



interpreters office

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For Attorneys: Examining Witnesses Through an Interpreter

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The following suggestions are made by the Interpreters Office of the Southern District of New York, in the spirit of aiding communication in the courtroom.

Examining a witness through an interpreter is not identical to examining a witness directly: when moving between languages, the possibilities for misunderstanding, confusion, inexactitude or error increase substantially. Generally, extra time and patience are needed to prepare a non-English speaker to testify.

In court, American lawyers speak legalese ("I'm moving to sever"), not everyday English. While many Americans are bewildered by legal proceedings, people from other countries are even more at a loss because legal systems vary from country to country. In-court hearings, for example, are not commonly held in Roman law countries, where most legal issues are decided on the papers. Many terms used in U.S. courts are unfamiliar to foreigners: i.e., *grand jury*, *jury selection*, *charge to the jury*, etc. for the simple reason that there is no parallel concept or procedure in foreign legal systems. An interpreter will convey these terms in the closest equivalent (e.g., *indictment* will be called a 'formal accusation' or 'accusation by the Grand Jury') but on no account is an interpreter permitted to offer explanations of procedure because the interpreter's code of ethics prohibits giving legal advice.

Early on in a case, an attorney would do well to clarify to the witness or defendant the various stages the case will pass through and how long each stage may take.

People perceive the honesty and seriousness of legal proceedings differently, depending on a variety of factors and experiences. In countries with a tradition of corruption, bribery or judiciary inefficiency, the population has learned not to set great store by what happens in court. The American justice system is not universally revered, either, and may appear artificial, inflexible or absurd. Attitude toward the legal system may affect a witness's demeanor when testifying.

Among the foreign-born, mastery of English varies a great deal, and for matters of great seriousness, such as legal proceedings, defendants or witnesses frequently request an interpreter, if only to make them feel more secure.

The best interpreters will allow you to follow the natural rhythm of questioning, and will at the same time convey some of the "flavor" of the witness, contributing to a sensation that you are hearing the witness directly, despite the language barrier.

Getting the Right Interpreter for the Job

Active court interpreters polish their skills every day, and generally, the more experience they have, the better they become. However, interpreters can also develop bad habits or have attitude problems. Some people who work as interpreters do it as an occasional sideline and are not well versed in the legal field. Interpreting ability and style vary, depending on experience, knowledge and attitude. Stress on an interpreter "to get it right" is significant, and even greater when a case is high profile. An excellent interpreter should have years of experience, be pleasant to work with, have good recall, smooth delivery, no hemming and hawing, call no attention to himself, and express no opinion on the merits of a case.

Consecutive interpretation is that done in Q and A format and differs from simultaneous

in that it requires a different set of mental reflexes. Skill levels, interpreting style, and memory capacity vary, so it is wise to choose carefully the interpreter you will use with a witness. Some interpreters have better short-term memory, and will pause or interrupt less. Some are better than others in diction, performance ability, idiomatic expressions, street slang, or legal jargon. If you work through an Interpreters Office or coordinator, tell that person of any concerns or past experiences so as to avoid a repetition of problems.

In choosing an interpreter, it is best to plan ahead. If plans are not made until the day before, you will likely get a last-minute, patchwork arrangement, especially inadvisable if a witness will be testifying for a long period of time (a day or more). Freelance interpreters who work regularly in court are flexible, but cannot ignore other commitments when trial schedules change without notice. Interpreters are paid for their time, whether or not they are actually interpreting, so waiting time is costly.

If the testimony will be more than brief (over an hour), two interpreters should be assigned to rotate with the witness, so that the interpreter's mental fatigue does not adversely affect the accuracy of the testimony.

Most Important Step: Prep

Making arrangements for an interpreter is only the first step; then both the witness and interpreter need to be prepped for what will ensue.

What to Tell the Interpreter

Since words are interpreted not in isolation but in context, for reasons of logic an interpreter needs to have a broad-brush idea of the case. If you take a few minutes to brief the interpreter before starting the assignment, it will help avoid confusion later on, so that the interpreter doesn't imagine another scenario, which may be likely but inapplicable.

The essential material for the interpreter to see ahead of time: a copy of the major case documents such as the complaint, indictment, prior testimony, or relevant tape transcripts.

To ensure continuity and quality, inform the interpreter of *when* you will be needing an interpreter, *for how long*, in what *type of proceeding*, and *for whom*.

Attorney Checklist for Interpreted Testimony

When briefing the interpreter, be sure to mention:

1. What the case is about: names and nicknames, places, overall plot; what piece of the proceeding the interpreter will be needed for;
2. Any documents likely to be referred to or shown to the witness;
3. Where the witness is from, how many years he or she has lived in U.S. (The witness may use some Anglicisms, whether correctly or incorrectly, and the interpreter should be forewarned);
4. Educational level of witness, any speech defects or particularities;
5. Numbers that may come up: addresses, amount of drugs or money, telephone numbers that will repeatedly be referred to, account numbers, etc.;
6. Any physical evidence that will be referred to or shown to the witness;
7. Any emotional factors that may affect the witness's concentration or delivery: mental problems, fear, jumpiness, etc.;

8. Any key words (descriptions, disputed dialog, slang, code words, etc.) that may be elicited in the testimony.

What to Tell Witnesses Who Will Testify Through an Interpreter

- Prepare the witness ahead of time, preferably with the same interpreter who will accompany the witness to the stand so that the witness's speech patterns will be familiar to the interpreter and vice versa. Just as a New Yorker might have to concentrate more when listening to an Alabama accent, a Spaniard may have to concentrate more when listening to a Caribbean accent. Accent variation and idiosyncratic speech abound. While interpreters, who are educated speakers, use standardized Spanish, Russian, French, etc., defendants or witnesses may hail from anywhere, and an uneducated speaker will be harder to follow than someone who expresses himself cogently. Interpreters have to "tune in" many different accents or speaking styles, and any lead time is helpful to the ear.
- Instruct witnesses not to direct any comments or questions to the interpreter during the testimony, but to act as though the interpreter were not there. Courtroom testimony is formal and stylized, and it is improper for the interpreter and witness to have any private conversation. If the witness has spoken with the interpreter before in informal settings, he may think there is nothing wrong with engaging the interpreter in conversation while on the stand: he should be told not to fraternize with the interpreter.
- Advise witnesses not to volunteer information but to limit themselves to answering the question, and to direct their answers to the examiner, not to the interpreter.
- Instruct the witness to look either at the attorney or at the jury, and explain that testimony is judged not only by words but by manner of testifying and body language. (Bear in mind that body language varies from culture to culture. In some cultures it is considered polite to answer questions with the eyes downcast, so a witness may have to be coached beforehand, to look up when answering the questions.)
- Instruct witnesses to wait for the question to be translated before they answer, and to answer in their native tongue.
- Advise witnesses to listen to the translation of the question even if they think they understand the English. Tell them to answer briefly, directly and to pause regularly so that the interpreter may render the testimony into English.

WARNING: Many witnesses forget to pause, and often interpreters cannot retain all detail in long narratives. It is a good idea to practice the rhythm of Q and A with the interpreter and the witness ahead of time so everyone can get accustomed to the procedure of waiting for the translation.

- Instruct witnesses that if they hear the word "objection," they should wait for the judge to rule, and then answer only if the objection is overruled.
- Construct questions with extra care. If you insert parenthetical remarks, or backtrack in your formulation of the question, room for misunderstanding increases greatly. It is easier to interpret logical questions and answers than rambling ones. If possible, refrain from questions with double negatives or ambiguous references. When using the word "you," clarify if you intend the singular or plural ("you yourself" or "yourself and others"). Remember to wait for the translation of the question and of the answer: even if you yourself can understand the foreign language response, the judge and jury need to hear it from the interpreter.

What to Do about Mistakes

Interpreters are not immune to mistakes, slips of the tongue, mental blanks, or memory lapses. If an error in interpretation occurs, it should be corrected as soon as possible, hopefully without causing undue embarrassment to the interpreter.

- If you believe a witness's answer is in error, or that the witness was misunderstood by the interpreter, the best solution is immediately to follow up with a rephrased question.
- Even if you are fluent in the interpreted language, do not substitute your own notion of how the question or answer should be interpreted. Likewise, do not assume that an error has occurred if you don't hear the word you expect. There is not a one-to-one correspondence between words, but many ways to reproduce sentence content from one language to another.

It is helpful to use language appropriate to the background of the witness. An interpreter is under oath to repeat exactly what is said, at the same level of formality or informality, and cannot "correct" sloppy language, turn legalisms into simplified language, or correct others' slips of the tongue. Clear questions elicit clear answers. If the question is ambiguous, filled with double negatives ("You didn't say you wouldn't go there, did you?") or constructed with many subordinate clauses ("And then, although you knew it was wrong, you didn't, although you could have, stop him from what everyone knows was a mistake?"), it stands a good chance of being misinterpreted to the witness, which may result in an unresponsive answer.

If a problem persists, it may be on account of technical or culture-bound phraseology: Does the witness know what you mean by "pre-trial proceedings?" Does your question include terms of art, cant, legalese, intentional sarcasm or ambiguity? Perhaps the witness is unfamiliar with units of measurement, directions (north, south), or neighborhood names, which are often expressed differently in other cultures. Punctuality, concept of time, and precision about time are valued differently in different cultures. An ambiguous answer may be the result of an ambiguous question. The answer may be culture-bound rather than a deliberate attempt to mislead. In some cultures, it is considered polite to be *verbose*. In other cultures, especially in the Far East, it is polite to *assent*, but that is different from an *affirmative answer*: a "yes" answer may be equivalent to saying "Yes, I'm hearing you (but don't necessarily agree)." A questioner would do well to bear these cultural and psychological differences in mind so that the wrong impression is not created for the jury.

Types of Error

The examples that follow will all be in English for illustrative purposes, but of course when rendered through an interpreter, the questions are interpreted from English to a foreign language and the answers, from a foreign language into English.

The error that most concerns us is the **material error**, or **error of substance**.

A substantive error would be "It was a blue car" when the witness said "It was a red car" or "I had 2 kilos" when the witness said "I had 12 kilos." This is also known as *lexical error* (wrong word).

Another type of substantive error is called *contre-sens*, [French for "contradictory meaning"] where the interpretation conveys the exact opposite of what the speaker said; e.g., the witness says "I don't know" and the interpreter renders it as "I know."

Other categories of interpreter error are:

1. Wholesale omission of parts of the question or parts of the answer

A: "And then when I went downstairs, I mean upstairs, because the house had two floors, I heard something."

A: [through interpreter] "Then I heard something upstairs."

2. Distortion of meaning

A: "I was never convicted in that case."

A: [through interpreter] "I never got sentenced in that case."

3. Unfamiliar idiom

A: "She was afraid of dying."

A: [through interpreter] "She was scared to death."

4. Errors in what is called "register conservation," or appropriate level

Q: "Wouldn't they rat you out if they knew?"

Q: [through interpreter] "Wouldn't they talk about you if they knew?"

(However, it would not be wrong to interpret the question as "Wouldn't they tell on you if they knew?")

5. Inclusion or elimination of "politeness markers" : e.g., It would be wrong if in interpreting the question "Where were you, sir?" the interpreter omitted the word "sir." Likewise, it is wrong for an interpreter to add honorifics or polite language if it is not in the original. Sometimes interpreters do this automatically, without thinking, but it is important that an interpreter not make a witness appear more polite (or less polite) than he is.

6. Conveying hesitancy or certainty where the opposite is expressed

Q: "Don't you know for a fact he didn't do it?"

Q: [through interpreter] "Don't you think you could be mistaken?"

7. Overly literal renderings, e.g., " I crossed the frontier." for "I crossed the border."**8. Grammatical errors, e.g., "We wasn't ready."**

These few examples show the room for error even in simple sentences, and illustrate the many decisions about words' meaning, impact, and level of formality that interpreters must make thousands of times a day.

Interpreter errors may be caused by: gaps in knowledge or vocabulary; lack of concentration; fatigue; distraction; mishearing; cognitive overload; low memory retention (when an interpreter can't retain all the elements of the message), or "language interference" (An example of interference would be where the interpreter inadvertently or out of ignorance chooses an expression that sounds like the word used in the original, but means something different, e.g., using deception in English for "decepción" in Spanish would be wrong, since the Spanish word means *disappointment*, not *deception*).

Experience has shown that errors of substance are sometimes in the eye of the beholder, and great hay can be made by either side from seemingly unimportant details in a case. In any event, the burden is on the objecting party to show that an error has been made.

How to Correct the Record

If there appears to be a problem with the interpretation, request a side bar and include the interpreter, who will make a correction for the record if one is necessary. If there is disagreement about the correct interpretation of a word or phrase, the judge will instruct the parties on how to proceed. An interpreter should not be dismissed outright due to a

mistaken word or phrase, because it is impossible for anyone to know all words or variants of language usage.

Other Professional Considerations

AN INTERPRETER MAY ASK TO APPROACH

An interpreter may on rare occasion ask to approach the bench for a sidebar if a language issue has come up that may lead to a miscarriage of justice, or in the event that further clarification is required from the court as to how to proceed.

GESTURES BY THE WITNESS

Interpreters should not repeat or characterize any gestures made by the witness. It is up to the attorney to describe for the record what the witness has indicated. If a gesture is very culture-specific, the witness can be asked directly what a particular gesture means in his culture.

EXPRESSING OPINIONS ON OTHER INTERPRETERS' ACCURACY

Court interpreters should not offer or be asked to express an opinion on any other interpreter's accuracy unless the request comes from the judge. In the normal course, interpreters will consult or send notes to each other on terminology usage. A "checking" interpreter should not also be engaged in interpreting the very same proceeding. The court interpreters providing the simultaneous interpretation should never be called as witnesses, unless the judge specifically requests them to. Slight variations in the way interpreters render certain expressions are to be expected, and no two interpreters will coincide exactly in all their renditions.

TRANSLATIONS TO BE INTRODUCED INTO EVIDENCE

Just as tape transcripts must be prepared ahead of time, any translation to be introduced into evidence should be done ahead of time. It is not a good idea to ask the interpreter to provide a sight translation of anything other than a simple or boilerplate document. The language of many legal documents is dense and syntactically complex, and to prepare an official translation, a translator needs to have reference material at hand and review it several times in order to produce a well-written text. Translation always takes longer than anyone expects, so please allow the translator to do the job properly. Translators who take pride in their work will not hand in an unrefined copy.

There is no legal requirement that documents be translated by a certified interpreter, although some courts have a standard practice to request that certified interpreters prepare the translations. The Court Interpreter's Act (28 USC 1827) does not specifically provide for the translation of documents by certified interpreters.

When seeking translators, it is advisable to give as much detail about the job as possible in advance, to specify the format in which you wish to receive the translation (diskette, hard copy, columns, etc.), and to request an estimate before the translator begins the assignment. Many attorneys are surprised by the cost of translation, but have little awareness of how long it takes to do. Translations cannot be done word for word, but concept for concept, and a lot of structural reformulation must be done when transferring thought from one language to another. For this very reason, a machine is incapable of producing a reliable translation. Keep in mind that a sloppy translation is worse than none at all, because most of the time it will have to be redone, and the cost in the end will be double for the same product.

TAPE TRANSCRIPTS

Tape transcripts are very time-consuming to produce, and nearly equally time consuming if one interpreter is checking another interpreter's work. The general

estimate is that for every minute of tape (assuming good audibility) an interpreter needs 30 to 60 minutes to listen, transcribe and translate.

At the outset, a defense attorney ought to get an idea from the interpreter about how long it would take to complete the assignment (often the interpreter will not be able to tell until listening to a sample of the tape) and what the estimated cost would be. In most districts, defense attorneys need prior authorization from the judge for the

When requesting transcripts to be prepared or reviewed, attorneys should also be sure to specify exactly what they want to accomplish: get a general idea of the content of conversations, get a general opinion on accuracy, see if their client is mentioned, or prepare a transcript to introduce into evidence?

In general, experienced interpreters have special equipment that can slow down the tape speed if needed, and must listen to tapes many times in order to be sure of what was said.

Be sure to ask the interpreter's experience with producing tape transcripts: how many they have done, whether they have worked for both defense and prosecution, whether they have ever testified as an expert witness, etc.

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