

"You Don't Have to Hear, Just Interpret!":

How Ethnocentrism in the California Courts Impedes Equal Access to the Courts for Spanish Speakers

Roxana Cardenas

The judge sat on the bench. He proceeded to read the sentence into the microphone in front of him in a barely audible, monotone voice. I interrupted, "Excuse me, Your Honor, the interpreter cannot hear you. Can you please check the microphone?" He replied, "You don't have to hear, just interpret!"

In shock and disbelief, I interpreted whatever I was able to hear. I occasionally turned to look at the defendant's attorney, but he just sat there silent and motionless. As soon as the criminal sentence was read into the record, I gathered the case information I had not heard. I then shouted out pertinent dates and numbers to the Spanish-speaking man in custody as he was led away by the bailiffs.

Court interpreters in the United States are privy to scenes such as this one on a monthly, weekly, or even daily basis, depending on the court where one works.¹ Similar occurrences were documented in a court interpretation services study conducted by a New York committee composed of attorneys and judges.² The New York study concluded, "A system of justice that allows a litigant to move through the courts without a complete understanding of the proceedings because of a language barrier, is an affront to the concepts of due process and equal protection."³

At national court interpreter conventions, the author has discussed with others perceptions about court interpreters that impact equal access to the courts. A pertinent, but mistaken, assumption is that a court interpreter's mere presence at a proceeding automatically fulfills the requirements of the law. Therefore, the interpreter is expected to play a purely passive, unobtrusive role. Voicing a concern to the court, as the author did by asking the judge to raise his voice, may be erroneously perceived by the court staff as inappropriate or even unnecessary.

A judge or an attorney may not know that an interpreter takes an oath to interpret faithfully.⁴ If she feels that she cannot render a true interpretation, due to a hearing or vocabulary problem, she is obligated to notify the judge. This obligation

stems from the fact that the defendant's due process rights are at stake. If the interpreter does not understand or hear a word, there results one fewer word that a Spanish-speaking defendant is unable to hear, as compared to an English-speaking defendant who hears for himself. The interpreter, by virtue of her skill, can put the Spanish speaker in the shoes of the English-speaking defendant. But when the interpreter's request to facilitate her interpretation to a defendant falls on a judge's deaf ears, it cannot be said that, relative to an English-speaking defendant, equal access to the courts has been afforded to the purely Spanish-speaking defendant.

California's justice system must work arduously to guarantee due process rights to its large Spanish-speaking population. One way to accomplish this is by educating bench officers and court staff about the court interpreter's role. Thanks to recent efforts by the Advisory Panel to the California Judicial Council to pass court rules addressing interpreter-related issues, there is hope on the horizon.

This article analyzes the legal field's apparent lack of interest in interpreter-related problems as a major barrier to ensuring equal access to the courts for Spanish speakers. It also seeks to dispel certain myths or misinformation about the function of interpreters by delving into a particular infamous case that involved the misuse of interpreters: the O.J. Simpson case.

I. PRIMARY STUMBLING BLOCK: A LACK OF CULTURAL-LINGUISTIC EXPERTISE AMONG JUDICIAL OFFICERS

A. IGNORANCE ABOUT THE ROLE OF COURT INTERPRETERS DEFEATS THE PURPOSE OF THE COURT INTERPRETERS ACT OF 1978

1. Court Interpreters Act of 1978

The Court Interpreters Act of 1978⁵ (hereinafter "the Act") establishes that a non-English speaker has the right to a court

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Footnotes

1. Mark Hansen, *Litigant Language Barrier: In New York, Court Interpreters Can Be Quickly Recruited, Poorly Trained*, A.B.A. J.,

May 1994 at 38.

2. The New York City Bar Association's Committee on Legal Needs of the Poor spent 15 months studying this subject in its local courts prior to May 1994. *Id.*

3. *Id.*

4. See FED. R. EVID. 604.

5. Pub. L. No. 95-539, 92 Stat. 2040, codified in pertinent part as amended at 28 U.S.C. §§ 1827-28.

interpreter in the federal courts, but does not itself address the state courts.⁶ Approximately twenty-two states recognize a criminal defendant's right to a court interpreter, via statutes or state constitutions.⁷ The Act's purpose is twofold: to ensure that the criminal defendant can communicate with his attorney and understand the proceedings, and to ensure that a testifying witness understands and answers the questions propounded by counsel or the judge.⁸ The dual purpose behind the Act is, in fact, intertwined with the Sixth Amendment⁹ guarantees of the right to counsel and right to confront witnesses.¹⁰ By reaching non-English speakers via the use of interpreters in the court system, the Act guarantees important constitutional rights that transcend the Sixth Amendment alone.¹¹

The Act does not automatically bestow an interpreter upon a defendant who requests language assistance. It is sometimes incumbent upon a judge, who may know little about assessing English proficiency, to use his discretion in appointing an interpreter.¹² The exercise of judicial discretion may not guarantee the non-English speaker access to an interpreter if a lack of linguistic assessment skills ultimately leads to an uninformed decision on the matter.¹³ For this reason, and because decisions to deny an interpreter rarely get appealed, a judge's discretion in appointing an interpreter has been the subject of severe criticism.¹⁴

2. Cultural Sensitivity

Is the denial of equal access to the courts to Spanish-speaking defendants more likely to occur if the judicial officer involved in his case has had little exposure to different cultures? Most certainly. A judicial officer who fails to take an interest in the importance that languages and trained interpreters have in a courtroom may unknowingly violate a defendant's constitutional rights—a situation I will document below. The creation of a standard by which judges could assess interpreter need would help to prevent such unknowing violations.

Although only a handful of reported federal court cases

have been appealed to the circuit level due to the denial of an interpreter,¹⁵ they exemplify a lack of cultural-linguistic awareness. In a 1994 California case,¹⁶ the judge withdrew an interpreter from the trial because the defendant testified to the jury, through his interpreter, that he had lived in the U.S. longer than he had lived in Cuba.¹⁷ The judge suggested, "Let's try it in English."¹⁸ When the defense attorney objected because his client could not express himself in English properly, the judge retorted, "Try it."¹⁹ On appeal, the Ninth Circuit held that the defendant's Fifth Amendment rights had been violated.²⁰ The judge's error had been the use of the defendant's length of U.S. residency as the singular factor in assessing English proficiency.²¹

[A]n immigrant will first learn to communicate his biographical information in the second language, perhaps by memorizing it. This does not mean that he speaks the foreign language in question.

Another mistake a judge may make during his evaluation of English proficiency is to simply ask the Spanish-speaker biographic information in English, without inquiring if the defendant understands English.²² A culturally aware person might readily understand that an immigrant will first learn to communicate his biographical information in the second language, perhaps by memorizing it. This does not mean that he speaks the foreign language in question. A sound judicial evaluation would have to include open-ended questions such that a non-English speaker could not anticipate an answer.

The epitome of cultural-linguistic unawareness is to hold a bilingual person to the standard of a certified court interpreter, as some judges do when they encourage a bilingual family member to interpret criminal proceedings to the defendant,

6. ROSEANN DUENAS GONZALEZ ET AL., FUNDAMENTALS OF COURT INTERPRETATION: THEORY, POLICY AND PRACTICE 37 (1991) [hereinafter "FUNDAMENTALS OF COURT INTERPRETATION"].

7. Leslie V. Dery, *Disinterring the "Good" and "Bad Immigrant": A Deconstruction of the State Court Interpreter Laws for Non-English-speaking Criminal Defendants*, 45 U. KAN. L. REV. 837, 840 n.23 (1997).

8. Mollie M. Pawlosky, Case Note, *When Justice Is Lost in the "Translation": Gonzalez v. United States, An "Interpretation" of the Court Interpreters Act of 1978*, 45 DEPAUL L. REV. 435, 445 (1996).

9. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . to be confronted with the witnesses against him; . . ." U.S. Const. Amend. VI.

10. FUNDAMENTALS OF COURT INTERPRETATION, *supra* note 6, at 158-59.

11. Duenas explains that Fourth and Fifth Amendment rights are also protected by the use of interpreters. In the case of searches and seizures (Fourth Amendment), court interpreters may play a role in transcribing and translating non-English documents that result in warrants. During arraignment, court interpreters aid the court in determining entitlement to the services of a public

defender (Fifth Amendment). *Id.*

12. Dery, *supra* note 7, at 843.

13. *Id.* at 846.

14. Critics from the different disciplines of linguistics, philosophy, and the law disfavor judicial discretion when there is a lack of linguistic ability to recognize a particular defendant's need for an interpreter, and the competency of such an interpreter in the English-language hegemony that is our justice system. *Id.*

15. Pawlosky, *supra* note 8, at 448, 490. As of 1996, only the Fifth, Sixth, and Ninth Circuits had decided interpreter denial cases. *Id.*

16. *United States v. Mayans*, 17 F3d 1174 (9th Cir. 1994).

17. Pawlosky, *supra* note 8, at 453.

18. *Id.*

19. *Id.*

20. *Id.* at 455.

21. In U.S. cities with large Hispanic populations, a Spanish speaker can survive without the use of English in his everyday life. The author's mother, a homemaker who rarely left the house, waited 20 years before she felt the need to learn conversational English.

22. Pawlosky, *supra* note 8, at 461.

As Jon Leeth noted, merely being bilingual does not qualify one to interpret, just like having two hands does not qualify one to be a concert pianist.

rather than request the services of a trained interpreter. To assume that the ability to speak two languages means you can interpret judicial proceedings is, as Jon Leeth has noted, analogous to assuming that all people with two hands can automatically become concert pianists.²³

In fact, though, the courts have a history of relying on non-appointed Spanish speakers to act as interpreters for the defendants—case in point, *United States v. Sanchez*.²⁴ In *Sanchez*,

the judge allowed the defendant's common-law wife to act as interpreter, finding that the arrangement was acceptable because it did not "inhibit comprehension"²⁵—vague phraseology, indeed. In New York, a court clerk kept a trial going by enlisting the help of a neighborhood Korean grocer.²⁶ Just as egregious, in *Montoya v. Texas*,²⁷ the court held that since the defendant in this murder case never objected at trial, he had no right to appeal the fact that the court bailiff filled in as the interpreter when a certified interpreter was unavailable. The trial court based its belief that the bailiff was an adequate interpreter on the bailiff's self-proclaimed competence.²⁸ *Montoya* concluded that even if appointing the bailiff as interpreter had been an error, it was harmless error.²⁹

These decisions point to a lack of understanding of the court interpreter's role, a basic lack of linguistic-cultural awareness. This lack of awareness, coupled with a lack of procedures³⁰ by which to evaluate interpreter need or interpreter competency, makes the Act easier to violate.

Why not simply make the right to an interpreter automatic upon request, as a number of critics suggest?³¹ This would certainly ease the burden of those judges who feel unqualified to make linguistic-related decisions. Is it because judges feel obligated to make such decisions? The answer may be that absent

ethnocentrism in our justice system, we would already have appropriate interpreter regulations in place, or no need for them.

B. DEBUNKING INTERPRETER MYTHS: ONE STEP CLOSER TO EQUAL ACCESS

By enacting the Court Interpreters Act of 1978, Congress acknowledged the specialized nature of court interpretation as a skill that falls outside the classification of merely being bilingual.³² At the same time, court interpreters are occasionally seen as "yet another piece of furniture in the well of the court."³³ It is the latter perception of interpreters that is dangerous to the Spanish speaker. To correct these and other mistaken assumptions about languages by judges or attorneys, common myths about interpreters must be dispelled; namely, that interpreters are merely bilingual, that an interpreter is the same thing as a translator, and that a perfect translation is a literal translation.

1. Myth #1: Interpreters are Merely Bilingual

As Jon Leeth noted, merely being bilingual does not qualify one to interpret, just like having two hands does not qualify one to be a concert pianist.³⁴ Interpreters earn their certification by passing a series of rigorous written and oral exams administered by the State of California³⁵ or by the Administrative Office of the Courts.³⁶ From 1978 to 1991, the Federal Court Interpreter Exam for Spanish (written component of the test) was taken by 9,750 presumably bilingual candidates.³⁷ Only 2,015 passed this written component, and of these 2,015 who went on to take the oral portion, only 388 passed and became federal court interpreters.³⁸ If it were only a matter of being bilingual, there would have been 9,750 new federal court interpreters, not a mere 388 new certified federal court interpreters in the United States for that time period.

To pass rigorous interpreting exams, most interpreters attend one-to-two-year certificate or master's degree programs in translation and interpretation in the United States or around the world.³⁹ A number of these interpreters are already lin-

23. FUNDAMENTALS OF COURT INTERPRETATION, *supra* note 6, at 16 (Duenas quotes Jon A. Leeth, a federal court administrator: "Most people believe that if you are bilingual you can interpret. That's about as true as saying that if you have two hands you can automatically be a concert pianist.").

24. *United States v. Sanchez*, 1994 U.S. Dist. LEXIS 16725 (E.D. Pa. Nov.16, 1994).

25. *Id.* at *6.

26. Hansen, *supra* note 1, at 38.

27. *Montoya v. Texas*, 811 S.W.2d 671, 672 (Tex. Ct. App. 1991)

28. *Id.*

29. *Id.*

30. California has enacted a Judicial Administration Standard Rule of Court, Rule 18, which provides guidelines for judges to follow when determining the need for a court interpreter. CAL. R. CT., APP., DIV. I § 18 (Deering 2001). See FUNDAMENTALS OF COURT INTERPRETATION, *supra* note 6, at 595.

31. Dery, *supra* note 7, at 843.

32. Pawlosky, *supra* note 8, at 466.

33. David L. Lewis, Book Review, 9 CRIM. JUST. 48 (1994) (reviewing

SUSAN BERT-SELIGSON, THE BILINGUAL COURTROOM: COURT INTERPRETERS IN THE JUDICIAL PROCESS (1990)).

34. FUNDAMENTALS OF COURT INTERPRETATION, *supra* note 6, at 16 (quote by Jon A. Leeth); see note 22 *supra*.

35. Roxana Cardenas, *Lost in the Translation: Courtroom Interpreters All Too Easily Are Made Scapegoats*, L.A. DAILY J., March 24, 1995.

36. Because the Administrative Office of the Courts (AOC) is directly responsible for the implementation of the Act, the AOC director delegates the task of constructing the federal court interpreter examination. SUSAN BERT-SELIGSON, THE BILINGUAL COURTROOM: COURT INTERPRETERS IN THE JUDICIAL PROCESS 36 (1990).

37. FUNDAMENTALS OF COURT INTERPRETATION, *supra* note 6, at 62.

38. *Id.*

39. Examples of such training programs are the UCLA Extension Program in Court Interpretation or the California State University, Los Angeles, Certification Program, which offers an array of classes on different modes of interpretation. Other interpreters attended European schools where they were trained to interpret for international organizations, such as the United Nations. See Cardenas, *supra* note 35.

guists, former Spanish literature professors, or former attorneys from other countries. In these programs, they learn to transfer all of the meaning heard from the source language into a target language, not editing, summarizing, adding meaning, or omitting, all in a matter of split seconds.⁴⁰ A bilingual person is not born with these capabilities. It takes an inordinate amount of skill and practice.

2. Myth #2: An Interpreter Is a Translator

An interpreter is not automatically a translator. Translations are written, as opposed to interpretations, which are oral.⁴¹ Therefore, the individuals we see in court should be addressed as interpreters, never as translators.⁴² The court interpreter may also be a court translator, but the performance of this job as a translator will take place in an office setting, perhaps at home, in front of the computer. The translator produces written documents in English or foreign languages, such as a translation into English that was originally a taped conversation that took place in Spanish.

3. Myth #3: A Perfect Translation Is a Literal Translation

There is no such thing as a perfect translation because interpretation is a mixture of art and science.⁴³ Interpretations are performed by humans and humans are not machines. Humans get fatigued and respond to distracting stimuli. Because there are no definite rules or vocabulary, two interpreters may give different renditions of the same passage and both may be correct. In an afternoon of testimony, an interpreter might process an average of 10,000 words.⁴⁴ If one of these words should escape her, it would still represent an accuracy rate of 99.9%.⁴⁵ In other words, even the best interpreter will make an occasional mistake and still be considered an excellent interpreter.

A number of statutes and rules of court require that the

interpreter provide a “verbatim⁴⁶ record” of the proceedings while interpreting witness testimony.⁴⁷

Because “verbatim records” are an impossibility, the court interpreter mediates between two extremes of conveying meaning and a conveying a verbatim record.⁴⁸ She does this while manipulating registers of language from the most formal legalese used during motions to the most informal jargon, such as slang.⁴⁹ The interpreter performs all these cognitive functions while interpreting for all courtroom parties speaking at rates of 200 words or more per minute.⁵⁰

There is no such thing as a perfect translation because interpretation is a mixture of art and science.

C. THE ROLE OF THE COURT INTERPRETER: EXPERT WITNESS OR COURT OFFICER?

The court interpreter is a language mediator who, through interpretation, allows the defendant to be linguistically and cognitively present in a legal setting.⁵¹ Accordingly, the proper role of the interpreter is to place the non-English speaker, as closely as is linguistically possible, in the same situation as an English speaker in a legal setting.⁵²

The interpreter is perhaps the only “officer of the court” who renders “expert services,” here by rendering regular court interpretation services.⁵³ Federal Rule of Evidence 604⁵⁴ subjects interpreters to expert qualification rules. An expert witness interpreter may testify as to translations she or others have done, or render opinions on questionable interpretations that other colleagues have made. A court interpreter must easily adapt to the dual role occasionally required of her, whether it is expert witness or interpreter/court officer. Despite the dual role, the interpreter is only compensated as an interpreter and never as an expert witness.⁵⁵

40. FUNDAMENTALS OF COURT INTERPRETATION, *supra* note 6, at 155.

41. *See* Cardenas, *supra* note 35.

42. This is a common misconception further exacerbated by the television industry’s use on the screen of “voice of the translator” when interviews/meetings are televised between two heads of state of different countries. The screen should read “voice of the interpreter” because the interpreter is working orally.

43. *See* Cardenas, *supra* note 35.

44. *Id.*

45. *Id.*

46. In the court interpreting field, “verbatim” translation means a “word-for-word” or “literal” translation. This is a misnomer because verbatim translations are rare. Imagine having to interpret “latch-key child” or “PTA” meetings at school. These concepts probably do not exist in other countries and must be explained by the interpreter in a short phrase. The same problem arises with legal concepts that have no direct translation such as “Mirandizing” someone, “six-packs” of photo lineups, or the “three strikes” laws. Again, the interpreter must concisely explain the meaning of the legal concept to the Spanish speaker.

47. FUNDAMENTALS OF COURT INTERPRETATION, *supra* note 6, at 17.

48. *Id.*

49. *Id.* at 19.

50. *Id.*

51. *Id.* at 155.

52. *Id.*

53. Officers of the court are employees or staff who work in the courtroom and are often administered oaths to comport themselves in a dignified manner in all interactions with judges, counsel, other court officers, defendants, and witnesses. FUNDAMENTALS OF COURT INTERPRETATION, *supra* note 6, at 160.

54. Rule 604 of the Federal Rules of Evidence provides: “An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.”

55. The pay rate of the interpreter does not increase because she is testifying as an “expert witness.” In fact, the county may even refuse to pay the interpreter her daily compensation. The county’s justification for nonpayment is that an interpreter-witness does not perform interpreting services while testifying as an expert; this despite the fact that an interpreter may unwillingly become a witness as a result of her regular job as a court interpreter.

The infamous O.J. Simpson trial . . . provides an illustration of how the lack of a rule . . . can lead to the use of unfair tactics by attorneys.

D. FLIPSIDE: ETHNOCENTRISM OR A FUNCTION OF SOUND DECISIONS?

Some would argue that ethnocentrism⁵⁶ is not the reason why there is a dearth of statutes and rules to aid the court in interpreter-related situations—they are simply unnecessary because judges are already making sound decisions pertaining to interpreter matters. As delineated in the first part of

this article, it is unlikely that noninterpreters in certain situations can make sound decisions. Even a bilingual judge in a city like Los Angeles is limited in his capacity to draft interpreter rules of court, hence the majority representation of California interpreters on judicial rule-drafting panels.⁵⁷

Some states are taking their first steps to wipe out ethnocentrism by recognizing that attitudes of cultural ignorance exist.⁵⁸ Once a state recognizes there is a problem in its courts, it can prioritize its budget accordingly. California is one such state that has been forced to examine its history, as described in the following section.

II. EQUAL ACCESS TO THE COURTS FOR SPANISH SPEAKERS HAS NOT BEEN ACHIEVED IN CALIFORNIA

In Los Angeles County, there are 645 certified court interpreters.⁵⁹ Of this total, 375 are Spanish court interpreters.⁶⁰ Los Angeles County provides interpreters for 91 different languages and has access to 168 languages via telephone interpretation.⁶¹ The overwhelming number of Spanish court interpreters, as compared to non-Spanish interpreters, is to be expected in a city that is at 46.5% Hispanic.⁶² When one factors into the equation that an interpreter may handle multiple cases in one day, the Spanish caseload may easily exceed that of any other foreign language.⁶³

The California Rules of Court are more likely to directly impact the specific conduct and treatment of interpreters than a general statute. Statutes on interpreters tend to be very broad, whereas rules of court are more specific. If state or federal statutes are not on point, a court interpreter, such as myself, will seek guidance from rules of court or the interpreter code of ethics. In fact, an interpreter may participate in drafting a rule of court by being appointed to the Court Interpreters Advisory Panel that makes rule recommendations to the California Judicial Council.⁶⁴ As will be shown below, current court rules are far from perfect.

A. THE O.J. TRIAL: A CASE IN POINT

The infamous O.J. Simpson trial, of which the author has some knowledge,⁶⁵ provides an illustration of how the lack of a

56. To the author, a lack of cultural-linguistic expertise may arise out of a lack of multicultural experiences, as is the case with a monolingual person in the United States who has never traveled abroad or spoken another language by choice. The author refers to a person fitting this profile as “ethnocentric.”

57. The statute authorizing the Judicial Council Court Interpreters Advisory Panel provides: “The panel shall include a majority of court interpreters and may include judges and court administrators, members of the bar, and others interested in interpreter services in the courts.” CAL. GOV’T CODE § 68565 (Deering 2001).

58. For example, in 1997, Wisconsin State Supreme Court Justice Janine Geske and state bar association members established a commission on racial and ethnic bias in the courts. The commission’s area of study will include sentencing patterns and court interpretation. See News, MILWAUKEE J. & SENTINEL, June 22, 1997. See also Ellen McCarthy, *Annual Report; Keeping California Courts Fair and Accessible*, 1998 CAL. JUD. COUNCIL, ADMIN. OFFICE OF THE CTS. VOL. III, at 18, 24, 41 (discusses strides made by the Racial and Ethnic Bias in the Courts Advisory Committee).

59. Telephone interviews with Gregory Drapac, Los Angeles County Assistant Court Manager, Interpreter Services (Oct. 13, 1998, and April 17, 2000).

60. *Id.*

61. The Los Angeles courts subscribe to Language Line Services (formerly AT&T Telephone Interpreting Services), whereby interpreting languages that may not be available in Los Angeles can be accessed by phone. If no interpreters for an obscure Mexican tribal language are found in Los Angeles, the courts may pay AT&T to locate an interpreter for that language who will interpret by phone from where she is living. *Id.*

What is unknown to the defendant and his defense attorney is

exactly what standard Language Line Services uses in selecting its interpreters and whether this standard is enforced. It is uncertain whether Language Line Services’ standards are as rigorous as that of certified court interpreters. Many certified interpreters work for Language Line Services in their leisure time, but other people work for Language Line Services precisely because they are not certified to work in the courts.

62. Los Angeles is a city of 3.7 million inhabitants, of which 46.5% were Hispanic in the 2000 Census. U.S. CENSUS BUREAU, THE HISPANIC POPULATION: CENSUS 2000 BRIEF (2001) (available at <http://www.census.gov/prod/2001pubs/c2kbr01-3.pdf>). In unincorporated East Los Angeles, the Hispanic population percentage was 96.8%, the highest concentration of Hispanics in any community in the United States with 100,000 or more in population. Hector Becerra & Fred Alvarez, *Census Reflects Large Gains for Latinos*, L.A. TIMES, May 10, 2001 (available at <http://www.latimes.com>).

63. According to Mr. Drapac, the courts do not keep track of the number of Spanish cases done by interpreters. A single interpreter may handle 1 to 20 cases a day. Because the interpreter is not required to keep count, there is no record of how much work is actually done. Drapac interview, *supra* note 59.

64. The panel is mainly composed of interpreters who have the necessary expertise to advise the judges and administrators while drafting rules. CAL. GOV’T CODE § 68565 (Deering 2001).

65. The author worked in the same building and belonged to the same pool of interpreters that provided services for the Simpson criminal trial. She regularly spoke with her colleague interpreters who worked directly on it. The result of these experiences led her to write the *Los Angeles Daily Journal* piece published on March 24, 1995. See Cardenas, *supra* note 35.

rule (due to a lack of interest) can lead to the use of unfair tactics by attorneys. The problem arose out of the defense team's insistence on a Salvadoran court interpreter as a replacement for the first interpreter, who was Mexican-born. This first interpreter had been assisting a Salvadoran-born defense witness, Rosa Lopez.⁶⁶ There was talk in the media of the imprecise interpretation by the Mexican-born interpreter, although no direct accusations were made.⁶⁷ The first interpreter was removed; her reputation, once impeccable, in question.⁶⁸

1. Confusion

The removal of the interpreter created mass confusion among court staff and the general public. What the public did not know, nor the defense team, was that interpreters rarely get assigned to court cases based on their race or country of origin.⁶⁹ Not only would it be impractical to do so, but the courts operate on the assumption that all California certified court interpreters are competent to interpret a broad use of Spanish that may be used in as many as 20 different countries that speak Spanish. This is because all interpreters basically take the same variation of a test⁷⁰ that may include a combination of Mexican, Salvadoran, Colombian, and/or other Latin American discourse and slang.⁷¹

It would be impossible for interpreters to become familiar with obscure colloquialisms from every Spanish-speaking region. Like an English speaker who cannot know every word in the English language, or may not know that a British person calls an elevator a "lift," the Spanish interpreter cannot know every word in both languages, nor every usage of a word in all 20 or more Latin American countries where Spanish is spoken, plus Spain.

The confusion was so great that court clerks started requesting nationality-matching interpreters for their cases. The county's interpreter assignment office, unable to fill such a tall

order, denied most nationality-matching interpreter requests. We interpreters reeducated the court staff on a daily basis by explaining why these interpreter requests were impossible to meet. As a result of this most unusual removal of an interpreter by the defense team, many interpreters, including myself, concluded that this was a ploy to win more time to prepare Rosa Lopez for testimony.⁷²

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2. Abuse by O.J. Defense Team

As the saying goes, a little knowledge can hurt you. Along the same lines, thinking you know a little Spanish may hurt you, especially if you challenge a court interpreter's work. Bilingual or semi-bilingual attorneys will most often engage in such practices. How the judge reacts can vary widely between courts since there are no guidelines to follow in such a confrontation.⁷³

Without a court rule, the attorney is free to cast doubt on almost anything that sounds suspect, especially if his case is not going well. The O. J. Simpson defense attorneys did so, and the California Federation of Interpreters reacted to Judge Ito's acquiescence at a Judicial Council Advisory Panel Committee meeting held on September 23, 1995.⁷⁴

The California Federation of Interpreters urged the court to recognize that the "expert witness" status of court interpreters precludes an attorney, with no interpreter certification, from challenging the work of a California certified court interpreter. Only an interpreter-expert witness can state credible grounds for the impeachment of another interpreter-expert witness.⁷⁵ A mere layperson cannot.⁷⁶ The California Federation of

66. *Id.*

67. This first interpreter informed the author that she was not removed due to an imprecise interpretation. The interpreter office based the change of interpreter on the defense's unusual request for a Salvadoran interpreter.

68. If a proper rule of court standardizing a procedure by which an attorney can challenge an interpreter had existed, this interpreter would probably not have been removed merely for being Mexican-born.

69. If this were the case, there would be a shortage of Mexican interpreters for the large proportion of Mexican Spanish speakers in the courts. There would also be an overabundance of Peruvian or Chilean interpreters for the small number of same-nationality cases.

70. California Personnel Services (CPS) has administered the Spanish certification test for many years. This author studied variations of CPS tests in order to become certified. Each year, the tests had roughly the same difficulty level, with variations in words, transcript subjects, and test proctors. Today, the Judicial Council indirectly administers the test through the CPS and has entertained bids from different non-CPS testing entities. Interview with Judge Jaime A. Corral, member of the Court Interpreter Advisory Panel to the California Judicial Council (Sept. 19, 1998).

71. In effect, the interpreter becomes more familiar with different varieties of Spanish every day. As a result, many interpreters compile glossaries of new words, obscure expressions, regionalisms, and the like. This enables the interpreter to become more skilled every day.

72. See Cardenas, *supra* note 38.

73. A number of judges will require the attorney and the interpreter to go to sidebar to "duke it out." The interpreter usually wins based on her certification because the judge will refuse to hear the attorney's argument if the attorney is not a certified court interpreter. Another option for the court is to call another interpreter to get a second opinion.

74. Memorandum from Alex Abella, Vice-Chair of Greater Los Angeles Chapter of Court Interpreters Association (GLAC) Political Action Committee, to General Membership of GLAC (Sept. 23, 1995) (on file with the author). GLAC is now known as the California Federation of Interpreters. The Abella memorandum was a summary of his address to the panel urging action on interpreter impeachment and substitution.

75. *Id.*

76. Challenges to an expert witness's testimony are usually done by the opposing attorney's expert witness on the same subject—not by an attorney who is a layperson on the subject matter.

To this day, no rule of court establishes a procedure for an attorney to follow should he disagree with the Spanish interpretation.

Interpreter's presentation ended with a call to implement a procedure whereby interpreter substitution does not become a routine event, needlessly brought about by an attorney claiming to know the language better than the interpreter.⁷⁷

B. HOPE FOR AN INTERPRETATION CHALLENGE PROCEDURE?

To this day, no rule of court establishes a procedure for an attorney to follow should he disagree with the Spanish interpretation.⁷⁸ The California Federation of Interpreters will no doubt continue its lobbying efforts before the Judicial Council committees.

On the brighter side, a procedure was adopted in 1999 under which the interpreter may request a conference with the witness (and attorney calling the witness) prior to his testimony.⁷⁹ This is allowed to better acquaint the interpreter with the witness's usage of Spanish and any unusual vocabulary he may use during his testimony. The pre-testimony conference has the effect of raising accuracy levels of interpretation tremendously.⁸⁰

C. AN OVERBROAD "GOOD CAUSE" CLAUSE LEAVES THE QUALITY OF INTERPRETATION IN DOUBT.

Rule 984.2 (b)(2),⁸¹ known as the "good cause" clause, provides the courts with the option to use an uncertified interpreter, provided certain conditions showing "good cause" are met.⁸² It is the source of much dissension among judges and interpreters because it lends itself to abuse by the courts, thereby bypassing the assignment of certified court interpreters. The courts favor it because it is a tool of expediency, specifically preventing "burdensome delays."⁸³

For the Spanish speaker, the "good cause" clause signifies a step back in the struggle for equal access, hearkening back to the days of self-proclaimed interpreters such as relatives, court staff, and the like. This rule violates the purpose of the Court Interpreters Act and is a blow to the profession of certified court interpretation.⁸⁴ It brings the bilingual up to the level of a certified court interpreter once again. Even more disturbing, section (c)(1) of Rule 984.2 permits a nonqualified person to act as a Spanish interpreter for two consecutive six-month periods if the judge finds that there is "good cause."⁸⁵

The efforts of the Advisory Panel to tighten conditions attached to the invocation of the "good cause" clause culminated in 1997 when a representative of the Mexican-American Legal Defense and Education Fund (MALDEF) sat on the Advisory Panel for Court Interpretation. The representative communicated to the California Interpreters Association her efforts to eventually eliminate the "good cause" clause with regard to the Spanish language. This feat remains an unat-

77. Abella memorandum, *supra* note 74.

78. All that's provided for in the rules is a suggested instruction to counsel in cases in which interpreters are used that "any objection [be directed] to the court and not the interpreter" and that counsel should "[a]sk permission to approach the bench to discuss the problem." CAL. R. CT., APP., DIV. I § 18.1 (Deering 2001).

79. CAL. R. CT., APP., DIV. I § 18(e) (Deering 2001). Such a conference is to be allowed "if the interpreter needs clarification on any interpreting issues," including colloquialisms, slang, and technical terms. *Id.*

80. A golden rule in interpretation training is to assimilate as much information as possible prior to interpreting the subject matter at hand. For example, an interpreter will review ballistics terminology in English and Spanish prior to interpreting in a trial in which a ballistics expert is expected to testify. This ensures accuracy because an interpreter may not have ready knowledge of ballistics vocabulary. The same rule applies to the testimony of any witness who may use an expression unknown to the interpreter or street names that may be confusing. A pre-testimony conference affords the interpreter the chance to clarify any confusion or research a word prior to testimony. It allows the interpreter to interpret with the highest degree of accuracy.

81. CAL. R. CT., DIV. IV, R. 984.2(b)(2) (Deering 2001). Applicable to trials in criminal and juvenile delinquency proceedings, the rule allows a judge to appoint an interpreter who is not certified if the interpreter is "provisionally qualified" and the judge finds that "good cause exists to appoint the noncertified interpreter." Rule 984.2(b)(3) allows the appointment of a noncertified interpreter to handle "brief, routine matter[s]," even if not the interpreter is not "provisionally qualified," at the request of a defendant or

minor if necessary to "prevent burdensome delay or in other unusual circumstances." CAL. R. CT., DIV. IV, R. 984.2(b)(3) (Deering 2001).

82. *Id.* §984.2(b)(3) *See* (3) to interpret a brief routine matter (i) if the defendant has waived the appointment of a certified interpreter, (ii) finds that good cause exists . . . etc.

83. The author's experience is that it is entirely in the judge's discretion to decide what constitutes a "burdensome delay." A judge may invoke the "good cause" clause if he needs an interpreter, but no interpreter is available. This tends to occur with non-Spanish interpreters, who are fewer in number. If the judge does not wish to wait a full day or longer for a certified interpreter, he may invoke the "good cause" clause.

84. If the good cause clause exists to allow nonqualified people to interpret, what is the point of seeking training to become qualified? Certified interpreters must pass tests and comply with continuing education requirements, much like attorneys. If they do not do so, they are dropped from the Judicial Council list of certified interpreters. Per Rule §984.2(c)(1), six-month Spanish interpreters neither take tests nor comply with continuing education. The incentive to become a certified interpreter is undermined if a nonprofessional can be deemed an interpreter for a one-year period (two consecutive six-month periods are allowed) without having to take a test or comply with continuing education requirements.

85. Rule 984.2(c)(1) provides that in counties with more than 80,000 people, "a noncertified interpreter of Spanish may be allowed to interpret for no more than any two 6-month periods." CAL. R. CT., DIV. IV, R. 984.2(c)(1) (Deering 2001).

Opinion Writing and Footnotes

I applaud the attention given opinion writing in the Summer 2001 issue of *Court Review*. Most decisions I make in a busy Indiana juvenile court as a magistrate are made immediately and without a detailed opinion. However, in the custody and visitation realm, there are occasions when a deliberative and detailed analysis is needed.

In those cases I submit detailed findings of fact and conclusions of law, not because of a need to define the case for higher review or because I have been asked to, but because the issues involved and the decisions made critically affect relationships between parents and children. Such cases to me merit an explanation to the litigants of what and why the decision has been made.

Having had the opportunity to study with F. Reed Dickerson in the late 1960's at Indiana University—he was cited by Joseph Kimble as "the father of legal drafting" in the United States—and the benefit of participating in a presentation by Bryan A. Garner to the Indiana judiciary several years ago, I acknowledge a need to control a personal tendency to be wordy. Though the objective is not always attained, I do make an effort to cut back. Helpful in the process is the advantage given by modern word processing, i.e., an ability to instantaneously see and revise while thoughts are fresh.

Though I recall some disdain by Professor Garner for the use of footnotes in trial court opinions, I continue to use them to include specific statutes, common-law principles (invariably in the family law realm I find something useful from Blackstone's Commentaries), etc., that may be known to the lawyers involved but not always to the litigants, who truly are "concerned about the underlying reasons" why a particular decision which affects the most basic of relationships has been made.

Thanks for an interesting and useful primer.

Harold E. Brueseke, Magistrate
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South Bend, Indiana

tained objective today because the MALDEF representative's term expired before a drafted rule was introduced. MALDEF nonetheless paved the way to "good cause" clause reform. Undoubtedly, community representation on the panel by groups such as MALDEF is one of the most effective ways Spanish speakers wield power with respect to the courts.

In 1999 the Advisory Panel mandated a limit of two consecutive six-month periods (within the "good cause" clause) that a person may be deemed a court interpreter.⁸⁶ The MALDEF representative posited while on the panel that there was no need for the "good cause" clause to be implemented with respect to Spanish interpreters. With a list of more than 300 certified Spanish interpreters in Los Angeles County alone, a court cannot claim that there is "good cause" to deem anyone else a Spanish interpreter. The "good cause" clause should be used as a last resort, not as a mere tool of expediency.

Until the California Rules of Court reflect a true understanding of the importance of the court interpreter to California's court system, the Spanish speaker will remain on the fringes of attaining fair and equal treatment as compared with his English-speaking counterpart. A better result is possible only if California's judges and judicial administrators recognize that different cultures and languages are represented in many of our multicultural courtrooms on a daily basis. As a result, the interpreter is a necessary part of the daily functions of the court. The appropriate recognition and use of the certified court interpreter's skills is the key to justice for the Spanish speaker in the California court system.



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86. Corral, interview, *supra* note 70

COURT REVIEW AUTHOR SUBMISSIONS WELCOME

Court Review invites the submission of original articles, essays, and book reviews. *Court Review* seeks to provide practical, useful information to working judges. In each issue, we hope to provide information that will be of use to judges in their everyday work, whether in highlighting new procedures or methods of trial, court or case management, providing substantive information regarding an area of law likely to be encountered by many judges, or by providing background information (such as psychology or other social science research) that can be used by judges in their work. Guidelines for the submission of articles, essays, or book reviews for *Court Review* are set forth in detail on page 25 of the Summer 2001 issue. For more information, contact *Court Review's* editor, Judge Steve Leben, at (913) 715-3822 or by e-mail: sleben@ix.netcom.com.