WHAT INTERPRETERS DO... AND WHY THEY DO IT!

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INTRODUCTION

In the U.S. District Court for the District of Puerto Rico the job of the interpreter in court is pivotal to the administration of justice. This booklet has been prepared to familiarize you with this important member of the court's support team.

INTERPRETER VS. TRANSLATOR

Before we go any further, let's clarify the difference between an interpreter and a translator, an interpretation and a translation, which are often – and mistakenly – used interchangeably. You probably have never heard the phrase "sign language **translator**". Yet on CNN and other news media the phrase "voice of the **translator**" is used quite frequently. Why is that? Well, for starters, a sign language interpreter is always going to be an *interpreter*, never a *translator*, and everyone seems to know that – at least at some intuitive level.

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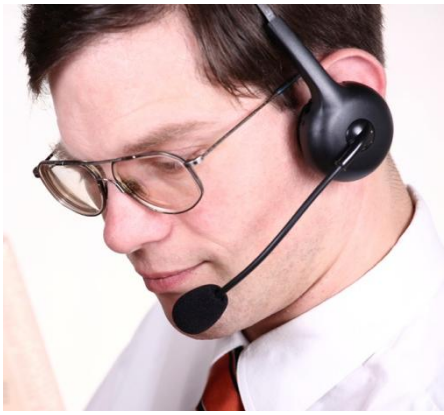
A translator works only with written documents. Furthermore, a translator need not be able to speak the languages translated, although translators do need to have a higher-than-average level of proficiency reading and writing those languages. They have to be able to convey in the translated text the message from the original text as faithfully as possible, including nuances such as sarcasm, humor, puns, and so forth. Sometimes that means that the translator must "edit", paraphrase, be creative, especially with literary texts, marketing,

advertising, even news and editorial texts. Technical texts, however, require a certain literacy in the particular field's terms-of-art, as well as writing styles. An insurance policy will have its own "language", different from a medical report, an instructions manual for a laboratory instrument, an application for a patent, or a legal complaint filed in court. A translator usually specializes in one or perhaps a few fields of knowledge in order to achieve the highest quality level in the final product delivered to a client. Some translators work only from a passive language into an active language.

A **passive language** is generally the language in which the translator does *not* have native-speaker proficiency, whereas the **active language** is the one in which the translator does have that level of proficiency. Sometimes – although not always – a translator can have *native or near-native proficiency* in more than one language, so these are all considered "active". In that case, the translator can work in more than one direction, for example, English into Spanish and Spanish into English.



Translators generally work in the solitude and privacy of an office, with time to consult reference sources, unless, of course, they are working for a newspaper with a pool of translators and a deadline or other similar circumstances. Assuming no such pressures, translators can look up terms in a host of dictionaries, explore usage and other language variables online, find synonyms that may be more suitable to a particular context, consult colleagues, and polish the translation until they are satisfied that it is the best final product they can deliver.

They can also control the time of day and for how long they sit down to work, get up for a break, and sit down again, unless, of course, they work for a company that sets their work schedules.

Interpreters cannot do any of that. Interpreters, first of all, depend on other people, because they work with the spoken word, and therefore need two other "speakers" who do not share the same language to be able to do their work. So the interpreters' clients set the times when the interpreter works, for how long, when they take a break, or not, and when they get to go home. Some international organizations, such as the United Nations, have set standards for an interpreter's working conditions, including not working more than 6 hours a day and no more than 30 minutes at a time.

The immediacy of the interpreter's performance requires certain skills, knowledge and abilities that translators do not need and not always have. That is why, ***not all translators can be interpreters***. On the other hand, ***not all interpreters are translators***, either.[1]

WHAT IS ORAL INTERPRETING?

Interpreters convey an ***oral message*** spoken by one person (the source language speaker) into an oral message to be heard by someone else (the target language listener). The **target language** listener and the **source language** speaker would not be able to communicate without the *language mediation* provided by the **interpreter**. Interpreting is the art and science

[1] See Bureau of Labor Statistics, *Occupational Outlook Handbook 2001-11 Edition* [http://www.bls.gov/oco/ocos175.htm]

of bridging the oral communication gap between two people who do not share a language in common. And that is why the voice-over on CNN is *never* a translator! It is *always* an interpreter.

Interpreters can be found in many different venues, from parent-teacher meetings in schools to administrative hearings in government agencies, from a hospital emergency room intake interview to an international marketing seminar, from a Miss Universe contest to a religious service. Interpreters are called upon to help build *linguistic* and *cultural* bridges in real-time situations, often under particular pressures or facing severe consequences if they make a mistake. For example, a mistake during a medical evaluation could have serious consequences for a patient's health or even life; likewise, a mistake during a court hearing could have serious consequences for a litigant's property, liberty or – again – life, in the case of a criminal defendant.

Interpreting is the art and science of bridging the oral communication gap between two people who do not share a language in common.

In certain venues, such as the United Nations, interpreters can work in one direction only, which would be into their "A" language, or mother tongue. When an interpreter can speak and understand a language like a native speaker, that language is considered to be the interpreter's "A" (active) language. When the proficiency falls below this level, then the language is classified as "B" or even "C" (passive). Certain international organizations have conferences with booths for interpreters in several languages. Each booth is called by the name of the language into which the interpreters will work, so that the

"Spanish" booth is for those interpreters who will interpret *only* into Spanish, the "French" booth is for those who will interpret *only* into French, and so on, including an "English" booth. When interpreters must work from a language that is not one of their "B" or "C" languages, then they do what is known as **relay interpreting**, picking up the interpretation from a colleague to then convey it into their "A" language.

In venues such as the medical field, the legal field, and what is known as community interpreting (mostly in informal settings), interpreters must work in two directions. In legal proceedings, specifically, interpreters must have native or near-native proficiency in two languages, one being the language of the court – in the case of the U.S. Courts, English – and the other being the language of the defendant, or witness.

PROFESSIONAL CREDENTIALS

The **Administrative Office of the U.S. Courts** has implemented a procedure to measure an interpreter's language skills and interpreting skills, in order to provide federal judges with a minimal assurance of a person's ability to convey meaning accurately when a message is transferred from one language into another during a court proceeding. This 2-part test, known as the **certification examination**, consists of a standardized written evaluation of the candidate's proficiency in English and Spanish[2], and then – if the candidate passes this portion –he or she can take the oral

[2] Until recently the Administrative Office tested and certified interpreters in Creole French and Navajo. At this time the only certification examination being administered is for English<>Spanish interpreters.

portion, which measures skill levels in three specific competencies: sight translation, consecutive interpreting and simultaneous interpreting.

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Sight translation is the "reading" of a document in one language, out loud, into another language. This is a hybrid form of interpreting and translating because it involves a written document, yet the rendition in the target language is done orally. The interpreter "translates" as he or she reads. This technique is used in court for all written documents that need to be read to a non-English speaking defendant, such as complaints, indictments, pre-sentence reports, and so forth. It is also used on the witness stand when a non-English speaking witness is shown a document in English about which he or she is to be examined, or when a foreign language document has to be translated for the court's benefit, such as a letter read out loud during a sentencing allocution.

Consecutive interpreting is used for Q-&-A's, where the person asking questions and the person answering them take turns with the interpreter during the exchange. Each speaker must speak briefly and then wait for the interpreter to convey that message before speaking again. For an interpreter, this technique involves listening, retaining in short-term memory what is being said, converting the source-language message into the target language and retaining it in short-term memory as well, and then conveying a full and accurate equivalent as soon as the speaker pauses, repeating all these steps every time one of

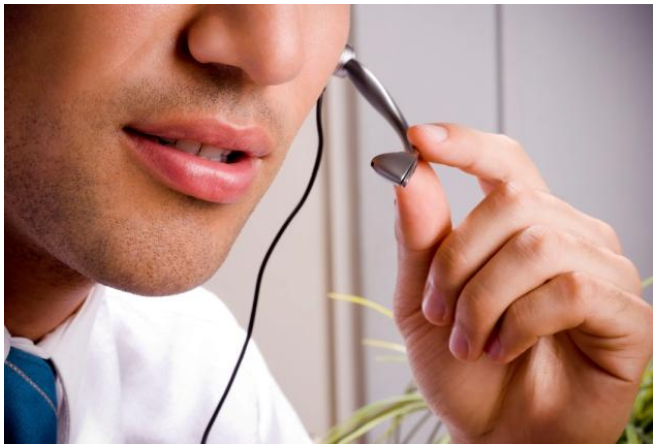
the two speakers takes a turn in the Q-&-A. In a legal setting, the interpreter must retain the language level – also known as **register** – and elements such as intonation. The role of the interpreter is not to simplify or explain if the register is too high for the listener's ability to understand. It is the source language speaker's responsibility to use the language level his or her intended listener can understand.

Simultaneous interpreting takes place at the same time as the source language speaker is engaged in discourse, such that the interpreter must listen, understand, mentally convert the message into the target language and convey it with a very brief time lag in between all those mental activities. The rendition in simultaneous, when there is no sound-proof booth, is done in a whisper mode, either into a microphone – when the court is equipped with simultaneous interpreting equipment – or directly into the listener's ear. The interpreter must preserve every nuance of the source language message, just like in the consecutive mode, including intonation.

Certification by the Administrative Office of the United States Courts is one credential that provides the members of the legal community with an assurance of minimal competency on the part of the person who has earned such a credential as a result of a standardized scientific instrument designed to measure the knowledge and skills required to interpret in legal proceedings.[3] Some states have also

[3] For detailed information about the Federal Court Interpreter Certification Examination (FCICE), go to http://www.ncsconline.org/d_research/fcice_exam/index.htm.

developed instruments to evaluate and certify judiciary interpreters; however the threshold to pass those examinations is lower than the federal threshold. The same holds true for what is known as the Consortium certification,[4] which is a shared credential by several states with reciprocity privileges. The good news is that these states – particularly California – and the Consortium states certify interpreters in many languages in addition to Spanish. Finally, there is a voluntary credential offered by the National Association of Judiciary Interpreters and Translators (NAJIT)[5], which certifies candidates as both interpreters and translators.



PERFORMANCE FACTORS

The source-language speaker's **speed** and **volume** are crucial elements for the interpreter to be able to perform his or her job.

When the speaker lowers his or her volume such that the interpreter cannot hear, the listener suffers because the interpreter cannot convey the message accurately. One cannot interpret what one cannot hear; and since the interpreter in a legal setting cannot guess or otherwise "fill in the blanks", the end result is that the listener will not get a full and accurate rendition of everything that is being said. The same problem arises when source-language speakers go too fast for the

[4] For more information about the Consortium Certification program go to: http://www.ncsc.org/ncsc_org/Education%20and%20Careers/State%20Interpreter%20Certification.aspx.
[5] More information about NAJIT at: http://www.najit.org.

interpreter to grasp the meaning of what they are saying, or to convert and render it in full.

Converting a message from one language into another is not a mathematical proposition, and the process always involves what is known as the *amplification factor*, meaning that regardless of the language combination, your final rendition will always have somewhere between 15% and 30% more words. This amplification factor poses a real problem for interpreters when the source-language speaker's speech rate is faster than average.

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According to some studies, "[t]he average speech rate in the mid-Atlantic states is 120 - 140 words per minute."[6] At the other end of the spectrum we have people like "auctioneers [who] can speak at about 250 wpm, and the fastest speaking policy debaters [who] speak from 350 to over 500 words per minute."[7] It is not uncommon to hear attorneys and judges in court speaking at this faster rate which, given the amplification factor of 15% to 30%, yields a speech rate for the interpreter of 400 to 650 words per minute. This rate by far exceeds the "150–160 words per minute, which is the range that people comfortably hear and vocalize words."[8] What this means is that defendants who are supposed to be understanding everything that is being said in court because they have the benefit of a qualified and competent interpreter oftentimes fail to

[6] Schwartz, Katie. *Speech Rate Too Fast? Tips to Slow Down* [http://ezinearticles.com/?Speech-Rate-Too-Fast?-Tips-to-Slow-Down&id=79912].
[7] http://en.wikipedia.org/wiki/Words_per_minute#cite_note-7
[8] *Ibid*.

understand, not because of the quality of the interpretation – or lack thereof – but because of the speed at which they are receiving the information.

Not only is low volume and high speed detrimental to the interpreter's performance and may have a detrimental impact on a defendant's right to due process, but these factors also impose a greater cognitive burden on the interpreter, causing *mental and physical fatigue* to set in much sooner than it would if all speakers were to maintain a "normal" rate of speech.

*The practice of **team interpreting** is recommended in order to reduce interpreter fatigue and the resulting errors in the interpretation, whether in the consecutive or the simultaneous modes.*

Studies on the impact of mental and physical fatigue on the quality of an interpreter's performance have shown that errors increase as **fatigue** increases,[9] and the interpreter's capacity to self-monitor diminishes proportionately, which in a legal setting can have highly prejudicial consequences for all parties involved and can undermine the best interests of justice.

This factor is also important when interpreters must work all day long in court. The practice of **team interpreting** is recommended in order to reduce interpreter fatigue and the

[9] See, among others, Kurz, Ingrid. *Physiological stress during simultaneous Interpreting: a comparison of experts and novices*. [http://www.openstarts.units.it/dspace/bitstream/10077/2472/1/03.pdf]. Also, Kalina, Sylvia. *Defining the Elusive – Interpreting Quality Research and Its Pragmatic Relevance***,** where an error is defined as a "substitution that is a considerable variance with the original" (Barik 1971: 21), and reference is made to a prior groundbreaking study by Barbara Moser-Mercer and others that perfectly illustrates this point:

> "Moser-Mercer, Künzli and Korac investigated the effect of prolonged turns (longer than 30 minutes) on the quality of interpreters' output and measured physiological and psychological stress that the interpreters experienced. They found a significant increase of meaning errors after 30 minutes, which represented a strong decline in quality. They also showed that interpreters' own judgment of quality is extremely unreliable after increased time on task. [http://www.dolmetschservice.eu/html/img/pool/Master%20AKKraemer.pdf]

resulting errors in the interpretation, whether in the consecutive or the simultaneous modes. During team interpreting, two interpreters take turns every 30 minutes or so, either at the witness stand or at the microphone, so that while one of them is actively engaged in the process, the other one can rest. Nevertheless, during team interpreting the second interpreter is always available to assist the first one with any problem that may arise, such as being unable to hear or understand a word, researching a term using reference sources, and so forth.

Interpreters must abide by a **Code of Ethics** that does not allow them to "assume" what the speaker "meant to say", adding to or omitting from the message, or otherwise altering the original message in any way. The reason for this is that the interpreter in a legal proceeding is there to "level the playing field" for those who do not speak or understand the language of the courts. Interpreters are not and should never be instruments for non-English speakers to have an advantage or to be at a disadvantage when compared to similarly-situated English speakers. (See the **Court Interpreters Act**, 28 U.S.C. 1827 et. seq., and the *Guide to Judiciary Policy* published by the Administrative office of the U.S. Courts.)

The right to due process provided by the Constitution of the United States can only be protected through a **competent interpreter** when a defendant does not speak or understand the language of the courts, since the right to be present and informed, confront witnesses, have effective assistance of

counsel, and all other rights associated to due process are lost as soon as a defendant cannot communicate with his or her attorney or understand the language of the courts.

While "a growing body of research now seems to suggest that the brains of individuals who speak more than one language may be functionally different from those of unilinguals"[10] being bilingual in and of itself is no assurance that a person can become a competent interpreter. Neurolinguistic and psycholinguistic studies conducted on the mental tasks an interpreter must perform have revealed that "[i]n expert interpreters (...), the cognitive skills involved are more likely to be highly speciali[z]ed schemes"[11] involved in the perception, comprehension and production of language, multi-tasking, problem solving, etc. The sustained attention required of an interpreter is far above the normal attention required for everyday conversation, and therefore the physical and mental stamina levels for an interpreter are comparable with those of an athlete, and greatly exceed the stamina required to perform other types of non-physical work.

A person who is "bilingual" but not a trained interpreter, who gives the defendant a "general idea" of what is happening in court, or what evidence the government may have against him or her, is not sufficient to safeguard the right to due process. A mediocre or incompetent interpreter places the non-English

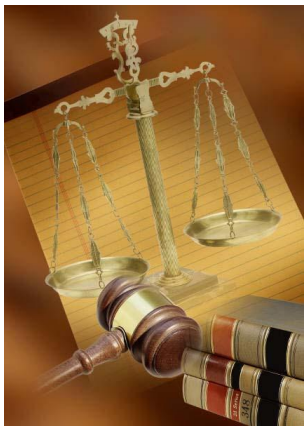
[10] Lambert, Silvie. *Simultaneous Interpreters: One ear may be better than two*. [http://www.erudit.org/revue/ttr/1989/v2/n1/037040ar.pdf]
[11] Nespoulous, Jean-Luc [http://hal.archives-ouvertes.fr/docs/00/02/82/53/PDF/Nespoulos_english.pdf]

speaker at a disadvantage vis-à-vis an English speaker, in clear violation of a defendant's constitutional rights.

A FINAL WORD

The job of a judiciary interpreter is extremely taxing and stressful. When a client – be it a judge, attorney, witness, or litigant – imposes an additional cognitive load by speaking too fast or not loud enough, the quality of the interpretation can be seriously compromised. When the quality of the interpretation suffers, a defendant's constitutional rights in a criminal proceeding are immediately jeopardized.

It is incumbent upon the bar and bench to not only be aware of the pivotal role played by the interpreter in every court proceeding, but to disseminate this awareness such that the integrity of the language mediation process in the courtroom can be safeguarded at all times.



BASIC GLOSSARY

Arraignment – Instrucción/Lectura de Cargos

Challenge – Impugnar

Complaint (civil) – Demanda

Complaint (criminal) – Denuncia

Conviction – Fallo condenatorio

Criminal (law, case, etc.) – Penal (derecho, caso, etc.)

Cross-examination – Contra-interrogatorio

Defendant (civil) – Demandado

Defendant (criminal) – Acusado

Examination - Interrogatorio

Exhibit – Prueba (elemento/objeto de)

Felony – Delito grave

Government – Fiscalía; Ministerio Público

Guidelines, Sentencing (Advisory) – Guías de Sentencia (Consultivas)

Indictment – Pliego Acusatorio / Acusación de Gran Jurado

Information – Acusación de Fiscalía

Life (imprisonment) – Cadena Perpetua

Plea (of guilty) – Alegación (de culpabilidad)

Plea Agreement – Acuerdo de Alegación

Plead, to – Hacer alegación

Safety Valve – Válvula de Escape

Waive, to - Renunciar

United States District Court for the District of Puerto Rico
Hon. José A. Fusté, Chief Judge
Frances Ríos de Morán, Esq., Clerk of Court
Becky Agostini, Court Services Manager
Hilda Gutiérrez & Janis Palma, Supervisory Interpreters
Annie Flores, Marie Hernández, Edna Brayfield &
Félix Toledo, Staff Interpreters