

# INTERPRETERS AS OFFICERS OF THE COURT: SCOPE AND LIMITATIONS OF PRACTICE

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The six branches of interpretation (conference, medical, judicial, business, escort, and seminar) share some similarities, but for this article my focus will be limited to the branch of judiciary interpretation and translation. Before discussing the judiciary interpreter's role and scope of practice, I will delineate the types of settings judiciary interpreters work in, the roles we play in those settings, and the reasons why the scope of practice is limited.

Dueñas González, Vásquez and Mikkelsen in *Fundamentals of Court Interpretation* subdivide legal interpretation into (1) quasi-judicial and (2) judicial interpreting, also referred to as court interpreting. A court interpreter or translator's work is not limited to in-court proceedings, since interpretation may also take place in proceedings that take place outside of the courtroom, e.g. quasi-judicial settings.

"Proceeding" is defined in *Black's Law Dictionary*: "In general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including *all possible steps* in an action from its commencement to the execution of judgment." [emphasis added]

The steps from commencement to the execution of judgment can take place but are not limited to attorney-client interviews, prosecutor-witness or victim interviews, police interviews or interrogations, probation interviews, depositions, administrative hearings, juvenile hearings, social security administration hearings and more. These interviews may take place in the hallway of a courthouse, a holding area, a jail, a prison, a police station, a prosecutor's office, someone's home, or a defense attorney's office. Settings or any activity related to law, whether *criminal* or *civil*, that may have a bearing or impact on the administration of justice, equal protection under the law, and due process of law are considered *legal and/or quasi-legal settings*.

The Constitution is the supreme law of the land. In arguing issues of law, courts interpret constitutional issues in one form or another that may appear or actually be inconsistent with other decisions or opinions, but the general principles undergirding the Constitution remain the same. When disputes about constitutional safeguards occur, the ruling may be appealed to a higher court, and eventually to the court of last resort, the United States Supreme Court.

Neither the Constitution nor the twenty-seven amendments to the Constitution make any reference to the right to an interpreter. Yet if a person does not speak English and is faced with a criminal or civil action against him, the court, the judicial officials present-

ing the action and the non-English speaker all need to understand one another. Otherwise, the constitutional safeguards afforded to all persons and required by the supreme law of the land could not be carried out; judicial officials could not comply with their duties to ensure due process and equal protection under the law. Therefore, an interpreter must be summoned to assist all parties so that justice may be properly administered.

Legal interpretation and translation is an important and specialized field requiring training, education, experience and knowledge. Judiciary interpreters must have skills to interpret (in the three modes of interpretation required by federal and some state statutes) accurately, faithfully, exactly and impartially.

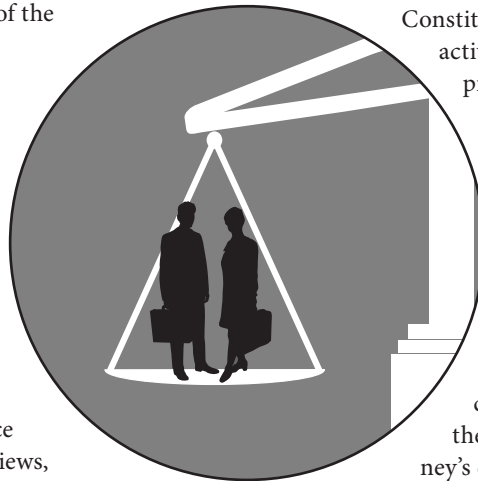
Constitutional issues may be at stake in proceedings or activities that have a bearing or impact on the legal process. The role of the judiciary interpreter is a demanding and stressful one. Our actions, our choice of words, lack of skill, lack of specialized terminology or unfamiliarity with our circumscribed role and professional responsibilities may adversely affect the outcome of court proceedings and the administration of justice.

An adverse impact can not only affect the non-English speaker's equal access, due process rights, life and liberty, but can also affect the court's ability to administer justice, the attorney's effectiveness, law enforcement's investigations, the prosecution, or even a victim's life.

In order for a court and other legal professionals to carry out the proper administration of justice, it is essential there be training and certification of interpreters through a valid and reliable testing instrument. Being bilingual, even a highly educated bilingual, does not necessarily make one a reliable judiciary interpreter and translator. Not everyone who speaks a second language possesses the cognitive and motor skills required for legal interpretation; not everyone is capable of withholding judgment or opinion in the legal arena.

A substantial amount of case law involving interpreter issues are cases on review for procedural and constitutional error. Over 25 courts have found it necessary to adopt a model code of interpreter conduct either through statute, court rules or by practice. Professional interpreter and translator associations have also adopted codes of conduct and professional responsibilities. Although association ethics may carry some weight with the judiciary, statutes, court rules, and court practice take precedence over association ethics.

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By virtue of the role we play in the administration of justice, many courts have stated outright that the interpreter is an officer of the court. A review of case law as well as interviews with judicial officials confirms that the role of an officer of the court is not strictly limited to in court proceedings but encompasses all proceedings, whether inside or outside of the courtroom.

What is an officer of the court and what does it mean to be an officer of the court? Prosecutors and defense attorneys as well as judges will tell you that an officer of the court is an individual working within the court system who is part of the judicial process, charged with specific duties, ethical guidelines and professional responsibilities in furtherance of that process. For example, attorneys, as officers of the court, have an obligation to the judicial process, to the court, and may even have a fiduciary responsibility. Although the attorney's loyalty is to his client, that loyalty ultimately must be practiced within the bounds of the law and within his role as an officer of the court.

An attorney is bound by the attorney/client privilege, and as we know, the privilege can only be waived by the client and not the attorney, *unless* a crime is in progress or going to be committed, or someone's life or safety is in jeopardy. At that point, as an officer of the court, the attorney must disclose such information. Other confidentiality rules by which officers of the court must abide pertain to specific legal settings: for instance, rules of court forbid defrauding the court, prosecutors have a duty to disclose any exculpatory evidence, and so on.

When an interpreter enters into the equation, the interpreter becomes part of the judicial process. An interpreter is necessary to enable all parties involved in the process to communicate effectively with one another and carry out their respective duties. Therefore, the interpreter's loyalty is by definition to the legal process per se. Interpreters, like other members of the justice system, must also adhere to court rules, protocol and procedures established by the court, and all rules governing court officials.

Interpretation in a legal setting requires the interpreter or translator to be accurate, faithful, and complete without summarizing, adding, embellishing, or omitting anything spoken or written. An interpreter must remain impartial and recuse him or herself if there is a perceived or real conflict of interest. The interpreter must interpret directly (not in indirect narrative style), using the same grammatical person as the speaker so that the indicated parties can speak to each other and to the court. The court record reflects the non-English speakers' words as rendered by the interpreter. [For further details, see NAJIT's position paper on *Direct Speech in Legal Settings*.]

The interpreter in a legal setting is viewed as a neutral party, regardless of who pays for the service, because the very reason we are summoned is to provide interpretation or translation to assist all parties in the administration of justice. The interpreter's role therefore is similar to a court reporter's. Courts have established ethical guidelines for the judiciary interpreter, including the prohibition against giving advice, legal or otherwise, and the inap-

propriateness of ever advocating for one side or the other. (It is of course illegal to practice law without a license.) Thus, by virtue of the role we play in the administration of justice, our duty and loyalty is to the integrity of the judicial process and not to any one individual.

It is essential that interpreters become familiar not only with the rules governing interpreters in the judiciary but also with local court rules and any other guidelines governing officers of the court and the judicial process. This concept is no different from an employee becoming familiar with the guidelines of the specific field the employee is involved in or the specific rules of the particular company at which they work.

Many things can happen when an interpreter steps out of the prescribed role and scope of practice. The following cases are mentioned for illustrative purposes only, without disclosure of the case name, number or city. These cases are unreported, but I have first hand knowledge from working as a consultant or testifying as an expert in the matter.

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In an Idaho case, law enforcement while investigating a homicide conducted an interview of a non-English-speaking suspect. During the interrogation, which was videotaped, the interpreter speaks on her own, appears to

engage in personal conversations, makes her own comments, initiates questions, explains concepts and provides advice, in addition to adding, omitting and summarizing information. Where the interpreter initiates questions or comments or provides advice, she does not interpret her ex parte communication back to the officers. The interpreter on her own asks the suspect three times to sign the Miranda waiver. During the interrogation she tells the suspect that this is his opportunity to tell the truth, that everything would be all right, not to worry and that it's best to tell the truth. She speaks to the suspect in the informal form of address and uses terms of endearment such as "honey" and "sweetie." A defense suppression motion was made, alleging Vienna treaty violations and claiming that the Miranda statement was coerced by the interpreter who stepped out of her role. In lieu of the suppression hearing, the prosecutor reduced the murder charge to voluntary manslaughter, to which the defendant ultimately pled guilty.

In an Illinois gang-related murder, a juvenile was charged with accessory to murder. Juvenile rights and parental rights were interpreted by the ten-year-old sister. During a videotaped interview with the prosecutor, the minor and the minor's parent, an officer was used to interpret for the parent. The officer interpreted in the third person and resorted to summaries of long questions and answers. The parent was unable to advise the juvenile at the appropriate times and could not follow what was taking place exactly, accurately and in real time in order to exercise the parental rights afforded her in this particular state. The judge dismissed the charges against the juvenile after testimony at the suppression hearing.

In an Ohio case, a sister of a suspect was used to interpret between law enforcement and the suspect. Other family members claimed that the sister did not interpret accurately. The sister/ad hoc interpreter was arrested and charged with obstruction

of police business. Although in this case the charges were later dropped, the fact remains that an interpreter can be charged with obstruction of justice should the interpreter lie or withhold important information in police work.

In another case, interpreters provided language assistance to non-English speakers seeking to obtain phony driver's licenses who were using false identification to obtain such licenses. The interpreters knew what was going on but assumed they were immune from criminal charges since they were merely providing interpretation. They were charged with conspiracy to commit fraud against a government entity. One interpreter was sentenced to two years and the other to five years of incarceration.

In these cases as with any other case dealing with the justice system, be it in a legal or quasi-legal setting, the interpreter's role is fairly simple in terms of protocol, procedures and ethics. The interpreter's task is to place a non-English speaker in the same position as an English speaker. It is not the interpreter's role to make sure that the non-English speaker understands the content but only to interpret what is being said. It is up to the judge or the attorney to explain and help the person understand. A legal interpreter should not on his own convey affectionate or intimate discourse to a non-English speaker or advocate for a defendant or victim, but should maintain the distance of an impartial and disinterested party. An interpreter cannot practice law without a license. The interpreter cannot permit himself to be used in the commission of fraud or any other crimes.

A non-English speaker and all parties involved in a judicial process are dependent upon the interpreter to provide a faithful and precise rendition of what is being stated. This puts an interpreter in a unique position of trust in the legal process. Thus, by virtue of the role the interpreter plays in the administration of justice, the constitutional implications of the profession, the fact that interpreters work to assist all other officers of the court, be it established by state statute, court rules, or by practice, the interpreter must necessarily be considered an officer of the court.

When interpreters step out of their appointed role, the integrity of the judicial system is put in jeopardy. Any departure from accepted practice leaves the interpreter open to challenges and may result in unfair convictions or dismissals, let alone diverted investigations. Judiciary interpreters, as well as any entity utilizing interpreter services or providing them, must understand the interpreter's role. Only then can each person and judicial official fulfill their role and perform the duties dictated by law, thereby safeguarding due process, equal access and equal protection under the law. ▲

*Disclaimer: The information in this article was obtained through research, discussion with attorneys and judges, and personal experience as a consultant. It is not the author's intent to interpret the law.*

*[The author is a member of the NAJIT Board of Directors and a member of the NAJIT Advocacy Committee and the ATA Public Relations Committee. This article was prepared in response to a recent debate on the NAJIT listserv about the meaning of the term "officer of the court" and its application to interpreters.]*

#### CULTURAL DIFFERENCE *continued from page 1*

Familiarity with all the geographic areas where a language is spoken makes one follow clues and mentally file them away for future use. I believe these minute variations hold true for almost every language; I have been told that no two Spanish-speaking countries have the same word for "green beans."

One helpful piece of information in determining which variety of Hindi or Bengali the speaker will use comes from the name itself. Even though most first names amongst Hindus are much the same, they are pronounced differently, depending on the state the person comes from. In Bengal a woman's name is *Bharoti* whereas a woman from the Northern Hindi-speaking states will be called *Bhar-ti*. In Punjab, however, male and female names are the same, except that among Sikhs, female names end in *Kaur* and male names end with *Singh*. Punjabi names bring to mind another anecdote. A Punjabi lady was once asked her mother's maiden name. She replied "*Kaur*." "What was *your* maiden name?" asked the interrogator. "*Kaur*," answered the lady. He then tried asking her name before she got married. The response again was "*Kaur*." "Very well," said the interrogator, "Do you know your maternal grandmother's name?"

"I do. It was such-and-such *Kaur*." And so it went.

Islamic names are difficult to render into English as well, in that they have only the one true name. How many of us know that "Osama" is really the son of "Laden"? Or for that matter, know whether "Laden" is the name of "Osama's" mother or father? And if we were to address him politely, for example in a court of law, would we be addressing him as Mr. Laden? That might come out sounding the same as if we addressed the author as Mrs. Ratna.

Another name-related confusion occurs with names like Mohammed or Ali. I have had five defendants in one hearing and all of their first names were Mohammed. As could be expected, general confusion prevailed until the last names were used. These people were named after someone, in this case, in honor of the prophet.

In my languages, recognizing names facilitates distinction between male and female, especially when doing telephone interpretation, when I am given names and expected to start the conversation with a greeting.

Knowledge of names of principals and the language variant also give insight into cultural norms and practices. For instance, it would be as offensive for a Hindu-named person to be offered beef as it would for a Muslim to be offered pork. Respondents in jail are usually never offered these choices, but one detainee asked the judge to please make sure he was not given ham or pork in jail. This incensed the judge, who retorted, "Next you will be telling me you only like the pillows at the Ritz Carlton." The detainee lost his head and replied in a very profane manner and even called the judge an infidel. I hear echoes of this even today if a Muslim woman is told to go to a male gynecologist, or a Muslim or Sikh person is asked if he drank any alcohol prior to the automobile accident. This information may not seem pertinent, but can help the interpreter to put out ensuing fires, for instance, when an insurance company adjuster asks, "Why was he so mad, and rambling on and on when I asked him if he had had a drink?"

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