

A Lawyer, an Interpreter and a Non-English Speaker Walk into a Bar...

Training Attorneys to Communicate Better when Using
Interpreters

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After months of bickering over a disputed divorce, they go to a bar to discuss the outcome.

"So what did you work out?" Samir asks the lawyer through the interpreter.

"Well, what it boils down to is that the party of the first part, to wit, Samir Mohamed, shall convey to the party of the second part and to her heirs and assigns forever fee simple to the matrimonial estate, including all property real and personal and all chattels appurtenant thereto."

"I don't get any of that," Samir mutters.

"That's right," the lawyer says.

Learning Objectives

- Understand how attorneys think
- Identify basic points to include in any presentation to attorneys on language access
- Identify trial techniques for attorneys to learn
- Consider other language access related topics specific to practice areas of the law
- Learn about additional venues and training tools for effective attorney education

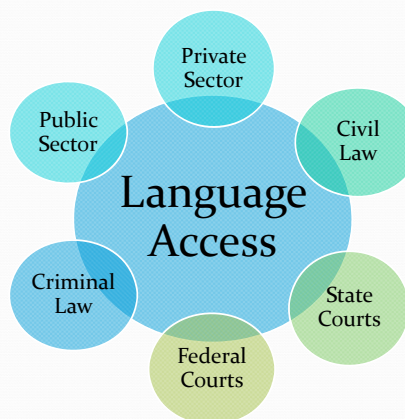
Why do lawyers learn?

- Mandatory continuing legal education
- Fear of malpractice
- Disciplinary action
- Expand client base & make money
- Perception & reputation within legal community
- Justice & fairness



Language access is a difficult stand-alone topic to present to attorneys

- Not a specific substantive area of the law (e.g. handling basic probate; GAL training; basics of filing Ch. 7 & Ch. 13)
- Multiple practice areas of the law
- Different jurisdictions
- Unique groups of lawyers
- Diverse client base



How the lawyer brain works

- Logical but not necessarily understandable
- Minimizes risk, e.g. don't ask a question you don't already know the answer
- Ability to argue (either side)
- Spots legal issues
- Wants to win
 - Money, votes, clients, principles



In order to win, lawyers must:

- Write persuasively
- Speak persuasively
- Make a good record
- Your focus on training them:
 - How to communicate more effectively when working with non-English speakers and interpreters so you can WIN your case



Basic Topic Areas to Include in Attorney Education

- I. Legal Requirements
- II. Qualified Interpreters
 - A. Process of court interpreting
 - B. Role of the court interpreter
- III. Practice Tips and Recommendations

Legal Requirements

Legal Requirements

- US Constitution
- Title VI of the Civil Rights Act
- Executive Order 13166
- Americans with Disabilities Act (ADA)
- Court Interpreter Act



Constitutional Right to Interpreter

- US Constitution ensures rights to all **people** within its borders
- No explicit right to an interpreter
- Implicit right to an interpreter
 - 5th Amendment: due process clause
 - 6th Amendment: right to confront witnesses, the right to be present at every stage in a trial



Legal Requirements

- State statutes
- Case law
- Supreme court rules
- Administrative orders, local rules, policies
- Code of Ethics or Professional Responsibility for Interpreters in your state or jurisdiction
- Statutory definition of Limited English Proficiency

Qualified Interpreters

Qualified Interpreters

- Explain the process and goal of court interpreting
 - Legal equivalence
- Not “word-for-word”
- Concepts
- Examples

Goal of Court Interpreting = Legal Equivalence



- Original message conveyed without editing, summarizing, deleting or adding
- Language level, style, tone and intent of the speaker is conserved
- “Voice” of the litigant or witness is mirrored exactly as spoken (or exactly as possible)
- Form and style of the message is retained - how something is said matters as much as what is said (credibility determinations)

Context

- *He, he said I should, I should, well that should take, take the mo...the money.*
- *“He said I should take the money.”*



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Not word-for-word

Atty. Q: What were you doing in the parking lot?

Answer: *“Estaba manejando mi mueble.”*

Literal word-for-word: “I was driving my furniture.”

Correct: “I was driving my old junker.”



Qualified Interpreters

- Discuss the role and goal of the interpreter
 - Being bilingual ≠ interpreter



This means you too, bilingual lawyer

- Explain your state’s certification process
- Tell a story about misinterpretation

TPR Trial



- At a Termination of Parental Rights (TPR) trial, a Spanish-speaking father on the witness stand was asked why he had not come from XX state to visit his child during the summer. The father replied, *“No podía”* which means *“I was not able to.”* The interpreter interpreted the father’s answer as *“I didn’t want to”* as if he had said *“No quería”* instead. One of the issues in this trial was the willingness of the father to spend time with the child.

Qualified Interpreters

- Explain what interpreters DO and DON'T DO
- Interpreters ≠ cultural brokers
 - Do your own research or hire an expert
- Interpreters ≠ attorneys
 - Don't tell them to explain legal concepts or go over forms
 - Don't make them do YOUR job
 - Let them ask questions for clarification

Qualified Interpreters DO NOT summarize testimony

- Interpreters abide by a Code of Ethics or Professional Responsibility
 - WI SCR 63.01 Accuracy and Completeness



- Interpreter: *"I wanted the children, I wanted this before, I wanted this before her...before that there was a man who touched...who touched the children. I wanted...the interpreter would like to point out that this is delicate situation with information that this interpreter is not well-informed of and interpreter is going to talk in the first person [sic] just to clarify. The main points is that he doesn't want the children anymore because of whatever has happened with whoever touching his children in an inappropriate and bad way."*



Attorney's duty to ensure effective communication inside & outside of the courtroom



- WI SCR 20.1.4: A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation
- It is quintessentially the duty of counsel to provide his/her client with available advice. *Padilla v. Kentucky* 559 US 356 (2010)

Practice Pointers

If attorneys want to win their case, they need to change their communication methods when working with an interpreter and a non-English speaker



Yuck...

- “Isn’t it fair to say, on the basis of these circumstances, being awakened out of a dead sleep, possibly not wearing your glasses, looking through a window screen, the distance, the lighting as it existed at that time, and everything else, that you don’t have a firm belief one way or the other as to the identity of the male you saw running away?”

Practice Pointers: General

- Speak through not to the interpreter; 1st person
- Don’t use family or friends (in appropriate circumstances)
- Privileged communication
- Don’t tell an interpreter NOT to interpret something
- Signs the interpretation may be going poorly
- Subpoenas
- Special issues with sign language and deaf community

Practice Pointers: Trial Techniques

- How an interpreting team will work
- Share expert witness reports and jury instructions with interpreter
- Jury instructions should state that the interpreter's rendition of the witness' statement IS the record
- Position yourself so interpreter can see you
- Avoid using legalisms (e.g. "Tell me in your own words" or "strike that")

Practice Pointers: Trial Techniques

- Allow interpreter to talk briefly with witness before testimony to establish that effective communication is possible
- Don't interrupt the interpreter
- Instruct witness not to interrupt the interpreter
- Discuss how to handle objections
 - Make timely objections as to the quality of the interpreter

Practice Pointers: Trial Techniques

- Compound questions; time
 - *"Can you tell the jury today whether or not on the date in question when you were walking towards the hospital in a southeast direction whether you intended to enter through the northeast door?"*
- Hypothetical situations
- Showing videos or playing audio

Practice Pointers: Trial Techniques

- Leading questions and double negatives
 - *"Isn't it true that during your deposition you told me that you don't remember whether the gate was up or down?"*
- Non-verbal responses by witness will not be interpreted so make a record
 - *"My back hurts here."*
 - *"Let the record reflect that the witness is pointing to his lower left back area."*

Practice Pointers: Trial Techniques

- Exhibits shown to non-English speaking witnesses; impeachment
 - *“I’m showing you what’s been marked as Exhibit 9, your treating physician’s notes about your appointment on March 3, 2013. Can you read into the record what the doctor’s notes indicate about your level of pain on that day?”*
 - *“Showing you your deposition, page 36, lines 18-24 could you read those into the record?”*

Practice Pointers: Administrative

- Whose responsibility to provide and pay for interpreters
 - Inside and outside of court (e.g. court-ordered mediation, psychiatric evaluations)
- How many interpreters are needed
- How and where to locate certified and qualified interpreters (roster)

Practice Pointers: Other Topics

- Family Lawyers
 - Conflicts of interest
 - Shared interpreters in contested hearings
 - Small linguistic communities
- Contracts, Probate, Trusts & Estates Lawyers
 - Translations of evidentiary documents
 - Quality of a translation
 - Objections about translator

Practice Pointers: Other Topics

- Immigration Lawyers
 - Credibility (*Feruz Emmeme vs. Ashcroft*, 7th Cir. 2004)
- Criminal Defense Lawyers/Public Defenders
 - Spotting appellate issues
 - Failure to appoint interpreter, unqualified interpreter, ineffective assistance of counsel, confrontation clause - presence

Other Venues & Tools of the Trainer

Additional Venues

- Law Students (e.g. UW Law School Economic Justice Institute Clinical Program)
- Local Bar Association lunches (e.g. include an ethics component)
- Specialty Bar events (e.g. Asian Bar Association, Hispanic Lawyers Association)
- Access to Justice Conference
- Legal Aid

Additional Venues

- Language access as part of a joint presentation with immigration lawyers
 - e.g. *Strategies for Representing Foreign National Clients: Interpretation, Immigration & Innovation*
- Write an article for your State Bar publication on language access resources
- Consider applying for CLEs for interpreter orientation

Tools of Training

- Learning objectives
 - ***Attorney will learn how to pose questions through an interpreter that will enhance witness credibility***
- Incorporate experiential learning (stories)
- Quizzes
- Case scenarios
- Interpreted transcripts

True or False

An attorney can waive his/her client's right to a qualified interpreter.

- The right to an interpreter can only be waived by the defendant. (*State v. Neave, 117 Wis.3d 359 (1984)*)
- Waiver should be done in open court and on the record
- *Wis. Stat. §885.38(4)(a)*



Case Scenario



- You are working on a long trial and your client is testifying for the second day in a row. On day 1, he was testifying through an interpreter who was not certified but has worked in court for years and is one of the judge's favorites. Today he is testifying through a different interpreter who is certified, however, your client is presenting as doubtful and uneducated which the jury is noticing. The judge stops the proceedings and calls both lawyers into chambers. The judge asks you, "What's going on counselor? Yesterday your client sounded like Einstein and today he's talking like a 5th grader." How do you respond?

ATTORNEY:	INTERPRETER:	BACK TRANS:
Judge, pursuant to negotiations, Mr. Smith would be offering for -- in return for a plea of no contest, and a withhold of adjudication, hopefully -	Su Señoría, según <u>los negocios</u> hechos con su... de que el señor, la Fiscalía está <u>dando * de no, no adjudicarle culpable *</u>	Your Honor, according to <u>the businesses</u> made with your... of the the sir, the State Attorney's Office if <u>giving *</u> of no, not to <u>adjudicate/ award you guilty</u>

ATTORNEY:	INTERPRETER:	BACK TRANS:
No. They -- they feel strongly about it and probably want some incarceration.	<u>Se siente bien del, uh, de la oferta</u> y sí quieren <u>de que buscan</u> tiempo en la cárcel.	<u>It feels good of the, uh, of the offer and they do want of that they are looking for time in jail.</u>

What questions do you have?

