

# DON'T GET LOST IN TRANSLATION: TEACHING LAW STUDENTS TO WORK WITH LANGUAGE INTERPRETERS

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\* Minn. Ct. R. State and Federal (1999) Reprinted with permission of West Group. Note: The Minnesota code is based upon the Model Code of Professional Responsibility for Interpreters in the Judiciary. The words "except to facilitate trainings or education" in Canon 6 do not appear in the Model Code of Professional Responsibility for Interpreters in the Judiciary. In all other ways the two are identical. To request a copy of the model code call the National Center for State Courts (800) 877-1233. The model code appears in William E. Hewitt, Court Interpretation: Model Guides For Policy and Practice in the State Courts 197-210 (1995).

## SUMMARY:

... Due to my family background I have needed the assistance of an interpreter from a young age. ... The new title does say something about the content of the movie. ... The act requires the appointment "of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter." ... Only in the absence of a certified interpreter may the federal court appoint an "otherwise qualified" interpreter, defined as someone who is professionally qualified or language skilled. A professionally qualified interpreter is someone who can show particular employment and experience in the interpreting field. ... At sentencing in Minnesota a qualified interpreter must be present. ... B. Find a Neutral, Qualified Interpreter Rather than a Family Member, Friend, or Person with Conflict of Interest ... If a student locates a certified interpreter it will be important to determine if the interpreter and client speak a common dialect and if the interpreter has expertise in any needed technical language. ... If such a program exists in the clinical student's state it is best to work with an interpreter trained in legal ethics and the role of interpreters. ... The student should research the local law to determine if "qualified" is defined and should request the most qualified interpreter possible. ...

## TEXT:

[\*347]

### Introduction

The General Practice Clinic at Hamline University School of Law was established in 1985. It was designed to provide civil legal services to low income persons, including persons who are relative newcomers to Minnesota, as a result of being refugees from their homelands. Over the years the students have assisted clients with family law matters, supplemental security insurance hearings, consumer cases, reemployment insurance hearings and immigration cases, particularly related to family reunification. As a result of client priorities and the availability of other resources in the community, the largest area of client need has been in the immigration area. Of necessity, students in the clinic have frequently sought the assistance of interpreters to facilitate communication with their clients. Because of the demographic patterns of the Twin Cities, students have worked with clients needing interpreters for a number of languages, including Hmong, Lao, Cambodian, Vietnamese, French, Haitian Creole, Amharic and Tigrinya.

Due to my family background I have needed the assistance of an interpreter from a young age. My mother was an interpreter for the United States army in Germany after World War II. I was born a year after she and my father moved to the United States. When I was five they helped my grandparents and aunts and uncles emigrate to the United States. They were displaced persons during World War II. The result for me was a sudden immersion into the German language. I became a quite fluent listener but not a very fluent speaker of the German language. I did not have the opportunity to learn to read or write the language. I understand the frustration of the person who can understand much of what is said, but needs an interpreter to respond in detail. I still need interpretation and translation assistance to communicate with relatives in Germany.

[\*348] My own law school experience provided me with no preparation for interviewing with the assistance of interpreters. Even today, this is not a topic generally considered in law school. I recently reviewed several interviewing and counseling textbooks and did not find preparatory materials designed to help students interview through interpreters. n1 As a result of working with interpreters in the General Practice Clinic for several years, I believe law schools should prepare attorneys to interview through interpreters for two

primary reasons. First of all, the demographics of the United States, the ever increasing speed of travel and communications, and the globalization of commerce make it likely that most attorneys will occasionally or frequently need to communicate with clients through the assistance of interpreters. n2 Secondly, and most importantly, serious justice and fairness issues arise when attorneys are unprepared to interview through interpreters and make mistakes or fail to recognize and intervene if errors are being made in a legal forum.

The issues presented when interpreters are needed could and, I believe should, be discussed in several courses in the law school curriculum including professional responsibility, evidence, civil and criminal procedure, and in interviewing and counseling courses. In addition, law school clinics should serve clients who need interpreters. This is an important accessibility issue as many persons in need of interpreters are low income and would fall within the financial eligibility guidelines of law school clinics. In this paper I will offer curricular [\*349] suggestions to help law school clinicians prepare students to interview through interpreters.

The article begins by showing why an understanding of the nature of language and the role of culture in communication is necessary for an accurate conveyance of meaning through interpreters. Teaching methodologies are suggested to bring these ideas home to students. The article goes on to summarize the history of federal and state law in the United States related to interpreters. Deficiencies in current legal protections for persons in need of interpreters are cited, as well as resources to help students find existing laws and model legislation.

Next, practical guidance is given to help students determine when they need an interpreter, what qualifications an interpreter needs in terms of language ability and training in ethics and the applied skills of interpreting, and how to find an appropriately qualified interpreter. Once an interpreter is found, suggestions are made regarding how students can convey respect and minimize communication errors in the interviewing process. Finally, suggestions are made as to conducting a hearing in a judicial forum or conducting a mediation with an interpreter. Common misconceptions of judges are cited, as well as the many risks of inaccuracy and potential unfairness faced by a person in need of an interpreter in a legal forum. The article highlights the importance of teaching student attorneys about interviewing through interpreters so they can advocate for practices that will protect clients in need of interpreters from unfairness in any legal forum in which they find themselves.

Both communities and law students will benefit if persons in need of interpreters are served in law school clinics. For low income persons, access to free legal services is always a challenge; it is even more so if an interpreter is needed. For law students, interviewing through interpreters is a subject best taught with opportunity for both theory exploration and practical application under the guidance of an experienced supervisor. For the administration a caveat: A budget is needed to pay independent, trained interpreters.

### I. What Characteristics of Language Make Interpretation And Translation Difficult?

Law students who are enrolled in a clinic accessible to persons in need of interpreters should, as a first step, consider the characteristics of language that make interpretation n3 of oral communication or translation n4 [\*350] of written documents a difficult process. Idiomatic expressions, dialects, regional variations and technical language all present particular challenges.

A starting point for clinic students can be a discussion of their own language backgrounds. I have asked students about their language experience and study over the years and have found that most clinic students have some language study in their background, some to the point of fluency. Some clinic students come from the countries of clients we serve and are bilingual and bicultural. Some have multiple language fluency. Occasionally we have a match between student fluency and client language need and this results in ease of communication and client comfort. More frequently, interpreters are needed.

Students frequently can remember from their own experience differences between English and the other languages they know or have studied. Such differences may include word order, the fact that more words may be needed to say something in one language than in another, the lack of a comparable word for every term in every language and the difficulty of translating idiomatic expressions. It is very helpful for students to discuss their experiences with these differences and share examples.

I have used an example from popular culture - how movie titles are changed when they play overseas -- to start the discussion of the difficulty of interpretation and translation. City Slickers played in Europe as Love, Life and a Cow. How to Make An American Quilt became The Years of Remembrance and Eye for an Eye was changed to The Next Victim. n5 When American movies screened in Hong Kong, the English Patient was retitled Don't Ask Me Who I Am. The Professional became This Hit Man is Not as Cold As He Thought and As Good As It Gets became Mr. Cat Poop. n6 One could ask students if it is possible to translate City Slickers into a short movie title in the languages they know or have studied. It probably will be difficult for them to translate, as it is such an idiomatic American expression. One might ask the students if something is lost in the 'translation' of City Slickers to Love, Life and a Cow. The new title does say something about the content of the movie. But the American English understanding of the term 'city slicker' is not conveyed. According to movie [\*351] executives there are several reasons movie titles are changed; some deal with meaning and others with marketing. Sometimes American movie titles "refer to something that isn't known internationally," or contain "idiomatic phrases [that] do not translate literally."n7 In these cases titles are changed for communication purposes.

## A. Idiomatic Expressions

'City slickers' is an example of an idiomatic expression. Idioms are expressions whose meaning is "not a function of their individual component parts; rather idioms have a unitary meaning." n8 The phrase cannot be broken down into 'city' and 'slickers' to decipher meaning. American English is replete with idiomatic expressions; for example, "The job only took two hours; it was a piece of cake .... It was just a plain vanilla sort of house .... The police were there in a flash."n9

Idiomatic expressions occur in most languages. It is important for students to realize that idiomatic expressions can be translated, but not necessarily word for word.n10 They might also consider when it is better to avoid idiomatic phrases that are difficult to translate in situations where interpretation is needed in order to be sure communication is accurate.

## B. Dialects

It is important for students to understand that languages are subject to differences of dialect and regional variations. Dialects are defined as distinct forms of a language, which are mutually intelligible to persons speaking in the different dialects. For example, Texans can understand New Yorkers and Americans Britishers. n11 While dialects are generally mutually intelligible, the same word or phrase can mean different things from one dialect to the next. Spanish for example, is the primary language in at least twenty-one countries with significant regional, country and dialect differences. "For example, guagua means 'bus' in Cuba but is 'baby' in Puerto Rico; alpaca is 'nickel silver' in Mexico while in South American it refers to a llama-like animal." n12 [\*352] Clearly, misinterpretation of just one word can have a negative impact on a person in a legal matter. Consider the Mexican farm worker who applied for worker's compensation benefits for a back injury. A Salvadoran interpreter interpreted 'cintura' as 'waist' instead of 'lower back' as the Mexican-dialect worker used it. Upon questioning by the judge, the worker denied having any injury other than to his back. He lost the hearing because the judge found his statements to be inconsistent and evasive. n13

Another example is given by Michael B. Shulman:

"!Hombre, ni tengo diez kilos!" A Cuban man was convicted on drug charges for uttering the words above. He used the words in response to a request for a loan and, given the dialect of the speaker and the context of the statement, they can properly be translated as 'man, I don't even have ten cents.' Instead, the court interpreter mistakenly translated them as, 'man, I don't even have ten kilos.' n14

Misinterpretation of just one word 'kilos' lead to an unjust conviction. Fortunately, in this case the error was identified and the conviction overturned. n15

Another dialect interpretation error took four years to correct. A young man from Mexico was convicted of murder in Oregon. He and several witnesses in the trial were provided Spanish interpreters, despite the fact that their native language was Mixtec. It was wrongly assumed since they were from Mexico they spoke Spanish fluently. The Spanish interpreter told the judge that she did not know the Mixtec words. Nevertheless, the judge did not provide a Mixtec interpreter. The young man spent four years in prison before this verdict was overturned. n16 It is critical that students understand the importance of dialect and regional differences in interpretation so errors are not made.

Students in need of interpreters for deaf persons need to be concerned with dialect and regional differences as well. For example, American Sign Language (ASL), a language linguistically different than English, evolves and changes over time and has regional variations. n17 Further, deaf persons communicate in a variety of ways. For example, "Pidgin Sign English (PSE) is a variant of ASL and English [\*353] in that the signer communicates through signs in English word order, incorporating ASL for various idiomatic expressions common in English." n18 Other sign languages have developed in other parts of the world.

American Sign Language, French Sign Language, Swedish Sign Language, and Chinese Sign Language are names of a few sign languages used by deaf people within specific national regions. ASL extends to some parts of Canada and Mexico, and has been exported to several other areas. Puerto Rican deaf people, for example, use a variety of signing which has diverged from ASL for only the past seventy to seventy-five years, and continue to have contact with ASL signers. Each of these sign languages has its own lexicon (signs), repertoire of non-manual behaviors (facial expressions, body movements and the like), and conventions of grammar.... When one of the languages involved in interpretation is a sign language, the interpreter must know which variety of sign language is required. n19

As an experiential exercise to help students consider regional differences and differences in dialect, I use a British English - American English quiz developed by a former clinic student, Deb Mackay from England. The quiz includes twenty-one multiple choice and matching questions involving words and phrases such as 'pavement' and 'cutting the fringe'. n20 A student from England who attended a C.L.E. I taught did very well on the quiz. Generally, however, students know some of the answers, guess some right and get quite a few wrong. They realize [\*354] this would not be good enough in an interpreting situation and that dialect and regional differences need to be considered in matching interpreters and persons in need of them.

## C. Technical Language

Interpreters need to have an excellent command of both English and the language of the person for whom they are interpreting, that is an excellent command of both the source and the target language of the interaction. n21 An interpreter who has exceptionally high proficiency in both languages might have a perfectly "balanced bilingualism," an ideal which, according to Susan Berk-Seligson "is a rare specimen and probably an impossible phenomenon." n22 Perfectly balanced bilingualism would mean the interpreter would have "proficiency in both languages in all domains of language usage." n23

A domain of language use is a concept developed by sociologist Joshua Fishman. n24 He defines a domain as a context in which one language is more likely to be used than another for reasons such as "location, topic, and participants. Typical domains are 'family', 'school', 'place of recreation', and 'church'." n25 Bilingual speakers "have a greater command of the vocabulary of that language in which the domain-related activity was experienced." n26 An example cited by Professor Berk-Seligson is "if you learned to play marbles in Spanish, but learned the rules of soccer in English, you probably will have difficulty describing marble game rules in English and similarly, you will have difficulty in describing the soccer game rules in Spanish." n27 (This concept of domain helps me understand why I could discuss dinner with my relatives in Germany but not labor law!) It is important for students to understand the tremendous complexity of interpretation and the rarity of perfect bilingualism on the part of interpreters.

The problem of vocabulary becomes even more complex in legal interpreting if highly technical language is involved, such as medical, scientific or other specialized language. To help law students experience this firsthand I distribute an article from an electrical engineering [\*355] magazine. It is written in English but is so highly technical and assumes so much engineering background that most law students cannot understand it. This is an effective way for law students to experience the problems of technical language. To translate that article into another language one would need experience in the domain of English electrical engineering terms and in the domain of engineering terms in the other language. Students should be prepared to discuss with interpreters whether they have an understanding of technical language in both source and target language or if technical language needs to be broken down into ordinary English.

It is important to remind law students that legal language used by lawyers and judges is technical language as well. Jonathan Swift defined it as "a peculiar Cant and Jargon of their own, that no other Mortal can understand." n28 Students could be asked to think back to the first year of law school and the time they spent learning legal language by looking up terms in law dictionaries. While well trained interpreters may have a high degree of understanding of English legal terms, students should not assume that all interpreters are fluent in legal language in source or target languages. Legal terminology is a matter the student should discuss with the interpreter. As another option, use of ordinary English rather than legalese is more likely to produce accurate understanding.

In this section, I have described how idiomatic expressions, regional differences and dialects, and technical language make interpretation and translation more difficult than one might at first expect. This certainly does not exhaust the subject of the nature of language and why interpretation is difficult. One would need to look to the field of linguistics for a more complete discussion. However, these are aspects of language that should be discussed with clinic students so they will go into an interpreting situation more aware of pitfalls to accurate communication.

## II. What Role Does Culture Play in Communication With The Assistance of an Interpreter?

Clinic students preparing to interview through interpreters should consider the critical importance of culture in the communication process. If students consider culture seriously they will have the best [\*356] chance for mutually respectful exchanges with clients and accurate communication. As a child I experienced what I now realize was a small bit of culture shock upon leaving home to go to grade school. I came from a household in which two languages were spoken, the food was different, the clothing was different and the values seemed different than what I observed in school. I went to school feeling very different and wondering "am I really American?" My culture shock had to be very minor compared to that which many people experience in coming to the United States, as I was a native English speaker and had one parent born in the United States, but I believe it is very helpful to start with our own experience in addressing with students the critical question, "what is culture?"

### A. What is Culture?

My experience over the semesters indicates that it is difficult for students to speak about culture, as it plays a major but often quite unconscious influence in our lives. It can be helpful to start with some definitions. One definition of culture is that it is "the total life way of a people, the social legacy the individual acquires from [the] group.... Culture is a way of thinking, feeling, believing. It is the group's knowledge stored up (in memories ..; in books and objects) for future use." n29

This definition points out the broadness of culture in its impact on everyday behavior, customs, manners, ways of doing things, world view, concept of time, values and so on. It is helpful to discuss the reasons why culture is so hard to talk about. The acculturation process begins when one is a baby and once cultural norms are learned they are almost instinctive, n30 like one's second skin.

I ask students to prepare for class by writing answers to the following questions: How would you define culture generally? What is your personal cultural background? How does it shape your world view? Can an understanding of cultural differences assist us as attorneys?

How? These student writings help prepare us for a class discussion on culture from the students' own perspectives. The goal of the class is to help students realize they have a cultural background that influences the way they do everything, as well as their world view. They bring this cultural vantage point to interviews with their clients. We are inclined to make assumptions based upon our own cultural vantage points, our own reality. We discuss the fact that since clients and students may come from different cultural backgrounds, failure of [\*357] the students to recognize their own cultural vantage point and avoid making assumptions based upon that vantage point can lead to both disrespect and communication errors. n31

#### B. Lack of Understanding Of Cultural Differences Can Result In Miscommunication

It can be helpful for students to hear about the kinds of mistakes one can make that might be considered cultural miscommunication. As an example, I describe a time in our clinic when a student interviewed a person filing a request for a visa for her son under immigration law. The student asked the son's date of birth, which the client gave. Although the I.N.S. approved the mother's petition for an immigrant visa for her son, he was later denied a visa at the United States embassy abroad because he gave a different date of birth at his interview than his mother had given on the papers filed with I.N.S.. Due to war there was no birth certificate. In an attempt to solve the problem the student reinterviewed his client and found out that, in addition to not having a birth certificate, dates of birth were not viewed in the same way in the culture of his client as they are in the United States. Birthdays were not celebrated and the client's home calendaring system was somewhat different from that of the United States. The student drafted an affidavit explaining the differences in the dates of birth. It was accepted by the United States officials at the embassy and the family was reunited. The example shows hidden cultural assumptions about the view of dates of birth, birthdays and calendaring. Our cultural assumptions were not the same as the client's and our failure to question our assumptions lead to the error.

It is helpful to discuss with students how to set aside their cultural assumptions and interview in a way that will help them view the matter from the client's perspective. One suggestion I make is that they do background reading on the language, country, region, ethnic group and religion of their client. We have developed files of country materials in the clinic as reference material. These background materials can be very helpful preparation for the students for cultural differences. Another source of general information can be found at mutual assistance organizations established by community members. Movies can also provide background orientation. One example is *El Norte*, a [\*358] film depicting a migration story from Guatemala. The students should be cautioned to use general information as background only and not to make any assumptions about their individual clients based upon background materials. To do so would be to stereotype and fail to recognize the individuality of the client. n32

In discussing with students the need to set aside their cultural assumptions it is helpful to discuss interviewing techniques that facilitate that process. The basic need to ask open ended questions in interviewing is doubly important when student and client come from different cultural backgrounds. More time is needed in interviewing as the student needs to learn not only the facts but the context. It is important to set the stage for openness in interviewing so that clients feel comfortable explaining cultural differences. n33 It is also very important for students to explain why they need to ask the kind of questions they are asking. I suggest to students that they take plenty of time, ask for context, and ask for deeper explanations about the matter at hand. It can even be helpful to suggest open ended questions to the students such as: "Can you tell me more about...?" "Can you explain what you mean by...?", "Why?" We are essentially asking law students to become good listeners, so they can truly see the matter from their client's perspective. n34 Recently, students in my clinic were questioning a person filing an asylum application about the distance between [\*359] two towns. The person being interviewed explained, "We do not think of distance in terms of miles, as in the United States, but in terms of how much you pay to be transported. The more you pay, the farther away the town is." To be an effective advocate for a client a student must learn to interview in a way that allows him or her to see the situation from the client's point of view. Once the student attorney stands in his or her client's shoes, he or she will be in a better position as an advocate to help a decision maker stand in those shoes.

Some persons in need of interpreters have relocated to the United States due to war or civil strife. For those persons, it is also helpful if the students read background materials on the conflicts in that region of the world. We add news clippings to our country files to keep the information current. Persons who have relocated to the United States due to war frequently have experienced the horrors of loss of home and family members. My own mother's family members lost their home, were permanently separated from extended family and friends and are still looking for a sister who disappeared. Clients in our clinic have experienced horrific losses. Some clients suffer physical and mental health problems due to war trauma and naturally have difficulty speaking about this history. Some suffer post traumatic stress and have memory problems. Students need proper preparation for sensitive interviewing in these situations. n35

#### C. Lack of Understanding of Cultural Difference Can Lead to Disrespect

Since our cultural background effects everything we do it is not surprising that a lack of awareness of cultural differences can lead to cultural miscommunication that is disrespectful. A word or even a gesture can convey very different meanings to persons of different cultures. n36 It is of tremendous importance that clinic students set respectful communication as a top goal for all client communications and take cultural differences into consideration in striving to reach that goal.

Beatriz Valera-Schutz and Margarita Gonzalez describe a process for developing cultural fluency in a text designed to build skills for [\*360] bilingual legal personnel. n37 They suggest that "the following basics of cultural fluency are essential in any personal contact

situation: warmth, respect, courtesy, and seeing the person as an individual." n38 In the text they provide the transcript of a hypothetical divorce case initial interview at a legal aid agency in which an attorney makes many mistakes that lead to cultural misunderstanding. Students are instructed to analyze the exercise line by line to find the points at which communication is inhibited by cultural misunderstanding. n39 Use of such an exercise by law students would be very informative prior to interviewing through an interpreter.

The authors suggest that warmth can be conveyed immediately by greeting the client in his or her own language. n40 A warm welcoming reception is important to alleviate a bit of the natural anxiety people feel in an attorney's office, particularly when they are not fluent in the language of the attorney. The authors suggest that warmth can be maintained if respect or regard for the person and his or her concerns is always conveyed. Clients may differ culturally from the student attorney in what concerns them; nonetheless, respect for the individual should always be shown. n41

The third suggested element of cultural fluency is courtesy. The authors suggest that courtesy can be conveyed by taking seriously client expectations as to formality and dress, identifying all personnel in the attorney's office, always being professional, taking as much time as needed by client, and learning the proper personal name of the client. n42 Care should also be taken to learn the proper pronunciation of the client's name.

Finally, the authors suggest that seeing the person as an individual is a critical step toward cultural fluency. They suggest learning about the language and culture of the individual but avoiding over-generalizations that are inaccurate to individuals. They suggest that attorneys avoid classifying an individual into a group term unless they are certain that is a classification the individual uses for him or herself. n43

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#### D. Consider The Client's Prior Legal System

In addition to having differences based upon culture, the clients your students interview through interpreters may come from a country with a legal system very different from that found in the United States. The way laws are viewed, the way disputes are resolved, and the legal terminology used may be very different. There may also be differences in the way in which the judicial system and players in it are viewed and trusted. It is helpful for students to learn about these matters [\*362] through country research and by asking the client. For example, in some countries there are assumptions about guilt or innocence that differ from those in the United States. Additionally, in some countries there is a fear of police that can carry over to the United States. n44

As an example, Hmong men and women involved in Minnesota dissolution proceedings are involved in a very different process than that which was traditionally practiced in Laos. In Minnesota, custody decisions are made on the basis of the best interest of the child. "To the Hmong, the question in child custody cases is not which of the parents would better care for the children but how the identity of the children would be better preserved. The practical effects of this system benefit the men more than the women because Hmong culture is patrilineal." n45

Under the rules of professional responsibility the job of the student attorney is to communicate accurately and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." n46 It is important for a student attorney to understand the client's traditional method of resolving the matter at issue (such as child custody) and for the client to understand the applicable U.S. law and practices. Once good communication is established on those two matters, the student and client will be better prepared to discuss what is legally possible, as well as what is culturally best for the client so the client can make an informed decision.

### III. Where Should Students Look to Find the Law Related to Working With Interpreters Applicable to Their Jurisdiction and Forum?

The state of the law related to working with interpreters is very much in the development stage. Just a few years ago, in 1993, the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System found serious justice issues in the provision of legal services when interpreters were needed in Minnesota. n47 A major concern was [\*363] that the improper use of interpreters and resulting inaccurate interpretations and translations were negatively affecting limited-English speaking persons appearing in the Minnesota courts. n48 Other concerns included the lack of adequate numbers of interpreters for public defenders and county attorneys and the use of unqualified and inappropriate interpreters such as family members. n49 Several other states have also issued racial and ethnic bias studies, as well as court interpretation studies. n50 It is only in the past twenty years that significant improvements have been made in the provision of interpreters to those in need of them. n51

As students begin to research the laws related to interpreters it is important that they realize that most legislation regarding interpreters is relatively new, it varies from state to state and forum to forum, and the law and practice is replete with imperfections. It will be incumbent upon students to find the applicable law, critique it and advocate for the best process possible for persons in need of interpreters in light of the imperfections of current law and practice.

#### A. Development of Interpretation Systems

Interpretation for spoken languages gained recognition as a profession after World War I. "It was during the Paris Peace Conference in 1919 that the field of conference interpreting got its start." n52 At that international conference diplomats and others present, including journalists, engaged in consecutive interpretation of the proceedings. n53 Consecutive interpretation occurs when a short statement is made in a source language followed by an interpretation into target language. n54 [\*364] Shortly thereafter Edward Filene developed simultaneous interpretation. n55 He was active in the League of Nations' International Labor Organization. He attended meetings conducted in French. Due to his limited French comprehension a friend sat next to him and whispered in English. "Filene financed the production of a headphone system permitting six languages to be translated simultaneously and sent to different users. It was first used in 1931 at the League of Nations Assembly, improved and reliably introduced as a regular part of the Nuremberg Trials following WWII." n56 For conferences in many languages simultaneous interpreting is a major time saver.

While the field of spoken language interpretation developed initially to meet the needs of diplomats and nations, sign language interpretation developed to remove communication barriers facing individual deaf persons. "In the United States, the story of interpreting begins with the introduction of the language of signs to the public education system with the founding of the American Asylum for the Deaf (now the American School for the Deaf) Hartford, Connecticut, in 1815." n57 Early signers probably were "available from schools for deaf people, from among deaf people's family members, and from churches which integrated deaf members through the use of signing." n58

## B. Federal Law

Federal legislation related to interpreters first developed to remove communication barriers for hearing impaired and deaf individuals by increasing availability and access to interpreters. n59 Additionally, federal grants supported the development of the Registry of Interpreters for the Deaf (RID), a national organization providing [\*365] access to interpreters for hearing impaired and deaf persons. n60

Through much of this century in the judicial setting, appointment of interpreters has been left to the discretion of the court. n61 The potential unfairness of this practice in criminal cases was recognized by the Second Circuit Court of Appeals in 1970 in a determination that "the sixth amendment's confrontation clause, made applicable to the states through the fourteenth amendment's due process clause, requires that non-English speaking defendants be informed of their right to simultaneous interpretation of proceedings at the government's expense." n62 The constitutional right to an interpreter in a civil matter remains less clear. n63

A major breakthrough in federal law occurred in 1978 with the passage of the Court Interpreters Act. n64 This landmark piece of legislation required the Director of the Administrative Office of the U.S. Courts to "establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States." n65 The law applies to both civil and criminal matters. The director is obligated to set standards for the qualification of persons to be certified as interpreters for "the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language." n66 The act requires the appointment "of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter." n67 This appointment can occur when the judge determines the necessity of an interpreter or upon motion of a party for an interpreter for a party or a witness when the language difference would inhibit the "party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or ... [a] witness' comprehension of questions and the presentation of such testimony." n68 [\*366] The act requires simultaneous mode interpretation for parties and consecutive mode for witnesses unless otherwise decided by the judge. n69 Additionally, this act allows the judge to determine, on motion of a party, whether a sound recording should be made of the proceeding. n70

The federal court certification tests that were developed as a result of the Court Interpreters Act were intended to "determine whether a foreign language interpreter is sufficiently skilled to practice in a judicial environment." n71 Applicants are tested on language ability in both English and foreign language, knowledge of court procedures and concepts, ability to interpret in consecutive and simultaneous modes, and sight translation. n72 The certification tests are quite difficult. For example, the pass rate for the Spanish federal exam is four percent. n73 Even so, one can pass the written Spanish and English exams with twenty percent wrong in each test. n74 Students need to realize interpreting is difficult and errors are very possible.

Despite the improvement brought about by federal certification tests, the federal courts currently only certify interpreters in Spanish, Haitian-Creole and Navajo. Additionally, federal courts certify interpreters in American Sign Language with proof of passage of the test administered by Registry of Interpreters for the Deaf. n75 Only in the absence of a certified interpreter may the federal court appoint an "otherwise qualified" interpreter, defined as someone who is professionally qualified or language skilled. n76 A professionally qualified interpreter is someone who can show particular employment and experience in the interpreting field. n77

The Court Interpreters Act was a major breakthrough. However, it is limited in scope and effect. It was originally designed only for cases instituted by the federal government. Congress extended the scope of the act in 1996 to provide certified or otherwise qualified sign language interpreter services to a hearing-impaired party, witness or [\*367] other participant in a judicial proceeding whether or

not the proceeding is instituted by the United States. n78 The scope was not extended to provide interpreters for non-English speaking persons in cases instituted by parties other than the United States. Therefore it does not apply to all cases in federal court. Additionally, there are not certified interpreters for most languages. Much remains in the discretion of the court including whether to appoint an interpreter and whether to make a sound recording. Students should be cautioned that in any federal case in which interpreters are needed it will be incumbent upon them to advocate for the most qualified interpreter and the best practices possible to ensure that the individual in need of interpretation is on an equal footing with others as possible.

### C. State Law

States vary with regard to their laws related to interpreters. Some states have significant legislation in this area, administrative resources for determining interpreters' qualifications, and long histories of improving the quality of justice when interpretation is needed. California began a testing and certification program in 1978, "making it the longest standing interpreting program." n79 New Jersey, New Mexico and Washington also have longstanding interpreting programs. n80 Most states have laws requiring appointment of interpreters in criminal cases but lack guidelines for establishing the interpreter's qualifications, allowing judicial discretion. n81 A further problem exists in some states in which legislation has been passed to develop standards to certify interpreters subject to availability of funding. Some states have been limited by lack of appropriations. n82

Minnesota is somewhere in the middle of the continuum between states with long histories of setting standards for interpreters and those with limited legislation in this area. Significant progress has been made in Minnesota since the publication of the Minnesota Supreme Court Task Force Report on Racial Bias in the Judicial System [\*368] in 1993. I will use Minnesota law to provide examples as to the possible laws students may find in their states, as well as what to look for. Minnesota requires the appointment of a "qualified interpreter" for any "person handicapped in communication" in criminal law matters, coroner's inquests, grand jury proceedings or mental health commitments. n83 Appointment of an interpreter is required prior to interrogation. n84 "Person handicapped in communication" is defined as 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." n85 The law requiring appointment of an interpreter in criminal law matters has been on the books in Minnesota since 1969. Minnesota also requires that courts not accept guilty plea petitions from persons who need interpreters unless they have reviewed it with a qualified interpreter. n86 The rule even recommends use of a multilingual guilty plea petition whenever possible. n87 The guilty plea petition advises the accused that for non-citizens a plea of guilty might result in exclusion, deportation or denial of naturalization. n88 At sentencing in Minnesota a qualified interpreter must be present. n89

In civil cases, Minnesota requires appointment of a qualified interpreter for a litigant or witness n90 who is "handicapped in communication ... because of a hearing, speech or other communication disorder, or because of difficulty in speaking or comprehending the English language," and thus is "unable to fully understand the proceeding 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." n91 Minnesota law has required appointment of an interpreter in civil matters since 1975.

Despite the existence of legislation requiring appointment of interpreters in civil and criminal matters, significant concerns about the quality of justice for those in need of interpreters were raised by the 1993 Minnesota Supreme Court Task Force on Racial Bias in the Judicial [\*369] System. n92 The task force found that even though Minnesota statutes use the term "qualified interpreter," it was not adequately defined and should be defined as "someone who is properly trained, tested and certified to work in the court system." n93 Additionally, the task force found that attorneys and judges were not adequately trained in the proper way to work with an interpreter. n94 In light of the findings, the task force made fifteen significant recommendations to improve the quality of justice for persons in need of interpreters in Minnesota Courts. n95

The task force report provided significant impetus for improvements in Minnesota in cases for which interpreters are needed. Rule 8, related to interpreters, was added to the General Rules of Practice for the District Courts effective January 1, 1996 and amended in 1997. n96 This rule requires the state court administrator to develop a statewide roster of interpreters. The roster is required to include three categories of interpreters. The first category includes certified court interpreters, who have passed all certification requirements including rigorous tests of English ability, ability in the language they interpret and professional ethics. n97 The second category includes non-certified interpreters who have not passed the rigorous language tests but have completed an orientation program, passed an ethics exam and filed an affidavit agreeing to be bound by the Code of Professional Responsibility for Interpreters in the Minnesota State Court System. n98 The third category of interpreters are noncertified sign language interpreters who hold appropriate certifications from Registry of Interpreters for the Deaf. n99

The rule requires judges to appoint a certified court interpreter as a first choice and a non-certified interpreter on the statewide roster as a second choice. Only if neither is available may the court appoint an otherwise competent non-certified interpreter who is not on the statewide roster. n100



The Code of Professional Responsibility for Interpreters in the Minnesota State Court System was promulgated by the Minnesota Supreme Court and went into effect January 1, 1996. This code provides significant guidance to interpreters, attorneys and judges regarding [\*370] the proper role of interpreters. The code requires an interpreter to be completely accurate and impartial, to maintain confidentiality, to report any conflict of interest or impediment to their performance and to report any attempts to impede their compliance with the rules of ethics. The scope of an interpreter's work is clearly delineated as interpreting or translating and not giving legal advice or opinion. n101 The Minnesota code is nearly identical to a Model Code developed by the National Center for State Courts. n102

The General Practice Rule 8 requirement that non-certified court interpreters attend an orientation program, sign an affidavit agreeing to be bound by the Code of Professional Responsibility for Interpreters and pass a written ethics exam to be included on the statewide roster was a significant step toward the assurance of quality interpretation. n103 The most recently published roster of court interpreters in Minnesota includes interpreters of approximately forty-five languages. Most of these interpreters are non-certified. For these interpreters one can be sure they have had an orientation to and understanding of the role and ethics of interpreters. However, one cannot be sure that non-certified interpreters have a high level of competence in English or the language of the speaker requiring interpretation. Certification tests are required to evaluate those abilities.

Minnesota adopted rules regarding certification of interpreters on September 19, 1996. These rules establish procedures for testing legal interpreting competency in specific languages. On the most recently published roster of interpreters in Minnesota there were two certified interpreters for Russian and twenty-four for Spanish. In addition, Minnesota has two certified Hmong interpreters who passed the pilot of a recently developed certification test for that language. Several additional Spanish language interpreters are in the process of being certified in Minnesota. n104

The fact that Minnesota has certified interpreters for a limited number of languages is due to the linguistic and fiscal difficulties involved in developing and offering certification tests. n105 In order to [\*371] pool resources and expertise with other states Minnesota joined with Washington, New Jersey, and Oregon to form the State Court Interpreter Certification Consortium in 1995 with the assistance of the National Center for State Courts. n106 Since 1995, Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois/Cook County, Maryland, Michigan, Missouri, Nebraska, New Mexico, North Carolina, Utah, Virginia, and Wisconsin have also joined the consortium. n107 Some of these states have joined as recently as 1999 and more will probably follow shortly. The consortium states together offer certification tests in Spanish, Cantonese, Haitian-Creole, Hmong, Korean, Laotian, Polish, Russian and Vietnamese. An Arabic language test is scheduled to be added. n108 The Consortium posts a list of contact persons for court interpreter programs in each member state, as well as California, Connecticut, New York and Cook County, Illinois, on the internet. n109 Students starting to research the law and practice in a particular state may find assistance from these contact persons. In addition, they may obtain a comprehensive list of state court rules regarding language interpreters from the National Center for State Courts. n110

The members of the Consortium and staff at the National Center for State Courts queried whether there would be benefit from state and federal coordination of efforts related to interpreters. The Center conducted a study and concluded that both state and federal courts would benefit from coordination of efforts. The Center recommended that federal courts consider joining the consortium of states to gain access to tests for languages not yet certified in federal court. The Center also recommended that state courts use the federal tests to certify interpreters for Spanish language as there are inadequate numbers [\*372] of certified Spanish language interpreters in many states. n111 Coordination efforts between states and federal courts is crucial because "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." n112 Increased coordination of efforts between a growing number of states and the federal courts will move access to well trained and certified interpreters for many languages on fast forward throughout the United States in the new millennium.

Students researching the laws and practices related to interpreters in state or federal courts are entering an area that is not perfect and is changing rapidly. Students may or may not find statutes requiring appointment of interpreters in both criminal and civil cases, rules defining qualified interpreters, rules setting up certification processes, and codes of professional responsibility for interpretation in the state in which they are working. If students are working in a state without such legislation they might turn to the Model Court Interpreter Act and Model Code of Professional Responsibility for Interpreters in the Judiciary for guidance. n113 These resources from the National Center for State Courts will help students lobby for the best practices for their client in their location.

There are other laws students should be aware of in working with interpreters. Testimony in the presence of an interpreter may be privileged. n114 Lawyers are required to "exercise reasonable care to prevent employees, associates and others whose services the lawyer utilizes from disclosing or using confidences or secrets of a client." n115 This would apply to an interpreter retained by an attorney. Students should check the rules of evidence related to interpreters. In Minnesota an interpreter is subject to the rules related to qualifying as an expert and takes an oath to make a true translation. n116

Students should also research the rules related to a particular administrative forum. For example, for Minnesota reemployment insurance compensation hearings, interpreters are provided, if necessary, upon request of parties. n117

Access to professionally trained and certified interpreters is uneven [\*373] throughout the country and, in general, not nearly at a level needed to ensure equal access to justice. Students need to be aware of this reality as they research their own law and practices and make plans to advocate for the best practices for their clients.

#### IV. What Qualities Should a Student Look for in an Interpreter to Ensure the Highest Quality of Interpretation or Translation?

##### A. Determine If A Client Needs An Interpreter

In any situation in which a student wonders if an interpreter is needed a threshold question should be considered. Where on the continuum of English acquisition is this person? Language acquisition occurs on a daily basis. Most persons in the United States have some ability to understand and speak English. Legal matters can be so lengthy that a person who needed an interpreter at the beginning does not at the end. A further issue to consider is whether the client can read English. Some people can speak English well but are not yet fluent readers. Letters from attorneys may not be understood, nor documents that need to be signed.

The National Center for State Courts has developed a model voir dire for judges to use to determine if someone is in need of an interpreter. Questions calling for a yes or no answer should be avoided because the answer does not ensure that the question was understood. Instead, the following voir dire questions are suggested:

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

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

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. n118

These questions are a start and would be useful to determine if a person does not yet have a basic English vocabulary. These questions are not adequate to determine if a person with a basic English vocabulary would need an interpreter to explain complicated and important matters in detail. For example, some clients in the clinic conduct most [\*374] legal business in English, but when trying to give detailed information for an affidavit or to fill out an asylum application, can communicate in much greater depth with the help of an interpreter. In a text designed for mental health care providers who assist refugees, the need for full expression in the dominant language is recognized. "A partial knowledge of a new or second language is always limiting when emotionally sensitive and complicated personal experiences of a traumatic nature are discussed. These can only be adequately verbalized in the patient's original language." n119

In a very unfortunate case in Minnesota, a teenage girl from Peru was wrongly determined to be actively psychotic, removed from Burnsville High School, and confined to a hospital psychiatric ward. The young woman had visited the school nurse before she ended up in the psychiatric ward. "She said the workers have refused to acknowledge a basic point. She knows enough English to chat with her friends but she had not mastered the subtleties of the language and relies on Spanish to communicate complex ideas." n120 Despite her lack of fluency no interpreter was arranged for her before it was decided that she should be locked up. Once confined she repeatedly asked for an interpreter but did not get one until she had been locked up overnight. Her discharge summary indicated she had not displayed any real psychotic features. n121 For partial English speakers, students should always be alert to the need for an interpreter in complicated and sensitive interviewing situations. Similarly, a person comfortable using English in a relaxed setting in a law office may need an interpreter in court, because the setting is stressful and fast-paced.

For clients who cannot easily answer the sample voir dire questions, it is clear that an interpreter is needed. For persons who can easily answer those questions further inquiry is needed with the individual. Are they concerned about having the appropriate level of English for the legal matter at hand? The answer may vary depending on how complex the matter is. Do they feel more comfortable and able to answer questions more completely with the assistance of an interpreter? Do they need translation assistance with letters and written [\*375] documents? If the answer to these questions is yes, an interpreter is warranted. Since accurate detailed communication is necessary for excellent legal work it is better to err on the side of having an interpreter if the client is comfortable with that decision. n122

## B. Find a Neutral, Qualified Interpreter Rather than a Family Member, Friend, or Person with Conflict of Interest

It is very common for persons in need of interpretation to bring a child, friend or other family member with them to interviews to help with communication. It is important for students to realize that a qualified, independent interpreter should be arranged for client interviews, rather than relying on family or friends. There are several reasons for this. The friend or family member may not have the expertise in English or the other language needed to interpret accurately. They may not have the necessary balanced bilingualism. In addition, a friend or family member may have an interest in the matter which could influence interpretation. This is a particular risk if they are not trained interpreters and do not understand the requirements of exact interpretation and impartiality. A client may not feel comfortable fully disclosing the details of the case in front of a child, friend or other family member, particularly if it is a sensitive subject. In some cases the friend or family member may actually have a conflict of interest with the client. To cite an extreme example, a Worcester judge appointed an allegedly abusive husband to interpret for his wife at an Order For Protection hearing. n123

Another common problem in public settings is for a person in need of an interpreter to be provided one in the form of someone down the hall who speaks the needed language to some extent. For example, at the arraignment of a suspect in the World Trade Center bombing no court certified Arabic language interpreter was available so an employee of the FBI was called upon to interpret for the suspect in federal court. n124 Procedures like this raise serious competence and conflict of interest concerns. Students should be alerted to the need for independent interpreters in office interviews. Students should also make sure that courts appoint independent qualified interpreters, rather than friends, family members, or persons with conflicts of interest [\*376] for matters in a judicial forum.

## C. Find an Interpreter with Excellent Command of Both Needed Languages

The Administrator of the Minnesota Court Interpreter Program manages a statewide roster of court interpreters for about forty-five languages, including American Sign Language. Students in our clinic consult the roster when looking for interpreters. Other states may have similar rosters of qualified non-certified interpreters and certified interpreters. It is a good place to start the search. Another option would be to check with the local district court. For example, Ramsey County District Court has a Court Interpreter Services office. n125 Personnel at the court interpreter office may be able to refer students to qualified interpreters. An additional resource is the Registry of Interpreters for the Deaf. n126

As far as language expertise is concerned, federal or state certified interpreters are the top choice, as they have passed rigorous tests in both languages. If a student locates a certified interpreter it will be important to determine if the interpreter and client speak a common dialect and if the interpreter has expertise in any needed technical language. The reality is that there are not federally or state certified interpreters for all languages and interpreters are not evenly distributed throughout the United States. It is very possible students will not be able to find a certified interpreter. n127

The National Center for State Courts has developed a model voir dire for judges faced with determining qualifications of an interpreter in the absence of certification or other qualification process. The questions they suggest related to language proficiency include:

What is your native language? How did you learn English?

How did you learn [the foreign language]? What was the highest grade you completed in school? Have you spent any time in the foreign country? Did you formally study either language in school?

Extent? Have you had an opportunity to speak with the non-English speaking person informally? Were there any particular communication problems? Are you familiar with the dialectal or idiomatic [\*377] peculiarities of the witnesses? n128

The Minnesota Supreme Court Advisory Interpreter Committee has prepared a Best Practices Manual to assist judges and court personnel working with interpreters. In that manual voir dire questions similar to the National Center for State Court Model Voir Dire are recommended. An additional line of questioning is suggested in the Best Practices Manual: How often does the interpreter communicate in English and the language or languages he or she proposes to interpret in on a daily, weekly, monthly basis? n129 This is a very important question as language skills are maintained and further developed with regular usage.

These questions should help students in their search for an interpreter with an excellent command of English and the other language. If the interpreter has an extensive vocabulary in both languages, more detailed communication between student attorney and client will be possible. Another factor to consider is whether the interpreter is not only bilingual, but bicultural, sharing a similar cultural background with the client. A similar cultural background between client and interpreter makes communication easier and more accurate.

## D. Find an Interpreter Who Understands the Role and Ethical Obligations of Interpreters

A first step for students will be to determine if their own state or local courts maintain a roster of interpreters who have been trained regarding the legal and ethical obligations of interpreters. In Minnesota the interpreters listed on the statewide roster have completed a

basic orientation program, signed an affidavit agreeing to comply with the Code of Professional Responsibility for Interpreters in the Minnesota State Court System and received a passing score on a written ethics exam. n130 If such a program exists in the clinical student's state it is best to work with an interpreter trained in legal ethics and the role of interpreters. If such training does not exist it is incumbent upon the student to explain the role of the interpreter and ethical guidelines. The student could use the Model Code of Professional Responsibility for Interpreters n131 or the Minnesota Code of Professional Responsibility for Interpreters n132 as a guide. A copy of the code of professional [\*378] responsibility for interpreters should be given to the interpreter as the student explains the obligations. After explanation, interpreters should be asked to sign an affidavit that they are willing to comply with the code. We ask all interpreters in our clinic to sign a confidentiality agreement, n133 explain to the client that the interpreter agrees to keep the matter confidential, and give the client a copy of the confidentiality agreement along with copies of retainers, releases or other necessary forms. This formality seems to add to clients' comfort in speaking freely in the interview.

The codes of professional responsibility for interpreters attempt to address and prevent the many things that can go wrong in interpreting as relates both to the role of the interpreter and legal ethics.

Canon 1 of the Model Code of Professional Responsibility for Interpreters n134 requires a complete, accurate interpretation without any alterations, omissions, additions or explanations. This canon addresses the duty of the interpreter to transmit information accurately and completely from source to target language. Students need to realize that sometimes meaning cannot be translated word for word from one language to another and they should ask the interpreter to let them know if there are difficulties in interpretation.

Canon 7 limits an interpreter's role to interpreting or translating as opposed to giving legal advice or expressing personal opinions. It is not uncommon for clients to ask interpreters for advice and for interpreters to give it. Canon 7 helps with role clarification and gives the interpreter a reason to deny a request for advice.

Canon 3 requires interpreters to be impartial and report any conflict of interest. It is important for the student to be sure the interpreter and client have no conflict of interest. Beyond that an interpreter needs to be someone the client feels comfortable working with.

Canon 8 requires interpreters to report any impediments to their performance. It is very important that interpreters feel free to do this [\*379] both in court and in the office so that accurate and complete communication can be achieved. Impediments may include the lack of a technical vocabulary on the part of the interpreter, overlapping conversations or an expectation that interpreters interpret longer amounts than they can remember accurately. It is important that interpreters be asked to report impediments as they arise.

A discussion by the student attorney with the interpreter regarding the canons of the code of professional responsibility for interpreters is a good way to establish a proper working relationship.

#### E. Find an Interpreter Who is Trained and Skilled in the Task of Interpreting

In addition to finding an interpreter with excellent language skills and an understanding of the role and ethics of an interpreter, it is important that clinical students find an interpreter with a high level of skill in the actual task of interpreting. Clinical students can consider the skills aspect of interpreting as similar to the skills aspect of lawyering that they are engaged in in the law clinic, such as developing competence in interviewing, negotiating, mediating or conducting trials.

The elements of the very difficult task of interpreting have been described as follows:

The goal of court interpreting is to produce a legal equivalent, a linguistically true and legally appropriate interpretation of statements spoken or read in court, from the second language into English or vice-versa.... The court interpreter is required to interpret the original source material without editing, summarizing, deleting, or adding while conserving the language level, style, tone, and intent of the speaker .... n135 ....

[In order to do this job,] the court interpreter must listen, comprehend, abstract the message from the words and word order of the message, store the ideas into memory, and then set about searching for conceptual and semantic matches to reconstruct the message in the other language, all this within the cultural and linguistic constraints and operating rules of that language. This takes place while the interpreter is listening for the next 'language chunk' to process while simultaneously monitoring his or her own output. n136

To help students gain some insight into just how difficult the interpreter's job is I have used two exercises, one to demonstrate consecutive [\*380] interpreting and one to demonstrate simultaneous interpreting. These exercises were developed by Joanne Moore, Washington State Office of the Administrator for the Courts. The following is the consecutive exercise:

You are Person B. While you read, Person A listens. When you are through, Person A will repeat verbatim what you have said. Person B reads the following: At about 7:15 p.m., a blue station wagon, maybe a 1981 Ford, southbound, approached the intersection of

35[su'th] Ave. N.E. and N. 27[su'th]. There was a stop sign, I think, but the driver did not stop. Then he turned left and speeded away. I could just make out his license plate. I believe it was WKH 392. (57 words) n137

In this exercise, one student reads the paragraph while another listens. When the reader finishes the listener repeats the paragraph. No student in my clinic has ever been able to repeat this information verbatim after hearing it in English and repeating it in English. They can not imagine interpreting it into a second language. They tend to make several mistakes, mistakes that would be critical in a trial. The students leave the exercise realizing how keen the interpreter's memory must be, why they need paper and pencil to jot notes, especially numbers, and why attorneys should reduce the length of the material to be consecutively interpreted. Students who have tried this exercise are more conscious of keeping the amount to be interpreted reasonable and checking with the interpreter to be sure the amount is reasonable.

Another exercise simulates what an interpreter experiences when expected to interpret in the simultaneous mode. n138 One student repeats a paragraph in English at the same time another speaks in English. They find it is not easy to listen to what has been said, and say it, while listening to what is being said and preparing to say it in the next segment. They can imagine how much more difficult it would be if [\*381] you not only had to listen and speak but also find the correct words to say in another language.

Both of these exercises are good interactive ways for students to actually "feel" on a motor level how difficult the task of the interpreter is. That increased understanding prompts them to be more sensitive to the interpreter's needs in interviewing and more aware of impediments to an interpreter in court, such as two people talking at once, inadequate volume and so on.

In addition to having a good memory and the ability to interpret in both the consecutive and simultaneous modes, interpreters need to conserve meaning in interpretation. If meaning is conserved the judge or jury who hears testimony will hear it in English as close to how it was spoken in the other language as possible. Conserving meaning is one of the most difficult challenges interpreters face. For example, linguists have found five registers (levels of formality of speech) that are used in English: "(1) oratorical or frozen; (2) deliberative or formal (3) consultative (4) casual and (5) intimate." n139 Interpreters are called on in courtrooms to speak in several registers and switch registers.

Susan Berk-Seligson conducted an ethnographic study of Spanish language courtroom interpreters. She tape recorded eighteen interpreters at court appearances for nine months in nine court houses. n140 She examined the accumulated data for errors in interpretation and found a variety of errors on the part of interpreters with regard to register. She found that some interpreters did not change register as needed or "consistently aim for a register that is too formal for the witness or defendant for whom they are interpreting." n141 The witness or defendant thus sounded different to the judge or jury than his or her actual words warranted. Professor Berk-Seligson found that raising the formality of a witness's register created a more positive impact on mock jurors regarding the witness's intelligence, competence and trustworthiness. n142 Rather than conserving meaning the interpreter may have changed meaning by changing register.

Other linguistic features she reviewed were pragmatic devices. For example, people speak with varying degrees of certainty. "A witness answering an attorney's question can convey a sense of certainty about what he is saying; alternately the witness can be seen to be [\*382] 'hedging' in his answer." n143 Professor Berk-Seligson found in her research that court interpreters frequently alter the degree of certainty or uncertainty conveyed by the witness. She gives the following example:

Defense attorney: what kind of house is that?

Interpreter: <qmarkx>Que tipo de casa es?

Defendant: Es una casa chica.

Interpreter: Well, it's a small house. n144

The question was answered with certainty; it's a small house. The addition of the word 'well' by the interpreter makes the answer less certain. Professor Berk-Seligson found that interpreters add "hedges, polite forms, uncontracted forms, implicit linguistic material and repetitions or rephrasing." n145 These changes are a matter of concern as witnesses who give longer answers are viewed more positively by mock jurors. n146

Other research has shown that difference in linguistic presentation has an influence on the credibility with which a witness is seen and thus a potential influence on the outcome of the case. The results of a study of powerful and powerless language indicated that the addition of hedges by witnesses had a negative effect on jurors. n147

The findings that interpreters did not conserve meaning, but rather changed meaning and thus may have had an impact on the outcome of cases is a matter of great concern. Professor Berk-Seligson stresses:

To understand what constitutes good interpreting, one must understand the concept of linguistic register. Good interpreting, ultimately, means high fidelity to the source language utterance. Interpreters are not supposed to make witnesses and defendants look any more convincing, intelligent, and trustworthy than they sound in their native language. Conversely, they are not allowed to make them appear less so. n148

The importance of linguistics in interpretation is a matter that should be brought to the attention of interpreters as well as attorneys and [\*383] judges. n149 There is an urgent nationwide need for more "training to improve interpreters' proficiency in applied interpreting skills." n150 Studies have shown that training can significantly improve interpreters' performance. n151

In summary, having determined that an interpreter is appropriate for a particular phase of the legal representation, students looking for interpreters should look for someone who is independent and not a friend, family member, or person with a conflict of interest. They should look for an interpreter who has an excellent command of both languages (certified if possible), understands and agrees to the role and ethics of an interpreter in the legal setting, and has significant training in the applied skills of interpreting. It will not always be possible to find an interpreter meeting all these criteria. If the only interpreters available lack formal training, it will be necessary for students to both understand and explain the role and expectations of interpretation in a legal setting to a proposed interpreter so as to protect the client.

## V. How Should Students Prepare to Conduct Interviews with Interpreters?

### A. Preliminary Preparation

Before scheduling an interview with an interpreter, students should consider doing some background reading on the country, culture and language of the client they will interview. n152 The interview should be scheduled for a longer period of time than usual as interviews through interpreters usually take longer. The student should find the most qualified, independent interpreter possible and make sure there is no conflict of interest. The student should make sure, through the client directly or through a family member asking the client, that the particular interpreter is someone the client feels comfortable with.

[\*384] If the most qualified interpreter available is not someone the student is sure has been trained in the role and ethics of interpreting the student should review the canons of the state's code of professional responsibility for interpreters or the model code with the interpreter. An agreement to comply with the code as well as to maintain confidentiality should be signed by the interpreter. If the student is working with an untrained interpreter it is important as a preliminary matter to explain the need for as exact an interpretation as possible. Offensive material should not be edited out. The interpreter should say exactly what the client says even if he or she thinks it is the wrong answer. The student should ask the interpreter to let him or her know if the interpreter does not understand a term used by the student so it can be explained. The interpreter should also alert the student to any other difficulties with interpreting so adjustments can be made. The student can let the interpreter know that his or her goal is to understand the client's statement in English as well as the interpreter understands it in the other language. At the beginning of the interview the student should meet with the interpreter and client and explain to the client the role of the interpreter: to interpret exactly what is said and to keep everything confidential.

An agreement needs to be reached as to how the interpreter will be paid. What is an agreeable hourly rate? Whose obligation is it to pay the interpreter? Our clinic has a fund to pay interpreters and we have a form for them to fill out for billing. We have paid rates varying from \$ 15 to \$ 50 an hour depending upon the interpreter. The number of hours needed depends upon the complexity of the case. We have managed on a budget of \$ 1,000 a year for interpreters, but a significantly larger budget may be needed depending upon the number of clients and complexity of cases.

### B. Interviewing Techniques

Interviews through interpreters should be conducted in the first person, with the student attorney directly speaking with the client. For example, a student should ask a client directly, "what is your address?" rather than asking the interpreter to ask her what her address is. First person communication with the client is more respectful. It makes it clear that the persons being interviewed are the clients and that it is what they have to say that is important. It gives clients the chance to respond in English when they wish. First person communication emphasizes that the relationship is between client and student and that the role of the interpreter is just to be present to facilitate [\*385] communication as needed. n153

Students interviewing through an interpreter should be aware of the likelihood that the client and student will differ culturally. Students need to be patient and flexible. The students may have a prepared interview outline but they should realize people differ across cultures in how information is conveyed and stories are told. In some cultures it is important to convey background and context before getting to what the student or lawyer believes to be the main point. n154 Students should adjust their questioning style to the client's preferred ways of sharing information. If the students are relaxed and good listeners, it will be easier for the client to feel comfortable with them.

In a text related to refugee mental health, eight tips are given to mental health workers who are interviewing through interpreters. These suggestions are informative for interviews in a legal setting as well and include the following:

1. Use short sentences.
2. Divide long or complicated sentences (messages, questions) into several short ones.
3. When speaking, look directly at the patient.
4. Ask clear questions regarding the patient's understanding of and reaction to what is being said.
5. Explain your own appraisal and reactions in words rather than nonverbal forms.
6. After patient's responses or explanations, summarize what has been communicated, and let patient confirm his or her understanding of it (back-interpretation).
7. Never interrupt the interpreter or the patient.
8. Never speak until full interpretation is completed. n155

The use of short sentences allows the interpreter to interpret an appropriate amount of information, thus avoiding memory problems and errors. Division of complicated sentences into short ones furthers that goal. Additionally, students should avoid compound questions entirely. At an asylum interview students in our clinic recently attended, an interviewer asked a three-part question. After interpretation, the witness responded to the first question. The interviewer did not allow enough time for the answer to the other two questions or [\*386] forgot them and went on to yet another question. Single, short questions are easier for interpreters and respondents and are more likely to result in accurate communication.

The suggestion that one ask clear questions regarding the client's reaction to and understanding of what is being said is important in legal interviewing. Asking for reactions can help students understand the client's feelings about the matter at hand, which need to be recognized as students strive to become empathetic listeners. Asking for the client's understanding of what has been said helps students know when further communication is needed if there are gaps in understanding. The client's understanding should be sought with open ended questions rather than yes or no questions. Students should explain their reactions in words rather than nonverbal ways to avoid potential cultural miscommunication. They should resist interrupting interpreters and clients to convey respect. Students who achieve good skills in interviewing through interpreters will communicate more accurately and convey respect to their clients.

## VI. How Should Students Prepare for and Conduct a Hearing in Court with an Interpreter?

### A. Make Sure an Interpreter Is Available at Any Hearing for a Party Who Needs Interpretation

Students facing a court appearance or other hearing for a client in need of interpretation should research the law of the forum to determine if there is a right to appointment of an interpreter under federal or state law or under the rules of an administrative agency. In some situations there is not a right to an appointed interpreter. For example, in initial asylum interviews "an applicant unable to proceed with the interview in English must provide, at no expense to the Service, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent." n156 In an initial asylum interview a student representing a client in need of interpretation must make sure that the most appropriate, qualified interpreter is present. At the beginning of the representation the student should clarify in writing whose obligation it is to pay the interpreter. Good interpretation is critical at initial asylum interviews. The client's failure without good cause to bring his or her own interpreter might be considered failure to appear for the interview by [\*387] the INS. n157

In matters for which appointment of an interpreter is required by statute or rule, students should call the court administrator to check on the process. In some judicial settings, court administrators arrange for interpreters. They need to be advised of the proper language and dialect. Conflicts of interest must be avoided. To avoid bifurcated hearings, court personnel should also be alerted to schedule more time than usual when an interpreter is needed. We have even found it helpful to check back the day before the hearing to be sure an interpreter is scheduled to avoid the inconvenience for client, witness and counsel if none has been arranged.

It is important that an interpreter be appointed at the earliest possible opportunity including any pretrial conferences. n158 Prior to any hearing the interpreter should speak with the individual to determine if there are any communication difficulties and to advise the person that the interpreter's role is to interpret and not to advocate. The interpreter should advise the person in need of interpretation of the ethical requirement to interpret everything, even vulgarities. n159 The interpreter must interpret accurately and not change any testimony.

There may be times when judges are inclined not to appoint an interpreter. A situation of this sort is depicted by Guadalupe Valdes in an article that delineates a process designed to help determine language competence or incompetence. n160 She describes a young man who spoke both English and Spanish but whose Spanish ability was superior to his English ability due to his usage at home and in his community. He was tried for murder and convicted without a Spanish-speaking interpreter. The author, who is a sociolinguist, reviewed the tapes of the young man's testimony in English at trial and his statements to the police in Spanish. She found that in English he came across as cocky and aggressive but in Spanish as a scared young kid "who was deeply confused and clearly anguished about what had happened." n161 Because he testified in English, Professor Valdes asked the following question: "Did the jury actually get to see the troubled youth that the many witnesses who testified on his behalf described?" n162 Because his defense was based upon a traumatic incident early in his life, it was crucial that the jury hear from the real young [\*388] man. The issue is whether they really heard and understood him as he did not speak in his dominant language at trial.

Students must very seriously consider, with clients, whether an interpreter should be requested in cases in which partial English fluency exists. For serious cases, using the dominant language of the client may be the best way to further the truth-seeking process courts are about. If a client and student determine that an interpreter should be requested for a client with partial English fluency, they should be prepared to explain to the judge why it is necessary. Prepare to explain why more extensive English vocabulary is necessary for the matter at hand or why a traumatic matter can best be expressed in the client's dominant language. n163

A judge who is not fluent in the language of the individual and is not a linguist does not have the needed expertise to determine language competence or incompetence. A Comment in Rutgers Law Review suggests that just as no one would expect a trial judge to determine mental competence to stand trial, "no one should expect the trial court judge to determine a technical, linguistic question of whether a particular individual speaks and understands enough English to consult with his lawyer and understand the proceedings against him." n164 The author further suggests, in a proposed model act, that a process be established in which a trial judge not refuse a request for an interpreter without consulting with "a language examining board including at least one competent linguist." n165 In close and serious cases it might be helpful to consult a linguist for an expert opinion on why an interpreter is warranted.

Another issue students should address is the number of interpreters needed. If a party and another participant such as a witness need interpretation, appointment of two interpreters should be requested. The party should have an interpreter at counsel table to interpret the proceedings simultaneously for them to allow confrontation of witnesses and effective participation. n166 The other interpreter can interpret consecutively for a witness to the judge and vice-versa.

An additional issue to consider is the fatigue factor faced by interpreters, as the task is very tiring. Teams of two interpreters are provided in some jurisdictions for trials that will take over two hours. n167 "A team of two well-trained and experienced court interpreters [\*389] can complete a trial much more quickly, efficiently and more accurately than one overworked interpreter." n168

#### B. Make Sure that Court Appointed Interpreter is Properly Qualified

A very helpful series of articles on interpreting in court was published in the State Court Journal. n169 The entire volume would be a good resource for students. In the lead article, the Honorable Charles Grabau cites common misconceptions held by judges whose duty it is to decide "who is to receive the services of an interpreter and whether an interpreter is qualified." n170

Misconception Number 1: If a person is bilingual, that person is able to interpret. Misconception Number 2: The appointment of a bilingual attorney will solve the language problem in the courtroom. Misconception Number 3: Defendants have little to contribute in their own defense. n171

Students may encounter judges unfamiliar with the complexity of interpreting who hold any or all of these misconceptions. With regard to the first misconception, the reality is that "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." n172 In an article describing interpreter errors made in certification testing, William E. Hewitt and Robert Joe Lee provide ample evidence that just because one is bilingual does not mean one can interpret. n173 The extreme example alluded to in the title of that article is the following:

The question put to the witness by counsel is:

Now, Mrs. Pe<tild n>a, 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? n174

Other incorrect interpretations of the above question to the witness included:



'I understand that you said that you lived in West Orange.';

'Now, you told me that you lived at 4581 East Orange'; and

'You told me that you lived in west of Orange, at 56 Grand [\*390] Street.' n175

The mistakes were so pervasive that only thirty-two percent of the test takers correctly interpreted "5681 Grand Street," n176 an amazingly low number. In another example a "salaried staff interpreter with thirty-eight years of experience" interpreted "Now, there were no injuries in this accident" as "Now, there were no insults in this accident." n177 This experienced interpreter made so many errors he or she only received forty-four percent correct scoring units. n178 The authors asked themselves whether the certification tests were fundamentally flawed and concluded that they were not. They determined that the reason for errors and low passage rates were "better explained by the inherent difficulty of the work and by the lack of professional training among those people whom courts use to provide interpreter services." n179 They concluded that "very few bilingual people who think they are qualified to interpret in court (or who someone else thinks are qualified) actually are qualified. The [certification] tests are doing the job they were intended to do." n180 Students should counter the misconception that all bilingual persons can interpret and insist that the interpreter appointed have excellent language proficiency in the needed languages (proven by passage of a certification test if at all possible), an understanding of the role and ethics of interpreters, and training in the necessary applied skills of interpreting.

With regard to the second misconception, it is fortunate for a client to have bilingual counsel but it is not a substitute for an interpreter. A bilingual attorney serving in the dual role of attorney and interpreter would be precluded from effectively representing his or her client due to the conflict in roles and the limits of his or her ability to concentrate on both roles. n181 A bilingual student or attorney [\*391] should always insist that a properly qualified interpreter be appointed for a person in need of one and not attempt to serve in both roles.

The third misconception, that defendants have little to contribute to their own defense, flies in the face of the constitutional right to effective counsel in a criminal matter. The defendant "must be able to communicate with his or her attorney." n182 It is also contrary to the ethical duty of an attorney, as a communicator with his or her client in all cases, to keep the "client reasonably informed about the status of the matter" and to explain the "matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." n183 Without proper interpretation the lawyer cannot competently represent the client.

Judge Grabau's view on the common misconceptions of judges with regard to interpreters highlights the important role students should play in ensuring that an interpreter is properly qualified when needed for a court hearing. At the beginning of a hearing, a student should determine if there are any reasons to object to the court appointed interpreter. The student should research the local law to determine if "qualified" is defined and should request the most qualified interpreter possible. The student may request opportunity to voir dire the interpreter to determine if there are objections to his or her qualifications. Is the interpreter a neutral individual with no conflicts of interest? Is he or she certified? If not, does the interpreter have excellence in both languages, any regional dialect, and any needed technical language? n184 Does the interpreter understand the role of the interpreter as articulated in the local or model code of professional responsibility for interpreters? n185 Does the interpreter have training, experience, and excellence in the applied skills of interpreting in the modes required by the court in this case? Voir dire questions are suggested in the Best Practices Manual to determine the interpreter's level of training and experience in the applied skills of interpreting. n186

[\*392] For hearing impaired persons it is crucial that students determine if client and interpreter can understand each other. In addition to proficiency in English and ASL, the interpreter needs to understand any particular communication methods used by the client, such as lipreading relied on by late-deafened adults, tactile signing of deaf-blind persons, foreign sign language, or the proper methods of communicating with a deaf person with minimal language skills. n187 An interpreter for a hearing impaired person should have the proper needed certification from the National Registry of Interpreters for the Deaf. Current certificates being issued include Certificate of Interpretation (CI) and Certificate of Transliteration (CT). n188 The RID written testing process evaluates the interpreter's knowledge of ethics, the role of the interpreter, deaf culture and ASL. In addition a performance test is given. n189

Students should object as needed if an interpreter appointed by the court appears not to have the requisite skills to interpret for the person in need of interpretation.

As a protection for the client on appeal, students should request an audio recording of the trial when a foreign language interpreter is [\*393] present or a video recording if a sign language interpreter is needed. These steps are necessary to record the interpretation as the court reporter is only transcribing the English portion of the trial. A record is needed so that concerns about errors in interpretation can be raised on appeal. n190 If there is no record of the interpretation, appellate courts overwhelmingly reject claims that the trial was unfair due to interpreter error, because there is no proof. n191 The court record is in English only.

Another issue for students to consider is whether to bring their own interpreter to listen for potential errors on the part of the court interpreter so timely objections can be made. If the student or attorney is not bilingual, errors will not be noticed. Even if they are bilingual, they are concentrating on the lawyering role. An additional interpreter for counsel, listening for errors might be warranted.

Ideally, interpreter errors should be caught as they occur and contemporaneous objections made so errors are not deemed to be waived. Contemporaneous objections, whenever possible, and audio or video recordings are necessities for preserving issues for appeal. n192

Vicky Funes-Torres, a federally certified court reporter, was quoted in a Chicago Tribune story covering the Seventh Annual Chicago Conference on Translation and Interpretation. She stated, "I think there are bad translations affecting the outcome of many trials." n193 She described "a case in which a man signed a murder confession after a section of the Miranda Rights -- 'If you do not have an attorney, we will furnish one for you' -- was translated as 'If you do not have an attorney, we will give furniture to one for you.'" n194 The confession was eventually disqualified but the defendant had to go to federal court for relief. n195

In an article on interpreters, Linda Friedman Ramirez and Leslie Kay, attorneys specializing in criminal defense and civil litigation for Spanish-speaking clients, stated:

Interpreter error is inevitable. Errors can stem from 1) literal translation: [\*394] where an interpreter concentrates on the words and not on the essential ideas; 2) inadequate language proficiency, which limits interpretation of differences in nuance, connotation, and speaking styles that will occur in court; 3) grammatical errors; 4) omission resulting from a deficient memory span; or 5) distortion resulting from an interpreter's failure to preserve the hesitation words, filler, interrupted and incomplete sentences characteristic of real speech and 6) summarizing testimony. n196

Since interpreter error is inevitable and remediation through the courts is ineffective at worst and time consuming at best, students should be sure to insist on the most qualified interpreter possible, take steps to catch errors as they occur in court, and be sure the record of interpretation is preserved for appeal.

### C. Be Alert for Impediments to Accurate Interpretation at Trial

Students should be alert to and bring to the court's attention any impediments to an interpreter's work. For example, interpreters are likely to have difficulty hearing if the court room is noisy, if there are overlaps in voices, or if people are speaking too softly or too rapidly. They are likely to make errors if the amount they are expected to interpret consecutively is too lengthy. It is helpful for an interpreter to have access to paper and pencil, especially if numbers are involved. Adequate lighting and an absence of glare is essential for sign language interpretation and lipreading. In addition, attorneys should not walk in front of a sign language interpreter. n197

Students should watch for interpreter improprieties. Interpreters should not advocate, give advice or attempt to influence a client or witness in any way. These actions are beyond the role of an interpreter to convey meaning from one language to another. If an interpreter engages in a lengthy exchange with a witness or client, seems to be attempting to influence an answer through facial expression or head nodding, n198 or in any other way appears to be going beyond the proper role of an interpreter, a student should intervene and determine if there actually is improper conduct. If so, it may be necessary to ask the judge for remediation and possibly a new interpreter.

Students working with an interpreter in a courtroom setting should be alert to any conditions that create a risk of interpreter error and seek correction. n199

[\*395]

### D. Be Sure Interpreters Are Present When Needed in Mediation or Other Alternative Dispute Resolution Forum

In a comprehensive article on the need for interpreters in mediation, Ileana Dominguez-Urban observed:

Only in science fiction stories do people from vastly different cultures, and sometimes different species, appear able to communicate faultlessly with each other immediately upon their first meeting. From the "preposterous" Universal Language Translator of the Star Trek series to the parody fish-in-the-ear translator of Douglas Adams' Hitchhiker's series, these devices represent the unattainable goal of seamless communication in cross-cultural interactions. In real life, we, as ordinary mortals, must make do with the awkward process of using another individual to serve as the conduit and translator of our words. n200

A good understanding of the process of interpretation is particularly important in mediation as one of the primary goals of mediation is "communication between the parties" n201 or getting the "two participants to [voluntarily] do that which they least desire to do -- talk to each other." n202 In mediation, as in any situation in which interpretation is needed, one way to make as accurate communication as possible a reality is by acquiring the assistance of a neutral, well qualified and skilled interpreter. Excellent interpretation is critical in mediation as the mediator is trying to help the parties probe beyond the surface facts to express their individual values and interests in the matter.

Professor Dominguez-Urban points out several reasons why bilingual mediators should not serve as interpreters. First of all, just because a mediator is bilingual does not mean he or she has the skill or training to interpret. Secondly, serving as both mediator and

interpreter would split the concentration between roles. "The mediator would be required to wear two hats simultaneously; the mediator [\*396] would need to enforce the ground rules as well as interpret the message of each party ... an extremely difficult, if not impossible, feat." n203 Finally, both parties may question the mediator's neutrality as he or she speaks to one at a time in his or her dominant language. n204

Mediators should be sensitive to the cross-cultural aspects of mediation in a setting in which an interpreter is required. In the code of ethics for neutrals in Minnesota the following caution is noted: "Neutrals should be aware that cultural differences may affect a party's values and negotiating style." n205 Ms. Dominguez-Urban further cautions that mediators must be prepared for the possibility of cross-cultural biases and prejudices against the person in need of an interpreter. n206 The mediator must be prepared to confront his or her own biases, ensure that the interpreter is neutral and make sure the mediation is conducted in a fair and respectful manner. n207

## Conclusion

Lawyers in the United States are very likely to need interpreters to communicate with clients occasionally or frequently due to demographics and an increasingly global economy. Communication through interpreters will never be an easy task, nor is it ever likely to be one hundred percent accurate due to the complexity of language and the overlay of cultural differences.

Eva Hoffman, a writer with a Ph.D. in literature from Harvard University, in a very moving autobiographical account, describes her relocation as a thirteen year old girl with her family from Cracow, Poland, to Vancouver, Canada, in 1959. She describes in detail her feelings of difference and alienation in a new culture. She also describes the tremendously difficult and lengthy process required for her to gain enough vocabulary and cultural understanding to truly express herself in English. n208 She is hurt when her mother says she is becoming "English." n209 "I know she means I'm becoming cold. I'm no colder than I've ever been, but I am learning to be less demonstrative." n210 [\*397] She learned to gesture less, to stand farther away from the person she is speaking to, and to avoid grabbing the listener's arm in excitement, so as not to be considered too aggressive. She also learned to avoid speaking critical truth too directly, and to be careful about what she says, how loud she laughs, and whether to give vent to grief. "The storminess of emotion prevailing in our family is in excess of the normal here ...." n211 The inhibitions caused by cultural differences and the complexity of speaking in a new language made communication very difficult for her. She reflected as follows:

It takes all my will to impose any control on the words that emerge from me. I have to form entire sentences before uttering them; otherwise, I too easily get lost in the middle. My speech, I sense, sounds monotonous, deliberate, heavy -- an aural mask that doesn't become me or express me at all.... It will take years before I pick and choose, from the Babel of American language, the style of wit that fits. It will take years of practice before its nuances and patterns snap smartly into the synapses of my brain so they can generate verbal electricity. n212

Eva Hoffman describes in great detail the long and difficult transformation necessary to be able to truly express herself in a new language. True expression of the self is critically important in legal matters. An interpreter is necessary for that expression of self until clients have reached the level of fluency needed to speak effectively for themselves in English. Law students and attorneys need to acquire an understanding of the complexity of language, the process of language acquisition, the cultural differences expressed through languages, as well as the role of the interpreter and skills necessary to interpret successfully in order to communicate respectfully and accurately with a client through an interpreter.

[\*398]

## Appendix A

### CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE MINNESOTA STATE COURTSYSTEM\*

#### 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.

#### 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.

## Canon 2 - Representation of Qualifications

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

## 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.

## Canon 4 - Professional Demeanor

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

[\*399]

## Canon 5 - Confidentiality

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

## 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 trainings or education.

## 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.

## 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.

## 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.

## 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.

## FOOTNOTES:

n1. I reviewed Robert M. Bastress & Joseph D. Harbaugh, *Interviewing, Counseling, and Negotiating: Skills for Effective Representation* (1990); David A. Binder, Paul Bergman & Susan C. Price, *Lawyers As Counselors: A Client Centered Approach* (1991); Roger S. Haydock, Peter Knapp, Ann Juergens, David Herr & Jeffrey Stempel, *Lawyering Practice and Planning* (1996); Stefan H. Krieger, Richard K. Newman, Jr., Kathleen H. McNanus & Steven D. Jamar, *Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis* (1999); Thomas L. Shaffer & James L. Elkins, *Legal Interviewing and Counseling* (1997). The authors of *Essential Lawyering Skills* note at 275 that cross-cultural differences impact negotiations and that negotiators may be required to communicate through interpreters. However, it was beyond the scope of that text to cover those subjects in depth.

n2. The 1990 census estimated that 32 million persons over five years old spoke languages other than English at home in the United States. Dorothy Waggoner, *Six States Have a Million Plus Home Speakers of Non-English Languages, Number and Needs: Ethnic and Linguistic Minorities in the United States* Vol. 3, No. 1 at 2-3 (Jan. 1993) (available online at <[http://www.asu.edu/educ/cber/n\\_n/b\\_index.htm](http://www.asu.edu/educ/cber/n_n/b_index.htm)>). Because the census does not include all language minority persons Waggoner estimated that the actual number may have

been as large as 47.8 million in January 1993. Id. at 4. Additionally, close to a million persons are legally admitted to the United States each year; the numbers were 915,900 in 1996, 720,461 in 1995, and 804,416 in 1994. See Statistics, Immigration and Naturalization Service <<http://www.ins.usdoj.gov/graphics/ins/statistics/annual/fy96/993.htm>> (updated 9/2/97). At those rates the 1993 estimate may have increased to nearly 55 million in early 2000.

n3. "Interpretation means the unrehearsed transmitting of a spoken or signed message from one language to another. Interpretation is distinguished from 'translation,' which relates to written language ... ". William E. Hewitt, Court Interpretation: Model Guides for Policy and Practice in the State Courts 31 (1995) (hereinafter Model Guides) (Available from National Center for State Courts, (800) 877-1233).

n4. "Translation is converting a written text from one language into written text in another language. The source of the message being converted is always a written language." Id. at 33.

n5. Mick LaSalle, Lost in Translation: U.S. Movie Titles Get New Titles Overseas, Minneapolis Star Trib., Aug. 5, 1996, at E8.

n6. F.Y.I., Something Lost (In Translation) Something Gained, Minneapolis Star Trib., Aug. 2, 1998, at E1 (citing Los Angeles Times).

n7. LaSalle, supra note 5. On the other hand, the author quotes John DeSimio, Senior V.P. at Castle Rock: "Titles are meant to entice viewers." The author indicates that "in some cases, perfectly translatable titles just don't have the same lure in another culture". In these cases title changes are for marketing reasons.

n8. Roseann Dueñas Gonzalez, Victoria F. Vasquez & Holly Mikkelson, Fundamentals of Court Interpretation 243-44 (1991).

n9. See id. at 244.

n10. See id.

n11. See id. at 246-47, citing Akmajian, A., Demers, R.A., & Harnish, R., Linguistics: An Introduction to Language and Communication 521 (2d ed. 1984).

n12. Earl L. Rees, <excl>Que problema! How accurate is that translation?, 6 Crim. Just. 18, 18 (1991).

n13. Debra L. Hovland, Error in Interpretation: Why Plain Error is Not Plain, 11 Law & Ineq. J. 473, 473 (1993) (citing to Washington State Office of the Administrator for the Courts, Court Interpreter Task Force Initial Report & Recommendations 21 (October 20, 1986)).

n14. Michael B. Schulman, No Hablo Ingles: Court Interpretation As A Major Obstacle To Fairness For Non-English Speaking Defendants, 46 Vand. L. Rev. 175, 176 (1993).

n15. See id.

n16. Immigrants in Courts 3-4 (Joanne I. Moore ed., 1999).

n17. Jo Anne Simon, The Use of Interpreters for the Deaf and the Legal Community's Obligation to Comply with the A.D.A., 8 J.L. & Health 155, 162-63 (1993/1994).

n18. See id. at 162.

n19. Nancy Frishberg, Interpreting: An Introduction 16-17 (1990).

n20. Thanks to Deb Mackay for this quiz. Sample questions include:

1. When one walks on the "pavement" one is walking on:

- a) the sidewalk (correct)
- b) the grass
- c) the street

2. One refers to "cutting the fringe" when one is:

- a) mowing the lawn
- b) telling someone to get to the point
- c) visiting the barber (fringe refers to bangs) (correct)

3. When one buys "jelly" one is buying:

- a) gummi bears
- b) Jell-O (correct)
- c) jam

4. go to the "big smoke" is to visit:

- a) the local tavern
- b) a large factory
- c) a large city (correct)

5. When one refers to the "boot" one is discussing:

- a) the trunk of a car (correct)
- b) firing someone
- c) footwear

n21. Gonzalez et al., supra note 8, at 296: "Source language is the language of the original message, the one being translated 'out of'... The target language is the language into which the message is being translated."

n22. Susan Berk-Seligson, *The Importance of Linguistics in Court Interpreting*, 2 *La Raza L.J.* 14, 16 (1988).

n23. See id.

n24. See id., at 16 n.6 (citing J. Fishman, *Sociolinguistics: a Brief Introduction* 51-55 (1971)). See also Fishman, *The Sociology of Language*, in *Advances in the Sociology of Language* 217, 250-55 (J. Fishman ed., 1976).

n25. Berk-Seligson, supra note 22.

n26. See id. at 17.

n27. See id.

n28. Gonzalez et al., supra note 8, at 253, citing J. Swift, *Gulliver's Travels* 297 (1947). The difficulty of interpreting and translating English legal terms is discussed by Rees, supra note 12, at 20-22. Included in his discussion are potentially serious variations in translations of Miranda warnings. See also Model Guides, supra note 3, at 72, for a bibliography of bilingual legal dictionaries in English and Spanish, Korean, Vietnamese, Cantonese, Laotian, and Cambodian.

n29. Clyde Kluckhohn, *Mirror for Man* 24, 28 (1944).

n30. See id. at 31.

n31. Anne Fadiman, *The Spirit Catches You and You Fall Down* 41 (1997). The author chronicles the tragic results in the treatment of a young Hmong girl who, due to lack of interpreter at the emergency room, "had epileptic seizures for 5 months before they were diagnosed and medicated." In several years of treatment, the communication gap between the Hmong family and U.S. doctors was never adequately bridged because of the differences in their cultural beliefs regarding what a seizure disorder is and how it should be treated.

n32. Christine Zuni Cruz. [On the] *Road Back In: Community Lawyering In Indigenous Communities*, 5 *Clin. L. Rev.* 557, 577-78 (1999) In an article regarding community lawyering in indigenous communities the author stresses the importance of understanding the influence of a community on a client as well as recognizing one's status as an outsider, if not a member of the community, and the importance of avoiding stereotypes and overgeneralizations. See also Beatriz Valera-Schutz & Margarita Gonzalez, *Cultural Fluency*, in Marilyn R. Frankenthaler, *Skills For Bilingual Legal Personnel Tecnicas Para El Personal Bilingüe En El Area Legal* 3 (1982). "Knowledge of the client's culture is of the utmost importance, since this knowledge may directly affect the handling of the legal problem. A familiarity with a client's culture, however should not incline the attorney toward trying to fit the client into a cultural stereotype. Cultural consciousness should provide one with a wider perspective for understanding individual behavior, not a preconceived explanation for every individual word or action." Id. at 19.

n33. See Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 *Clin. L. Rev.* 321, 344-50 (1998) for a model of interviewing in the opening moments that allows clients to speak in their own voices, relaying their primary concerns from their own perspective.

n34. See also Gay Gellhorn, Lynne Robins & Pat Roth, *Law and Language: An Interdisciplinary Study of Client Interviews*, 1 *Clin. L. Rev.* 245 (1994) for a description of an interdisciplinary process used by the authors to help law students develop interviewing skills that do not silence clients but, rather, foster good communication and relationships between clients and student attorneys. See also Linda F. Smith, *Interviewing Clients: A Linguistic Comparison of the "Traditional Interview" and the "Client-Centered" Interview*, 5 *Clin. L. Rev.* 541, 583-84 (1995). The author describes the benefits of allowing clients the opportunity for uninterrupted narrative, allowing them to relate "their story in their own words and in their own way."

n35. Jody Johnson, a guest speaker from the Center for Victims of Torture, provided very helpful interviewing guidance to clinic students. See also Herbert C. Modlin, M.D., *Posttraumatic Stress Disorder, No Longer Just For War Veterans*, 79 *Post Graduate Med.* 26 (1986), for a discussion of symptoms of PTSD that may affect interviewing. See *Amidst Peril and Pain, The Mental Health and Well Being of the World's Refugees* (Anthony J. Marsella et al. eds., 1994) for a description of mental health issues facing refugees and cultural differences in the expression of those concerns.

n36. Valera-Shutz & Gonzalez, *supra* note 32, at 2.

n37. See *id.* at 1-63.

n38. See *id.* at 27.

n39. See *id.* at 5-26.

n40. See *id.* at 27.

n41. See *id.* at 28.

n42. See *id.* at 29-30.

n43. See *id.* at 31-32. In summary, the authors have compiled a list of Do's and Don'ts that may be helpful to students. Some suggestions are specific to Spanish language interpretation; most are of general applicability. From *Skills for Bilingual Personnel Tecnicas Para El Personal Bilingue En El Area Legal* © 1982. Reprinted with permission of South-Western College Publishing Co., a division of Thomson Learning.

[tdg1.6+n,mp1,ql [tcg2m,mp1,ql,vu1] Don'ts/Do's 1. Don't use the familiar form of address (tu). 1. Use the polite form of address (usted). 2. Don't assume that a client understands English merely because he or she understands the words, "Do you understand English?" 2. Ask whether the client would feel more comfortable with an interpreter for all of the interview or just certain parts. 3. Don't take the attitude that you don't or can't understand someone else's Spanish. 3. Learn language variations. Become familiar with as many forms of the vernacular as possible. 4. Don't classify a person as "Hispanic," "Spanish," etc., unless he or she applies this classification to him or herself. 4. If there is a need to classify the client, use the classification that the client applies to him or herself. 5. Don't dress carelessly or too informally. 5. Dress in a manner appropriate to a formal office setting. 6. Don't assume that the client knows or can guess the role or function of each member of the office staff. 6. Let the client know the name and function of each person with whom he or she comes in contact at the office. 7. Don't ignore the use of more than one last name or assume that you can correctly guess which is the "equivalent" of that used generally in the United States. 7. Familiarize yourself with the personal name formula used by most Hispanics. 8. Don't prejudge the client based upon what you believe must be his or her cultural background. 8. Consider the client in individual terms as much as possible. 9. Do not assume that general cultural characteristics will be found in each individual. 9. Learn about the culture of the major groups with whom you work. 10. Don't ignore gestures in interpreting. 10. Become familiar with the possible cultural meanings of gestures. 11. Don't rush. 11. Give the client as much time as possible. 12. Don't assume that calling the client by his or her first name will make the client feel more at home. 12. Call the client by his or her last name always. 13. Don't assume that laughter or a facetious response to a question means that a client does not care. 13. Be professional. Maintain a friendly but serious attitude. 14. Don't expect the client to make all the adaptations necessary to communicate with you. 14. Remember that you are there to serve the client.

Valera-Schutz & Gonzalez *supra* note 32, at 32-33.

n44. Rees, *supra* note 12, at 22. See also *Immigrants in Court*, *supra* note 16, at 55-157, presenting information on the laws and legal culture of China, Mexico, Russia, Vietnam and Islam. The Washington State Office of Administrator for the Courts convened focus groups of eight to ten recently settled immigrants who provided perceptions on the justice systems in their country of origin. For example, persons in a Vietnamese focus group indicated that, "in practice in Vietnam, arrested people are presumed guilty. So that here arrested people don't even think of proving their side." *Id.* at 150. If a client had such a view of law enforcement, the U.S. presumption of innocence would need to be explained.

n45. T. Christopher Thao, *Hmong Customs on Marriage, Divorce and the Rights of Married Women*, 1 *The Hmong World* 96 (Council on Southeast Asia Studies, Yale Center for International and Area Studies 1986).

n46. Minn. R. of Professional Conduct, Rule 1.4(b) (1998).

n47. Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, 16 *Hamline L. Rev.* 475, 620 (1993).

n48. See *id.* at 621.

n49. See *id.*

n50. Model Guides, *supra* note 3, at 14. At the time of this report Idaho, Iowa, Florida, Massachusetts, Michigan, Minnesota, New Jersey, New York and Washington had issued studies on racial and ethnic bias and California, New Jersey, New York, Utah and Washington had issued court interpretation studies. For information on a particular state see National Center for State Courts web site, *infra* note 109, listing contact persons for state interpreter programs.

n51. 1978 marked both the first state law mandating competency testing of court interpreters in California and passage of the Court Interpreters Act by Congress calling for the use of qualified interpreters in federal courts and the development of standards. See discussion *infra* at notes 64-78. William E. Hewitt, *Court Interpreting Services In State and Federal Courts, Reasons and Options for Inter-Court Coordination* v (1998). The study was published by the National Center for State Courts. Call (800) 877-1233 to request a copy.

n52. Frishberg, *supra* note 19, at 8.

n53. See *id.*

n54. "Consecutive interpreting is rendering statements made in a source language into statements in the target language intermittently after a pause between each completed statement in the source language. In other words, the interpreter renders an interpretation after the speaker has stopped speaking. When using this mode of interpreting, it may be necessary for the interpreter to signal a speaker to pause to permit a consecutive interpretation when the length of the utterance approaches the outer limits of the interpreter's capacity for recall. During consecutive interpreting, the interpreter should take notes to assist him/her in rendering the interpretation." Model Guides, *supra* note 3, at 32.

n55. "Simultaneous interpreting is rendering an interpretation continuously at the same time someone is speaking. Simultaneous interpreting is intended to be heard only by the person receiving the interpretation and is usually accomplished by speaking in whispered tones or using equipment specially designed for the purpose in order to be as unobtrusive as possible." *Id.*

n56. Frishberg, *supra* note 19, at 9.

n57. See *id.* at 10.

n58. See *id.*

n59. See *id.* at 11, 12. Such federal laws included the Vocational Rehabilitation Act Amendments of 1965 (Public Law 89-333), Education for All Handicapped Children Act, 1975 (Public Law 94-142) and the Rehabilitation Act of 1973 as amended in 1978 (Public Laws 93-112, 95-251, and 95-602).

n60. RID was incorporated in 1972 for the purpose of the "maintenance and distribution of a registry of accredited interpreters, establishment of certification standards for qualified interpreters, recruitment of qualified interpreters, advancement and education of qualified interpreters, and preparation of literature relating to the methodology and problems of interpreting." Frishberg, *supra* note 19, at 12-13.

n61. Bill Piatt, *Attorney as Interpreter: A Return To Babble*, 20 *N.M. L. Rev.* 1 (1990).

n62. See *id.* at 2 n.13 (citing *United States ex rel. Negron v. New York*, 434 F.2d 386, 390-91 (2d Cir. 1970)).

n63. Charles M. Grabau & Llewellyn Joseph Gibbons, *Protecting the Rights of Linguistic Minorities: Challenges To Court Interpretation*, 30 *New Eng. L. Rev.* 227, 262 (1996). See also Heather Pantoga, *Injustice in Any Language: The Need for Improved Standards Governing Courtroom Interpretation in Wisconsin*, 82 *Marq. L. Rev.* 601 (1999).

n64. 28 U.S.C. 1827 (1999).



n65. See *id.* at subd. (a).

n66. See *id.* at subd. (b)(1).

n67. See *id.* at subd. (d)(1).

n68. See *id.*

n69. See *id.* at subd. (k).

n70. See *id.* at subd. (d)(2).

n71. Hewitt, *supra* note 51, at 21.

n72. See *id.* at 21, 22, 24. Sight translation means reading "a document written in one language while translating it orally into another ... without advance notice and on sight." Model Guides, *supra* note 3, at 33.

n73. Hewitt, *supra* note 51, at 25.

n74. See *id.* at 23.

n75. See *id.*

n76. 28 U.S.C. 1827 (b)(2) (1999).

n77. See Hewitt, *supra* note 51, at 22. "The 'language skilled' category is one that includes anyone 'who can demonstrate to satisfaction of the court the ability to interpret court proceedings'." *Id.* at 23.

n78. 28 U.S.C. 1827 (subd. l) (1999). The Americans with Disabilities Act (ADA) (Public Laws 101-336, 102-166, 104-1, 104-59, and 104-28) provides another basis for appointment of interpreters for hearing impaired persons. For an extensive article on the historical treatment of deaf persons, information on deaf culture, the various languages and communication methods of deaf persons, requirements of the ADA and particular skills needed by interpreters for the deaf, see Simon, *supra* note 17.

n79. Hewitt, *supra* note 51, at 15.

n80. See *id.* at 14.

n81. See *id.* at 13. See also Pantoga, *supra* note 63, for an extensive discussion of the problems in Wisconsin due to lack of standards for appointment of interpreters and reliance on the discretion of the judges who are untrained in both linguistics and the complexities of interpreting.

n82. Hewitt, *supra* note 51, at 14.

n83. Minn. Stat. Ann. 611.32 (subd. 1) (West 1999).

n84. See *id.* (subd. 2).

n85. Minn. Stat. Ann. 611.31 (West 1999).

n86. Minn. R. Crim. P., Rule 15.11 (1999).

n87. See *id.*

n88. See *id.* Rule 15, App. A (subd. 19e).

n89. Minn. R. Crim. P., Rule 27.03 (subd. 2) (1999).

n90. Minn. Stat. Ann. 546.43(1) (West 1999).

n91. Minn. Stat. Ann. 546.42 (West 1999).

n92. Task Force, *supra* note 47, at 621-23.

n93. See *id.* finding 9, at 621.

n94. See *id.* finding 4, at 621.

n95. See *id.* at 621-23.

n96. General Rules of Practice for the Minn. Dist. Cts., Rule 8 (1999).

n97. See *id.* Rule 8.01(a).

n98. See *id.* Rule 8.01(b).

n99. See *id.* Rule 8.01(c).

n100. See *id.* Rule 8.02(a)-(c).

n101. Code of Professional Responsibility for Interpreters in the Minnesota State Court System. (1999). (See App. A *infra*).

n102. Model Guides, *supra* note 3, at 197-210. The only way the Minnesota code differs from the model code is in Canon 6. The model code has a blanket restriction on public comment; Minnesota's code provides an exception permitting public comment to facilitate trainings or education. *Id.* at 206 & App. A *infra*.

n103. General Rules of Practice for the Minn. Dist. Cts., Rule 8.01b (1999).

n104. Minn. R. on Certification of Court Interpreters (1999). See also 1999 Statewide Roster of Court Interpreters published by Minnesota State Court Administrator. Telephone interview with Helen Boddy, Administrator of Minnesota Court Interpreter Program (November 8, 1999).

n105. Congress historically has allocated \$ 400,000 per year to pay interpreters and support the development and administration of certification tests. Developing certification tests is a costly process for individual states. Hewitt, *supra* note 51, at 13.

n106. See *id.* at 31. Sue Dosal, Minnesota State Court Administrator, among others, provided leadership in the development of the consortium. Telephone interview with Helen Boddy, Minnesota Court Interpreter Program (November 8, 1999). See also Consortium for State Court Interpreter Certificate Agreements, <<http://www.ncsc.dni.us/research/INTERP/Agreement.htm>>, and Catherine Gill & William E. Hewitt, Improving Court Interpreting Services: What the States are Doing, 20 State Ct. J. 34 (1996).

n107. Consortium for State Court Interpreter Certification, Member States, <<http://ncsc.dni.us/research/INTERP/Members.htm>> (updated 10/28/99).

n108. Consortium for State Court Interpreter Certification, Tests, <<http://ncsc.dni.us/research/INTERP/Tests.htm>> (updated 11/15/99).

n109. Court Interpretation, Contact Persons for State Interpreter Programs, <<http://ncsc.dni.us/research/INTERP/Contacts.htm>> (updated 11/9/99).

n110. Madelynn Herman, Anne Endress Skove, Angela Atwood & Anjali Kharod, State Court Rules for Language Interpreters, IS99.1242 (September 8, 1999) (available from National Center for State Courts, (800)877-1233).

n111. Hewitt, *supra* note 51, at x, xi.

n112. Gill & Hewitt, *supra* note 106, at 34.

n113. Model Guides, *supra* note 3, at 197-234. See also Code of Professional Responsibility for Interpreters in the Minnesota State Court System, *supra* note 101 & App. A, *infra*.

n114. Minn. Stat. Ann. 595.02 (subd. (1)(h)) (1999).

n115. Minn. R. of Professional Conduct, Rule 1.6 (c) (1999).

n116. Minn. R. of Evidence, Rule 604 (1999).

n117. Minn. R. 3310.2911 (1998).

n118. Model Guides, supra note 3, at 147.

n119. Goran Struwe, Training Health and Medical Professionals to Care for Refugees: Issues and Methods, in *Amidst Peril and Pain, The Mental Health and Well Being of the World's Refugees*, supra note 35, at 314. See also Guadalupe Valdes, When Does A Witness Need An Interpreter? Preliminary Guidelines for Establishing Language Competence and Incompetence, 3 *La Raza L.J.* 1-27 (1990) (guidelines for attorneys to establish when a bilingual person should have an interpreter in order to communicate competently and accurately in direct and cross examination questioning).

n120. Julio Ojeda-Zapata, Immigrant Decries Web of Errors That Left Her Branded as 'Psychotic', *St. Paul Pioneer Press*, April 2, 1994, at E5A.

n121. See id.

n122. Grabau & Gibbons, supra note 63, at 269, citing Gonzalez et al., supra note 8, at 269. The authors indicate that being able to speak conversational English is not a proper test of whether one can meaningfully participate in a courtroom procedure. The language understanding of a sophomore in college is needed.

n123. Peggy Hernandez, Courts' Language Barrier Seen as Threat to Justice, *Boston Globe*, Oct. 30, 1991, at Metro Region 21.

n124. Junda Woo, Legal Rights Can Get Lost in Translation, *Wall St. J.*, Mar. 8, 1993, at B8.

n125. Ramsey County (Minn.) District Court has published a Court Interpreter Manual (5[su'th] ed. 1998) which describes the role of the interpreter, describes the various specialized courts, gives an overview of civil and criminal cases, defines the various court personnel and their functions, includes a code of ethics, defines the modes of interpretation and provides definitions of legal terms. They can be reached at (651) 266-8082.

n126. The RID national office is located in Silver Spring, Maryland and their phone number is (301) 608-0050. They can provide students with local contacts for interpreters for deaf persons.

n127. See supra text accompanying notes 71-75.

n128. Model Guides, supra note 3, at 148.

n129. Minn. S. Ct. Interpreter Advisory Committee, Best Practices Manual On Interpreters in the Minnesota State Court System at G 2-3 (May 1999) (hereinafter Best Practices Manual) (Direct inquiries to helen.boddy@courts.state.mn.us).

n130. See supra text accompanying notes 96-99.

n131. Model Guides, supra note 3, at 199-210.

n132. See supra note 101 & App. A., infra.

n133. Confidentiality and Non Disclosure

I, [sp4.], acknowledge that during my work as an interpreter on an independent contract basis at Hamline University School of Law, I will have/have had access to or may become aware of confidences or secrets of clients served by the Law Clinic. Pursuant to Rule 1.6(c) of the Minnesota Rules of Professional Conduct, and Canon 5 of the Code of Professional Responsibility for Interpreters in the Court System, I agree to hold in confidence all confidences and secrets disclosed to me either in writing, verbally, or as a result of the interpretation I do for Hamline University School of Law.

Signed,

[sp6.]

Dated:[sp4.]

n134. Model Guides, supra note 3, at 200. See also supra note 101 and App. A, infra.

n135. Gonzalez et al., *supra* note 8, at 16 (citations omitted).

n136. See *id.* at 23, citing D. Gerver, *Simultaneous Interpretation and Human Information Processing* (1971) (unpublished doctoral dissertation, Oxford University).

n137. *Consecutive Exercise* developed by Joanne Moore, and reprinted with permission of the Washington State Office of the Administrator for the Courts.

n138. *Simultaneous exercise* developed by Joanne Moore and reprinted with permission of Washington State Office of the Administrator for the Courts. "You are Person B. You read while Person A simultaneously repeats what you are saying. 'My attorney and guardian angel advises me that if I plead guilty I am giving up my right to have a trial. I can be sentenced up to 10 years, but the standard range is 4 to 6 months. If you hear that she is here, we can go to the store and buy some potatoes. Then you can appeal to the court of last resort, and the resort is at Lake Chelan. The challenge to change the tone and meaning of this inquest is one that can be seen by any literary critic writing for the Seattle Times, published in Volume 1, number 128, page 7 and following and in the WAC 128.134, (a)(I)(b), with parallel cite at 42 Wash. App. 123, 1987. Your argument is without foundation. Your appeal is denied. I impose sentence. Guard, remove the offender from my sight.'" Thanks to Helen Boddy, Minnesota Court Interpreter Program, for demonstrating the use of these exercises.

n139. Susan Berk-Seligson, *The Bilingual Courtroom* 169 (1990).

n140. Berk-Seligson, *supra* note 22, at 15. The author recorded proceedings in two federal, three state, two municipal, and two justices of peace courtrooms.

n141. See *id.* at 22.

n142. See *id.* at 46; see also John M. Conley, William M. O'Barr & E. Allan Lind, *The Power of Language: Presentational Style in the Courtroom*, 1978 *Duke L.J.* 1375.

n143. Berk-Seligson, *supra* note 22, at 25.

n144. See *id.* at 32.

n145. See *id.* at 45.

n146. See *id.*

n147. Conley et al., *supra* note 142. The authors conducted empirical research on the effect on jurors of linguistic changes from, for example, "powerful" to "powerless" speech. Powerful speech is straight-forward. Powerless speech is more uncertain, and characterized by hesitation, hedges and polite forms. The authors found that use of powerless speech is consistently less well received by jurors than powerful speech. Based upon this study significant concern would arise about the fairness of a trial in which an interpreter changes a witness's speech from powerful to powerless by adding hedges, hesitations or polite forms.

n148. See Berk-Seligson, *supra* note 22, at 47.

n149. See *id.* at 47-48.

n150. Hewitt, *supra* note 3, at 53.

n151. Bruce T. Downing & Kate Helms Tillery, *Professional Training for Community Interpreters, A Report on Models of Interpreter Training and the Value of Training* (1992) (Publication No. CURA 92-2) (published by Center for Urban and Regional Affairs, 330 Hubert H. Humphrey Center, 301 19<sup>th</sup> Ave. S., Minneapolis, Minn. 55455). The authors undertook a study of 25 interpreter training programs in North America and Europe. They found that the competence of an interpreter could not be guaranteed without testing. They further found that two to three week interpreter training programs significantly improved interpreter proficiency in accuracy, conservation of register and speaker's intent, speed of performance and minimization of intrusiveness of interpreter in the conversation. They posited that much more extensive training would be necessary for an interpreter to reach the level of proficiency required of a court interpreter.

n152. See *supra* notes 31-43 and accompanying text.

n153. See Berk-Seligson, *supra* note 139, at 60-65 for a discussion of the problems that arise in court when a judge or lawyer addresses the interpreter directly rather than the person in need of interpretation. The role of the interpreter changes inappropriately from interpreting speech to telling the witness what to do and giving opinions on whether the witness understands.

n154. *Immigrants in Court*, *supra* note 16, at 17.

n155. Struwe, *supra* note 119, at 313, citing B. Englund-Dimitrova, *Flyktingar Och Invandrare I Sjukvården* [Refugees and immigrants under medical care, Stockholm, Sweden] (1991).

n156. 8 C.F.R. 208.9(g) (1999). "The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter." *Id.*

n157. See *id.*

n158. Hon. Lynne W. Davis & William E. Hewitt, *Lessons in Administering Justice: What Judges Need to Know About the Requirements, Role and Professional Responsibilities of the Court Interpreter*, 1 *Harv. Latino L. Rev.* 121, 133 (1994).

n159. See *id.*

n160. Valdes, *supra* note 119.

n161. See *id.* at 3.

n162. See *id.*

n163. See Struwe, *supra* note 119, at 314.

n164. Comment, *The Right to an Interpreter*, 25 *Rutgers L. Rev.* 145, 168 (1970).

n165. See *id.* at 169.

n166. *Best Practices Manual*, *supra* note 129, at 15.

n167. Charles M. Grabau, *Court Interpreting: View From the Bench*, 20 *State Ct. J.* 6, 10 (1996).

n168. *Best Practices Manual*, *supra* note 129, at 15.

n169. *Overcoming the Language Barrier: Achieving Professionalism in Court Interpreting*, 20 *State Ct. J.* 6, 6-41 (1996).

n170. Grabau, *supra* note 167, at 6.

n171. See *id.*

n172. William E. Hewitt & Robert Joe Lee, *Behind the Language Barrier, or "You Say You Were Eating an Orange?"*, 20 *State Ct. J.* 23 (1996).

n173. See *id.*

n174. See *id.* at 23

n175. See *id.* at 27.

n176. See *id.*

n177. See *id.* at 29

n178. *Id.*

n179. See *id.* at 26. A *Washington Post* reporter recently chronicled the story of young mother of two who faces deportation to Guatemala as a result of an assault charge against her. The woman had been the victim of domestic abuse and was charged with a

misdeemeanor assault charge under circumstances that appear to have involved self defense. The article raises serious questions about the quality of interpretation that she received. While the court records indicated that she pled guilty, she didn't believe she pled guilty but thought she was convicted by the judge, based upon what the court appointed interpreter told her. She also signed papers which were not translated and which she later found out waived counsel. The author indicated that the woman's court appointed interpreter had attempted to pass the certification test three times unsuccessfully, yet was allowed to continue to interpret in Virginia as interpreters are not required to be certified in that state. Philip P. Pan, *Victimized Woman Faces Deportation*, Wash. Post, Feb. 20, 2000, at A1.

n180. *Id.*

n181. Piatt, *supra* note 61. See also Carlos A. Astiz, *A Comment on Judicial Interpretation of the Federal Court Interpreter Act*, 14 *Just. Sys. J.* 1, 103 (1990).

n182. Grabau, *supra* note 167, at 6. See also Davis and Hewitt, *supra* note 158, at 126.

n183. Minn. R. of Professional Conduct, Rule 1.4(a) & (b) (1998).

n184. See also *supra* notes 128-29, and sample voir dire questions in accompanying text.

n185. Model Guides, *supra* note 3, at 199-210.

n186. Best Practices Manual, *supra* note 129, at G-2-3:

11. Do you have any formal interpreter training?

a.

[sp2f+n+t]When did you take the training?

b.

[sp2f+n+t]How long did the training last?

c.

[sp2f+n+t]What did the training entail?

12. In what settings have you interpreted?

a.

[sp2f+n+t]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?

3. For what type of proceedings?

i. civil proceedings

ii. criminal proceedings

iii. family court

iv. traffic court

b.

[sp2f+n+t]Other settings

1. What form of interpretation did you use?

i. simultaneous

ii. consecutive

iii. sight interpretation of documents

2. How often?

n187. Simon, *supra* note 17, at 173-174.

n188. "Certificate of Interpretation (CI): ability to interpret between ASL and spoken English in both sign-to-voice and voice-to-sign. Certificate of Transliteration (CTI): ability to transliterate between signed English and spoken English in both sign-to-voice and voice-to-sign." John G. Richardson, *Court Interpreting for Deaf Persons: Culture, Communication, and the Courts*, 20 *State Ct. J.* 16, 21 (1996). "Transliteration .... refers to the act of representing the English language in a visually accessible form of communication. This method closely follows the grammar and structure of spoken English through the use of manual coding. Manually coded English (also known as 'signed English') is not a true language. Use of this system necessitates having a viewer who knows English well." Best Practices Manual, *supra* note 129, at 6. Contact the Registry of Interpreters for the Deaf (RID) ((301) 608-0050) for information regarding other certificates awarded in past. See also Frishberg, *supra* note 19, at 97-98 for history of RID Certification. Minnesota accepts CSC -

(Comprehensive Skills Certificate) or CDI or CDIP (Certified Deaf Interpreter Provisional) in addition to CI and CT. Best Practices Manual, supra note 129, at 7-8.

n189. Simon, supra note 17, at 168.

n190. Best Practices Manual, supra note 129 at 13.

n191. Berk-Seligson, supra note 139, at 200.

n192. See Hovland, supra note 13. Ms. Hovland argues for an exception to the plain error rule in cases of alleged interpreter error. The plain error rule is applied when no objection is made at trial. Ms. Hovland argues that it is not always possible for parties and attorneys to object to interpreter errors at trial. Since reversal based upon plain error is rare she argues that "it is questionable whether non-English speaking defendants or defendants whose trials include non-English speaking witnesses have the same access to the appellate process as do English speaking defendants." Id. at 488-94.

n193. Mark Caro, Interpreters Speak Volumes about Linguistic Confusion, Chi. Trib., Sept. 26, 1994, Chicagoland at 1.

n194. Id.

n195. Id.

n196. Linda Friedman Ramirez & Leslie Kay the non-english speaking client, el cliente que no habla ingles, The Champion 7 (Jan/Feb. 1994).

n197. Simon, supra note 17, at 189-90. See also Frishberg, supra note 19, at 179-85.

n198. The Court Room Interpreter: A User's Guide and Checklist, 20 State Ct. J. 13 (1996) (piece adapted from an article by Judge Lynn W. Davis, 9 Utah Bar J. 26 (Feb. 1996)).

n199. The National Center for State Courts has developed three videos on court interpreting that may help students prepare for court appearances with interpreters. They are entitled Mental Commitment Interpreting, Working With Interpreters, and Interpreters: Their Impact on Legal Proceedings. These NCSC videos can be obtained by contacting Bristol Productions LTD, 2401 Bristol Court SW, Olympia, WA 98502, (360)754-4260, phone or (360)754-4240, fax. Working With Interpreters illustrates "steps that judges can take to minimize the disadvantages that linguistic minorities face when they come to court." Interpreters: Their Impact on Legal Proceedings, can be used to show the "fundamental ways that due process and equal protection of linguistic minorities are jeopardized by untrained interpreters." Model Guides, supra note 3, at 249-50.

n200. Ileana Dominguez-Urban, The Messenger As The Medium Of Communication: The Use Of Interpreters In Mediation, 1997 J. Disp. Resol. 1, 3 (footnotes omitted).

n201. See id. at 6.

n202. See id. (citing Kent L. Brown, Comment, Confidentiality in Mediation: Status and Implications, 1991 J. Disp. Resol. 307, 309).

n203. See id. at 23.

n204. Id.

n205. Minn. General R. of Practice for the Dist. Ct., Rule 114 App. Introduction (1998).

n206. Dominguez-Urban, supra note 200, at 40. This article will be of particular interest to mediators because of the author's suggestions regarding how to conduct cross-cultural mediations in a fair and sensitive fashion.

n207. Id.

n208. Eva Hoffman, Lost In Translation: A Life in a New Language (1989).

n209. See id. at 146.

n210. See id.

n211. See id. at 146-47.

n212. See id. at 118-19.