

Representing non-English Speaking Clients: 10 Points Attorneys Should Know

Good, clear communication is hard enough to achieve when only one language is involved. The process of interpretation adds layers of potential misunderstanding and confusion because of linguistic, cultural, and technical factors that come into play. Communication can and frequently does break down. A professional interpreter has special skills and knowledge to bridge the language gap by anticipating and overcoming these factors. But interpretation is interactive and dependent on the cooperation of the participants. Providing an interpreter will not automatically bridge cultural, linguistic, and educational gaps. For successful communication, the participants must understand the demands and limitations of interpretation, be aware of the process, and assist the interpreter to provide high quality interpretation.

Attorneys must also be prepared to evaluate the qualifications of the interpreter provided by the court and should be concerned with the competence of the interpreter. They should object if they perceive that the interpreter is incompetent or when procedural errors interfere with the non-English speaker's access to due process.

The following ten points cover basic factors attorneys should be aware of when using interpreter services for attorney-client communications and during court proceedings.

1. Court interpreters require certain fundamental physical conditions in order to perform competently.

- a. Speak at a reasonable speed. English is a language of few words, and usually more words are required for a precise translation into another language.
- b. Allow time for interpretation. Only one person can speak at a time. Let the interpreter finish interpreting.
- c. The interpreter must hear to interpret. Speak loudly. Don't turn your back to the interpreter. Don't rustle papers loudly. Assist the interpreter in getting the court to provide an environment in which the interpreter can hear.

2. Court interpreters are trained to provide a complete and accurate interpretation. The code of ethics and professional conduct establishes that court interpreters:

- a. *Should* interpret everything and conserve all elements of the communication including: meaning, level of speech (formal, technical, slang, jargon), tone and paralinguistic features.
- b. *Should not* add to, explain or elaborate on what is being said. Technical or legal terms will be translated but not explained by the interpreter.

b. *Should not* omit any information or change the level of speech. If an attorney is speaking formally or using legal jargon, the interpreter will do the same. If a witness is using slang or foul language, the interpreter should not "clean it up" in interpretation.

3. With an effective interpreter you should feel that you are communicating directly with your client, as if the interpreter were not present. The attorney should:

- a. Speak directly to the client. Say "I'm your attorney" instead of "Tell him I'm his attorney". Remember: it's not a conversation with the interpreter; it's a conversation with the client.
- b. Maintain eye contact with your client. If the client is focused on the interpreter, ask the client to listen to the interpreter but to look at you. This may not come naturally, but it helps to establish good communication.
- c. Look up from the file and observe the client. This provides paralinguistic information including whether the client understands. It is up to the attorney to recognize miscommunications and clear them up. Observing the client also makes the attorney aware of the need to allow time for interpretation to be completed, for the client to respond, and for the interpreter to interpret the response.

4. Interpreters are not advocates and are required to remain impartial.

- a. Interpreters should disclose any conflict of interest they may have in a case.
- b. Interpreters should not express opinions about a case or carry on conversations with a witness or defendant without the permission of the attorney. They should avoid behavior that may give the appearance of partiality.
- c. Attorneys should not ask interpreters to give opinions they are not qualified to give, or that compromise the interpreter's neutrality such as:
 - "Is my client dumb/crazy?" -- "How was my closing argument?"
 - "Does my client understand?" (ask your client)

5. If you speak the client's language and communicate directly with your client outside of court, or if you "get by" in English outside of court, make sure to:

- a. Use the interpreter to communicate an offer, prepare for a plea, or to prepare for testimony so that your client becomes familiar with the process of interpretation and the terms used in court by the interpreter. These may differ from the terms you are accustomed to using.
- b. Ask the client if he/she prefers to use an interpreter. Attorneys sometimes overestimate their bilingual skills or their client's comprehension of English. This often results in unnecessary confusion when the defendant or witness is in court using an interpreter.

6. Interpreters need to prepare in order to perform effectively. Interpreters interpret concepts and units of meaning that are dependent on context.

- a. Interpreters may need to review police reports before evidentiary hearings to familiarize themselves with facts, names, locations and specialized vocabulary.
- b. Jury instructions should be provided for review before they are to be interpreted and the interpreter should have a copy to refer to during instruction.
- c. More extensive preparation may be required for complex motions, or before simultaneous interpretation of expert witness testimony.

7. A pre-appearance interview should always be conducted with a witness. Conducting such an interview is crucial to getting effective testimony through an interpreter, and will protect your witness' credibility by allowing for the best possible interpretation. At the interview, the attorney or the interpreter (with the attorney's permission) should explain to the witness the process of consecutive interpretation at the witness stand. That mode of interpretation should be practiced during the interview so the witness becomes comfortable with it. In the interview, the interpreter:

- observes the speech style and articulation of the witness
- determines the dialect or regional origin of the witness
- becomes familiar with the facts and vocabulary of the case

8. Interpreters need breaks. Interpretation has been identified as one of the most mentally demanding tasks that a person can perform, requiring the use of at least 22 cognitive functions.¹ Because fatigue can interfere with the accuracy and completeness of interpretation², and thereby interfere with the client's right to understand the proceedings, attorneys should be aware of the following:

- a. Interpreters working on trials and other long proceedings should be assigned in teams, so that the interpreters can spell each other every 30 minutes. This is called "team interpreting" and is standard practice in the federal courts and conference interpreting. If team interpreting is not being practiced the attorney should support the interpreters request for a break *at least* every hour.
- b. When the court takes a recess interpreters need to rest and should not be asked to work with you and your client. If you need to confer with your client the break period should be extended. Team interpreting resolves this problem because one rested interpreter is always available, eliminating delays in the proceedings and allowing for longer sessions without breaks.

¹Michelsen, Patricia. 1992. "Court Interpreting". *The Court Management & Administration Report*. 3.10-16

² Vidal, Mirta. 1997 "New Study on Fatigue Confirms Need for Working in Teams". *Proteus: Newsletter of the National Association of Judiciary Interpreters and Translators*.

9. In an interpreted proceeding, protecting your client's due process rights means being aware of any impediment to your client's right to be linguistically present.

Protecting the right to a competent interpreter should be handled with as much zeal as other legal issues. An attorney should:

- a. Know the statutory requirements regarding qualifications and certification of interpreters and check the qualifications of the interpreter provided by the court.
- b. Understand what skills and knowledge are required to perform competent legal interpretation. This will allow you to effectively voir dire an interpreter or challenge an interpreter that you suspect is incompetent.
- c. Make an objection to the use of an unqualified interpreter or whenever you perceive that the interpreter (certified or not) is not performing adequately.

(cont., item 9, Protecting the Right to a Competent Interpreter)

- d. Make a record of problems or interference with your client's right to a competent interpreter throughout the proceedings. Case law establishes a number of situations that can lead to reversal when this right is violated. Statements of counsel regarding a defendant's inability to be linguistically present, to confer with counsel, or to understand the proceedings are a principal mechanism for establishing prejudice on the record.

10. Bridging cultural gaps is the attorney's responsibility, not the interpreter's. Although interpreters can sometimes be of assistance, attorneys should be aware of cultural factors and adjust their communication accordingly.

A few important, common sense guidelines:

- a. Formality is important in many cultures. Being casual or personal in the United States may make you come across as friendly and accessible, but this is not always effective with people from other cultures. On the contrary, it may be seen as inappropriate or disrespectful and may undermine the client's confidence in you as his attorney.
- b. Introductions are important in other cultures and help to establish trust and a rapport with your client. Tell the client that you are their attorney and introduce the interpreter. Take time to explain your role as the client's advocate and the rules of confidentiality. Let your client know that the interpreter is bound by attorney-client privilege.
- c. Most non-English speakers in the criminal system have little education and many are illiterate. Inquire into your client's level of education and factor this into your

expectation of a client's ability to deal with sophisticated vocabulary, numbers, measures, written information and unfamiliar concepts.

- d. Terms like probation, jury trial, plea bargain, and many more are culturally bound concepts-- don't assume your non-English speaking client understands them just because they have been translated. Avoid the use of acronyms and jargon such as SWAP, DDP, or two-year top, which are unfamiliar to the non-English speaker.
- e. In many cultures showing respect for authority means agreeing with whatever you are told. Some non-English speakers will defer to people with higher education or authority and may be reluctant to speak up when they don't understand some words, concepts, or the interpreter. It is a good idea to tell your client that you want to know if they don't understand what is being said. Bear in mind, however, that if the defendant does not understand what is going on, this could be due to a variety of factors other than inadequate interpretation.
- f. Concepts of time, place and relationships are different in other cultures and this can affect the apparent credibility of your client or a witness, or your ability to communicate. Interpreters are not experts in these areas and should not be called upon to act as on-the-spot experts on cross-cultural issues that come into play in a particular case.