

# HERE ARE YOUR RIGHT HANDS: EXPLORING INTERPRETER QUALIFICATIONS

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## I. INTRODUCTION

You are busted and accused of murder.<sup>1</sup> There is a dead body in the next room with gunshots to the back of the head and you do not remember a thing because you drank too much last night and passed out. The police, eager to talk to you, drag you down to the station and because you do not speak English, the police call one of their interpreters. Jennifer Rodriguez, a local native woman who studied Spanish in Mexico a few years ago, arrived quickly at the station. She knew the way. She had been there before.

The detective leans over the table and with clenched teeth and sharp words, he says, “Here are your rights,” and then the interpreter follows:

Eh, usted tiene la derecha de que algo . . . que usted, uh, va . . . puedes usar contra usted una corte de la ley. Usted tiene la derecha absoluta para quedarse en silencio si usted prefiere. Usted tiene la derecha a dar visa de abogado antes y usted también tiene la . . . uh . . . derecha con la presencia de un abogado aqu[í] con usted durante las preguntas. [Y] también si usted no puede pagar para un abogado es posible para tener un abogado. [¿]O.K.? Sin pagar antes las preguntas. [¿]O.K.? [¿]Entiendes usted todas esos derechas abajo la law?<sup>2</sup>

Then you nod your head and say “Mmm-hmm,” and the interrogation continues.

Not far away, two businesspeople from two different countries and companies convene to close a deal for a new global venture. Having met several months ago at an international trade conference, their acquaintance leads them to discover a growth opportunity that will give them a

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<sup>1</sup> See Isabel Framer, *Interpreters and Their Impact on the Criminal Justice System: The Alejandro Ramirez Case*, 9 *Proteus* (Newsltr. of the Nat'l Assoc. of Judiciary Interpreters and Translators) 2-3 (Winter-Spring 2000) (the hypothetical above is based on the facts of the *Ramirez* case); see generally *State v. Ramirez*, 732 N.E.2d 1065, 1067-68 (Ohio App. 11th Dist. 1999).

<sup>2</sup> *Id.* at 1-4.

comparative advantage in their industry. If they collaborate, both firms will significantly expand their respective markets. With the help of a translator, they corresponded back and forth until they have negotiated the terms of the deal. After much anticipation, both businesspeople decided to meet face-to-face to memorialize the agreement. The American partner had made arrangements to have a local interpreter assist them with the language barrier.

As Faizal, the overseas partner, enters the room, he smiles and says in his own language, "I see you've put on some weight." Putting on weight is a sign of prosperity for this speaker. The interpreter, caught off guard by this comment, searches for the right words in English. His mind races through "Gee, you look fat," but a split-second gut check creates the next thought, "Gee, it looks like you have gained some weight." Still not comfortable, the interpreter finally utters, "you look heavier than . . . the last time I saw you." The businessperson from Ohio, who has struggled with weight recently, is annoyed and somewhat offended by this comment and for the first time begins to have doubts about the partnership.

These two illustrations raise a number of questions about the fundamental role that interpreters play in the communication process. Given that important outcomes can be at stake, the defendant's life and liberty in the first case, and trust and financial gain in the second, what should one look for in an interpreter, or what should one expect or demand? What rules, if any, guide interpreters in the communication process? What knowledge, skills, and abilities must interpreters possess in order to effectively facilitate communication? What specialized training or preparations should interpreters have in order to effectively and competently interpret in a legal setting? The purpose of this essay is to explore the answers to these important questions and to provide a practical guide in selecting competent and qualified interpreters to assist legal professionals in communicating accurately with non-English speakers.

## II. INTERPRETERS AND TRANSLATORS

Before delving into the subjects of selection and qualifications, it is important to note a distinction between interpreters and translators. Notice that in the second story, the businesspeople first worked through a translator while they were corresponding back and forth and then an interpreter when they met face-to-face. What is the difference?

The National Association of Judiciary Interpreters and Translators (NAJIT) and the American Translator Association (ATA) distinguish these two areas as separate professions that require two distinct sets of skills and abilities. NAJIT, for example, makes this distinction:

Interpretation is the process by which oral communication is rendered from one language to another. The original is either spoken or signed language, and the rendition is delivered either in another spoken language or in a signed language.

Translation is the process by which written text is rendered from one language into another. The original is in written form, and the translation into the other language is also produced in written form.<sup>3</sup>

It is most simply put by the ATA that “[t]ranslation is written, whereas interpreting is spoken.”<sup>4</sup>

Although some interpreters are also translators and some translators are also interpreters, it is important to know the distinction. These distinctions become important because each area requires a different set of skills, and it may be important to match needs with skills. Since interpreters are used with far greater frequency than translators, the emphasis here will be on exploring the qualifications of interpreters with respect to legal and court assignments.

### III. BILINGUALS VS. INTERPRETERS

Generally, bilingualism refers to the ability to speak two languages.<sup>5</sup> It is assumed that this ability is equal in both languages. What happens however, when a bilingual has less proficiency in one language? Is she still bilingual? What if she came to the U.S. when she was twelve years old, but is now in her forties and has not studied her native language since she began school in the sixth grade? Is *she* bilingual? What if she only has two years of college Spanish or another foreign language? Is *she* bilingual? Do all bilinguals have equal command of both languages? The answer is no.

Bilinguals come with varying degrees of fluency. Bilingualism, fluency, and language acquisition are broad topics that encompass areas in the fields of education, psychology, and linguistics. To do them justice would require a far lengthier article. However, a glimpse at the subject matter reveals that these are indeed complex subjects. For example, researchers have identified a number of characteristics to classify bilinguals. These characteristics include the following: language ability, language use, language function, balance or equal ability, age of acquisition, language

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<sup>3</sup> National Association of Judiciary Interpreters and Translators, *Frequently Asked Questions About the Field of Judiciary Interpretation and Translation*, <http://www.najit.org> (last updated June 19, 2008).

<sup>4</sup> American Translators Association, *Translation: Getting it Right, a Guide to Buying Translations*, [http://www.atanet.org/docs/Getting\\_it\\_right.pdf](http://www.atanet.org/docs/Getting_it_right.pdf) (2003).

<sup>5</sup> *Webster's Third New International Dictionary of the English Language Unabridged* 215 (Philip Babcock Gove et al. eds., Merriam-Webster, Inc. 1993).

development, context, elective (whether they choose to learn it or not),<sup>6</sup> relative competence, cognitive organization, cultural identity,<sup>7</sup> and so forth. Other traits include minimal and maximal bilingualism, semilingualism, and double semilingualism,<sup>8</sup> the latter two referring to a deficiency in one or both of the languages spoken.<sup>9</sup> The relevant point for legal professionals to know is that bilingualism is a fluid state that can develop or diminish over time depending on the effort or circumstances of the individual.

Bilinguals typically dominate one language or another. Rarely do bilinguals maintain equal fluency in both languages.<sup>10</sup> It is not impossible to have balanced fluency or near-balanced fluency. But, the following important elements must be present in order for this to occur: the opportunity to use the language, the culture and values that the individual is immersed in, as well as the individual desire, need, motivation, ability, and so forth. Bilinguals who lack these elements, particularly immersion in a culture where the language exists and thrives, may actually experience recessive bilingualism, that is, a diminished ability to speak that language.<sup>11</sup> Some heritage speakers, that is, speakers who are raised in an environment where a non-English language is spoken and speak or at least understand the language to some degree, may be in this category. These individuals may remain in a state of recessive bilingualism unless they make an effort to immerse themselves in the language and the culture of their heritage.<sup>12</sup>

For single language speakers, it may be difficult to determine how fluent a bilingual person is by listening alone. The only way to know for sure is to subject these individuals to a battery of tests in order to measure their bilingual ability. What single language speakers should know however is that bilinguals come with differing degrees of language fluency. Recognizing that a person can communicate in two languages might be sufficient to accept that they have some degree of bilingualism, but it is not enough to determine how bilingual a person is and for what purposes they may use their bilingualism. The answer to this question is the subject of the remainder of this article.

An interpreter, according to Merriam-Webster, is “a person who translates orally for parties conversing in different tongues.”<sup>13</sup> Notwith-

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<sup>6</sup> Colin Baker, *Foundations of Bilingual Education and Bilingualism* 3-4 (Nancy H. Hornberger & Colin Baker eds., 4th ed., Multilingual Matters Ltd. 2006).

<sup>7</sup> Josiane F. Hamers & Michel H. A. Blanc, *Bilinguality and Bilingualism* 25 (2d ed., Cambridge U. Press 2000).

<sup>8</sup> Baker, *supra* n. 6, at 8-10.

<sup>9</sup> Colin Baker, *The Care and Education of Young Bilinguals: An Introduction for Professionals* 6 (Multilingual Matters Ltd. 2000).

<sup>10</sup> Baker, *supra* n. 6, at 3-4.

<sup>11</sup> *Id.*

<sup>12</sup> *Developing Professional-Level Language Proficiency* 197-98 (Betty Lou Leaver & Boris Shekhtman eds., Cambridge U. Press 2002).

<sup>13</sup> *Webster's*, *supra* n. 5 at 1182.

standing the use of the verb “translates” in contradiction to the NAJIT and ATA definitions, the interpreter is one who facilitates communication between two parties who speak different languages. Thus, the role of the interpreter surfaces when people with different languages need to communicate with each other. Depending on the context that this need arises in, the interpreter may have to act within certain parameters and protocol. For example, what if the interpreter in the fictional case above had omitted or changed Faizal’s comment about the person from Ohio putting on weight? What would have been the effect of such an omission? What was the expectation to begin with? What protocol guides the interpreter’s method? Absent any predetermined conditions, the interpreter may have little to go on in order to effectively facilitate communication between parties.

In casual settings, an interpreter may simply use common courtesy or personal judgment to convey meaningful information. In formal or official situations, however, an interpreter may be required to act within predetermined rules or protocol. Court or legal interpreting is in fact, subject to such predetermined rules and protocol. Thus, interpreters in the legal field must work within this framework. Interpreters in this arena must utilize particular techniques in the communication process and demonstrate an understanding of legal terms and legal concepts. Interpreters cannot interpret what they do not know or understand. Communication in the legal setting is guided by an understanding of the use of legal arguments, protocol, procedures, laws, and traditions. If interpreters are not prepared to handle this task, they will get in the way or perform poorly. Author Elena M. de Jongh states that:

The degree to which interpreters . . . understand the oral message depends on several factors: their knowledge of the original language; the relevant knowledge they possess of the subject under discussion; and awareness of what has already been said and what a given argument is endeavoring to demonstrate or to refute.<sup>14</sup>

The distinction between a bilingual and an interpreter is that presumably, the interpreter has training, preparation, and a well-developed set of skills to effectively facilitate communication. No such requirements are needed for casual conversations.

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<sup>14</sup> Elena M. de Jongh, *An Introduction to Court Interpreting: Theory & Practice* 26 (U. Press of Am., Inc. 1992).

#### IV. THE PROBLEM WITH SELECTING INTERPRETERS USING APPEARANCE AND SELF-AFFIRMATION

If the detective could have understood what the interpreter had said in the above referenced case, the detective would have quickly realized that the police had selected an incompetent interpreter because the interpreter was not fully bilingual or even prepared for the assignment.<sup>15</sup> Because the detective was unable to assess the interpreter's linguistic skill, and because he did not inquire about the interpreter's skills or training, he had no idea of the poor choice the police had made in recruiting this interpreter.

Similarly for legal professionals, choosing the wrong interpreter can prove disastrous. Such a choice can result in a lawyer losing a case, misunderstanding the facts, providing ineffective assistance, sending an innocent person to jail or allowing a guilty person to go free, or simply wasting valuable time and resources. The manner in which most legal professionals select interpreters suggests that they remain largely unaware that bilinguals come with differing degrees of fluency. Even when legal professionals are able to find a fluent or "balanced" bilingual, fluency alone is not enough for competent legal interpreting.<sup>16</sup> Legal interpreting requires superior language fluency, mastery of legal terminology, understanding of legal procedures and protocol, training in interpreting techniques, and compliance with legal and ethical standards. This particular knowledge, skills, and abilities are what distinguish the legal interpreter from a general bilingual.

Currently, the most common method used to recruit and select legal interpreters is the appearance model. Loosely constructed, the appearance model is based on three factors of selection: looks, self-affirmation, and assumptions. For example, if the person looks like an interpreter, that is the person appears "ethnic," then he or she must be an interpreter. If such a person subsequently affirms that he or she *is* an interpreter the legal professional frequently accepts this at face value. The thought process being, that because the person looks like an interpreter and claims to be an interpreter, then this person must know what to do and how to do it. The knowledge, skills, and abilities are therefore assumed to exist. The lack of inquiry as to the fluency, experience, education, and training of the interpreter affirms that the legal professional accepts the faulty notion that all bilinguals have equal command of both languages and that they additionally possess a mastery and knowledge of the legal profession.

At the other end, since bilinguals are asked to self-affirm and self-

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<sup>15</sup> To read the English translation of the Miranda warning that Ramirez received see the text accompanying *infra* note 18.

<sup>16</sup> See William E. Hewitt, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* 16 (Nat'l. Ctr. for St. Courts 1995).

assess their competencies, the impression of their skills and abilities may be skewed by hidden motives, lack of knowledge, or simply the desire to be helpful. Although the latter may be admirable, it is insufficient for legal interpreting. Moreover, in cases where motives are less than desirable, interpreters may purposefully jeopardize the parties' positions by interjecting their own view of the situation or outcome. In other cases, the interpreters may simply not know any better. It is precisely this faulty selection process and these faulty assumptions that create problems for legal professionals and parties who need and require effective and accurate communication.

The appearance approach reveals that many legal professionals lack information about how to effectively inquire into the legal interpreter's technical skills and how legal interpreters go about acquiring such competencies. Additionally, many bilinguals simply do not know what it takes to be a legal interpreter or how to go about fulfilling this role. Most bilinguals do not have knowledge of court interpreting techniques, legal requirements, or ethical standards. In 2005, the Supreme Court of Ohio conducted a survey on the use of interpreters. The survey revealed that thirty-two percent of interpreters working in the courts had not received any interpreter-related training. None. Approximately twenty-three percent had received less than forty hours of interpreter-related training, and nineteen percent had 120 hours or less of such training.<sup>17</sup> It is hard to imagine finding a competent interpreter when the bilingual workforce is so poorly trained and so poorly prepared for legal assignments.

Equally difficult to imagine is that interpreters can master skills, technical vocabulary, and subject-specific terminology by simply engaging in common conversation, talking to family members, or merely by being exposed to a cursory preparation. Typically, mastery of a profession involves significant, prolonged preparation and practice as candidates move from basic understanding to advanced proficiency, from entry as a novice or apprentice to a master of the profession. Each stage is driven by curiosity, reflection, and a thirst for knowledge. In short, selecting interpreters based on appearance and interpreter self-assessment potentially provides legal professionals with poorly skilled, poorly trained, and poorly prepared interpreters, a standard not worthy of the legal profession.

The selection of the inexperienced interpreter can be minimized, however, if legal professionals understand how interpreters are recruited and how they can effectively explore the interpreter's background and qualifications. With some simple tools, legal professionals can make the

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<sup>17</sup> Sup. Ct. of Ohio Interpreter Servs. Program, *Report on the Use of Interpreters in Ohio Courts*, [http://www.sconet.state.oh.us/publications/interpreter\\_services/interpreter\\_use\\_report.pdf](http://www.sconet.state.oh.us/publications/interpreter_services/interpreter_use_report.pdf) (February 2006).

best selection available, even if they are unfamiliar with the foreign language. Making the best choice is exceedingly important because legal professionals must place significant trust in the abilities of an interpreter.

#### V. A SHORT INVENTORY OF ETHICS, STANDARDS, AND INTERPRETER TECHNIQUES

As stated previously, interpreters who provide services in the legal setting must know their role, have superior command of both languages, and have relevant legal training on interpreting matters. Interpreters must know and comply with professional ethics and responsibilities. Ideally, interpreters should be selected based on qualifications, experience, and ability. This section will briefly explore interpreter ethics, key standards, and critical interpreter techniques. This discussion will serve as the foundation for the Practical Guide to Explore Interpreter Qualifications presented at the end of this article.

To illustrate the requirements mentioned above, consider the case of Jennifer Rodriguez, the interpreter at the police station in the *Ramírez* case. Ms. Rodriguez conveyed this to the accused:

Ah, you have the right that something . . . that you . . . ah . . . can use against yourself in a court of law. You have [absolutely] on the [right hand side] to stay in silence, if you prefer. You have the right hand side to [non-word] to an attorney before . . . and also you have the right hand side for the presence of an attorney here with you during the questions and also if you can't pay for an attorney, it is possible for having an attorney, O.K.? [W]ithout paying before the questions, O.K.? Do you understand all of these your rights underneath the [law]?<sup>18</sup>

These are the “rights” that were presented to the accused. They hardly seem to represent the required Miranda warning. Granted, the term “right” as an adjective has twelve different meanings<sup>19</sup> and even more when one includes uses as a noun. However, an interpreter should have enough understanding of the language to not only know the differences, but also to accurately use the equivalent meaning in the other language. The use of the terminology must be done in the proper context; otherwise the utterance may be nonsensical. In this case, the interpreter needed to deliver the equivalent meaning of “legal right” and not “right hand,” or “right angle,” or “right” as proximity, or “right” as in time duration, or any other meaning of the word “right.”

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<sup>18</sup> *State v. Ramirez*, 732 N.E.2d 1065, 1067-68 (Ohio App. 11th Dist. 1999).

<sup>19</sup> *Webster's II: New Riverside University Dictionary* 1011 (Anne H. Soukhanov et al. eds., Riverside Publ. Co. 1988).

Perhaps Ms. Rodriguez had the desire to be helpful, but if she had been asked about her qualifications or asked about her language ability, it might have been apparent that she simply did not have what it takes to do the job. Ms. Rodriguez did not seem fluent in Spanish, did not seem familiar with legal terminology, and did not understand her role in facilitating communication in a legal setting. These foregoing conclusions can be drawn from the following exchange:

- Interpreter: O.K. Good. He says he does understand his rights as I have read them.
- Detective: O.K. Does . . . he knows that, ah, he doesn't have to . . . have to talk.
- Interpreter: That's correct.
- Detective: He has the right to have an attorney?
- Interpreter: Yes. Yes. That is correct.
- Detective: Did you ask him? Does he want to make a statement without a lawyer?
- Interpreter: Alejandro, do you want to talk a little tiny bit and [unintelligible] without an attorney? Or do you prefer . . . do you have an attorney?
- Defendant: [unintelligible] without an attorney.
- Interpreter: O.K. He will talk without the presence of a lawyer, Detective Luhta.<sup>20</sup>

In this brief exchange, there are a number of clues that indicate that the interpreter does not have a proper understanding of her role, is not familiar with interpreter standards, and is unaware of ethical requirements. First, when the interpreter states, "He says he does understand his rights," this is an indication that the interpreter is unfamiliar with the technique of direct speech.<sup>21</sup> Direct speech refers to the techniques interpreters must use to interpret in a legal setting. The technique meets a standard that requires the interpreter to speak in the first person:

The interpreter interprets and speaks or signs the speaker's message in the other language, but says or signs it in the first person, thus sounding exactly as if the interpreter were the person who had initiated the message . . . . This rule

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<sup>20</sup> *Ramirez*, 732 N.E.2d at 1068 (the following conversation taken from the factual background of the *Ramirez* case).

<sup>21</sup> *Id.* (quoting testimony in the trial court of the translation of the rights that Ms. Rodriguez gave to Ramirez).

also applies to the interpreted conversations between attorney and client that are not on the record because the principles of avoiding confusion and unobstructed accuracy are the same.<sup>22</sup>

Direct speech is particularly vital during plea agreement negotiations. Because of the strict requirements that accompany the acceptance of a guilty plea, the court must ensure that the interpreter uses first person interpretation so that the words of the speaker are heard rather than what would seem to be the impression of the interpreter,<sup>23</sup> as exhibited in the *Rodriguez* case. Direct speech preserves the integrity of plea agreements pursuant to Criminal Rule 11.<sup>24</sup> This technique also reduces miscommunication and confusion. If a record is being created, direct speech preserves the integrity of the record. Second, when the detective asks, “Does he know that, ah, he doesn’t have to . . . talk?” The interpreter fails to interpret and worse, answers for the defendant, “That’s correct.”<sup>25</sup> Notice also how the interpreter omits and fabricates information. The Detective asked, “He has the right to have an attorney?” The interpreter should have responded, “He has the right to have an attorney?” Instead the interpreter stated, “[Y]es. Yes. That is correct,”<sup>26</sup> but the defendant never said those words. The interpreter provided the answers, not the defendant. The Miranda warning is for the benefit of the accused, not the interpreter. Third, even when the detective noticed that the interpreter was not interpreting but merely answering, he asked, “Did you ask him?” The interpreter in turn misrepresented the question and then complicated matters by asking a compound question.

When individuals who use interpreters are not familiar with direct speech, they will continue to direct the communication to the interpreter in the third person, for example: “Tell him he has the right to an attorney.” The proper form however would be to direct the communication to the party rather than the interpreter. In this way, when the speaker states, “You have the right to an attorney,” the interpreter states, “You have the right to an attorney.” If the speaker states, “Tell him he has the right to an attorney,” the proper interpretation under this rule would be, “Tell him he has the right to an attorney.” This will certainly create confusion because the accused would ask, “Who’s he?” The job of the interpreter is to accurately and completely interpret words; that is the fundamental purpose of the interpreter. The broader role is explained as follows:

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<sup>22</sup> Sup. Ct. of Ohio Interpreter Servs. Program, *Interpreters in the Judicial System, A Handbook for Ohio Judges* 23 (Supreme Court of Ohio 2008) (available at [http://www.sconet.state.oh.us/publications/interpreter\\_services/IShandbook.pdf](http://www.sconet.state.oh.us/publications/interpreter_services/IShandbook.pdf)) [hereinafter *Handbook*].

<sup>23</sup> *State v. Pina*, 361 N.E.2d 262, 265 (Ohio App. 2d Dist. 1975).

<sup>24</sup> See Fed. R. Crim. P. 11; see also Ohio R. Crim. P. 11.

<sup>25</sup> *Ramirez*, 732 N.E.2d at 1068.

<sup>26</sup> *Id.*

The role of the interpreter is to place the Limited English Proficient (LEP), deaf or hard-of-hearing individual in a position as close as linguistically possible to that of a similarly situated English speaker (e.g., an English speaker of similar background, experience and education) in the same legal setting.

To this end, the interpreter must interpret completely and accurately, adding or omitting nothing, giving due consideration to grammar, syntax, intent, register and level of language of the original speaker. Having an interpreter should not result in an advantage or disadvantage to the LEP, deaf or hard-of-hearing witness or defendant.<sup>27</sup>

The last declaration is based on an ethical standard for interpreters.<sup>28</sup> In legal proceedings, this standard ensures that non-English speakers are meaningfully present, are able to assist in their own defense, receive effective assistance of counsel, confront accusations against them, or waive any such right knowingly, intelligently, and voluntarily. The accuracy of the interpreter speaks to due process and equal protection guarantees. To meet this standard, the interpreter must be fluent in two languages, understand legal terms, use the proper interpreting skills, and comply with other professional requirements.

At the present time, many states have adopted professional codes for court interpreters.<sup>29</sup> Most of these codes have the same or similar canons. To cover each canon in detail would take much more than is necessary to illustrate the point.<sup>30</sup> However, it may be worth listing some of the principles to get a general sense of the scope. The most common precepts typically include the following: accuracy and completeness, representation of qualifications, impartiality and avoidance of conflicts of interest, confidentiality, proficiency, professional demeanor, reporting impediments to performance, scope of practice, duty to report ethical violations, and restriction of public comment.

The Code of Professional Responsibility “presents key concepts and precepts, which over the years have emerged in statutes, rules, case law, and professional experience.”<sup>31</sup> These canons represent the highest standards of conduct for legal interpreters. Interpreters must understand these principles

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<sup>27</sup> *Handbook*, *supra* n. 22, at 23.

<sup>28</sup> *Id.*

<sup>29</sup> Karl Thoennes & Peter Kiefer, *Court Ethics, Interpreter Codes*, <http://www.courtethics.org/Interpreter%20Codes.htm> (last updated Dec. 13, 2007).

<sup>30</sup> See Roseann Dueñas González, Victoria F. Vásquez & Holly Mikkelson, *Fundamentals of Court Interpretation: Theory, Policy, and Practice* ch. 34 (Carolina Academic Press 1991) (offering detailed explanations of the relevant canons).

<sup>31</sup> Hewitt, *supra* n. 16, at 197.

in order to function effectively as language facilitators in legal proceedings.

The practice of interpretation, like the practice of law, has many gray areas and practitioners often have to point to objective standards to justify certain practices. Take for example, impartiality and conflicts of interest. In the abstract, legal interpreters should act as neutral language facilitators and should not side with one party or the other. However, consider the following: an interpreter does not disclose a previous relationship with a party. The interpreter, in fact, has done business with the party. The interpreter hired this party to import products into the United States. In this case, would a legal professional want to know of such a relationship prior to using the interpreter? What if the interpreter were instead a former employee of the client being represented by the other side? Would the attorney, in this case, want to probe this relationship or have the opportunity not to use this interpreter?

Now consider confidentiality. For simplicity, assume the canon regarding confidentiality simply states the following: interpreters shall not disclose privileged or other confidential communications that they hear or obtain while acting in a professional capacity. The interpreter learns a piece of information from facilitating a discussion between the attorney and a defendant in a prior meeting. Subsequently, the interpreter gets a call from the prosecutor to do preparatory work with a non-English speaking witness. The interpreter then shares information with the prosecutor that he heard while working for the defense. The information the interpreter shared is privileged. Does the interpreter need to understand the meaning of privileged communication? Should the interpreter be required not to disclose such information? In what common experience will a bilingual learn this?

Currently, Ohio does not have a code of professional responsibility for interpreters. However, the Supreme Court of Ohio is in the process of adopting such a code. Interpreters working in the legal field, nevertheless, need to understand the tenets and abide by them. Additionally, legal professionals should also be familiar with them to ensure that interpreters operate within the boundaries.

Finally, the modes of interpretation refer to three basic interpreting techniques used by interpreters to convey messages. The modes are simultaneous interpretation, consecutive interpretation, and sight translation. These are the only three interpretation modes permitted by federal and most state statutes or court rules. There is some debate within the field as to whether summary interpretation should also be considered a mode. However because summary interpretation involves paraphrasing and condensing the original speaker's statements and does not provide a precise

rendering of the complete message, it is not currently used in courts.<sup>32</sup>

“Simultaneous interpretation is the technique of rendering the source language message into the target language while the original speaker continues to speak. Strictly speaking, it is not literally simultaneous with the utterance in the source language, but commences only after an extremely brief time-lag.”<sup>33</sup> Consecutive interpretation is the mode where “the interpreter waits until the original speaker has completed his or her utterance before beginning to interpret that utterance. It is the normal mode for witness-stand testimony and colloquies.”<sup>34</sup> The last mode, sight translation, refers to the:

[H]ybrid mode in which the interpreter, without advance notice and after only briefly examining a document, provides an oral translation of it. Sight translation is distinguished from other translation in that it is rendered orally and it is performed immediately (‘on sight’), whereas translators ordinarily have the opportunity to do research and review the translation prior to final submission.<sup>35</sup>

## VI. KNOWLEDGE, SKILLS, AND ABILITIES

Conducting a probe into the background of the interpreter may help legal professionals make better choices. However, knowing how to gauge an interpreter’s responses may prove even more helpful. To illustrate, consider the *Ramirez* case. The following represent the qualifications of Jennifer Rodriguez: she was an administrative assistant for the local chamber of commerce; she had seven quarters of Spanish in college; she had lived in Mexico for approximately six months at some point in the 1980s; and she had also done interpreting in the past, but that was it. To what degree was Ms. Rodriguez bilingual or fluent in Spanish? How did Ms. Rodriguez understand or master legal terminology? How did Ms. Rodriguez come to know and conform to interpreting standards or interpreter ethics? Where did Ms. Rodriguez learn the interpreting techniques necessary to interpret in the legal setting? The conclusion here, based on the transcript, is that she lacked the necessary skills, knowledge, and abilities to work as a legal interpreter. If one were to list vital competencies that interpreters must possess, it might look like this:

### 1. KNOWLEDGE

- Knowledge of the legal system, civil and criminal procedure, and other court practices

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<sup>32</sup> *Handbook*, *supra* n. 22, at 11.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

- Knowledge of legal terminology in both English and the target foreign language
- Knowledge of interpreter techniques
- Knowledge of standards and laws pertaining to court interpreting
- Knowledge of ethical and professional standards for legal interpreters

## 2. SKILLS

- Native-like fluency of English and foreign language including grammar and usage, slang, and idioms
- Command of interpreter techniques and modes of interpretation
- Short-term memory skills to store significant units of information
- Predictive thinking skills to anticipate incoming messages
- Accuracy skills to select equivalent vocabulary or phrases in target language

## 3. ABILITY

- Ability to speak with proper pronunciation, diction, and intonation
- Ability to listen and comprehend rates of speech, regional accents, and dialectical differences
- Ability to process linguistic information quickly
- Ability to make quick linguistic decisions regarding word choices
- Ability to convey precise meanings of word choices

These competencies cannot be obtained without considerable study, training, and preparation.

## VII. PERFORMANCE APPROACH

The easy answer to the selection of a competent legal interpreter would be interpreter credentialing or certification. Certification of court interpreters would provide legal professionals with an assurance that a minimum standard of competency has been met. Certification programs affirm that interpreters who pass the exams possess the minimum acceptable

level of skill to function effectively as a court interpreter. The Administrative Office of U.S. Courts, for instance, uses written and oral examinations that assess the knowledge, skill, and ability necessary for effective court interpretation.<sup>36</sup> Those who pass both the written and oral exam receive federal court certification. Analogously, court interpreter certification is already being implemented in many states. At the moment, thirty-two states offer court interpreter certification.<sup>37</sup> Ohio is in the process of establishing such a program but is not one of the states that offer this credential.

The reality is that this option offers only a partial answer since there are close to seven-thousand living languages and over thirty-nine thousand alternate language names and dialect names.<sup>38</sup> Certification will not solve all the language needs, particularly in light of the number of tests created to measure court interpreting competency. The federal system currently has exams for three languages: Spanish, Navajo, and Haitian Creole, but only tests in Spanish.<sup>39</sup> The Consortium for State Court Interpreter Certification uses tests for the following languages: Arabic, Cantonese, Bosnian, Croatian, Serbian, French, Haitian Creole, Hmong, Ilocano, Korean, Laotian, Mandarin, Portuguese, Russian, Somali, Spanish, Turkish, and Vietnamese.<sup>40</sup> If all the tests were implemented by any state court system, about eighty to ninety percent of the cases could conceivably be covered by certified interpreters. Nevertheless, many other languages can appear in the legal system, and legal professionals would still need to find competent interpreters. For this, legal professionals and interpreters will have to work together to maximize resources and the use of technology to create the maximum access possible.

#### VIII. PRACTICAL GUIDE TO EXPLORE INTERPRETER QUALIFICATIONS

In the absence of performance-based evaluation, certification, or credentialing of interpreter services, legal professionals must ensure competency by carefully selecting individuals to perform this service. The

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<sup>36</sup> Natl. Ctr. St. Cts., *Federal Court Interpreter Certification Examination for Spanish/English: Examinee Handbook* 17-40, [http://www.ncsconline.org/d\\_research/fcice\\_exam/FCICE-ExHndbkOnline-08.pdf](http://www.ncsconline.org/d_research/fcice_exam/FCICE-ExHndbkOnline-08.pdf) (last updated June 2008).

<sup>37</sup> Natl. Ctr. St. Cts., *Consortium for State Court Interpreter Certification*, [http://www.ncsconline.org/D\\_RESEARCH/CourtInterp/Res\\_ConsortTestSched2008.pdf](http://www.ncsconline.org/D_RESEARCH/CourtInterp/Res_ConsortTestSched2008.pdf) (last updated Jan. 11, 2008).

<sup>38</sup> See Gordon Raymond, Jr., *Ethnologue: Languages of the World* 1, 891 (15th ed., SIL Intl. 2005) (available at [http://www.ethnologue.com/language\\_index.asp](http://www.ethnologue.com/language_index.asp)).

<sup>39</sup> Natl. Ctr. St. Cts., *FCICE, Federal Court Interpreter Certification Examination Program*, [http://www.ncsconline.org/D\\_Research/Consort-interp/fcice\\_exam/index.htm](http://www.ncsconline.org/D_Research/Consort-interp/fcice_exam/index.htm) (last accessed Sept. 25, 2008).

<sup>40</sup> Natl. Ctr. St. Cts., *Consortium for State Court Interpreter Certification: Frequently Asked Questions* 3, [http://www.ncsconline.org/D\\_Research/CourtInterp/1Consort-FAQ.pdf](http://www.ncsconline.org/D_Research/CourtInterp/1Consort-FAQ.pdf) (last modified Apr. 23, 2008).

following are questions that legal professionals can use to ascertain whether the interpreter has sufficient expertise:

1. GENERAL EDUCATION:

- Do you possess a degree from an accredited college or university?
- What was your area of study?
- Did you take any courses on linguistics, grammar, or legal studies? If so, what were they?
- Have you taken courses in interpretation or translation? If so, what were they?
- How long was the program (weeks, months, two-year, four-year, etc.)?
- How did you prepare to become a legal interpreter?

2. SPEAKING FLUENCY:

- How old were you when you started speaking the foreign language?
- How did you learn the foreign language?
- How often do you speak the foreign language?
- When do you speak it and with whom?
- Do you have any occasion to use the foreign language in a formal setting?
- Do you have any occasion to use the foreign language in a technical field? If so, what is that field?
- Do you have the occasion to use the foreign language in a legal setting? If so, what is the setting or capacity?
- How have you mastered technical vocabulary in these fields?
- Do you have the occasion to use the foreign language where you work? If so, what kind of work do you do?
- Do you use the foreign language with people other than your family and friends?
- In what context do you use the language?
- How do you keep up with the foreign language?
- What do you do to keep your foreign language fluency?

### 3. READING FLUENCY:

- When you read in the foreign language, what kind of material do you read?
- Do you read fiction or literature in the foreign language?
- Do you read academic articles in the foreign language? If so, in what area do you read and how often?
- What foreign language newspapers do you read?
- Do you read magazines in the foreign language?
- When you assemble a product or an object, do you read the instruction in English or in the foreign language? Why?
- Do you visit websites in the foreign language?
- What kind of material do you like to read in the foreign language?
- How many English-foreign language dictionaries do you own?
- Are any of them English-foreign language legal dictionaries?

### 4. LISTENING ABILITY:

- When you listen to the foreign language, what do you listen to?
- Do you watch television programs in the foreign language? How often?
- Do you listen to the radio or music in the foreign language? How often?
- Do you listen to tapes or CDs in the foreign language? How often?

### 5. LEGAL INTERPRETER TRAINING:

- Do you have interpreter-specific training?
- How much self-study do you do a month to prepare you for legal interpreting?
- How many hours of training do you have in civil or criminal procedure?
- How many hours of training do you have in legal terminology?

- How many hours of training do you have in the modes of interpretation?
- How many hours of training do you have on interpreter ethics?
- Can you list three canons in your code of ethics?
- How many hours of advanced training do you have?
- How many hours of training do you have on idioms, slang, and colloquialisms?
- How many hours of training do you have on note-taking?
- How many hours of training do you have in interpreter theory?
- How many hours of training in grammar?

#### 6. LEGAL TERMINOLOGY

- Can you tell me what “accessory” means in legal terms?
- Can you tell me what an “arraignment” is?
- If my client is having a “bench trial”, what do you understand that to mean?
- Can you tell me what a “bench warrant” is?
- What is a “citation”?
- What is “conflict of interest”?
- What is the meaning to dismiss a case “without prejudice”?
- What is “double jeopardy”?

This is a short and non-exclusive list of the types of questions that legal professionals can pose to potential legal interpreters. If the candidate is detached from his or her native language, this person may have lost fluency in the foreign language, particularly if the candidate has no active use of the foreign language. If the candidate has no interpreter training, the candidate will not know the proper techniques or standards. Additionally, if the interpreter has no court training they may not be familiar with legal terminology. Generally, if candidates cannot hit on the knowledge, skills, and abilities, they will not be able to competently facilitate communication in a legal setting. If the candidate is not certified but can demonstrate the following attributes: active use of both languages, accumulation of over one hundred hours of legal and interpreter training, can recite professional canons, has worked in the legal environment for a number of years, owns bilingual legal dictionaries, engages in frequent self-study, and can give

definitions of simple legal terms, the candidate will be a better choice than an individual that cannot meet these requirements.

#### IX. CONCLUSION

Without a competent interpreter that is capable of facilitating a complete and accurate flow of information, vital communication may be absent, the gathering of facts will be distorted, misunderstanding may be prevalent, and most importantly, justice will be denied. In criminal cases, defendants cannot be meaningfully present, be able to assist in their own defense, receive the effective assistance of counsel, confront witnesses, or waive any of their rights knowingly, intelligently, and voluntarily. Only with competent interpretation and translation will non-English speakers have access to justice, due process, fundamental fairness, and equal protection of the law.