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The proper use of interpreters can help protect the rights of persons with limited English proficiency and facilitate the fair and efficient administration of justice.

The Court: *You got anybody here that understands English better than you?*

Unknown Person: *I do, sir.*

The Court: *Well, why don't you just come up here. Are you charged with something too or are you his friend?*

Unknown Person: *(Inaudible.)*

The Court: *Well, you can come on up here. Sounds to me like he better enter a 'not guilty' plea, seeing as he can go to jail big time.*

Unknown Person: *He said he's guilty.*¹

The number of persons in the United States over the age of five who speak English less than very well soared from 14 million in 1990² to 24.5 million in 2007,³ a whopping 175 percent increase. Although Spanish is the non-English language spoken most frequently at home, there are more than 300 single languages or “language families” used in the United States.⁴ These statistics point to an ever-increasing challenge confronting state and federal courts charged with providing access to justice for all—including individuals whose primary lan-

guage is not English and who have a limited ability to read, speak, write, or understand English (often referred to as “limited English proficient” or “LEP” individuals). In the federal courts alone, interpreted events (defined as one interpreter, one case number, one date) have been increasing steadily over the past decade, from approximately 100,000 in 1996, to 232,457 in 113 different languages in the 12 months ending September 30, 2007.

Given that language and cultural barriers may prevent criminal defendants from effectively participating in their trials, result in misinterpretation of witness statements made to triers of fact during court proceedings, deter minority litigants from the civil justice system as a forum for redress of grievances, and exclude large sectors of the population from jury pools,⁵ the lack of sufficient numbers of qualified interpreters in the courtroom poses

1. *Ohio v. Fonseca*, 124 Ohio App. 3d 231, 705 N.E. 2d 1278 (Ohio Ct. App. 1997).

2. <http://www2.census.gov/prod2/decennial/documents/1990/CPH-L-133.pdf>

3. http://factfinder.census.gov/servlet/ADPTable?_bm=y&-US&-geo_id=01000ds_name=ACS_2007_1YR_G00_-&-lang=en&-caller=geoselect&-format=

4. <http://www.nvtc.gov/lotw/months/november/USlanguages.html>

5. See V. Jaksic, *Future Jurors May Need Interpreters: As Diversity Grows, Courts Weigh A Complex Option*, National Law Journal, Aug. 6, 2007, at 1 (discussing growing pressure on courts to provide interpreters for LEP jurors).

Court interpreter Adriana Hinojosa, right, interprets at a hearing in Omaha, Nebraska, in September 2008. Hinojosa is one of just 21 certified foreign language court interpreters in the state and her workload has more than doubled in the last decade.

a significant threat to the fair, impartial, and efficient administration of justice.⁶ Identifying, training and supervising reliable interpreters in a wide variety of languages also presents a significant management issue for the courts.

The proper use of interpreters can help protect the rights of LEP parties and facilitate the fair and efficient administration of justice. Only through competent interpretation can an LEP party understand the statements of the judge, opposing counsel, and the party's own counsel, as well as the testimony of witnesses, and assist in his or her own defense. Interpretation also enables judges, juries, and counsel to understand the testimony of defendants, witnesses, and other parties. Furthermore, interpreters make it possible for the court reporter to produce an accurate English-language record of court proceedings.

Right to an interpreter

The right to an interpreter, although not specifically guaranteed under the U.S. Constitution, has been established through case law interpreting the Sixth Amendment right of a defendant to confront adverse witnesses and participate in his own defense,⁷ including the right to effective assistance of counsel, as well as

through the fundamental fairness required by the Fifth Amendment's due process clause, as applied to the states through the Fourteenth Amendment. Certain state constitutions (e.g., California and New Mexico) also recognize the right to an interpreter for LEP defendants in criminal cases, and state courts have recognized a variety of federal constitutional sources of the right to an interpreter.

The Court Interpreters Act, 28 U.S.C.A. §1827 (1978), requires federal courts to appoint an interpreter in criminal and civil actions commenced by the federal government in U.S. district courts, and applies to both pretrial and grand jury proceedings. Other mandates for interpreters are included in Justice Department regulations implementing Title VI of the Civil Rights Act of 1964, as well as Executive Order 13166 (ordering all federal departments and agencies to develop policy guidelines to improve access by LEP persons to federally funded services).

In addition, a number of states have enacted statutes and rules mandating the appointment of court interpreters in criminal cases, in juvenile proceedings, and in certain civil cases (especially in family-related proceedings after a protective order is sought or granted, and

in cases involving child abuse, neglect, or termination of parental rights, as well as in mental commitment and guardianship proceedings). In most civil cases, however, the courts normally have discretion to determine whether the expense of the court interpreter should be paid by the state, or assessed to one party or among the parties.

Despite the various constitutional and statutory protections providing for the appointment of interpreters, many states still have no coherent system for providing interpreter services or ensuring the competence of interpreters. Anecdotal reports, newspaper articles, and even court-sponsored studies indicate that due process and fundamental fairness considerations are being given short shrift in the treatment of LEP participants in the courts.

For example, LEP persons often have no means to communicate with court clerks, staff, or judicial officers; judges often lack the training necessary to distinguish between litigants who understand rudimentary English and those who are truly proficient in the language; court interpreters are permitted to interpret without any demonstrated competency, and some courts routinely allow untrained, non-professionals, including relatives and friends, to act as interpreters;⁸ courts are allowing cases involving LEP parties, including criminal defendants, to proceed without qualified interpreters or, in some cases, any interpreters at all; and some states have no system for training judges, court officials, or attorneys in issues related to utilization of interpreters. The lack of available qualified interpreters often causes substantial delay and disruption in court proceedings, and has led in some cases to reversals at the

6. See generally M. Jullian, *Courts Need More Interpreters; Immigrant Cases Spike U.S. Demand*, USA Today, Nov. 19, 2008, at 3A; P. Aronson, *Subject to Interpretation: Many State Courts Face A Shortage of Interpreters*, National Law Journal, March 22, 2004, at 1.

7. See, e.g., *Negron v. New York*, 434 F.2d 386, 388 (2d Cir. 1970).

8. In one Oregon case, a judge presiding over a spousal abuse case apparently directed the abused wife to interpret for her accused husband. See L. Taylor, *Rights to Accurate Legal Translations Evolving; Attorneys, Some Judges Say Poor Interpretations Botch Convictions*, Lexington Herald-Leader, April 22, 2002, at A1; see also Aronson, *supra* n. 6 (discussing use of a drug defendant to interpret for other defendants, as well as use of people ranging

from "Spanish-speaking pastors to the local high school Spanish teacher to the owner of the local Mexican restaurant" as court interpreters; noting that dual role of defense attorney who is also forced to serve as interpreter for his client may violate Code of Professional Responsibility); L. Feldman, *Society Increasingly Multilingual; LA Courtrooms: Judge, Jury – and Interpreter*, Los Angeles Times, May 5, 1985, at 1 (discussing court's reliance on "actresses, interior decorators, chemists, law students and housewives" as interpreters).

9. See, e.g., V. Benmaman, *Interpreter Issues on Appeal*, IX PROTEUS (Fall 2000); L. Davis, M. McKeel, J. Oldroyd, B. Steed, *The Changing Face of Justice: A Survey of Recent Cases Involving Courtroom Interpretation*, 7 HARV. LATINO L. REV. 1 (2004).

appellate level.⁹

In one of the most oft-cited examples, *Negron v. New York*, 434 F.2d 386 (2d Cir. 1970), the court reversed a murder conviction where the defendant had been denied an interpreter. The court emphasized that the stakes were even greater than the defendant's Sixth Amendment right to confront witnesses against him: "Considerations of fairness, the integrity of the fact-finding process, and the potency of our adversary system of justice forbid that the state should prosecute a defendant who is [in effect] not present at his own trial."¹⁰ As the court noted in *United States v. Carrion*, 488 F.2d 12 (1st Cir. 1973), in criminal cases, "[t]he right to an interpreter rests most fundamentally . . . on the notion that no defendant should face the Kafkaesque spectre of an incomprehensible ritual which may terminate in punishment."

Trial courts enjoy broad discretion in the appointment and qualification of interpreters. Appeals based on interpretation problems are difficult, largely because there is rarely a record of the foreign language communications to compare to the official English language record of court proceedings. Nevertheless, trial courts have been reversed in cases where they appointed interpreters who did not speak the defendant's language¹¹ or who were unqualified or unable or unwilling to fully and properly interpret testimony,¹² as well as in cases where delays in the appointment of interpreters violated defendants' speedy trial or other rights.¹³ Moreover, interpretation problems are not confined to the courtroom. Injustice may result from inadequate interpretation at other stages of the process.¹⁴

At least some of these issues are being addressed as states move to modernize and improve interpreting standards in the courts. A majority of states are now members of the Consortium for State Court Interpreter Certification (discussed below), which develops court interpreter proficiency tests and provides technical assistance to members. At the federal level, the State Court Interpreter

Grant Program Act,¹⁵ which would provide funding for the improvement of state court interpreter programs, has been introduced in the Senate on several occasions, and was reported favorably by the Senate Judiciary Committee in 2008, but has never come up for vote.

Court interpreting basics

A court interpreter is an intermediary or conduit whose participation allows an LEP person to participate meaningfully in a judicial proceeding. The interpreter conveys the meaning of a word or group of words from a source language (SL) into a target language (TL). The goal of the interpreter is to produce a "legal equivalent" of spoken communications, which has been described as a "linguistically true and legally appropriate interpretation of statements spoken or read in court, from the second language into English or vice versa."¹⁶ The interpreter is required to render the form and content of the discourse in a verbatim manner, and cannot edit, summarize, delete, or add to the original SL statements. Thus, obscene language, slang, and

colloquial expressions must all be conveyed, conserving the language level, style, tone, and intent of the speaker.

Although the "verbatim" standard is required at least in part because the interpreter's version of the spoken discourse becomes the official record of the proceeding, a truly verbatim interpretation is often impossible because many terms and phrases in the SL may have no exact equivalent, or may even be nonsensical, in the TL. The interpreter must therefore mediate between the verbatim requirement of the legal record and the need to convey a meaningful message in the TL. The dichotomy is resolved by focusing on conceptual units that must be conserved on a concept-by-concept, as opposed to a word-by-word, basis. Thus, as the Supreme Court of Minnesota observed in *Minnesota v. Mitjans*, 408 N.W. 2d 824, 832 (Minn. 1987), interpretation "is an art more than a science, and there is no such thing as a perfect translation of . . . testimony."

There are two principal modes of oral interpretation used in court interpreting: *consecutive* and *simultane-*

10. See Aronson, *supra* n. 6.

11. See, e.g., Aronson, *supra* n. 6 (discussing, *inter alia*, 2003 reversal of conviction of child sexual assault, where Colorado appellate court found that not only did court-appointed Farsi-speaking Iranian interpreter speak language different from that of defendant, a Dari-speaking native of Afghanistan, but also that it appeared that interpreter himself had difficulty understanding English).

12. See, e.g., *Perez-Lastor v. INS*, 208 F.3d 773 (9th Cir. 2000) (reversing and remanding denial of asylum claim, based on lack of due process due to inadequate interpretation of deportation hearing proceedings; referring to interpreter's "less-than-fluent command of the English language, and consequent lack of precision throughout the hearing"); Aronson, *supra* n. 6 (discussing, *inter alia*, Kentucky appellate court's 2001 reversal of first-degree murder conviction of Honduran-born immigrant, where inexperienced interpreters had used wrong Spanish words, used words that are not in Spanish vocabulary, mangled meaning of entire sentences, and completely failed to interpret long passages of testimony); see also *United States v. Makham*, 2005 WL 3533263 (D. Or. 2005) (overturning jury verdict in drug-related trial, based in large part on pervasive problems with interpretation during trial, where Thai defendant's "limited ability to speak English, her difficulty in understanding English, and her illiteracy in both the English and Thai languages, all of which exacerbated the court's, counsel's, and the jury's difficulty in comprehending defendant's testimony," and where interpreter interrupted defendant's testimony to "inform the court that defendant's testimony and answers to questioning, spoken in Thai, were confusing").

13. See, e.g., E. Londono, *Md. Judge Dismisses Sex-Abuse Charges; Clerk Is Unable To Find Suitable Translator In Time*, Washington Post, July 22, 2007, at C5 (reporting on dismissal of criminal prosecution for sexual abuse of seven-year-old girl, where judge ruled that defendant's right to speedy trial had been violated as a result of court's protracted nationwide efforts to locate an interpreter in defendant's language – Vai, a tribal language spoken only in West Africa, primarily Liberia and Sierra Leone); Aronson, *supra* n. 6 (documenting 2003 case of Spanish-speaking defendant who sat in jail in upstate New York for more than three months "unable either to talk meaningfully to his attorney or understand the vehicular homicide charge against him"; noting that "[i]n worst-case scenarios, hearings, pleas and trials can be delayed, sometimes for months, as lawyers and courts wait for qualified interpreters, leaving defendants to languish in jail").

14. See, e.g., Aronson, *supra* n. 6 (noting that police "often . . . use Spanish-speaking officers to interpret during an interrogation – a conflict of interest that can lead to tainted confessions"); Taylor, *supra* n. 8 (discussing *Ohio v. Ramirez*, where appellate court reversed defendant's murder conviction, based on police interpreter's botched interpretation of Miranda warnings, where "You have the right to the advice of an attorney" was interpreted as "You have a right-hand turn to give a visa to a lawyer"); *Ohio v. Rarmirez* 135 Ohio App. 3d 89, 732 N.E.2d 1065 (Ohio Ct. App. 1999).

15. S. 207 (110th Cong.) (2008).

16. R. González, V. Vásquez, H. Mikkelsen, *FUNDAMENTALS OF COURT INTERPRETATION: THEORY, POLICY AND PRACTICE* 16 (North Carolina: Carolina Academic Press, 1991).

Model voir dire for determining the need for an interpreter

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

Identification questions:

“Ms. ____, please tell the court your name and address.”

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

Questions using active vocabulary in vernacular English:

“How did you come to court today?”

“What kind of work do you do?”

“What was the highest grade you completed in school?”

“Where did you go to school?”

“What have you eaten today?”

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

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

Source: National Center for State Courts, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*.

Suggested text for judge’s statement in court to clarify the role of the interpreter

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

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

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

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

Source: National Center for State Courts, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*.

courtroom discourse. The interpreter may be seated behind and whisper into the ear of the LEP speaker, or may use electronic equipment, with headphones, through which the LEP speaker hears the interpretation. A third form of interpretation, called *summary interpretation*, is a method of paraphrasing or summarizing the words of a speaker, and is not appropriate in a courtroom or during counsel’s meeting with a client.

Interpretation should be distinguished from *translation*. Translation refers to the process of converting written text from one language into written text in another language. Interpretation and translation involve very different skills, which means that an excellent interpreter may not serve well as a translator, and vice versa. However, *sight translation*, a hybrid task by which an interpreter reads a document written in one language while rendering it orally into another language, is often performed by court interpreters.

Interpreter qualification

Court interpretation is a highly specialized, and particularly demanding, form of interpreting. Court proceedings not only involve interactions at a significantly higher level of difficulty than conversational language, but also require a familiarity with legal terminology and procedures and with the cultural context impacting the parties in the court proceedings. The court interpreter’s successful performance is dependent on his or her ability to convey the speaker’s words and presentation style in the courtroom setting, without changing colloquial expressions or tone.

To be fully competent in all situations, an interpreter should possess at least the following attributes: (1) strong language skills in both English and the foreign language, including a knowledge of legal terminology and idiomatic expressions and slang in both the source and target languages, as well as an understanding of geographic differences in meaning and dialect; (2) skills in the three

ous. In *consecutive interpretation*, the interpreter listens and speaks in a sequential manner after the speaker has completed a thought. This form of interpreting is used principally for witness testimony, and allows the jury to pay full attention to the defen-

dant’s tone of voice, demeanor, and body language. (Even if the jury is unable to speak the defendant’s language, it may still draw inferences regarding these non-verbal elements.) *Simultaneous interpretation* is performed contemporaneously with

basic modes of interpreting (consecutive and simultaneous interpretation and sight translation), including highly developed short-term memory skills that allow the interpreter to listen, understand, memorize, interpret, and speak at the same time, as well as experience in determining the appropriate mode to use in particular courtroom situations; and (3) an understanding of ethical and professional standards and how to apply those standards in a courtroom setting.

The Court Interpreters Act of 1978 and subsequent 1988 amendments mandated a national exam for certifying interpreters qualified to interpret in federal courts. The Administrative Office of the U.S. Courts has developed such an exam for Spanish, Navajo, and Haitian-Creole, although only the Spanish exam is currently administered. Interpreters who pass this exam and meet the other qualifications of the Administrative Office are referred to as *certified* interpreters. The Administrative Office's Federal Court Interpreter Certification Examination is administered in two phases and includes written and oral tests that, among other things, measure a candidate's ability to accurately perform simultaneous as well as consecutive interpretation and sight translations as encountered in the federal courts.

Apart from certified interpreters, the Administrative Office classifies two additional categories of interpreters: *professionally qualified* interpreters and *language skilled* interpreters. Individuals may be deemed professionally qualified if (1) they have previously been employed as conference or seminar interpreters with any United States agency or with the United Nations or a similar entity if the condition for employment includes successfully passing an interpreter examination, or (2) they are members in good standing of a professional interpreter association that requires a minimum of 50 hours of conference interpreting and the sponsorship of three active members of the same association. Interpreters who

are not certified or considered professionally qualified can be classified as language skilled interpreters if they can demonstrate to the satisfaction of the court their ability to effectively interpret from the foreign language into English and vice versa in court proceedings.

At the state level, the National Center for State Courts has established the Consortium for State Court Interpreter Certification to develop court interpreter proficiency tests for use by member states. Forty states were members of the Consortium as of the end of 2007. The Consortium has constructed a variety of testing instruments in some 17 languages, and has also supported the development of a written examination focusing on vocabulary, legal terminology, court procedure, and professional ethics. In addition, some states have developed their own testing programs; and one professional organization, the National Association of Judiciary Interpreters and Translators (NAJIT), has developed an oral performance examination for its members (for Spanish interpreters only).

Utilization of interpreters

In 1995, the National Center for State Courts published Model Guides on court interpretation for policy and practice in the state courts,¹⁷ which recommended standards governing the use of interpreters in trial courts. The "Judge's Guide to Standards for Interpreted Proceedings," contained in Chapter 6, sets forth a number of recommendations on the use of interpreters in the courtroom, which are summarized here along with other tips for the proper and efficient use of interpreters.

- All interpreters appointed by the court should be as highly qualified as possible. Trial judges should urge that a coordinator of interpreter services be designated whose responsibilities include meaningful screening and assessment of interpreters' skills before placing their names on a roster of court interpreters who may be called to interpret on a regular

basis in the court.

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

- When two or more defendants who need an interpreter speak the same language, interpreting equipment should be used to provide simultaneous interpretation of the proceedings.

- Every interpreter used in the court should be required to swear an oath to interpret accurately, completely, and impartially.

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

- Before proceedings begin, the judge should explain the role and responsibilities of interpreters to all the courtroom participants in any court proceeding.

- The judge should advise every witness of the role of the interpreter immediately after the witness is sworn and before questioning begins. As the judge gives the advisement, the interpreter should simultaneously interpret it for the witness.

- Any time an interpreter is required for a jury trial, the judge should advise the jurors of the role and responsibilities of interpreters, and the nature of evidence taken through an interpreter.

- When a case involves an LEP party, the judge should instruct the panel of jurors before voir dire begins that an interpreter is sitting at counsel table to enable the party to understand the proceedings. It is also important to determine whether prospective jurors are affected by the presence of an interpreter due to, among other things, prejudice against LEP persons, and whether prospective jurors speak

17. W. Hewitt, COURT INTERPRETATION: MODEL GUIDES FOR POLICY AND PRACTICE IN THE STATE COURTS (Williamsburg, VA: National Center for State Courts, 1995).

Interpreter's oath

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

Source: National Center for State Courts, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*.

Suggested text for clarifying the interpreter's role to the witness

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

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

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

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

Please speak in a loud, clear voice so that everyone and not just the interpreter can hear. If you do not understand the interpreter, please tell me. If you need the interpreter to repeat something you missed, you may do so, but please make your request to the person speaking, not to the interpreter.

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

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

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

Source: National Center for State Courts, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*.

iciency in English and is receiving the assistance of an interpreter.

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

- Jurors must treat the interpretation of a witness's testimony as if the witness had spoken English and no interpreter were present;

- Jurors must not evaluate a witness's credibility positively or negatively due to the fact that his or her testimony is being given through an interpreter;

- Jurors who speak a witness's language must ignore what is said in that language and treat as evidence only what the interpreter renders in English. Such jurors must ignore all interpreting errors they think an interpreter may have made.¹⁸

Other practical procedures a judge can observe to ensure the most effective use of interpreters during proceedings include: 1) keeping the courtroom as quiet as possible and allowing only one person to speak at a time, 2) speaking and assuring that others speak at a volume and rate that can be accommodated by the interpreter, 3) permitting witness interpreters to use appropriate signals to regulate speakers when the length of an utterance approaches the outer limit of the interpreters' capacity for recall, 4) making certain that the interpreter can easily hear and see the proceedings, and 5) ensuring that the interpreter has conversed briefly with the LEP person to be certain that the interpreter and the party or witness are able to communicate adequately.

Finally, the record of the case made by a court reporter in interpreted proceedings consists only of the English language spoken in court. However, errors on the part of the interpreter alter the evidence presented to the judge and jury. If the accuracy of the interpretation is challenged, the objection cannot be evaluated after the fact by the trial judge, or later on appeal, unless an audio or audio/video recording of the source language testimony exists

the foreign language that will be used during the proceeding and may not

be able to pay attention only to the interpretation.

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

18. There are at least two reasons for this last instruction. First, the record of the proceedings is only in English, and it is the recorded testimony that constitutes evidence in the case. Second, jurors may mishear what is said; the interpreter (like the court reporter) is a trained listener.

to supplement the court reporter's transcript of the proceedings in English. Judges who regularly hear interpreted matters should thus explore the feasibility of making tape recordings of all witness interpreting and, as a second priority, of all proceedings interpreting.

Interpreter fatigue

Courts should be aware of and make provisions for dealing with interpreter fatigue. Although court interpreting may seem effortless to others, it is highly demanding and mentally taxing, and mental fatigue sets in after approximately 30 minutes of sustained simultaneous interpretation, resulting in a marked loss in accuracy, no matter how experienced or talented the interpreter may be. If interpreters work without relief in proceedings lasting more than 30-45 minutes, the accuracy of interpretation may be compromised.

If a proceedings interpreter believes that the quality of interpretation is about to be jeopardized due to fatigue, the interpreter should inform the court, and a recess should be taken or a replacement obtained. For any proceeding lasting longer than 30 minutes of continuous simultaneous interpretation, two interpreters should be assigned so they can relieve each other at periodic intervals. A similar standard should be observed for continuous witness interpreting.

Errors

Interpreting is an extraordinarily demanding activity, and cannot be error-free even with sufficient rest intervals. Appreciation of this reality should be extended to the interpreter during any allegations of inaccurate interpretation. When a witness interpreter discovers his or her own error, the interpreter should correct the error at once. If the interpreter becomes aware of an error after the testimony has been completed, he or she should request a bench or side bar conference with the court and the lawyers to explain the problem. The court can then decide whether a correction on the record is required.

Suggested text for clarifying the interpreter's role to the jury

Proceedings interpreting

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

Witness interpreting

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

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

Source: National Center for State Courts, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*.

When an error is suspected by the judge, an attorney, or another officer of the court, the problem should be raised at the earliest convenient opportunity, and in any event before the witness is released. In the case of a jury trial, the issue should be handled at a side bar conference. The following steps are recommended:

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

pretation, then the court should amend the record accordingly and advise the jury.

Parties objecting to the court's decision between the competing versions should be given the opportunity to make clear their exception on the record.

Resources and technology

There are a variety of sources to obtain court interpreter resources, including full-time staff court interpreters, freelance contract interpreters, and private agencies. There are also substantial resources available on the internet, through state or federal court interpreter offices. Another initiative to strengthen state courts' ability to access qualified court interpreters is the establishment of regional pools of interpreters, particularly for less frequently-used languages, that participating states will support through shared resources and coordinated testing and administration.

Yet another option employed by some states is the use of telephonic interpreter services for non-eviden-

Further reading and additional sources of information

M. Carter-Balske, L. Kay, L. Friedman Ramirez, *Use of Foreign Language Interpreters*, in CULTURAL ISSUES IN CRIMINAL DEFENSE (2nd ed.) (L. Friedman Ramirez, ed.) (Juris Publishing, Inc., 2007).

R. González, V. Vásquez, H. Mikkelson, FUNDAMENTALS OF COURT INTERPRETATION: THEORY, POLICY AND PRACTICE (North Carolina: Carolina Academic Press, 1991).

State Court Interpreter Certification Consortium:
http://www.ncsconline.org/D_Research/CourtInterp/CICourtConsort.html

National Association of Judiciary Interpreters and Translators:
www.najit.org

Southern District of New York Interpreters Office:
<http://www.sdneyinterpreters.org/>

American Translators Association: www.atanet.org

tiary proceedings when a court interpreter is unavailable. Telephonic interpreting has been used by courts for many years and enables court systems to access competent interpreters in a variety of languages, regardless of their location. Many states contract with private companies to obtain interpreter services for short non-evidentiary proceedings, and some state courts have even developed in-house telephone interpreting programs using their staff attorneys and/or their roster of qualified interpreters. However, telephonic interpreting programs have limitations due at least in part to the fact that the lack of visual cues diminishes the capacity of the interpreter to understand the context of the spoken words in the proceeding.

A newer technology to advance language interpretation services is remote video interpreting services. Remote video interpreting offers a combination of video and audio connections, allowing the interpreter to gather more of the visual cues lacking with telephonic interpreting. There are now a variety of remote

video interpreting services available that can provide on-demand access to interpreters so long as the parties have access to a high-speed broadband connection and videoconferencing equipment and related software.

Given the large number of people in the U.S. with limited English proficiency, foreign language interpreters are essential to assuring full access by all to the justice system. Court interpreters must be properly qualified and utilized, and it is up to the judge to ensure that the role of the interpreter is clearly understood by all courtroom participants. ☞

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