

EVERY WORD MATTERS

Working with Court Interpreters to Overcome Language Barriers

By Katrin Johnson

AN ACTUAL JURY TRIAL SCENARIO, EXPERIENCED BY THE AUTHOR

Prosecutor: *And what happened next?*

State's Witness (in Spanish):

I saw the man step up to the police officer and reach for his gun.

Interpreter (in English):

I saw the man step up to the police officer and reach for his arm.

Linguistically, this mistake is somewhat logical. The Spanish word the witness used for gun was "arma." In English we often use arm to indicate a gun, such as being armed, or the right to bear arms. Yet in a criminal case where a defendant is charged with assaulting a police officer, the unchecked misinterpretation of this short word could have had a profound impact on the outcome.

The practice of law relies almost exclusively on written and spoken language. Most of us who gravitate to this field aren't too keen on spending our days calculating equations or working in laboratories. Instead words are our tools—for researching precedent, communicating with clients, writing convincing analyses, carefully wording documents, questioning witnesses, and persuading others to our position. Yet for a field that relies so heavily on the spoken and written word, we still have much to learn about the importance of qualified interpreters, why credentials matter, the ethical standards required by court rules, and steps attorneys can take to improve interpretation accuracy.

Harder than it looks

Like professional athletes, chefs, or ballet dancers, good interpreters make their work look much easier than it actually is. Think, for a moment, about what interpreters actually do. They carefully listen to and analyze a statement, mentally convert the meaning to its equivalent in the other language (which often doesn't share comparable terminology), and articulate the equivalent in a level tone appropriate for the setting. Yet

they do this nonstop as we continue to talk and talk. In fact, while interpreting in the simultaneous mode, the interpreter is listening to and analyzing one statement while speaking/signing the previous statement. Interpreting requires a level of intellectual and linguistic gymnastics that most of us have never experienced.

Professional legal interpreting requires the sophisticated mastery of many competencies, but most can be boiled down into three key skills: (1) a high level of language proficiency (including legal and other technical terminology) in English and the non-English language; (2) the mental dexterity to quickly and accurately convert meaning from one language to another; and (3) application of professional responsibility standards designed for interpreting in the legal environment.

Who are these experts and how can lawyers find them?

Since the 1990s, the Washington State Administrative Office of the Courts (AOC) has administered the Court Interpreter Program, which annually tests and trains aspiring court interpreters in foreign languages. The select few who attain the "Certified" credential must pass a national oral exam that tests their accuracy in interpreting legal discourse in the three interpreting modes: simultaneous, consecutive, and sight translation (interpreting a written text aloud into the other language). Each mode requires different skills and abilities, and few people can accurately perform in all three. The passing rates for these exams are typically below 10 percent

HOW DO I DETERMINE IF A PERSON NEEDS AN INTERPRETER?

Sample questions for determining the English proficiency of a person and the need for an interpreter.

1. How did you come to court today?
2. How did you learn English and what is most difficult about communicating in English?
- ...
5. Describe what you see in this courtroom.
6. What is the purpose of your court hearing today?
7. You have the right to a court-appointed interpreter. Tell the court the best way to communicate with you and to let you know what is being said.

If the person has difficulty answering these questions, an interpreter is recommended. Also, if you cannot understand the person's spoken English, consider using an interpreter.



Deskbook on Language Access in Washington Courts

www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/StateLAP.pdf

because sustained, accurate interpretation of legal communications is a difficult skill to master.

Courts are required, under RCW 2.43.030(b), to appoint Certified interpreters unless good cause can be shown on the record. The issue of what constitutes good cause was recently addressed in *State v. Aljaffar*, 190 Wn. App. 75, review denied, 188 Wn.2d 1021 (2017). An Arabic-speaking defendant in Spokane was on trial for a felony offense, yet the only Certified Arabic court interpreter lived in Seattle. The court held that “the fact that the interpreter lived a few hours away and could not be made available on short notice did not provide the State good cause to excuse retaining a certified interpreter.”

Certification exams are available in only 14 languages—far fewer than the number of languages spoken in our courts. For example, no certification exams exist for languages such as Hindi, Japanese, or Ukrainian. Ten years ago the AOC began implementing a new credential for these other languages—“Registered.” To be a Registered interpreter, a candidate must go through the same training as those working towards certification. However, they are tested only on language speaking and comprehension skills. Their interpreting accuracy is not tested.

Certified and Registered interpreters can be easily found in an online directory maintained by the AOC at www.courts.wa.gov/interpreters.

Unique standards of professional responsibility

Court interpreters have a significant degree of power and discretion. As gatekeepers of language, they control what is communicated from one language to another. In addition to being linguistically talented, court interpreters must have the ability to navigate and manage ethically complex situations. General Rule 11.2 requires all interpreters serving in Washington courts, regardless of their credential, to

abide by the Code of Conduct for Court Interpreters. Similarly, attorneys representing clients with limited English proficiency (LEP) should consider raising objections based on these rules to protect these clients' rights.

General Rule 11.2(b) requires that interpreters interpret all material “thoroughly and precisely, adding or omitting nothing, and stating as nearly as possible what has been stated in the language of the speaker, giving consideration to variations in grammar and syntax.” The role of the interpreter is not to simplify, contextualize, summarize, or in any other way alter the communication. According to Samuel Matix, a Certified Lao and Registered Thai court interpreter, “Interpreters are the magic telephone by which people speaking different languages communicate.” If a person with LEP is swearing in court, the court interpreter swears too. If a person with LEP is speaking incoherently, the court interpreter must try to match the original speech as best as possible, even knowing that it is incoherent to the listener. Similarly, if an attorney is speaking in highly technical terms, the interpreter must match the same level of technical formality in the non-English language, even if the listener is likely unable to understand it.

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A pet peeve of many interpreters is that judges and attorneys ask them to interpret “verbatim” or “word-for-word.” However, language doesn't convert so smoothly. According to Ginger Wang, a Certified Mandarin court interpreter, “They don't understand that

we don't just interpret words, we interpret the main message without changing it.” If an English-speaking person says, “It's a piece of cake,” the interpreter won't use the word “cake” unless the person actually is referring to cake. Rather, the interpreter would try to find a similar colloquialism to reflect the concept of something being simple. When you weave in legal terminology,

exact equivalents in other languages are even more difficult to achieve. For example, according to a Hmong Legal Glossary published by the Wisconsin Court Interpreter Program, the translation of “Juvenile Court,” a simple term in English, is “Tsev Hais Plaub Rau Cov Menyuam Tsis Tau Hnub Nyoog.”

Like attorneys, court interpreters must also watch for real and perceived conflicts of interest. General Rule 11.2(d) states that interpreters may not render services if they are a potential witness, associate, friend, or relative of a party, have a personal or financial interest, or have participated in the choice of counsel, unless the court finds good cause on the record. Quite frequently court interpreters are closely tied to their cultural and linguistic neighbors. In small communities where everyone knows everyone, that can include the interpreters too. The

rule requires interpreters to notify the court of any real or potential conflicts of interest.

Steps attorneys can take to improve interpretation

Most attorneys assume that the quality of interpretation is completely outside their control, and all they can do is hope for the best. However, there are many proactive steps that attorneys can take to reduce interpreting errors and confusion. Attorneys should ask their regular interpreters for their suggestions. But as a starting point, here are three critical steps to take:



1 Provide the interpreter with background or contextual information. Interpreters jump around from court to court, hearings commonly begin shortly after they arrive, and they

have no idea what type of matter they are interpreting for—custody dispute, guilty plea, protection order, etc. Yet they are expected, almost robotically, to make sense of what is being stated and provide automatic accuracy. Wang points out that, “While everybody else is familiar with a case—the judge, attorneys, social workers, and case managers—they expect that the interpreter, who comes in cold not knowing anything about the case, should be able to just interpret what is being said.” Take a few moments to brief the interpreter and provide a few critical pieces of information. Names, numbers, and dates are particularly difficult to interpret on the spot. For trials and more lengthy procedures, provide interpreters with a copy of written documents that will be referenced to or read from, such as police reports, written memoranda, and jury instructions.

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185 Wn.2d 510, 374 P.3d 510 (2016) (atty fees recoverable in admin proceeding where back pay is awarded)

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2 When they are interpreting, don't speak to the interpreter. Speak to the person with LEP.

A common mistake made by attorneys is to turn to the interpreter and ask him/her the question, rather than directing it to the person with LEP. "Ask her whether her address has changed," may be interpreted into, "Ask her whether her address has changed." (As you'll recall, accuracy is required of interpreters under General Rule 11.2.) Instead, speak directly to the person with LEP, "Has your address changed?" Interpreters try to achieve a kind of invisibility, allowing you to have a direct communication with the person with LEP.

3 Request a team of two interpreters for trials and longer hearings. Interpreting requires the nonstop process of listening, analyzing, linguistic conversion, and speaking. In the courtroom, typically one person speaks at a time. The interpreter, however, interprets everyone's words. Even the most highly skilled interpreters reach a breaking point at which accuracy becomes compromised. Team interpreting is an industry standard that minimizes the risk of interpreter error, avoids disruptions to the proceedings, and creates more flexibility. Two interpreters work on a rotational basis, switching roles in 20- or 30-minute increments. One interpreter plays the role of Active Interpreter, and the other (typically seated next to or nearby) is a Support Interpreter. The Active Interpreter delivers the interpretation, whereas the Support Interpreter acts in a stand-by capacity, listening and jumping in to assist when needed. For example, in the trial testimony described at the beginning of this article, the Active Interpreter made the mistake between "gun" and "arm." The Support Interpreter jumped in to correct the record. If not for the Support Interpreter's involvement, the mistake would likely have gone unnoticed.

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Court interpreters come from a distinguished profession that plays an essential role in the judicial system. Without them, we would not ethically be able to represent clients with LEP. With them, we can increase access to justice by elimination of language barriers. NWL



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Samuel Mattix, Bellingham
Certified Lao and
Registered Thai Court Interpreter

“I would like to say one thing from a practical point of view...

Please pay us promptly after the services are rendered. Most of us work as independent contractors, and if we can, we'd like to avoid putting unnecessary energy and resources into tracking down the unpaid invoices. The contracting parties, i.e., the attorneys' offices, are responsible for the payment. If you simply pass on the invoice to your client who received our interpretation, we are sometimes left with dealing with people who try to re-negotiate our agreed terms with you.”

Vania Haam
Certified Korean Court Interpreter

“If you plan to call your client/witness to testify...

please spend some time going through the testimony with the help of an interpreter. Your client/witness will be much better prepared and much more comfortable answering via interpreter. The interpreter will be much better prepared, thus providing higher quality of interpreting, when they know context, names, dates, addresses. It is overwhelming for a person to testify but twice as difficult when the interpreter is involved.”

Emma Garkavi
Certified Russian Court Interpreter