counsel to take exception to qualification.
- Always refer to interpreter by name.
- Give preliminary instructions to the jury, parties, and witnesses regarding the role of the interpreter.⁴
- Caution participants about speed, clarity, and simultaneity of speech.
- Take breaks to avoid fatigue.
- Watch for interpreter improprieties (see lower-right).
- Consider the unique requirements of an interpreter for the deaf or hearing impaired.
- Make and preserve a record: audio, if speaker does not speak English; audio/visual, if speaker is deaf or hearing impaired.

³Interpreters ought to have access to drinking water at counsel table or nearby without interruption and ought to be positioned to maintain eye contact with parties, the lawyers, and the judge. "The interpreter shall be positioned in the courtroom to hear the witness or party but shall not block the view of the judge, jury, or counsel." CJA 3-306 (2) (C) (vii).

⁴A preliminary instruction should be given to the jury to advise the jurors of the important role of the interpreter: he or she is neither an advocate for the accused nor part of the defense team.

Interpreter's Oath

The court should make a preliminary determination on the basis of the interpreter's testimony that the interpreter is qualified and then have the following oath administered:

"Do you solemnly swear that you will well and truly and to the best of your ability discharge the duties of interpreter and that you will interpret and translate from English into _____, and from _____ into English such questions and answers as shall be put to the witness and received from the witness in the case now pending before the Court, so help you God?"

Judges need to watch for interpreter improprieties. For example, an interpreter should not:

1. Improperly influence an answer by head nodding, facial expressions;
2. Engage in lengthy exchanges with the accused;
3. Otherwise lead the witness;
4. Answer questions, give advice, etc.;
5. Arbitrate or mediate a resolution of a case. Lawyers and judges should address the parties, not the interpreter; and
6. Speak in the first person when speaking for the accused. For instance, the interpreter should say "I didn't do it," not "He said he didn't do it."

Court Interpreting for Deaf Persons: Culture, Communication, and the Courts

John G. Richardson

Introduction

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 helps a hearing person understand what it is like for people who lose their hearing after growing up in a hearing world; it does not equal the experiences of people who are born deaf or become deaf early in life. The absence of the sense of hearing interferes with communication in ways that are more profound than simply not being able to hear.

This article offers a basic look at several interrelated issues on deafness and interpreting for the deaf that judges and court managers should know about to ensure justice and fairness in court proceedings that involve deaf or hard-of-hearing individuals: (1) cultural issues related to deafness, (2) the mechanics of visual modes of communication, (3) the skills and services professional interpreters have to offer the courts, and (4) problematic practices that experienced interpreters for the deaf routinely encounter and urge the courts to remedy.

Cultural Issues Related to Deafness

In the United States there is a large community of deaf individuals who have their own visual language, American Sign Language (ASL). Most members

of this "culturally deaf" community are *prevocationally* deaf; that is, they suffered hearing loss before the end of adolescence.¹

Interestingly, persons who are *audiologically* deaf do not necessarily consider themselves part of the deaf community. This group is much larger than the culturally deaf community and consists of individuals who, despite being deaf or 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. Their inability to hear does not mean that they are unable to communicate through oral language. Deaf individuals who are members of the hearing society are more likely than culturally deaf individuals to rely on languages or modes of communication other than ASL. 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 lipreading are among the adaptive mechanisms

¹Paul C. Higgins, "Outsiders in a Hearing World," *Urban Life* 8 (April 1979): 5.

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*. These phrases include hard-of-hearing people as well as people who cannot hear at all. But their use also sometimes reflects an effort to avoid labeling and negative connotations traditionally associated with culturally deaf persons.

Because members of the deaf culture are "outsiders in a hearing world," they are often suspicious and wary of people who can hear. That wariness and distrust stems from a history of misunderstanding and injury to members of the deaf community by the wider dominant hearing society. For example, within the wider hearing society, there is a strong inclination to equate spoken communication skills with intellectual capacity. In general, culturally dominant hearing people tend to consider oral language as the only *legitimate* form of communication.

Since culturally deaf individuals lose their hearing ability early in life, they experience difficulty speaking English fluently and articulately or are unable to do so. Consequently, culturally deaf individuals who cannot communicate in spoken Standard English may be stigmatized as unintelligent or mentally defective by people who can hear.

Deaf individuals and interpreters for the deaf are aware that such harm can be inflicted even in the relatively enlightened setting of a court of law.² Without a proper

understanding of visual modes of communication, judges and lawyers can unknowingly destroy the fairness of court proceedings by constraining the work of a court interpreter for the deaf. Some judges and lawyers 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.

One compelling example of profound and hurtful misunderstanding is evident when judges and lawyers ask, and at

²For 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 William Hewitt.

times order, ASL interpreters to refrain from using facial grammar and body movements that are essential to ASL. Such requests and orders are issued on the grounds that the movements are "distracting" to other court participants.³ Such rulings reinforce the deaf person's sense that the courtroom is a hostile

environment rather than a neutral forum.

Trust is an important concept within deaf culture. Most interpreters can hear and are commonly perceived by members of deaf culture to be 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 people who can hear.

For individuals who are members of nonwhite 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 trust between the interpreter and the deaf person. This, in turn, inhibits the very thing that is essential to any court proceeding: communication.

³This 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. What follows is a basic overview of the visual modes of communication used by deaf individuals and interpreters for the deaf.

Modes of Communication

What people who cannot hear have in common is that they rely on "information they can see" to communicate.⁴ Beyond that, it is difficult to generalize. The

preferred or most effective means of communication for deaf people varies widely, often depending on 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 people in a given setting have in common.

Judges and other court officers should at least be aware of the several recognized methods or modes of communication used by deaf and hard-of-hearing individuals. These include speech reading or lipreading; gesturing (the most rudimentary and limited form of communication); written communication, including computer-aided real-time transcription; and sign language.

Sign language is the use of visual signs to convey information and ideas. There are three basic categories of sign languages, each with its own range of utility, depth of lexical meaning, and level of complexity: (1) independent languages such as American Sign Language; (2) speech-equivalent-signing systems; and (3) finger-spelling systems. The most advanced forms of sign language are not just manual representations

⁴Rita Jo Scarcella, "Professional Sign Language Interpreters," *New Jersey Lawyer*, Spring 1987 (No. 119). of oral language; they are independent languages, such as ASL, British Sign Language (BSL), Danish Sign Language (PSL), and others. 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 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).⁵

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.

There are many forms of sign language, but among them, ASL appears to have the greatest inherent capacity for effective and efficient communication.

⁵David Crystal, *The Cambridge Encyclopedia of Language* (Cambridge: Cambridge University Press, 1987), 220.

⁶Ibid.

ASL is a highly developed language with a structure that can be described in its own terms. About 4,000 signs are used in ASL. The vocabulary, grammar, idioms, and syntax of ASL are completely different from English.

The linguistic units and structure of ASL consist of facial expressions, body posture, and shapes and movements of hands, arms, eyes, and head.

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, or imperative). The lower part of the 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.

Given the range and complexity of ASL and other sign languages, it is clear that culturally deaf people need neither adaptive mechanisms nor the assistance of interpreters when they communicate *with each other*. Members of the culturally deaf community view deafness as a "disability" only in contexts in which communication is required with individuals who are *not* members of the deaf culture, such as a courtroom. The range and complexity of ASL also makes it apparent that interpreters need to be extremely knowledgeable and adept at recognizing and overcoming barriers to communication. Therefore, because ASL is the primary language of the American deaf community, learning ASL is prerequisite for certification as an interpreter for the deaf.

Certified interpreters for deaf persons can help minimize the effects that common misconceptions about sign languages can have on court proceedings. These misconceptions interfere with the best practices that courts should follow to facilitate communication with a deaf person. Contrary to popular belief, a person who is fluent in ASL is likely more 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. For example, misconceptions about ASL such as the following are not uncommon among court officials who have some knowledge of court interpretation: "American Sign Language is not word-for-word, and should cause concern as to its use for a verbatim record."⁷

The foregoing comment illustrates two prevalent misconceptions, the first about language and interpreting generally; and the second about ASL. The first is that proper interpretation between *any* two languages should always be "word for word." Despite legal language that is often phrased to the

⁷Gary Cramer (Court Reporter, Los Angeles Municipal Court), personal correspondence with William 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.

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. 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. The second and most widely unchallenged misconception is that ASL is some form of "shorthand English" rather than a separate, distinct, and fully developed language. There are signing systems that mirror spoken English language, which are referred to as speech-equivalent-signing systems.

Speech-equivalent-signing systems are less sophisticated than ASL. Generally, speech-equivalent-signing systems were developed with the aim of bringing visual communication closer to the structure of spoken language, particularly oral English. Manually Coded English, Seeing Essential English, Signed English, and other similar systems were designed to help educators communicate with and improve the academic achievement of deaf students in the "hearing world." Each of these systems aims to reflect the structure and word order of English, but they do so in different ways; for example, the ways in which hand signs are formed. However, it must be clearly understood that speech-equivalent-signing systems are not equal to ASL or any other separate, distinct, and independent sign language.

Another system, which is less sophisticated than either ASL or speech-equivalent signing, is referred to as "finger spelling." Finger-spelling systems are typically used in classrooms with young children rather than in

social interactions among deaf adults. In this system, which can be applied to any language that has an alphabetic writing system, each letter of the alphabet has its own sign. The main strength of finger spelling is its scope and flexibility. It is quick to learn and can be used to sign an indefinite number of words. It is particularly useful 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), and 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). It is also difficult for receivers 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 on-lit 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.⁸

Judges and other court officials should also be aware of other modes of communicating with deaf or hard-of-hearing individuals, particularly if the deaf person is not capable of using sign language. A deaf person may or may not be able to speech read (commonly referred to as on the

⁸Crystal, op. cit., 225.

lips.⁹ Facility in speech reading also varies, as does lipreading). 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 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 speech reading as their chosen mode of communication may require "oral interpreters," professionals 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*. Because English may be a second language for many deaf persons, some have limited competence in writing and reading English. In these cases, the use of concrete images and simple sentence structures is important. A deaf person will

⁹New Jersey Department of Human Services, Division of the Deaf and Hard of Hearing, "Deafness and Interpreting," October 1991, 4.

usually want important information, such as appointment dates and times, confirmed in writing.

Computer-aided real-time transcription (CART) also can be used to communicate with the deaf. 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 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.

Gesturing is the most rudimentary form of visual communication. While sign language can express the same range of meaning as 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.

Some deaf people have never forged meaningful ties in either the culturally deaf or the oral language cultures. They 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 lipreading abilities, and they cannot read or write English. MLC people communicate through their own idiosyncratic gestures, which are usually unfamiliar to anyone but the MLC deaf person, his or her family, and 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 understanding of books, telecaptioning, or newspapers. Their world is restricted to personal experience; 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.

The court must give special consideration in communicating with MLC people. Even when special consideration is given, however, MLC deaf people are often unable to participate in 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, requires extraordinary measures that are beyond the scope of this article. However, professionally trained interpreters for the deaf can identify MLC individuals and advise the court about the best way to establish communication.¹⁰ 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 an MLC person, or they may themselves be deaf individuals who have special training and skills in both ASL *and*

¹⁰For 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.

in other modes of visual communication.

Certification of Interpreter for the Deaf

As is 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 using an incompetent interpreter could result in having a deaf person *talk down* to the court. For example, if a deaf person determines that the interpreter is minimally skilled or incompetent, he or she may try to help the interpreter by avoiding the use of linguistically complex ideas and sentences. The deaf person may also attempt to aid the interpreter by leaving out details, subtleties, nuances, or even subtextual information, knowing that the interpreter is likely to either misunderstand what he or she is communicating or 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 intermediate interpreters when necessary, but less skilled professional interpreters often will not. It is suspected that less skilled interpreters may believe that the use of a relay interpreter could be misconstrued as a sign of incompetence.

Unfortunately, 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, certified, highly skilled 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 advance notice required.

The most common requirement that states have established for interpreters for the deaf is certification by the 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 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 have 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.¹¹

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 the basis for general interpreter certification. When an individual who does not hold a valid NRID certificate applies to work as an interpreter for the deaf in these states, 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. For example, standards for court and legal interpreting referrals in Massachusetts require:

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

¹¹For a detailed review of these certificates, see New Jersey Department of Human Services, op. cit., 15-17.

California's *Guidelines for Approval of Certification Programs for Interpreters for Deaf and Hard of Hearing Persons* defines 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.¹² The certification process stresses a comprehensive knowledge of all aspects of the court interpreting process, including:

¹²The guidelines referred to in this article are based on an undated report

obtained from the Judicial Council on February 24, 1993.

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
4. The role and function of court interpreters, including court etiquette
 5. The various court proceedings that commonly and frequently require the use of interpreters
 6. A code of conduct and professional ethics

when they understand the effect that cultural factors have on how people communicate. In particular, judges will recognize the importance of both 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.

Conclusion

Judges routinely contend with cultural differences among people who come before them, and they cannot be experts on all cultures. However, judges are better prepared to ensure the fairness and integrity of court proceedings

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Behind the Language Barrier, or "You Say You Were Eating an Orange? "

William E. Hewitt and Robert Joe Lee

The question put to the witness by counsel is:

Now, Mrs. Pena, you indicated that you live in East Orange, at 5681 Grand Street?

The question heard in Spanish by the witness, via the interpreter, is:

You say you were eating an orange?

Court interpreters make it possible to take evidence from witnesses who do not speak English, and they deliver a cornerstone guarantee of our Constitution to non-English-speaking litigants: the right to be "present" during their own trial and participate in their own defense.

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. To fulfill these duties, the interpreter must

conserve every element of information contained in a source language communication when it is rendered in the target language. In simplest terms, the job of the court interpreter is to render everything said in the source language into the target language accurately and completely.

Canon 1

Professional Responsibility for Court interpreters: 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.

In the example that opens this article, it is evident that the purpose of having an interpreter is utterly lost. In that example, what the witness hears from the attorney (through the interpreter) bears no relationship to the actual question. That extreme example may try the reader's credulity (although it represents an actual performance by an interpreter in a testing situation). It seems incredible that this type of misinterpretation would go unnoticed in a trial setting or that an interpreter this bad would be permitted to

continue in the case. (Unfortunately, documented cases of unnoticed or uncorrected errors as extreme as this one are known to the authors.) Following is another, less heinous, interpretation.

"Now, Mrs. Pena, you indicated that you live in East Orange, at 5681 Grand Street?"

"You told me that you lived in the west of Orange, at 56 Grand Street." (translation)

In this example, where the error is not absurd, the ill-effect on a court proceeding is more insidious. How much confusion will need to be sorted out as a consequence of the interpretation error before the examination productively resumes? And what impressions will the jury form of the witness (or the attorney) in the meantime?

How Many Bilingual People Are Qualified to Interpret in Court?

It is easy to forget what we know about the complexities of language and underestimate the difficulty meeting the requirements of a court interpreter's job. It is easy to take for granted that any bilingual person is capable of doing what we expect court interpreters to do. In fact, very few bilingual individuals who are called upon to work as court interpreters have the knowledge and skills required to achieve what is expected of them. In the examples above, what specific challenges have the interpreters failed to meet? In the opening example, it is evident that the interpreter's command of the languages is deficient. The extent of the person's bilingualism itself is questionable. In the second example, the failure relates not to knowledge of language, but to basic cognitive abilities that are essential to the interpreter's craft. In order to correctly render rote-facts (like numbers and names), the interpreter must pay close

attention to detail while listening and then conserve the detail for later recall with an excellent short-term memory. Figure 1 is a schema depicting *eight* cognitive activities that take place when interpreters do their work.¹ In the second example, only two of the activities of the schema-listening (paying close attention to detail) and storing ideas (short-term memory) are emphasized. Other language features-idiomatic speech, for example-heavily tax the interpreter's skills across all eight dimensions of the schema.

Many interpreters perform poorly when they interpret in court because they do not know what is expected of them. They have no formal training in the responsibilities of the court interpreter. Among the implications of Canon 1 of the Code of Professional Responsibility for Interpreters in the Judiciary are the following, which are reviewed and discussed in detail in training workshops for court interpreters:

oversimplifies scholarly models of linguistic cognitive operations that are involved in transferring a message from one language to another. See, for example, the models by Cokely (Figure 3), Gerver (Figure 4), and Moser (Figure 5) in Roseann D. Gonzalez, Victoria C. Vasquez, and Holly Mikkelson, *Fundamentals of Court Interpretation: Theory, Policy and Practice* (Durham, N.C.: Carolina Academic Press, 1991), 319-321.

[I]nterpreters 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.

(Commentary to Canon 1, Code of Professional Responsibility for Interpreters in the Judiciary, emphasis added)

¹The schema substantially

Figure 1 Cognitive and Motor Skills

The interpreter ...

1. Listens
2. Comprehends
3. Abstracts the message from the words and *word order*
4. Stores ideas
5. Searches for the conceptual and semantic matches
6. Reconstructs the message in the other language
7. *While* speaking and listening for the next chunk of language to process
8. *While* monitoring his or her own output

Figure 2

The Problem of Idioms and Slang and obscenity

“The third time he goes up to him, he gives him the finger. I mean, this is not somebody who's trying to remain cool. What he did, he gets into the fray, right in the guy's face, nose to nose with him, and says, ‘You're a punk, mother fucker!’ ”

Source: A California municipal court trial transcript.

In light of the foregoing, consider the challenges offered by the text in Figure 2. Is an ordinary bilingual speaker of English and Spanish, say, likely to be able to handle the idioms in the passage? What will an untrained person do with the obscenity? Will it be preserved? If not, what effect might this have on the evidence presented to the trier-of-fact?

The purpose of this article is to demonstrate and to concretely

illustrate both the extent and the nature of the deficiencies in interpretation that courts should expect when they use "interpreters" who are not properly trained and have not passed a proficiency test. We do this by analyzing the performance of individuals who have taken court interpreting proficiency tests. Court interpreter proficiency tests simulate in a controlled way the work that interpreters do in court.

As such, they provide a good source of information about what goes on behind the language barrier during court interpretation. Figure 3 illustrates one unfortunate phenomenon often discovered through testing. Unqualified bilingual individuals who interpret in court may be trapped by false cognates-words that sound the same in two languages but have very different meanings.

Figure 3
The Problem of False Cognates



Pass Rates on Court Interpreting Proficiency Tests

Carefully developed court interpreting proficiency tests have been used in the federal courts and the states of California, New Jersey, and Washington for several years. An analysis of the numbers of individuals who have taken and performed satisfactorily on those examinations helps us find out how many bilingual people are qualified to interpret in court. Table 1 summarizes test results for Spanish language interpreters. The pattern evident in Table 1 is that very few people who take interpreting tests are able to pass them.² Passing rates vary from 3.6 to 12.5 percent. Is the pattern any

different for other languages? No, it isn't. Table 2 shows the limited data that are available in a few states for other languages. Pass rates on the tests are nearly always lower than 10 percent.

What conclusion is suggested by Tables 1 and 2? What explains these low passing rates? Are the tests fundamentally flawed and unfair to the people who take them? Do they mislead us about the quality of the work most of these people do when they serve the court as interpreters? Our answer is "no." We suggest that the low passing rates are better explained by the inherent difficulty of the work and by the lack of professional training among those people whom courts use to provide

interpreting services. In our view, very few bilingual people pass the tests because very few bilingual people who think they are qualified to interpret in court (or who someone else thinks are qualified) actually are qualified. The tests are doing the job they were intended to do.

²The reasons for differences among reported pass rates on the tests are complex and have never been systematically examined. Many factors probably contribute: differences in the way test records are kept, differences in demographics, emphasis on recruitment and training, relatively minor differences in the testing program itself, "pass/fail" standards, etc. We do not believe that these factors suggest any important functional differences in the testing instruments.

Table 1

How Many Practicing Spanish Interpreters Are Able to Pass a Skills Test?

Jurisdiction	Total Number Tested	Total Number Passing	Percent with Passing Scores
California	2,498	98	3.9%
Federal Court	15,588	559	3.6%
New Jersey	977	78	8.0%
Washington	1,176	147	12.5%

Note: The figures for California are from January 1991 to April 1993; for federal court, as of February 24, 1995; for New Jersey, as of March 21, 1995; and for Washington, as of February 23, 1995.

Sources: University of Arizona; Cooperative Personnel Services, State of California; Administrative Office of the New Jersey Courts; and Office of the Administrator for the Courts, Washington.

Table 2

How Many Practicing Interpreters in Languages Other Than Spanish Are Able to Pass an Interpreting Skills Test?

Jurisdiction	Language	Total Number Tested	Total Number Passing	Percent with Passing Scores
Federal Court	Navajo	104	9	9%
	Haitian Creole	339	13	4%
New Jersey	Haitian Creole	27	2	7%
	Portuguese	55	9	16%
Washington	Cambodian	55	4	7%
	Cantonese	52	5	10%
	Korean	72	6	8%
	Laotian	26	1	4%
	Vietnamese	116	11	9%
Total Other Languages		846	60	7%

Notes: Sources are the same as given in Table 1. Information on passing rates for languages other than Spanish is not available from California.

As evidence of the ways in which interpreters who fail interpreting tests distort the meaning of the source language message when they render it into the target language, we offer a series of typical examples. Becoming familiar with the illustrations illuminates the testing process for the reader by showing what test raters count as errors when tests are scored. Having an understanding of the test structure, content, and construction processes is also useful for settling misgivings about the validity of the tests. A brief description of what the tests are like and how they are developed is found in the next article.

Inside a Test- A Sampling of Errors

To gain an appreciation of the kinds of errors unqualified interpreters make, let us look first at examples of a single scoring unit to see how it is rendered by many different people. The first example is the familiar "Mrs. Pena" illustration, which is included to show the different ways that a rote-fact item (an address) and the sentence containing it can be gotten wrong. The underlined phrase "5681 Grand Street," is the scoring unit in this sentence. For the candidate to get credit for the scoring unit, he or she need only render the address correctly into Spanish. Any other problems with the rest of the sentence are ignored by the raters as they listen to the interpreter's performance. To take us behind the language barrier, we show, using experts' English back-translations, how the interpreter put the question into Spanish. About one-third of the people who took this test did say the address correctly in Spanish.

The second example also appears in the witness testimony part of the exam, but is taken from the witness's portion of the colloquy. It is an idiomatic expression in Spanish that would properly be rendered in English as "It sure did!" or "Did it ever!"³ What is obviously important for the interpreter to preserve in the witness's idiomatic answer is not just the affirmative response, but the conviction with which it is uttered.

The third example is also taken from a Spanish response during the colloquy. The scoring units in the text (underlined phrases) are selected to test knowledge of general vocabulary ("die passenger side") and an idiomatic expression in Spanish ("in case anyone heard"). Again, candidates can make mistakes in interpretation on other parts of the sentence and still get credit if they get the scoring unit itself correct.

If the Spanish idiom were rendered literally (or "word for word" into English), the result would be something like "I already believe it" or "I now believe so."

Example #1

"Now, Mrs. Pena, you indicated that you live in East Orange, at 5681 Grand Street?"

"5681 Grand Street, was interpreted correctly by
32%
of the people who took this test

Translations:

1. "You say that you live in East Orange."
2. "You told me that you lived in the west of Orange, at 56 Grand Street."
3. "Now, you told me that you lived at 4581 East Orange."
4. "Em, em, I live at 58 on, on, Hunt Street."
5. "I understand that you said that you lived in West Orange."
6. "And tell me whether you live on, on Grand Street, Senora Pena."
7. "You live in East Orange at 81 Grand Street."
8. "You indicated earlier that you lived at 5681 Grant Avenue in East Orange. Is that right?"
9. "I understand that you live in East Orange, on the street, at number 5681."
10. "*You say that you were eating an orange?*"

Example #2

Q: "Now, at that time, or shortly thereafter, did anything unusual occur?"

A: "It sure did! I heard a loud crash, that seemed to have occurred right there."
"It sure did!"
was interpreted correctly by
37%
of die people who took the test

Translations:

1. "I believe so."
2. "Yes, I believe."
3. "She says yes, obviously there was . . ."
4. "I, I, yes, I believe so."
5. "Yeah."
6. "Yes, I believe that."

Example #3

"Well, they broke a window, the one on the passenger side,

and they told me to keep a look out in case anyone heard the noise of the glass."

"The passenger side"
was interpreted correctly by
64%
of the people who took the test

"in case anyone heard"
was interpreted correctly by
32%
of the people who took the test

Translations:

1. "We got to the car and one of them broke a window and they told me to watch while we all, while we were in the car."
2. "Well, they broke one glass and they told me to be on the look out to see if somebody came."
3. "Well, they both broke one of the window, window doors and then they, they ask me to be there if any person came by."
4. "Well, they break out one of the windows from the driver's side and they said to watch if there, if they see somebody."
5. "Yes, they broke the opposite window from the driver's seat. They told me to look out just in case anybody wou' arrive."
6. "Well, we went there and one broke the drive, the window on the driver's side, and the other one told u', told me to watch just to hear if anybody was coming."
7. "O.K., uh, they broke the passenger window and told Mr. Herrera to watch out in case, uh, somebody comes over, to act as a lookout."
8. "Well, ah, one of them broke the window from the passenger side, and the other one told me to look just in case that somebody had been looking around."
9. "Well, uh, he broke somethin' off the car?"
10. "Well, we broke the passenger side window, and they axed [phonetic] me to cover and watch for them while they did what they had to do."
11. "Well, they, they broke the window and they told him to watch out so nobody would hear or see why the glass was broken."
12. "Well, they broke the window by the, ah, driver's side and they told me to be on the lookout for somebody-come."
13. "Well, he told me to watch the glass and to hear if there's any passenger coming by."

But What About *Experienced Bilingual People Who Take Interpreting Tests?*

In the preceding examples, we examined a single scoring unit to see the many ways it could be misinterpreted by

different people. We had no way of knowing how much experience these people had. In examples 4, 5, 6, and 7, let us examine the performance of four different individuals whom we do know something about. In fact, they apparently have very good

qualifications. Each example contains a summary of the interpreter's experience, the interpreter's overall score on the test, and illustrations of the kinds of errors for which the interpreter was penalized in scoring.

Example #4

Salaried staff interpreter with 38 years of experience
Overall test score:
44%
correct scoring units

Text to be Interpreted

Now, there were no injuries in this accident.
... but thought nothing of it.
It had to be dark.
... continuing to harass him.

Interpretation

Now, there were no insults in this accident.
... but did not think about it at all.
It was dark.
... continuing to offend him.

Example #5

Salaried staff interpreter with 22 years of experience
Overall test score:
36%
correct scoring units

Text to be Interpreted

I was on the second floor, in my bedroom.
Were you able to actually see . . .
There was a very big crash . . .
... a shotgun

Interpretation

I was on the second floor, in my dormitory.
Were you able to presently see . . .
There was a car accident . . .
... a firearm

Example #6

Staff court interpreter with 12 years of experience
Overall test score:
29%
correct scoring units

Text to be Interpreted

... but thought nothing of it.
It sure did!
And could you tell us what floor you were on at about midnight . . .
There were rocks thrown.
... were you able to actually see where the broken glass had come from?
I don't intend to rehash the evidence.

Interpretation

... but took nothing out.
Yes, I think so.
And can you tell me what floor you were on at midnight . . .
Rocks were not thrown.
... could you see where they broke the glass . . .
I don't intend to hear the evidence.

Example #7

Lawyer and freelance interpreter with 12 years of experience
Overall test score (took test twice):
41% and 41%
correct scoring units

Text to be Interpreted

I met Mr. Torres five years ago . . .
I looked for a jacket that I had just bought, I hadn't put it on yet, and it was missing.
Well, because at one time we were sweet-hearts.
\$3,500

Interpretation

I knew Mr. Torres five years ago . . .
I picked up a jacket which I had not worn then and I put it on.
Yes, we were friends at the time.
\$35,000

Conclusion

Are the linguistic and cognitive challenges that court interpreters face sufficiently difficult that the work should be entrusted to trained and properly qualified professionals, not just to anyone who is bilingual to some (usually unknown) degree? We believe the answer to that is very clearly "yes!" Courts should do everything reasonably within their power and limited resources to encourage professionalism among the bilingual individuals they must rely on for interpreted proceedings. This involves formal training for all interpreters and, above all, implementing interpreting proficiency testing programs in the languages courts most frequently encounter. To do less is to systematically do less than justice to everyone who comes before the court lacking full competence in the English language.

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A Court Interpreting Proficiency Test at a Glance: What It Looks Like and How It Is Developed

William E. Hewitt

Test Structure and Content

Court interpreter proficiency tests simulate the work that interpreters do in court. In order to perform acceptably on the test, interpreters must possess mastery of two languages at the level of an educated native speaker, have the ability to interpret in the simultaneous, consecutive, and sight translation modes, and be able to convey messages accurately, completely, and promptly. Tests have three parts: (1) sight translation of documents (foreign language into English and English into foreign language); (2) consecutive interpretation of testimony; and (3) simultaneous interpretation of an attorney's opening or closing argument to the judge or jury.

Figure 1 summarizes the basic structure of a test. Test materials are adaptations of transcripts and other source documents collected from court proceedings. In combination, the modules test the candidate's knowledge of both languages, including such dimensions as general vocabulary, terminology, and familiarity with representative examples of speech styles that are most commonly encountered in court and legal settings. For state court interpreter certification, the passing score on the test is 70 percent. More specifically, interpreters who take the test must include and accurately convey the meaning of 70 percent of 200 underlined words or phrases that are included in the test as scoring units.

Scoring units represent the special linguistic characteristics that interpreters must be able to render to deliver a complete and accurate 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. Figure 2 illustrates a test passage drawn from a police report. The definition and selection of scoring units requires linguistic experience and expert judgment. 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 figure, the linguistic features that each unit has been selected for are shown by the numbered notes. The illustration exaggerates the "density" of scoring units in a passage, and it does not contain examples of all of the scoring unit types found on tests. Idioms, for example, are not included, nor is slang. In an actual test, there would be no more than three scoring units in a passage of this length.

Test Writing

Test writing involves (1) selecting court transcripts or documents around which to construct each of the test modules; (2) preparing foreign language translations of the transcripts; (3) identifying unique characteristics of the language that pose challenges for interpreters and need to be included as scoring units; (4) modifying the scripts to make them.

Figure 1
Structure of Court Interpreting Proficiency Test

Test Segment	MODULE 1 Sight translation: foreign language to English	MODULE 2 Sight translation English to Foreign language	MODULE 3 Consecutive interpreting	MODULE 4 Simultaneous interpreting
Approximate time required	6 minutes	6 minutes	20 minutes	10 minutes
Length of source document	200-225 words	200-225 words	750-850 words	800-850 words
Number of scoring units	25	25	75	75
Approximate percent of total test	12.5	12.5	37.5	37.5

Figure 2

What Do Scoring Units Look Like on a Test?

On July 7, 1995,¹ the defendant² in this case was observed^{5,6} walking quickly⁴ away from a convenience store,³ shortly before⁴ it began to rain. He appeared to be intoxicated.^{5,7}

1. Numbers/names
2. "Legal" terminology
3. General vocabulary
4. Modifiers/emphasis
5. "Register" (style)
6. Grammar/verbs
7. False cognates

the correct length and to make them contain the correct number and types of scoring units; (5) reviewing all of the text for accuracy; and (6) preparing a scoring guide that lists alternative interpretations that will be scored as acceptable (or that will *not* be acceptable). A tape recording of the simultaneous interpreting passage must also be made.

After the draft test is completed, it is circulated for review by experienced law and language professionals. Before the draft test is put into use, a simulation of the examination process is conducted as a pilot test. Test writers review the results and interview the pilot test takers to identify and eliminate or modify test items that appear invalid or potentially unreliable or otherwise problematic.

Test writing work is overseen by a lead test-writing consultant with proven experience in developing interpreting proficiency tests. The lead consultant directs the test writing process and participates in identifying and recruiting the language specialists. The primary qualifications of the lead test writer are prior experience organizing and managing test writing projects in more than one language and extensive interpreting experience. Individuals meeting this requirement generally have an advanced degree, academic training in language or linguistics, hold certifications by the federal or state courts and/or by the American Translator's Association, and have been involved in teaching and training interpreting theory and practice.

Two to three language experts are selected to write the foreign language parts of the test and select scoring units. Qualifications of the language experts are fluency in the two languages at the level of a college-educated person, experience in interpreting, and familiarity with language theory.

What the States Are Doing

Catherine Gill and William E. Hewitt

Access to justice for millions of non-English-speaking American residents and citizens is impeded in a meaningful way by their inability to participate in and comprehend fully proceedings in state courts and tribunals in which they are involved. Myriad factors - from a lack of understanding about when to provide an interpreter in a court proceeding to the dearth of qualified interpreters and professional standards - contribute to the miscarriage of justice that is perpetrated each time a person is before a court without an understanding of what is taking place.

In recent years, state task forces and commissions charged with identifying issues faced by racial and ethnic minorities have concluded that the plight of non-English speakers in the state courts is one that is compelling and requires immediate and drastic action. Effective communication and understanding is the key to the constitutional protections each of us is guaranteed. A steadily increasing number of states are beginning to appreciate the need to address the concerns of the non-English speakers in their state courts. These states are looking for ways to rationally apply their limited resources to create an efficient and effective system of court interpreting services. Figure 1 summarizes the nature of and possible solutions for the problems that state courts face. It also illustrates how problems faced by judges in the trial courts tend to call for solutions that require

response at the state level or even interstate collaboration.

This article offers a series of recommendations for a phased-in program for improving interpreting services in state courts. The recommendations respond to frequently asked questions received at the National Center for State Courts about how to begin programs to improve interpreting services. The recommendations offered are based on steps that have been followed in states that have been successful in launching and sustaining interpreting service improvements. The shared elements of these programs are known to the authors through past research by the National Center for State Courts and, more significantly, through participation in a steadily expanding network of cooperative activity and information exchange known as the State Court Interpreter Certification Consortium.

What Is the State Court Interpreter Certification Consortium?

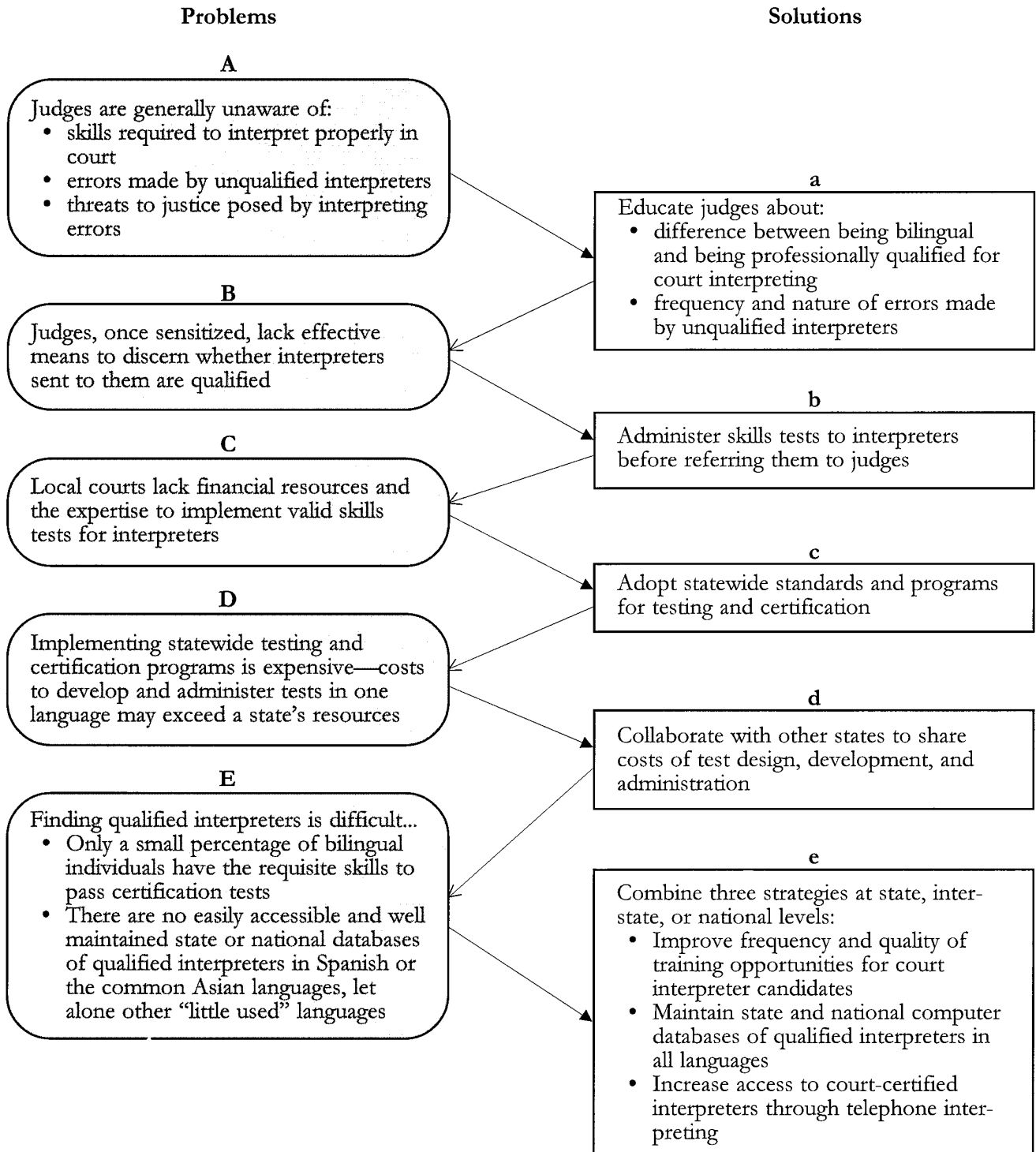
Interpreter proficiency testing - the objective determination of an individual's interpreting skills - is an essential component of programs to improve interpreting services. In fact, most states that have addressed the issue have determined that using untrained and untested interpreters in the courts allows inaccurate and incomplete information to be passed on to both the judge and the non-English-speaking party or

witness. However, 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. The State Court Interpreter Certification Consortium was created by the National Center for State Courts and the states of Minnesota, New Jersey, Oregon, and Washington to remedy this problem by providing a vehicle for exchange of expertise and the sharing of financial resources. Essentially, the Consortium is a "test bank" maintained by the National Center for State Courts under the policy direction of a steering committee composed of representatives from member states.¹ As such, it is a vehicle for making valid and reliable inter-preter proficiency tests available to state courts at affordable costs. The formal objectives of the Consortium are to "establish court interpretation test development and administration standards, and *provide testing materials*, in order that individual states and jurisdictions may have the necessary tools and guidance to implement Certification programs."² The State

¹Sue Dosal, state court administrator of Minnesota, chairs the four-person steering committee. Other members are Kingsley Click, state court administrator of Oregon, and Robert Joe Lee and Joanne Moore, the court interpreting program managers of New Jersey and Washington, respectively.

²State Court Interpretation Certification Consortium, *Guidelines for Consortium Organization and Operation*, p. 1.

Figure 1
Improving Interpreting in the State Courts:
The Rationale for Collaborative Problem Solving



Justice Institute contributed substantially to the effort through grant support to the research project that gave birth to the idea of a Consortium and then in the form of grant support for test development.

Five other states - New Mexico, Virginia, Maryland, Utah, and Delaware - have joined the Consortium since it was founded in July 1995. It is anticipated that Illinois will have joined by the time this article goes to press. Since its inception, the Consortium has developed tests in Spanish, Hmong, Korean, Russian, and Vietnamese that are now available to member states.³

New Jersey and Washington, two of the founding member states of the Consortium, have long-standing testing programs and a wealth of expertise in test development and administration. Before joining the Consortium, New Jersey and Washington had tested more than 2,500 interpreters in Spanish and several other languages.⁴

Five other Consortium states (Minnesota, New Mexico, Oregon, Utah, and Virginia) have now completed certification testing in Spanish. Table 1 summarizes the results of the individual testing effort in those states. Approximately 344 individuals have been tested in those five states. Fourteen individuals passed the test in Minnesota, 13 in

that it was forced to discontinue because it had "overused" its single test) will be adding 11 new interpreters to its roster of certified interpreters, bringing its total to 32 (an increase of about 30 percent).

Maryland is scheduled to begin testing in September 1996. New Jersey, Oregon, and Washington have begun to expand their testing to include Russian, Korean, and Vietnamese using Consortium tests. Minnesota also will begin to expand its testing to include these three languages in September 1996.

The programs in New Jersey and Washington did not spring into existence overnight, nor will an effective interpreting program get off the ground in other states without preparation, time, commitment, and resources. But the job is now much easier than it was for the "pioneer" states like New Jersey, Washington, and California because of the models these pioneer states have provided. Both New Jersey and Washington began their state initiatives with the formation of task forces to oversee research and policy development and to assist in efforts to secure funding for the programs.

As other states become aware of the task before them and begin to explore ways to effectively conduct and maintain an interpreting service program, they look to those states that have led the way in establishing and

states, the greater the accomplishment for all.

The following recommendations are intended to be helpful both to states that are just starting to develop a court interpreter program and to those that are trying to improve established programs and services.

Recommendation 1

Establish a Supreme Court Interpreter Policy Advisory Committee

A planning and advisory group charged by the supreme court to develop recommendations for statewide policy and practice governing interpreters is an effective way to ensure that the state's policies and plans for improving interpreter services reflect an appropriate mix of best practice and practical constraints. Establishing a comprehensive court interpreter program is a significant undertaking requiring specialized experience and expertise. 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 statewide 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, and occupational testing and from judges and attorneys who

³Language tests in Arabic, Cambodian, Cantonese, Haitian Creole, Laotian, Mandarin, Polish, and Portuguese are also available to members of the Consortium but require adaptation to the Consortium test format.

⁴New Jersey has tested 1,059 interpreters, and Washington has tested 1,497.

Oregon,⁵ 12 in Utah, and 24 in Virginia. New Mexico (which in years past had a testing program

⁵Oregon's final testing was interrupted by the flood of 1996. Screening test results suggest that Oregon will certify about 25 Spanish interpreters after its first round of testing is completed.

promoting viable interpreter programs. It is not necessary to reinvent the wheel; in fact, the greater the uniformity among the

have worked extensively with interpreters.

Table 1
First-Year Spanish Testing Experience in Consortium States
 Total Number of Test Takers = 344

State	Number who took screening test	Number who qualified to take final test	Number who took final test	Number who passed final test	Success rate*
Minnesota	40	15	15	14	35% (14/40)
New Mexico	74	13	13	11	15% (11/74)
Oregon	76	29	20†	13	19% (13/67)
Utah	63	17	14	12	20% (12/60)
Virginia	n/a	n/a	91	24	26%** (24/91)
All States	253	74	153	74	22% (74/332††)

* The success rate is calculated by dividing the number of individuals who passed the test by the number of candidates who took the screening test minus the number of individuals who qualified for but were unable to take the final test.

† Floods in Oregon prevented several candidates qualified to take the final test from taking the test on the scheduled day. These candidates will complete the testing in the summer of 1996.

** Because Virginia's testing procedure did not employ a screening phase, Virginia's success rate is calculated simply by dividing the number of individuals who passed the test by the number of individuals who took the test.

†† This figure (332) is the number of candidates who took the screening test in Minnesota, New Mexico, Oregon, and Utah minus the number of individuals who qualified for but were unable to take the final test in these states, plus the number of candidates who took the test in Virginia.

Experience in states with well-developed programs suggests that the advice and services of such individuals can be obtained pro bono by forming a Court Interpreter Advisory Panel. Staff support for the advisory committee should be provided by the administrative office of the courts. Ideally, the committee would be chaired by a member of the supreme court. If this is not possible, the committee chair should be a judge in whom the court has the highest confidence. Figure 2 outlines suggestions for the composition of the committee.

Costs

Costs for this initiative presumably can be absorbed largely within existing operational capacity of the supreme court or the administrative office of the courts.

Recommendation 2

Educate the advisory committee, judges, and other key court personnel about court interpreter issues

The National Center for State Courts (NCSC) has developed a workshop presentation and materials for offering a lively program to sensitize judges, lawyers, and court managers to the differences between "bilingual people" and "court interpreters" and to alert them to important interpreter issues. Depending on the time available, the program integrates lecture, audience participation exercises, videotape material and discussion, and question/answer formats as educational techniques. The program covers seven topic areas,

Figure 2
Suggested Composition of a Court Interpreter
Advisory Committee

- the state court administrator or designee
- at least two trial judges (one metro, one rural)
- at least two district court administrators
- one prosecuting attorney who has experience working with non-English speakers
- one defense attorney who has experience working with non-English speakers
- one to three representatives who provide court-related services to the state's major non-English-speaking populations
- two professional foreign language interpreters (these individuals should have formal training in languages and interpreting and maintain an affiliation with at least one professional interpreting or translating association)
- one certified sign language interpreter

modified as needed for the time available: (1) what goes on "behind the language barrier" when interpreters are used in court; (2) what knowledge and skills are required for interpreting adequately in court, and what goes wrong when interpreters are unqualified; (3) clues for discerning the difference between qualified and unqualified interpreters; (4) information about interpreter skills testing (how it works and why it is important); (5) guidelines for effective and efficient use of interpreters; (6) what options are available for improving the court's access to qualified interpreters; and (7) how to conduct voir dire to determine the need for a qualified interpreter.

Costs

Costs for this program will range from \$1,000 to \$1,500, depending on the scope of the presentation and the particular need of the state. While workshop materials are provided by the NCSC at no cost, the cost for travel, per diem and time for a

trained NCSC associate and an interpreter consultant will have to be absorbed by the participating state. However, it is possible that funding for the time of the associate and the interpreter consultant is available through the NCSC's Court Services Division Technical Assistance Program.

Recommendation 3

Adopt a code of professional responsibility for court interpreters

A code of professional responsibility for court interpreters provides a crucial foundation for a state's interpreter program. It provides an authoritative reference to what trial judges, lawyers, and administrators should expect of interpreters, and study and discussion of the code becomes a featured element in the state's training programs for interpreters. Familiarity with the code can then also become a required element in the state's program of certification: all interpreters, regardless of the language they speak, should be

thoroughly familiar with the code of professional responsibility.

A Model Code of Professional Responsibility for Interpreters in the judiciary is published in Chapter 9 of *Court Interpretation: Model Guides for Policy and Practice in the State Courts* (Williamsburg, Va.: National Center for State Courts, 1995).

One of the initial activities of the advisory committee should be to review the Model Code and adapt it as appropriate for the state in question. The work group charged with this activity should consist of judges, lawyers, and interpreters.

States that have a code of professional responsibility for interpreters similar to or based on the Model Code include California, Maryland, Massachusetts, Minnesota, Oregon, New Jersey, Utah, Virginia, and Washington. Hawaii, Nebraska, and Nevada are also considering adopting the code.

Costs

As with Recommendation 1, costs for this recommendation

should be easily absorbed within the existing operational capacity of the supreme court or the administrative office of the courts.

Recommendation 4

Provide mandatory minimum training for all interpreters

The third step in the program is to offer and require all court interpreters to attend a two-day basic orientation and fundamentals training work-shop, patterned after the model presented in Chapter 4 of *Court Interpretation*. Offering such workshops is a significant step in the process of improving the qualifications of interpreters. In addition to other benefits, implementing these workshops in advance of a certification testing program provides a forum to introduce and explain the reasons for the testing program. It also provides an opportunity to explain the general nature and content of certification tests, how they are conducted, and how interpreters can prepare for them.

Six states with which the NCSC has worked in 1995 and 1996 have elected to establish mandatory minimum training standards for all interpreters as a prerequisite for continued employment in the courts. The workshops offered through these states include both small and large group discussions; skills practice; ethical considerations; basic court and legal procedural issues and terminology; and certification testing preparation. Moreover, these valuable workshops provide the attendees with an opportunity to gather with other professionals, to exchange information and ideas, and to gain valuable contacts. Figure 3 is a sample agenda outlining the program content for a two-day workshop.

Costs

A standard workshop curriculum and materials are available through the NCSC at no cost. Some adaptation of these materials will be required. We strongly recommend that states obtain the services of expert interpreter training consultants to assist them in planning and implementing an initial cycle of these programs. The NCSC also provides a list of the consultants who have contributed to the development of these materials and who have been retained as workshop faculty by other states.

Specific costs for these programs need to be estimated based on the scope of the program, travel required for consultants, etc. Consultant fees for experienced workshop faculty range from a minimum of \$300/day to \$500/day.

Recommendation 5

Initiate mandatory writing testing about the code of professional conduct, court procedure, and court and legal terminology for all interpreters

The objective of a written test on the code of professional responsibility is to ensure that all interpreters – regardless of *interpreting* skills – are minimally competent in written English; understand the requirements of the code of professional responsibility; and are familiar with very basic legal and technical vocabulary and concepts. No standard written test covering all of these elements has been developed through the Consortium (see Recommendation 6), which so far has focused on oral proficiency certification tests. However, similar written tests have been developed in Oregon and Minnesota, and these can be made available for adaptation and use by other states.

Costs

Costs for test development or adaptation would be modest. The development of an entirely new test would be less than \$5,000. Test administration costs would also be modest: no outside expertise is required to either administer or score the tests. It is very likely that test administration expenses could be defrayed entirely by test registration fees.

Recommendation 6

Become a member of the State Court Interpreter Certification Consortium

This recommendation is requisite for the recommendations on testing that follow. As discussed above, the Consortium makes valid and reliable interpreter proficiency tests available to state courts at affordable costs. The Consortium provides for standards for general administration, test administration, training, and security for court interpreting programs. Any state that agrees to pay the membership fee and to observe the terms and

Figure 3
Sample Agenda

Introductory Workshop for Court Interpreters

Day 1

8:30 am	Registration
9:00 am	Introduction, Overview and Goals
9:30 am	Workshop Pretest
9:45 am	Review and Discussion of Pretest
10:15 am	Break
10:30 am	The Role of the Interpreter and Introduction to Ethics
11:00 am	Small Group Discussion of Ethical Issues (requires qualified small group leaders)
12:00 pm	Lunch
1:00 pm	The Skills and Modes of Interpreting: Simultaneous and Consecutive Interpreting and Sight Translation (lecture and demonstration)
2:00 pm	Small Group Skills Practice, Discussion
2:30 pm	Court and Justice System Structure
3:00 pm	Break
3:15 pm	The Roles of Court Officials and Related Agencies
4:15 pm	Review and Question and Answer
4:30 pm	Wrap-up

Day 2

9:00 am	Criminal Procedure (and procedure in other case types) – and the Role of the Interpreter (lecture and demonstration)
10:00 am	Interpreting in Other Settings: Attorney/Probation Interviews, Lock-up, Jails, Mental Health, etc. (lecture and demonstration)
10:30 am	Break
10:45 am	Practical Realities of Courthouse and Courtroom Procedure
11:45 am	Terminology: Introduction to Common Court Terms, Including Advisements and Forms
12:15 pm	Lunch
1:15 pm	Small Group Practice – Interpreting Standard Forms
1:45 pm	Terminology: Resources and Research
2:15 pm	Break
2:30 pm	Overview of Self-Study Techniques and Additional Resources (lecture and discussion)
3:15 pm	Study Groups: Small Group Practice
4:00 pm	Certification Examinations: What and Why (lecture and discussion)
4:45 pm	Wrap-up

conditions of membership in the Consortium is welcome to join.⁶

While applications for membership in the Consortium by jurisdictions other than states (e.g., counties, individual trial courts, etc.) will be given due consideration, it is preferred that a state be the joining entity because of the importance of coordination at the state level. It is important to have uniform standards for interpreter proficiency across the state, and usually the financial commitments required to support testing and educational programs make more sense as state-level commitments.

Costs

To become a member of the Consortium, states must agree to abide by the Consortium's guidelines governing test administration standards, test security, minimum educational standards for interpreters, and financial support. Under the Consortium's guidelines, most states are expected to contribute a one-time fee of \$25,000 to defray the costs of current and future test development and maintenance. The Consortium's steering committee will consider proposals from states for fee payment schedules or for proration of the fee based on the number of languages the state may wish to include in its testing program. For example, it is possible that a "Spanish only" membership fee may be negotiated at a reduced cost.

⁶For additional information about the Consortium and how to join, please contact William Hewitt at the National Center for State Courts, 300 Newport Avenue, Williamsburg, VA 23185; (757) 253-2000.

Recommendation 7

Initiate certification testing in Spanish (might be another language in a few states)

A detailed description of the testing process adopted by the Consortium is beyond the scope of this article. (See pages 32-33 for a summary description.) However, both the tests and a test administration procedure are available through the Consortium. Most Consortium member states (Minnesota, New Mexico, Oregon, Utah, Maryland, and Delaware) have elected to contract with the NCSC to administer the tests until in-state experience and expertise in test administration has been acquired through participation in one complete testing cycle. Tests are administered in two phases (screening and final certification), and the entire process (including planning, test administration, and return of final results) takes about four to six months.

Costs

Certification testing is expensive, especially in the initial implementation stages when it is necessary to rely almost exclusively on outside consultants to oversee the test administration process and serve as test administrators and test takers. As testing experience is gained, however, we continue to find ways to reduce testing costs. As a rule of thumb, however, states should not consider initiating a first-time testing program for less than \$20,000 to \$25,000 to complete one testing cycle for about 50 to 75 candidates in Spanish. Depending on the state's policy choices, about one-half to two-thirds of the costs of this first-round testing program can be recovered through test registration fees. As the program continues and stabilizes—with increased in-state experience and decreased numbers of test takers—test administration costs decrease, possibly to the point where the program can be sustained with fee revenue.

Recommendation 8

Expand the testing program to additional languages

In the year following implementation of Spanish testing, states should consider extending the testing program to include the two or three most frequently encountered languages other than Spanish. Tests in Hmong, Korean, Russian, and Vietnamese are now available to Consortium member states. Additional examinations will be completed in 1996. The prioritization of test development for other languages will depend on the needs and requests of member states. In the near future, new tests will likely include Arabic, Cambodian, Cantonese, Haitian Creole, Laotian, Mandarin, and Polish.

Conclusion

Language and communication should not create a barrier to the state courts for non-English speakers. States should and must take the requisite steps to ensure that access to justice is uniform. The recommendations here are intended to provide a framework for a state's research and planning efforts in the area of court interpretation. By educating the judiciary and other key court personnel to the need for qualified court interpreters; by educating and training the interpreters themselves; and by insisting on standards of ethical and professional conduct, states will be able to uphold the integrity of the court proceeding; maintain public confidence and support in the judicial system; and utilize precious resources efficiently and effectively.

K. STATE OF MINNESOTA,
FIFTH JUDICIAL DISTRICT,
ORDER ESTABLISHING
POLICIES FOR
INTERPRETER SERVICES

In Re: Order Establishing Policies for Interpreter Services

I. Goals of the 5th District Interpreter Policy

- A. The 5th Judicial District will comply with the spirit and intent of Rule 8 of the General Rules of Practice for the District Court.
- B. The 5th District is establishing these policies pursuant to M.S. § 484.69, subd. 3, that allows the Chief Judge to exercise general administrative authority over the courts of the judicial district.
- C. The use of telephone interpreting should be minimized and only used if a certified interpreter cannot be obtained after diligent search.
- D. If telephone interpreting is needed, it should be with a Minnesota certified interpreter. The AT&T Language Line should only be used as a last resort.
- E. In order for court administrators to adequately budget and document interpreter expenses, maximum rates are set for the following services:
 - 1. Interpreter coordinating service;
 - 2. Telephone interpreting for emergencies by certified court interpreters;
 - 3. Hourly rates and expenses for certified and non-certified (roster) court interpreters.

II. Interpreting Coordinating Service

If a certified court interpreter is contacted by a Court Administrator's office with a request to arrange for an interpreter for a different language, the maximum rate for that coordinating service shall be \$20 per hour with no expenses. The hourly rate will be billed in 15-minute increments. The reimbursement will be to the organization for which the certified interpreter is working, or to the individual, if they are in unpaid status from their primary government employer, upon presentation of a uniform statement at Attachment A.

III. Interpreting Over the Telephone

For those certified court interpreters who agree to interpret over the telephone for emergencies, the rate shall be \$2 per minute. The fee shall be paid to the organization for which the certified court interpreter is working, or to the individual if they are in unpaid status from their primary government employer, upon presentation of the uniform statement at Attachment B.

IV. **Interpreting In Court**

The following maximum rates and expenses are set for certified and non-certified (roster) court interpreters for court proceedings upon presentation of the uniform statement at Attachment C.

A. Certified Court Interpreters

The maximum rate is:

- \$50 for the first hour (appearance time rounded up to one hour)
- \$40 for each subsequent hour (time rounded up to nearest quarter hour)
- \$30 per hour travel time

B. Non-certified (Roster) Court Interpreters

The maximum rate is:

- \$40 for the first hour (appearance time rounded up to one hour)
- \$30 for each subsequent hour (time rounded up to nearest quarter hour)
- \$20 per hour travel time

C. Calculating Court Interpreter Time

When calculating court interpreter time, lunch time is not included; break time is included. When the court interpreter arrives for a court proceeding, they should check in with the Court Administrator's office, and check out when they leave. The statement for services should be submitted to the Court Administrator before the court interpreter leaves, if possible.

D. Expenses

Mileage, meal expenses and other reasonable expenses as established by state guidelines. (See Attachment D.)

E. Cancellation Fee

The cancellation fee is \$50 for certified court interpreters and \$40 for non-certified court interpreters, unless the interpreter is notified of the cancellation by 5:00 p.m. of the previous business day. If the court proceeding is not canceled in time and the interpreter drives to the location of the court proceeding, the interpreter is owed the one-hour minimum plus driving time and mileage.

V. **Court Proceedings Defined**

The above rates shall be paid from the Court Administrator's budget only for the court proceeding, which is defined (for payment purposes) as the court session itself, plus interpreting for the defendant and his attorney, and/or witnesses immediately prior to a court proceeding, during breaks in the court proceeding, or immediately after the court proceeding. Interpreting, other than above, that is needed by public defenders. Prosecutors or probation/court services shall be paid by their respective budgets. NOTE: Exceptions

may need to be made for a period of time until the affected agencies establish appropriate budgets and line items.

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VI. Miscellaneous Interpreter Policies

A. Tape Recording

Consecutive non-certified (roster) court interpreting of the court proceedings that are on the record shall be tape-recorded. Simultaneous interpreting authorized by the Court need not be recorded.

B. Diligent Effort

The Court Administrator's Office should consult the statewide roster of certified and non-certified (roster) court interpreters and begin their diligent effort with the nearest (in distance) available certified interpreter on the list. The Court Administrator will decide when the diligent effort required by the rule has been satisfied.

C. Maximum Rates

1. The maximum rates are set with knowledge of the rates set by the Federal Courts and Hennepin County and the rates charged by interpreter agencies. The presiding judge always has the authority to order a higher rate of payment or expenses in circumstances where there are very limited numbers of interpreters available for rare languages or dialects.
2. The maximum rates set in this policy for court interpreting for court proceedings do not supersede any existing agreement between interpreters and individual counties at lower rates.
3. Rule 8 requires the use of certified or non-certified (roster) court interpreters for court proceedings. Other departments and/or agencies that are not covered by Rule 8 are not covered by these rates or policies.
4. In certain civil cases, pursuant to 43.07 of the Rules of Civil Procedure, the court may direct one or more of the parties to pay for the cost of the interpreter.

VII. Effective Date

This administrative order is effective April 29, 1998 until changed by subsequent order.

Dated: April 15, 1998

Bruce F. Gross
Chief Judge, 5th Judicial District

NOTE: This administrative order does not establish any policies or rates for sign language court interpreters.