

Report to the Arizona Judicial Council

On

INTERPRETER ISSUES IN ARIZONA COURTS



By the

Committee To Study Interpreter Issues

In Arizona Courts

October 2002

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Table of Contents

<u>Executive Summary</u>	4
<u>Foreword</u>	4
<u>Recommendations</u>	5
<u>Report to the AJC</u>	7
<u>Recommendation I: Certification Of Court Interpreters Become A Reality For The Courts In Arizona</u>	10
<u>Recommendation II: Extensive Interpreter Training Be Established As An Integral Part Of The Certification Process To Increase Availability Of Qualified Interpreters For Arizona Courts</u>	18
<u>Recommendation III: Proposed Legislation Be Promoted, And Court Rules Promulgated, That Govern Language Interpreter Use, Conduct And Professionalism</u>	20
<u>Recommendation IV: A Judicial Interpreters Commission Be Established To Develop Operating Policies And Provide Oversight Management To The Court Interpreter Certification Program</u>	28
<u>Funding/Program Costs</u>	32
<u>Appendix I Interpreter Related Cases</u>	
<u>Appendix II Survey - Test and Education Fees - 2001</u>	
<u>Appendix III Profile of General Demographic Characteristics for Arizona: 2000</u>	

Executive Summary

Foreword

Arizona's courts must be accessible and responsive to the public. *Justice For A Better Arizona: A Strategic Agenda for Arizona's Courts 2000 – 2005* presents several ambitious initiatives designed to improve the Court's performance in these areas. In this regard, Arizona courts are expected to implement a program that provides qualified language interpreters for limited-English speaking participants and ensures accessibility and responsiveness to all litigants.

At its March 2002 meeting, the Arizona Judicial Council directed the formation of a Committee to Study Interpreter Issues in the Arizona Courts and to serve as an advisory committee of the Council. The specific objectives of this committee are to:

- Review the Interpreter Need and Practice Study and Recommendations, prepared by the Arizona Minority Judges Caucus' Interpreter Issues Committee;
- Consider how to increase both the availability and the quality of language interpreters in Arizona Courts;
- Develop a strategy and recommendations for the AJC to consider in terms of funding needs and a strategy to secure needed funding for this initiative;
- Develop recommendations for additional legislative, policy and court rule changes for AJC consideration,
- Report to the Council at its October 2002 meeting.

This report responds to the Arizona Judicial Council's request.

Administrative Order 2002-34¹, signed by Chief Justice Jones on May 24, 2002 established the Committee to Study Interpreter Issues in the Arizona Courts. Initially, the committee was comprised of 20 members. Subsequent orders have added an additional three members. The Committee's membership, by design, includes a diverse group of judges, administrators, representation from the clerks of court association, interpreters representing general and limited jurisdiction courts, attorney associations and the Arizona Commission for the Deaf and Hard of Hearing. The membership encompasses representatives from both metropolitan and rural areas of the state.

The Committee first met in late May 2002 to review its charge, outline related issues and develop strategies for executing its responsibilities to the AJC. At the first meeting subcommittees for Certification; Training; and Rules, Statute and Administrative Code were established. Over the next three months, each subcommittee met numerous times and made reports to the full Committee at meetings in July, August and September.

¹ Arizona Supreme Court Administrative Order 2002-34 is available for viewing at: <http://www.supreme.state.az.us/orders/admorder/Orders02/2002-34.pdf>

The Committee recommends the creation of a court interpreter certification program to be administered by the Arizona Supreme Court. The program includes training, testing, performance standards and a code of ethics to ensure that all interpreters working in Arizona courts are fully qualified so that all participants in court matters are provided full and equal access to justice. The committee also proposes the creation of the Commission on Judicial Interpreters to oversee the program for the Court.

Recommendations

The Committee makes four recommendations, that:

1. Certification Of Court Interpreters Become A Reality For The Courts In Arizona.

As envisioned, a court interpreter certification program would be funded by seed money provided by the Court, but would become partially self-sustaining through fees paid by interpreters. This program will enable a relatively unorganized and unregulated group of individual interpreters to create a true profession in which they can take great pride. The result will be an increase in the availability, as well as the quality, of court interpreters throughout Arizona.

2. Extensive Interpreter Training Be Established As An Integral Part Of The Certification Process To Increase Availability Of Qualified Interpreters For Arizona Courts.

The committee believes that the scarcity of qualified court interpreters is directly related to lack of a coordinated statewide court interpreting training program. Training for court interpreters should be coordinated and required by the Supreme Court. The training strategy proposed by the committee will serve three purposes: recruit individuals with aptitude for court interpreting, coordinate training opportunities state-wide to prepare individuals for certification, and retain certified court interpreters through a continuing education program.

3. Proposed Legislation Be Promoted, And Court Rules Promulgated, That Govern Language Interpreter Use, Conduct And Professionalism.

The court interpreter certification program proposed by the committee will require changes or additions to the Arizona Revised Statutes, the Code of Judicial Administration, and the Rules of Court. The committee has drafted these proposed changes, including an enabling statute creating the program;

administrative rules establishing the Commission on Judicial Interpreters and outlining procedures for training, testing, and certifying interpreters; and court rules defining the standards for appointment and instituting an interpreter code of ethics.

4. A Judicial Interpreters Commission Be Established To Develop Operating Policies And Provide Oversight Management To The Court Interpreter Certification Program.

The Committee concurs with the Minority Judges Caucus recommendation that a Commission on Judicial Interpreters be established as a standing commission of the Arizona Judicial Council. The Commission is to develop practices, procedures and exercise oversight management of the Arizona Court Interpreter Certification Program. The Commission should be broadly based in representation from all jurisdictional levels including judges, court administrators with experience in court interpreter issues, members of the bar, judicial interpreters, members of the public, rural and urban representation and AOC personnel.

The importance of “access to the courts” and the constitutional implications of failing to provide access requires Arizona to develop a comprehensive court interpreter certification program. The complexity of the interpreter issues and the constant growth in interpreter needs and use provide sound rationale for a statewide Commission to manage the responsibility of the Arizona Court Interpreter Certification Program. The course of action taken by the court should have the full benefit of a statewide working Commission, ensuring the successful administration of the Arizona Court Interpreter Certification Program.

The committee believes the above recommendations will enhance the quality of language interpreter services, eventually increase the number of language interpreters available for Arizona Courts, and permit adoption of legislative provisions, court rules and administrative code. Importantly, this approach allows time for cultivating the concrete funding sources needed to manage a successful court interpreter system. Proposals for each of the above are detailed in this report.

Report to the AJC

Introduction

A viable court interpreter certification program that extends services to linguistic minorities preserves the principles of justice. It is essential that Arizona courts remove communications barriers for persons of limited English proficiency, placing them in the same position, as similarly situated persons for whom there is no such barrier.

Arizona courts should not deny justice by precluding a sizable portion of the population from receiving essential information and services from the Courts. Absent reasonable accommodations that convey information to thousands of limited English proficiency Arizonans in a language they can comprehend, the Court risks compromising basic constitutional rights and access to justice for these individuals.

More statistical research and analysis is required to extrapolate English language proficiency data from the most current census, nonetheless, it is instructional to look at Arizona ethnic populations. For example, the following 2000 U. S Census data profiles Arizona's Hispanic population. This data indicates that the Hispanic population in 2000 was about 1.3 million people, making Spanish, by far, the predominant foreign language spoken in the state among non-English speakers. In addition to these figures, other reports estimate that nearly one-half million Arizonans, or about one in ten people over the age of 5 years, do not possess English proficiency.

ARIZONA 2002 Hispanic Or Latino And Race		% Total
Total population	5,130,632	100.0
Hispanic or Latino (of any race)	1,295,617	25.3
Mexican	1,065,578	20.8
Puerto Rican	17,587	0.3
Cuban	5,272	0.1
Other Hispanic or Latino	207,180	4.0
Not Hispanic or Latino	3,835,015	74.7
White alone	3,274,258	63.8

A detailed profile of demographic characteristics for Arizona is included as Attachment III.

Need For Qualified Interpreters

No specific United States Supreme Court case directly addresses the right to an interpreter in criminal or civil cases as a constitutional issue. However, in recent history, many federal and state courts have upheld this right in criminal proceedings. The case most often referenced in this regard is *Negron v. New York* , 310 F.Supp. 1304 (EDNY

1970) (where defendant did not understand English, it was the duty of the state, trying defendant for murder, to provide defendant with a Spanish interpreter).

Moreover, at an Arizona state level, there is the case of *State v. Natividad*, 111 Ariz. 191, 526 P.2d 730 (1974) (an indigent defendant who is unable to speak and understand the English language should be afforded the right to have trial proceedings translated into his native language in order to participate effectively in his own defense provided he makes a timely request for assistance. A fair and impartial trial is denied such person if he is denied a timely request for assistance. U.S.C.A. Const. Amend. 14.). A second Arizona case is *State v. Hansen*, 146 Ariz. 226, 705 P.2d 466 (1985)(interpretation afforded defendant was so inadequate that she was deprived of due process of law). The above two cases seem to indicate that Arizona courts have already recognized the right to interpreters. In a most recent case, *Pagoada v. Kentucky*, No. 97CR-1002 (Fayette Cir. Ct., 5th Div, Oct. 5, 2001) the Court opined "all parties concerned made concerted efforts to provide Pagoada with adequate interpretation. Out of ignorance, all assumed that one who speaks Spanish or is born in a Spanish-speaking country can interpret. This case reveals that this is a false assumption." The Court also said: "The Commonwealth of Kentucky will bear additional expense and delay. Justice, however, requires it." *Id* at 8. (Attachment I provides a summary of several court interpreter related cases.)

Establishing a program to address interpreter needs requires an evaluation of several interrelated factors:

- 1) At a basic level, the Courts often receive individuals at the counter who have no or limited English language proficiency. Currently, courts rely on counter clerks to service these individuals. However, we must insure skilled individuals are available to communicate with these customers.
- 2) More complex language-interpreting skills are needed in criminal court settings for such matters as pre-trial conferences, trials and similar hearings where there is the potential for loss of liberty.
- 3) Certain domestic relations and landlord tenant cases, on occasion, will require interpreter services.
- 4) Lastly, Interpreters are needed for attorney-client conferences.

Court interpreting is a demanding job that requires complete fluency in both English and the target language. The level of expertise required for this profession is far greater than what is required for everyday bilingual conversation. Interpreters must be able to effectively convey the specialized language of judges and attorneys, converse in the vernacular of street slang of witnesses as well as respond in the technical jargon of criminalists, police officers, and expert witnesses. Most people do not have full command of all registers in both English and the target language and, therefore, require special training to acquire it.

In addition to the necessary language skills, court interpreters must be proficient in (a) simultaneous interpreting - where the interpreter speaks contemporaneously with the

speaker; (b) consecutive interpretation - where individuals listen to a few sentences or a complete thought, then the speaker pauses while the interpreter conveys the message; as well as (c) sight translation - where the interpreter reads and translates a written document.

These interpreting skills are used in all court-related proceedings and form the cornerstone of court interpretation. Proficiency in these interpreting skills can be acquired in a number of ways. Some interpreters learn these skills on their own by using self-study material. Other interpreters prefer formal classroom training. Shadowing court interpreters is another way individuals become familiar with the duties and responsibilities of this position.

In addition to total fluency in both English and the target language, and proficiency in interpretation, a court interpreter should have excellent public speaking and interpersonal skills. Sometimes the testimony to be interpreted is shocking or traumatic, and the interpreter must be able to deal with such matters without becoming emotionally involved. The interpreter must also be able to refrain from expressing personal opinions or acting as an advocate for one side or the other in a court case, and must be able to work unobtrusively. The interpreter must be able to work well under pressure and react quickly to solve complex linguistic and ethical problems as they arise. On the other hand, when the interpreter alone cannot solve a problem, they must demonstrate the good judgment required to inform the Court of that fact and take whatever steps are necessary to resolve the situation. And finally, good court interpreters constantly strive to improve their skills by reading from a wide variety of sources, attending conferences, researching new terms and concepts, and honing their interpreting techniques.

Need For System-Wide Response

The Committee found that several Superior and Municipal courts within Arizona have expended resources to recruit, test and train a cadre of competent court interpreters. However, the Committee finds that the level of interpreting services for Arizona Courts is uneven across the state. To remedy this current situation, the Committee recommends a comprehensive, system-wide response to practices governing court interpreters used by Arizona Courts.

Recommendation I: Certification Of Court Interpreters Become A Reality For The Courts In Arizona.

Committee research of court interpreter practices in other states, the Federal court interpreter certification program, and programs currently administered by the Arizona Supreme Court, Administrative Office of the Courts' Certification and Licensing Division suggest that several factors are universal when certifying Court Interpreters. In addition to establishing rules for the use of a court interpreter and a code of ethics for interpreters, the process of certifying interpreters includes basic provisions for an application process that incorporates a background investigation, testing, and coursework in ethics and court practices.

This section offers proposed language for Standards for Court Interpreters and a Code of Ethics for Court Interpreters. Our recommendation would be that Sections 1-4 of the Standards as well as the Code of Ethics, which is incorporated into those standards and included as an appendix to them, be proposed as Rules of Court for the Rules of Criminal Procedure, Civil Procedure and Juvenile Procedure. Section 5 of the standards which delineate the certification, registration and testing process, would be established in an Administrative Code, which can, by reference, incorporate the proposed rules. These would be promulgated pursuant to legislation as proposed in Recommendation III.

Standards for Appointment of Court Interpreters

Section 1. Scope

This rule shall apply to all courts in this state, including without limitation, Supreme Court, Court of Appeals, Superior Court, Justices of the Peace and Municipal Courts.

Section 2. Definitions

(a) State Certified Court Interpreter - an interpreter who possesses the qualifications outlined in Section 5(a) of this rule.

(b) Registered Court Interpreter - an interpreter who possesses the qualifications outlined in Section 5(b) of this rule.

(c) Interpretation - the unrehearsed transmission of a spoken message from one language to another.

(i) Simultaneous interpretation – providing the target-language message at roughly the same time as the source-language message is being produced.

(ii) Consecutive Interpretation – providing the target-language message after the speaker has finishing speaking.

(d) Limited English-speaking person - a participant in a legal proceeding who has limited ability to speak or understand the English language.

(e) Non-credentialed interpreter - a court interpreter who is not certified or registered as provided in this rule.

(f) Participant - a party, witness, or other person in a legal proceeding.

(g) Translation - the rendering of a written document from one language into a written document in another language.

Section 3. Determining Need for Interpretation

(a) Order of preference. Upon determining that a participant in a legal proceeding, where such an appointment is required by law or otherwise deemed necessary, has a limited ability to understand and communicate in English, the court shall appoint an interpreter according to the preference listed below:

- (1) State certified court interpreter;
- (2) Registered court interpreter;
- (3) Non-credentialed court interpreter.

(b) Factors to be considered. The court may appoint an interpreter of lesser preference (i.e., registered instead of certified or non-credentialed instead of registered) only upon a finding that diligent, good faith efforts to obtain the certified or registered interpreter, as the case may be, have been made and none has been found to be reasonably available. A non-credentialed interpreter may be appointed only after the court has evaluated the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence involved.

(c) Required findings. Before appointing a non-credentialed interpreter, the court shall make the following findings:

- (i) that the proposed interpreter appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court setting; and
- (ii) that the proposed interpreter has read, understands, and will abide by the Interpreter Code of Ethics for Arizona.

(d) Best efforts. A summary of the efforts made to obtain a certified or registered interpreter and to determine the capabilities of the proposed non-credentialed interpreter shall be made in open court. Use of minors as interpreters is discouraged.

(e) Multiple interpreters. The court shall use the services of multiple interpreters where necessary to aid interpretation of court proceedings.

(f) Telephonic interpreters. The courts should provide live in-person interpreters in all cases, except that in brief, preliminary proceedings or in other matters involving an urgent need for the protection of life and safety, the imminent removal of persons or evidence from the jurisdictions, or in other cases involving similar emergency circumstances, when an in-person interpreter is not available, a qualified interpreter who

is employed by a telecommunications or other technology based service may be provided.²

Section 4. Procedures

(a) Waiver of Interpreter. A limited English-speaking participant may at any point in the proceeding waive the services of an interpreter. The waiver of the interpreter's services must be knowing and voluntary, and with the approval of the court. Granting such waiver is a matter of judicial discretion.

(1) Procedure.

(i) The waiver is approved by the court after explaining in open court to the limited English speaking person through an interpreter the nature and effect of the waiver; and

(ii) the court determines in open court that the waiver has been made knowingly, intelligently, and voluntarily.

(iii) If the limited English speaking person is the defendant in a criminal matter, the court must further determine that the defendant has been afforded the opportunity to consult with his or her attorney.

(2) At any point in any proceeding, for good cause shown, a limited English speaking person may retract his or her waiver and request an interpreter.

(b) Oath. All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession. The court shall use the following oath:

“Do you solemnly swear or affirm that you will interpret from _____ to English and English to _____ accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Interpreter Code of Ethics; that you will follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?”

(c) Removal of an Interpreter in Individual Cases

The duties and obligations of interpreters shall be those proscribed by the Interpreter Code of Ethics adopted herein as part of this rule and attached as an appendix. Upon oral or written motion of the parties, or the court upon its own motion, any of the following actions shall be good cause for a judge to remove an interpreter from a case:

² Adopted by the ABA House of Delegates February 2002

- (1) Incompetence;
- (2) Being unable to interpret adequately, including where the interpreter self-reports such inability due to unexpected language, dialect, accent or other factors;
- (3) Knowingly and willfully making false, misleading, or incomplete interpretation while serving in an official capacity;
- (4) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
- (5) Misrepresentation of credentials;
- (6) Failure to reveal potential conflicts of interest; or
- (7) Failing to follow other standards prescribed by law and the Interpreter Code of Ethics.

Section 5. State Certified and Registered Court Interpreters

(a) Certified Interpreters. To receive certification as a state court interpreter, the candidate shall:

- (1) Submit to a criminal background check. Convictions for any felony or for a misdemeanor involving dishonesty or false statement shall disqualify a candidate from certification if such conviction is ten years old or less.
- (2) Attend an approved ethics and skill-building workshop;
- (3) Pass an approved criterion-referenced written examination;
- (4) Pass an approved criterion-referenced oral performance examination; and;
- (5) Complete any required application forms and pay any required fees.

Interpreters with certification as a federal court interpreter or from other A.O.C. approved programs shall be certified as a state court interpreter after successfully meeting the requirements of (a)(1) and (a)(2)) above. Interpreters with any other type of certification will be reviewed on a case-by-case basis to determine what steps the interpreters must take to be granted state court interpreter certification.

(b) Registered interpreters. To receive designation as a registered state court interpreter, the candidate shall:

- (1) Submit to a criminal background check. Convictions for any felony or for a misdemeanor involving dishonesty or false statement shall disqualify a candidate from certification if such conviction is ten years old or less.
- (2) Attend an approved ethics and skill-building workshop;

(3) Pass an approved criterion-referenced written examination for English proficiency; and

(4) Complete any required application forms and pay any required fees.

If an oral performance examination is available, a registered court interpreter must sit for the examination at least annually until he/she receives a passing grade to become a certified court interpreter. Failure to sit for the oral examination as required by this section shall result in the loss of designation as a registered court interpreter. Failure to pass the oral examination after three attempts shall result in the loss of designation as a registered court interpreter.

(c) Renewal of credentials. Once credentialed; certified and registered court interpreters shall be required to renew their credentials every three years.

(1) The three-year effective period for certification begins on the July 1 following the date of certification. Renewals are from July 1 of one year to June 30 of the third year for three-year periods.

(2) Renewing credentials requires the following:

(i) Providing documentation of 16 hours annually of continuing education approved by the Committee on Judicial Education and Training (COJET) including 8 hours of interpreter specific training; and

(ii) Completing any required renewal application forms and paying any required fees; and

(iii) Submitting to an updated criminal background check.

In concert with the Standards for Appointment of Court Interpreters a Code of Ethics is needed. As mentioned above a fundamental part of standards for use of court interpreters includes some recognition that individuals appointed meet some basic level of professionalism. The recommended code of ethics is provided as initial step

Interpreter Code Of Ethics

(1) Accuracy and Completeness

An interpreter shall render a complete and accurate interpretation or sign translation, without altering, omitting, or adding anything to what is stated or written, and without explanation. An interpreter shall convey the emotional emphasis of the speaker by preservation of tone and inflection. When interpreting for a party, the interpreter shall interpret everything that is said during the entire proceedings. When interpreting for a witness, the interpreter shall interpret everything that is said during his or her testimony.

(2) Representation of Qualifications

An interpreter shall accurately and completely represent his or her certifications, training and relevant experience, and make such documentation available to each and every court to be maintained on file by such court, if desired.

(3) Impartiality and Avoidance of Conflict of Interest

An interpreter shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Any condition that interferes with the objectivity or impartiality of the Court interpreter or affects his or her professional integrity constitutes a conflict of interest. A conflict may exist if the interpreter is acquainted with or related to any witness or party to the action, or if the interpreter has any interest in the outcome of the action, or if he or she is perceived as not being independent of the adversary parties or agencies.

The interpreter shall disclose to all parties any actual or apparent conflict of interest. An interpreter shall not engage in conduct creating the appearance of bias, prejudice, or partiality. An interpreter shall not make statements about the merits of the case until the litigation has concluded.

An interpreter shall not accept money or other consideration from anyone other than the Court for the performance of an action that they would be required or expected to perform in the regular course of assigned duties. Nor shall court interpreters accept gifts, gratuities, or favors of any kind that might reasonably be interpreted as an attempt to influence their actions with respect to the Court. An interpreter has an obligation to do nothing that would impair his or her impartiality.

(4) Professional Demeanor and Appearance

Interpreters shall present themselves and conduct themselves in a manner consistent with the dignity of the Court and shall be as unobtrusive as possible. An interpreter

shall maintain an impartial professional relationship with all court officers, attorneys, jurors, parties, and witnesses.

(5) Confidentiality

An interpreter shall protect the confidentiality of all privileged and confidential information. An interpreter shall not disclose privileged communications between counsel and client and shall maintain inviolate the confidences of the client.

(6) Restriction on Public Comment

An interpreter shall not publicly discuss, report, or offer an opinion concerning a matter in which they are, or have been engaged, even when that information is not privileged or required by law to be confidential. An interpreter shall not render an opinion or make subjective statements of any kind through, or in connection with, a newspaper, radio or other public medium regarding any legal matter in which the interpreter has interpreted or served as a translator of written material of a legal nature.

(7) Scope of Practice

In performing interpretation, interpreters shall limit themselves to interpreting or translating and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or sight translating while serving as an interpreter.

(8) Assessing and Reporting Impediments to Performance

An interpreter shall assess at all times his or her ability to perform interpreting services. Interpreters shall familiarize themselves as thoroughly as possible about the nature and length of a proceeding beforehand, to assess their ability to deliver adequate services. If an interpreter has any reservation about his or her ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the appropriate judicial authority.

(9) Professional Development

An interpreter shall continually improve his or her skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields. An interpreter shall seek to elevate the standards of performance of the interpreting profession.

(10) Duty to Report Ethical violations

An interpreter shall report to the proper judicial authority or other appropriate authority any effort to impede the interpreter's compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Recommendation II: Extensive Interpreter Training Be Established As An Integral Part Of The Certification Process To Increase Availability Of Qualified Interpreters For Arizona Courts.

Extensive training for court interpreters should be made available and encouraged by the Supreme Court. Many reports suggest that training is a critical component of interpreter certification. To address the varying professional development needs of court interpreters, sufficient financial resources must be allocated for orientation and training programs geared towards maximizing the number of individuals who successfully complete the certification testing requirements.

A second component of interpreter certification is screening. The purpose for using a screening examination is twofold. First, it increases passing rates. Testing basic language proficiency using a written examination is efficient and cost effective. Additionally, using a screening examination is a relatively inexpensive way to alert bilingual individuals to additional individual training needed for court interpreting.

The purpose for using a screening examination is two-fold. First, it improves passing rates. Additionally, using a screening examination is a relatively inexpensive way to alert bilingual individuals to the additional individual training needed for court interpreting.

Interpreter Screening and Training Requirements

1. The Supreme Court will require mandatory a one-day interpreter orientation session appropriate for all spoken language interpreters. Orientation sessions will be offered at multiple locations throughout the state. The curriculum will give participants an overview of the judicial system in Arizona and the needs and expectations of the Court, with emphasis on ethical conduct, legal terminology, court procedure, and basic court interpreting skills. The orientation will also discuss the state court interpreter certification and registration requirements. The Supreme Court will determine the cost of this orientation.³
2. The Supreme Court will administer a written screening examination to assess English language proficiency as a means of determining eligibility to participate in an orientation program. Only individuals receiving a passing score on this test will be allowed to participation in the orientation program described above. The Supreme Court will determine the cost to participants for this examination.³
3. To assist those individuals wishing to take any oral court interpreter examination⁴, an optional 20-hour skills-building course will be offered on five consecutive Saturdays from 8:30 AM - 12:30 PM. This course will focus on the

³ These fees should be representative of those found in other jurisdictions and are suggested to help defray the total cost of these programs.

⁴ Oral examinations may also be offered in other languages.

three interpreting modalities: consecutive and simultaneous interpretation, and sight translation. The participants will be divided according to their target language. The Supreme Court will determine the cost of this course, including the cost of training materials. Participants are also encouraged to shadow or observe the work of an interpreter who is certified or registered during the five-week period.

The Supreme Court also will offer continued education courses for all state certified and registered Court Interpreters. These classes will be offered in multiple locations throughout the state and taught by locally and nationally recognized court interpreters. Topics will include ethical issues, colloquial language, legal terminology, and interpreting skills, among others. The cost of each class will vary. These classes can be used to meet all state re-certification or re-registration requirements. In addition, court interpreters are encouraged to participate in training programs offered by state and national professional associations, such as the Arizona Court Interpreter Association (<http://www.aciaonline.org>), The National Association of Judiciary Interpreters and Translators (<http://www.najit.org>), University of Arizona Agnese Haury Institute for Interpretation and the National Center for Interpretation (<http://nci.arizona.edu/>) and the American Translators Association (<http://www.atanet.org>).

Recommendation III: Proposed Legislation Be Promoted, And Court Rules Promulgated, That Govern Language Interpreter Use, Conduct And Professionalism

The Standards for Appointment of Court Interpreters will require changes to existing Statute. This recommendation offers proposed language for changes to Arizona statute by adding A.R.S. § 12-243 (Interpreters for limited-English speakers; proceedings; definitions), §12-244 (Interpreter fund) and proposed changes to the Arizona Rules of Courts by adding Rules of Criminal Procedure. (Similar rules should be added to the Rules of Civil and Juvenile Procedure.)

§ 12-243. Interpreters for limited-English speakers; proceedings; definitions

A. The court shall appoint an interpreter for a limited-English speaking person in any criminal case or other matter in which such appointment is required by law, to interpret the proceedings to the limited-English speaking person, to interpret the limited-English speaking person's testimony or statements and to interpret preparations with the limited-English speaking person's attorney.

B. Except as provided below, the court shall not appoint an interpreter for a limited-English speaking person unless that interpreter meets the requirements of the Supreme Court's court interpreter certification program. The Supreme Court shall administer the court interpreter certification program and shall adopt rules and establish and collect fees necessary for its implementation. The Supreme Court shall deposit, pursuant to §§ 35-146 and 35- 147, the monies collected pursuant to this subsection in the interpreter fund established by § 12-244. At a minimum, the rules adopted pursuant to this subsection shall include the following:

1. A code of conduct.
2. Minimum qualifications.
3. Registration or certification.
4. Training and continuing education.
5. The administration of an oath of office.

C. As a condition of appointment, the Supreme Court shall require each applicant for the position of interpreter to submit a full set of fingerprints to the Supreme Court for the purpose of obtaining a state and federal criminal records check to determine the suitability of the applicant pursuant to § 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the Federal Bureau of Investigation.

D. The court shall notify the Supreme Court if it appears that an interpreter has violated a rule adopted under this section. The Supreme Court shall then conduct an investigation and hearing pursuant to its rules. If the Supreme Court determines that the interpreter committed the violation, it may withdraw the interpreter's certification or impose other sanctions, including civil penalties, and shall notify the courts in each county of this action. The Supreme Court may also require the interpreter to reimburse the court for the expenses it incurred to conduct the investigation and hearing.

E. Persons appointed by the Supreme Court to serve in an advisory capacity to the court interpreter certification program, its staff and hearing officers, and employees of the administrative office of the court who participate in the program are immune from civil liability for conduct in good faith that relates to their official duties.

F. The Supreme Court may exempt an interpreter from the requirements of this section for good cause.

G. If the only available interpreter does not possess adequate interpreting skills for the particular situation, the court or appointing authority may permit the limited-English speaking person to nominate another person to act as an intermediary interpreter between the limited-English speaking person and the appointed interpreter during proceedings.

H. A limited-English speaking person entitled to the services of an interpreter under this section may knowingly and intelligently waive these services pursuant to rules promulgated by the Supreme Court. A limited-English speaking person who has waived an interpreter under this subsection may provide his own interpreter at his own expense without regard to whether the interpreter is qualified under this section. However, the court retains the discretion to examine the interpreter, the training and experience of the interpreter, and determine whether or not the interpreter is sufficiently qualified to comply with the Due Process requirements of the Arizona and United States Constitutions.

I. As used in this section, "limited-English speaking person" means a participant in a legal proceeding who has limited ability to speak or understand the English language.

J. This section does not grant any interpreter or any applicant for an interpreter the right to a direct appeal to the Supreme Court.

K. The Supreme Court may receive and expend monies from the interpreter fund established pursuant to § 12-244 for the purposes of performing the duties related to interpreters pursuant to this section.

L. The provisions of this section do not apply to interpreters who are required to be certified under § 12-242.

§ 12-244. Interpreter fund

A. The interpreters' fund is established consisting of fees, costs and fines collected pursuant to § 12-243 and monies appropriated to the fund. The Supreme Court shall administer the fund.

B. Monies deposited in the fund are continuously appropriated and are exempt from the provisions of § 35-190 relating to lapsing of appropriations.

C. The Supreme Court may receive and expend monies from the fund for the purposes of this chapter.

D. On notice from the Supreme Court, the state treasurer shall invest and divest monies in the fund, as provided by § 35-313, and monies earned from investment shall be credited to the fund.

RULES OF COURT

(The following rules are proposed as additions to the Rules of Criminal Procedure. Similar rules should be added to the Rules of Civil and Juvenile Procedure)

Rules of Criminal Procedure

Rule 40. Interpreters

Rule 40.1. Standards for Appointment of Interpreters

a. **Scope.** This rule shall apply to all courts in this state, including without limitation, Supreme Court, Court of Appeals, Superior Court, Justices of the Peace and Municipal Courts.

b. **Definitions.**

1. *State Certified Court Interpreter* - an interpreter who is duly certified by the Arizona Supreme Court's Court Interpreter Certification Program.

2. *Registered Court Interpreter* - an interpreter who is duly registered by the Arizona Supreme Court's Court Interpreter Certification Program.

3. *Interpretation* - the unrehearsed transmission of a spoken message from one language to another.

- (i) *Simultaneous interpretation* – providing the target-language message at roughly the same time as the source-language message is being produced.
- (ii) *Consecutive Interpretation* – providing the target-language message after the speaker has finishing speaking.

4. *Limited English-speaking person* - a participant in a legal proceeding who has limited ability to speak or understand the English language.

5. *Non-credentialed Interpreter* - a court interpreter who is not certified or registered as provided in this rule.

6. *Participant* - a party, witness, or other person in a legal proceeding.

7. *Translation* - the rendering of a written document from one language into a written document in another language.

c. Determining Need for Interpretation

1. Order of preference. Upon determining that a participant in a legal proceeding, where such an appointment is required by law or otherwise deemed necessary, has a limited ability to understand and communicate in English, the Court shall appoint an interpreter according to the preference listed below:

- (1) State Certified Court Interpreter;
- (2) Registered Court Interpreter;
- (3) Non-credentialed Court Interpreter.

2. Factors to be considered. The Court may appoint an interpreter of lesser preference (i.e., Registered instead of Certified or Non-credentialed instead of Registered) only upon a finding that diligent, good faith efforts to obtain the certified or registered interpreter, as the case may be, have been made and none has been found to be reasonably available. A Non-Credentialed Interpreter may be appointed only after the Court has evaluated the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence involved.

3. Required findings. Before appointing a non-credentialed interpreter, the Court shall make the following findings:

- (i) That the proposed interpreter appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court setting; and
- (ii) That the proposed interpreter has read, understands, and will abide by the Interpreter Code of Ethics provided by Rule 40.2 below.

4. Best efforts. A summary of the efforts made to obtain a certified or registered interpreter and to determine the capabilities of the proposed non-credentialed interpreter shall be made in open court. Use of minors as interpreters is discouraged.

5. Multiple interpreters. The Court shall use the services of multiple interpreters where necessary to aid interpretation of court proceedings.

6. Telephonic interpreters. The Courts should provide live in-person interpreters in all cases, except that in brief, preliminary proceedings or in other matters involving an urgent need for the protection of life and safety, the imminent removal of persons or evidence from the jurisdictions, or in other cases involving similar emergency circumstances, when an in-person interpreter is not available, a qualified interpreter who is employed by a telecommunications or other technology based service may be provided.

d. Procedures

1. Waiver of Interpreter. A limited English-speaking participant may at any point in the proceeding waive the services of an interpreter. The waiver of the interpreter's services must be knowing and voluntary, and with the approval of the Court. Granting such waiver is a matter of judicial discretion.

(a) Procedure.

- (i) The waiver is approved by the Court after explaining in open court to the limited English speaking person through an interpreter the nature and effect of the waiver; and
- (ii) The Court determines in open court that the waiver has been made knowingly, intelligently, and voluntarily.
- (iii) If the limited English speaking person is the defendant in a criminal matter, the Court must further determine that the defendant has been afforded the opportunity to consult with his or her attorney.

(b) At any point in any proceeding, for good cause shown, a limited English speaking person may retract his or her waiver and request an interpreter.

2. Oath. All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession. The Court shall use the following oath:

“Do you solemnly swear or affirm that you will interpret from _____ to English and English to _____ accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Interpreter Code of Ethics; that you will follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?”

3. Removal of an Interpreter in Individual Cases

The duties and obligations of interpreters shall be those proscribed by the Interpreter Code of Ethics adopted herein as part of this rule and attached as an appendix. Upon oral or written motion of the parties, or the Court upon its own motion, any of the following actions shall be good cause for a judge to remove an interpreter from a case:

- (1) Incompetence;
- (2) Being unable to interpret adequately, including where the interpreter self-reports such inability due to unexpected language, dialect, accent or other factors;
- (3) Knowingly and willfully making false, misleading, or incomplete interpretation while serving in an official capacity;
- (4) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
- (5) Misrepresentation of credentials;
- (6) Failure to reveal potential conflicts of interest; or
- (7) Failing to follow other standards prescribed by law and the Interpreter Code of Ethics.

Rule 40.2. Interpreter Code of Ethics

(1) Accuracy and Completeness

An interpreter shall render a complete and accurate interpretation or sign translation, without altering, omitting, or adding anything to what is stated or written, and without explanation. An interpreter shall convey the emotional emphasis of the speaker by preservation of tone and inflection. When interpreting for a party, the interpreter shall interpret everything that is said during the entire proceedings. When interpreting for a witness, the interpreter shall interpret everything that is said during his or her testimony.

(2) Representation of Qualifications

An interpreter shall accurately and completely represent his or her certifications, training and relevant experience, and make such documentation available to each and every court to be maintained on file by such court, if desired.

(3) Impartiality and Avoidance of Conflict of Interest

An interpreter shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Any condition that interferes with the objectivity or impartiality of the Court interpreter or affects his or her professional integrity constitutes a conflict of interest. A conflict may exist if the interpreter is acquainted with or related to any witness or party to the action, or if the interpreter has any interest in the outcome

of the action, or if he or she is perceived as not being independent of the adversary parties or agencies.

The interpreter shall disclose to all parties any actual or apparent conflict of interest. An interpreter shall not engage in conduct creating the appearance of bias, prejudice, or partiality. An interpreter shall not make statements about the merits of the case until the litigation has concluded.

An interpreter shall not accept money or other consideration from anyone other than the Court for the performance of an action that they would be required or expected to perform in the regular course of assigned duties. Nor shall court interpreters accept gifts, gratuities, or favors of any kind that might reasonably be interpreted as an attempt to influence their actions with respect to the Court. An interpreter has an obligation to do nothing that would impair his or her impartiality.

(4) Professional Demeanor and Appearance

Interpreters shall present themselves and conduct themselves in a manner consistent with the dignity of the Court and shall be as unobtrusive as possible. An interpreter shall maintain an impartial professional relationship with all court officers, attorneys, jurors, parties, and witnesses.

(5) Confidentiality

An interpreter shall protect the confidentiality of all privileged and confidential information. An interpreter shall not disclose privileged communications between counsel and client and shall maintain inviolate the confidences of the client.

(6) Restriction on Public Comment

An interpreter shall not publicly discuss, report, or offer an opinion concerning a matter in which they are, or have been engaged, even when that information is not privileged or required by law to be confidential. An interpreter shall not render an opinion or make subjective statements of any kind through, or in connection with, a newspaper, radio or other public medium regarding any legal matter in which the interpreter has interpreted or served as a translator of written material of a legal nature.

7) Scope of Practice

In performing interpretation, interpreters shall limit themselves to interpreting or translating and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or sight translating while serving as an interpreter.

(8) Assessing and Reporting Impediments to Performance

An interpreter shall assess at all times his or her ability to perform interpreting services. Interpreters shall familiarize themselves as thoroughly as possible about the nature and length of a proceeding beforehand, to assess their ability to deliver adequate services. If an interpreter has any reservation about his or her ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the appropriate judicial authority.

(9) Professional Development

An interpreter shall continually improve his or her skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields. An interpreter shall seek to elevate the standards of performance of the interpreting profession.

(10) Duty to Report Ethical violations

An interpreter shall report to the proper judicial authority or other appropriate authority any effort to impede the interpreter's compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Recommendation IV: A Judicial Interpreters Commission Be Established To Develop Operating Policies And Provide Oversight Management To The Court Interpreter Certification Program

A Judicial Interpreters Commission should be established as a standing committee of the Arizona Judicial Council. It is critical that any successful program include an oversight body to develop and incorporate clearly defined policies and program coordination. The plans of this report - initial registration and eventual certification of court interpreters - are no exception. The following is a suggested program outline to manage Arizona's court interpreters.

ADMINISTRATIVE CODE

ARIZONA CODE OF JUDICIAL ADMINISTRATION

PART 1: Judicial Branch Administration

Chapter _____

Section _____: Commission on Judicial Interpreters

A. General Purpose. The Commission on Judicial Interpreters is established as a standing committee of the Arizona Judicial Council. The Commission on Judicial Interpreters shall:

- (1) Establish the goals, policies and priorities for the statewide court interpreter certification program.
- (2) Implement procurement of testing services consistent with the Procurement Rules for the Judicial Branch, including competitive sealed bidding or proposals.
- (3) Determine the allocation of available funds.
- (4) Oversee the statewide court interpreter certification program, including the selection, development and support of a training and testing program, establishing a certification program, and continuing education program.
- (5) Oversee compliance with statewide interpreter standards of practice and ethics mandates.
- (6) Monitor the Court interpreter needs and practices in all Arizona courts.
- (7) The Commission shall maintain a record of all applicants for certification and a roster of all certified and registered court interpreters.

- (8) The Commission shall assist the Supreme Court in maintaining a well functioning court interpreter certification program.

B. Membership. The Commission on Judicial Interpreters will be comprised of representatives, appointed by the Arizona Supreme Court Chief Justice, from each of the following:

- 1) The Chief Justice of the Arizona Supreme Court, or assigned designee,
- 2) One judge of the Arizona Court of Appeals,
- 3) One superior court judge,
- 4) One municipal court judge,
- 5) One justice of the peace,
- 6) One court administrator from a general jurisdiction court, who is a resident of this state, and who has experience with court interpreter issues,
- 7) One court administrator from a limited jurisdiction court, who is a resident of this state, and who has experience with court interpreter issues,
- 8) One staff court interpreter from a general jurisdiction court, who is a resident of this state, and who has experience with court interpreter issues,
- 9) One staff court interpreter from a limited jurisdiction court, who is a resident of this state, and who has experience with court interpreter issues,
- 10) One contract interpreter who is a resident of this state, and who has experience with court interpreter issues,
- 11) One lesser-used language interpreter who is a resident of this state, and who has experience with court interpreter issues,
- 12) Four practicing members of the State Bar of Arizona, who are licensed to practice law in this state including; members in civil practice, defense bar private and public sector and prosecutors,
- 13) One public member, who is a resident of this state,
- 14) Other members as may be appointed at the discretion of the Chief Justice of the Arizona Supreme Court.

C. Terms of Members. Members of the CJI appointed pursuant to subsection A, paragraph 2 through 14, serve terms of varying lengths to encourage continuity.

Members may be re-appointed for successive terms. The Chief Justice shall fill a vacancy for any remaining portion of a term in the same manner as the original appointment.

D. Responsibilities of Members. Members of CJI shall attend and actively participate in CJI meetings, assist with the administration of CJI affairs and serve on CJI advisory committees as necessary.

E. Compensation. Members of the CJI are not eligible to receive compensation but are eligible to receive reimbursement for expenses, pursuant to Title 38, Chapter 4, Article 2.

F. Organization.

1. The Chief Justice shall appoint CJI leadership, including a chair and co-chair, as needed to organize CJI business.

2. The CJI Chair may appoint advisory committees to help CJI carry out its responsibilities.

3. Standing advisory committees include:

A. Examination and Certification Advisory Council (ECAC)

1. Purpose. The Examination and Certification Advisory Council coordinates the planning, development and implementation of a statewide court interpreter certification program.

2. Responsibilities include proposed recommendations to the CJI regarding:

1. Designation of languages for certification;
2. Establishing qualification standards of interpreters;
3. Code of professional responsibility for interpreters;
4. Rules of ethics;
5. Uniform standards of practice for interpreters; and
6. Standards for background checks for interpreters.

B. Training and Continuing Education Committee (TCE)

1. Purpose. The Training and Continuing Education Committee coordinates the planning, development and implementation of a statewide Interpreter Training and Continuing Education Program.

2. Responsibilities include providing recommendations to the CJI regarding training and continuing education of interpreters in the following areas:

1. Pre-certification test training
2. Qualification standards of interpreters
3. Code of professional responsibility for interpreters
4. Rules of ethics
5. Uniform standards of practice for interpreters

C. Committee on Statewide Registry of Non-Certified Interpreters (CSR)

1. Purpose. The Committee on Statewide Registry coordinates the planning, development and implementation of a statewide registry of Non-Certified Interpreters Program.

D. Grievance and Complaints Board (GCB)

1. Purpose. The Grievance and Complaint Board (GCB) coordinates the planning, development and implementation of a statewide grievance and complaint program.

G. Meetings. CJI shall meet no less than twice a year. Additional meetings may be called at the discretion of the chair. All meetings shall be noticed and open to the public.

H. CJI Action. CJI shall adopt rules for conducting CJI business. These rules shall prescribe the quorum and majority needed to constitute CJI actions. The Commission shall maintain a record of the meetings and all official actions.

I. Staff. Under the direction of the Chief Justice, the Administrative Office of the Courts shall provide staff for CJI and may conduct or coordinate research as recommended by CJI.

Funding/Program Costs

Several cost components are included in administration of an effective court interpreter certification program. These include:

- Costs associated with ongoing program maintenance, including staff support,
- Interpreter training costs,
- Interpreter testing costs (test procurement, administering and scoring), and
- Judicial and court staff training costs,

Part of the charge to the committee was to include recommendations as to funding needs and a strategy to secure needed funding. While it is anticipated that some funding will be fees paid by interpreter candidates for the testing, registration and certification process, these fees will simply cover those training and testing costs. User fees will neither provide start-up funds nor be sufficient to cover on-going staffing costs.

Our research revealed that other states that have adopted statewide Court Interpreter Programs have received funding from a variety of sources, e.g. startup grants from private or public (state or federal) sources. Examples are grants from the Byrne Foundation, State Justice Institute and the Department of Justice. We found also that sources of funds needed to facilitate ongoing program expenses include direct appropriations through the legislature and/or internal State Court funding. Most states require some form of payment from interpreters, especially for testing and training costs. Appendix II is a survey of training and testing fees charged by states that are members of the National Center for State Courts Interpreter Consortium. Other findings include the example in Idaho, in which the Legislature provides funding for an on-going program. In the state of Washington, a grant from a private foundation provided initial funding. Several other states have also received federal or private grants for initial funding. The Committee expects that Judicial Interpreters Commission will be instrumental in developing funding sources.

Extensive research was done to determine where we might pursue various funding sources outside of the court system. However, the current state of the economy has resulted in both state and federal budget cuts. Many grant sources, such as the State Justice Institute, have lost their own funding. Therefore, despite our best efforts, at this time we can find no alternative funding sources. However, recognizing the necessity of interpreters in providing access to justice and in aiding due process rights for all court users, the recommendation is that the Supreme Court should make this a priority and make available the start-up costs from the court budget for the following estimated expenses.

Court Interpreter Certification Program Cost Estimates

	Estimated Cost:	
	Start Up	Ongoing Expense:
Test used for Certification: The process of certification requires that some form of testing must be put into place. The two most visible possibilities are:		
National Center for State Courts Interpreter Consortium	\$50,000	-0-
University of Arizona Agnese Haury Institute for Interpretation	\$50,000	-0-
Test Rating (Scoring) *	-0-	\$10,000
Interpreter Training: As referenced in Recommendation II, training is needed to both insure an acceptable number of applicants will successfully pass any test and provide continuing education. *	\$10,000	\$10,000
Judiciary and Staff training		\$15,000
Court Interpreter Program Support Staff	\$75,000	\$75,000
Estimated Total	\$135,000	\$110,000

* Includes curriculum development and assumes a portion of costs for test scoring and training will be paid by participants.

Appendix I Interpreter Related Cases

By Virginia Benmaman for Proteus, Newsletter of the National Association of Judiciary Interpreters and Translators, Fall 2000

Court interpreters and attorneys have a special interest in the issues raised on appeal that involve foreign-language interpretation. In this paper I will focus on the most important interpreter-related cases of the past twenty years, especially those of the past decade, with occasional reference to earlier appeals, which have been highly significant.

For the most part, appellate issues related to interpreters have not dealt so much with errors of interpretation as with procedural errors, matters for which both the trial court and counsel are ultimately responsible. As will be shown, even when the actual performance of the interpreter in court is questioned on appeal, the higher courts have not been overly impressed with the arguments presented. Despite hundreds of cases appealed on grounds related to the use and/or performance of interpreters, slight errors of interpretation are less likely to become the reason for a reversal than we might believe. However, past decisions are not necessarily a prediction of future rulings. The increasing volume of interpreted cases nationwide will probably result in more appeals involving some aspect of the interpretation process. Higher courts may begin to scrutinize the elements of error with different eyes and apply new criteria relevant to the abuse of discretion standard. Let us first review some background.

Due Process and Equal Access

Bear in mind that no provision in the federal constitution guarantees the right to an interpreter. The rights of all individuals, including non-English speaking litigants, are referred to in constitutional amendments, especially the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution. The Fifth Amendment guarantees that an individual cannot be deprived of life, liberty or property without due process, fundamental fairness and equal protection under the law. The Sixth Amendment asserts that a defendant has the right to be meaningfully present at his or her own legal proceeding. Presence implies not only physical presence, but also access to direct knowledge about the proceedings, in order to a) assist in one's own defense by active participation; b) receive effective assistance of counsel and provide counsel with informed and intelligent input; c) confront the government's witnesses and cross-examine them; and d) waive these constitutional rights knowingly, intelligently and voluntarily. The Fourteenth Amendment extends the application of these rights to resident citizens of any and all states. Case law frequently invokes these amendments and attorneys regularly cite them in their appellate briefs.

Precedents

Although the United States Supreme Court has never directly addressed the right to an interpreter in criminal or civil cases as a constitutional issue, many courts on the

state and federal levels have upheld this right in criminal proceedings. The landmark case in which this view was firmly established came to federal court via a pro se habeas corpus petition by a state prisoner who had been convicted of murder in a New York State criminal case and sentenced to 20 years to life. The defendant, Rogelio Nieves Negrón, was indigent and spoke no English. His court-appointed attorney spoke no Spanish. No communication existed between counsel and defendant, nor were any of the trial proceedings made comprehensible to the defendant except for brief and spotty instances in which an interpreter, employed on behalf of the prosecution, translated in summary fashion into Spanish for Negrón. Negrón's own testimony and that of two Spanish-speaking witnesses were interpreted into English for the benefit of the Court. (Note that case law of the 19th and early 20th century indicates that the only interpreters paid for and provided by the Court were exclusively for witnesses.) Twelve of the fourteen witnesses testified against him in English. None of this testimony was comprehensible to Negrón. In **U.S. ex rel. Negrón State of New York, 310 F. Supp. 1304 (EDNY 1970)**, Judge John Bartels held that Negrón's trial lacked the fundamental fairness required by the due process clause of the Fifth Amendment and the Fourteenth Amendment, which extended these guarantees to the states. This was the first federal court ruling stating that a Spanish-speaking defendant in a criminal case was entitled to the services of an interpreter, and that failure to provide a translator rendered the trial constitutionally infirm. Judge Bartels' ruling was appealed and his decision was affirmed by the Second Circuit Court of Appeals 434 F.2d 386 (2d Cir.1970)

Appointment of An Interpreter

Since the Negrón ruling, several major events have bolstered the call for equal access to due process by linguistic minorities, such as the Court Interpreters Act of 1978 (amended in 1988); legislation in several states mandating the presence of interpreters in cases involving individuals with minimal English skills; and as of this writing, the required certification of practicing interpreters in twenty-two states. Yet we must not lose sight of the fact that the trial court has wide discretion in determining whether an interpreter is necessary for a defendant. Appellate opinions commonly hold that the appointment of an interpreter, as well as determination of who is qualified to serve as interpreter, is within the trial court's sound discretion. Such is the case in every state, and this judicial exercise is considered an abuse of discretion only if the defendant has thereby been deprived of some basic right.

The standards of review that appellate courts apply to the issues raised are "abuse of discretion" and the "plain error" doctrine.

Abuse of Discretion:

The defense must make a timely and specific objection during the proceedings, which is noted on the record. Proof must be presented to the trial court that a problem has occurred with an interpreter-related issue, which is prejudicial to the defendant's case. This may be a procedural error related to the need and presence of the

interpreter, or to the interpreter's actual performance. Once proof is presented, the trial court must rule accordingly. A presiding judge can take corrective measures only if and when some difficulty with the interpreter is made known. Without this procedure, there can be no grounds for appeal. The sentiment of the appellate courts was aptly stated in **U.S. v Joshi, (896 F2d 1303, 11 Cir 1990)**: "It would be an open invitation to abuse to allow an accused to remain silent throughout the trial and then, upon being found guilty, assert a claim of inadequate translation."

In general, the Court of Appeals looks to the effect of the alleged error. If it finds the error was not prejudicial, the trial court's ruling will be affirmed. Prejudice has not resulted if:

1. The evidence concerning error was irrelevant or inconsequential. Sketchy arguments on the importance of untranslated remarks cannot be the basis for a finding that the trial judge abused his discretion.
2. The error was corrected once brought to the attention of the trial judge.
3. Cross-examination was made concerning the matter and no further objection was raised.
4. The evidence against the accused was so overwhelming that errors in interpretation were of little consequence.
5. Untranslated evidence was presented in the defendant's own language (from the witness stand) and therefore did not require translation.

Plain Error Doctrine:

If an error is not objected to at trial, an appeal may be sought under the plain error doctrine. This standard requires a showing that the error was egregious, that it affected substantial rights, represented a miscarriage of justice, or resulted in an unfair trial. This standard requires greater substantiation than the standard applied to objections made during trial. In general, reversals based on plain error are seldom granted.

Issues Raised On Appeal

1. Failure to Appoint an Interpreter

Failure to appoint an interpreter was the most common grounds for appeals during the 1970's and early 1980's. Unfortunately, failure to appoint still occurs today. Judicial discretion-- with or without an evidentiary hearing-- is applied to assess a defendant's knowledge of English and language abilities. How monolingual or even bilingual judges can accurately assess language skills has not been fully debated, all the more curious given that foreign language educators are still grappling with

developing an appropriate methodology for determining language proficiency. Another question remains unanswered as well. How high must the language barrier be before a defendant has a right to an interpreter? Simple questions asked during a voir dire (if indeed a voir dire is held) for the purpose of eliciting a verbal response in English from a defendant frequently require monosyllabic answers, which provide little insight into the comprehension or communication ability of a minimal English speaker. Judicial decisions not to appoint an interpreter have also occurred in cases in which a) the Court determined that defendants hiring private counsel could afford their own interpreter, b) the defense failed to request an interpreter, and c) counsel for the defense also served as interpreter. However, in the following decisions, the judgments of conviction were reversed and the cases remanded with specific instructions.

State v Rodriguez N.J. 1996 (Super 129, 133-37) No interpreter was present in municipal court when the defendant was convicted of DUI and leaving the scene of an accident. The appellate court reversed, holding that "There can be no waiver of right to interpreter without knowing, voluntary and intelligent declaration on the record by the defendant, and the trial court must provide an interpreter at public expense if defendant requires one and cannot afford to pay for these services."

In **Ohio v Fonseca, 1997(124 Ohio, App.3d 231)**, the defendant was charged with forgery. During initial appearance in municipal court, the judge read the charges and then asked how the defendant wished to plead. The following exchange took place.

The Court: You got anybody here that understands English better than you?

Unknown Person: I do, Sir.

The Court: Well, why don't you just come up here? Are you charged with something too, or are you his friend?

Unknown Person: [Inaudible]

The Court: Well, you can come up here. Sounds to me like he better enter a guilty plea, seeing as he can go to jail big time.

Unknown Person: He said he's guilty.

The judge accepted the guilty plea and stated that the appellant's sentence would be thirty days, and the unknown person replied "He says, 'okay!'" Later Fonseca filed a motion to vacate his guilty plea, which was overruled by the trial court. The Appellate Court stated upon review:

"Obviously, the plea was not knowingly made. The judge failed to inform him of his rights of counsel and a continuance. Appointment of counsel will be made at no charge to the defendant. The defendant had the right not to make any incriminating statement against himself. His plea is vacated on those grounds. Judgment reversed, and the matter is remanded to the trial court for proceedings consistent with this opinion."

In **New York v Serna, 1999, NY AD. 3 Dept. (WL 357316)**, the defendant claimed he did not enter his guilty plea knowingly and intelligently because he was unable to communicate with his attorney due to language difficulties. No interpreter was provided for the plea allocution. Defendant was never questioned about his language proficiency, nor did he waive on the record the right to an interpreter. Counsel was relieved and new counsel appointed to address issues on remand to the trial court.

A slightly different situation occurred in **Giraldo-Rincón v Dugger, 1989, MD FLA (707 F Sup 504)**. Although the Colombian native had bilingual attorneys representing him on narcotics charges, the trial judge denied defense counsel's request for the appointment of an interpreter. He did so without inquiring into the petitioner's ability to pay for one, on the ground that the defendant, who counsel asserted was indigent, could secure and pay for his own interpreter because he had retained an attorney. The defendant could not comprehend the English testimony of 11 witnesses. Occasionally counsel would relate what was transpiring at trial. On a habeas corpus petition, the appeals court concluded that the petitioner's trial lacked the fundamental fairness required by due process, and the judge's refusal to inquire into the petitioner's need for and ability to pay an interpreter violated his rights under the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution. Habeas corpus relief was granted.

Other types of proceedings have also been reversed for failure to appoint. Several examples are presented here. In **Ahmed v. Quality Staffing Solutions, 1999, Min. App. (WL 233347)**, Ahmed, a Somali immigrant, failed to timely file continued claims for insurance benefits because she had difficulty understanding the process and was not provided an interpreter. In **Melese v Kebede, 1999, Wash.App.Div.1 (WL 350833)**, Melese, an Ethiopian Amharic speaker and mother of a three-year-old, could not express herself in a custody battle. Her attorney assured the Court that no interpreter was necessary, and the plaintiff continued to give brief monosyllabic answers. This failure to provide an interpreter along with other errors resulted in a reversal and remand of the case.

In **Franklin v District of Columbia 1998, USCA (No. 97-7162)**, prisoners brought a class action suit against the District of Columbia because of failure to provide qualified interpreters at parole hearings, disciplinary hearings and for inmates' medical care. The Appeals Court agreed that this was a violation of Fifth and Sixth Amendment rights and ordered provision of interpreters at "all stages of disciplinary classification, housing, adjustments, and parole hearing process."

2. Ineffective Assistance of Counsel

In **Diaz v The State of Texas, 1995 (Blue Book Citation Form TEX 327)**, the defendant was convicted of aggravated possession of marihuana. Among seven points on appeal, one claimed ineffective assistance of counsel related to the role of the interpreter. On the day of the trial, counsel left defendant alone with an interpreter to have various documents and waivers of rights translated. When counsel returned,

he asked if there were any questions. Receiving a negative answer, counsel had defendant sign the various English-language documents and then signed the certificate and other forms indicating that he had personally read and explained the waiver of rights and contents of the documents. The Appeals Court ruled that the trial court did not properly admonish the defendant orally on the range of punishment, nor explain the contents of several written documents. The judgment was reversed and the case remanded to the trial court.

3. Bias and Conflict of Interest

In two Texas cases, **Costello v State, 1991, TEX App Corpus Christi (807 SW 2d8)**, and **People v Montoya, 1991, TEX App Corpus Christi (811 SW 2d 671)**, the Court ruled on appeal that there was no error in infringement of right to confrontation when Spanish-speaking bailiff was appointed to interpret during the regular interpreter's absence, and no objection had been raised during trial.

A habeas corpus petition in **Baez v Henderson, 1992, SDNY(LEXIS 774)**, claimed that at sentencing, the bilingual presiding judge had translated the proceedings into Spanish for the defendant as well as defendant's own statements into English for the record. The petition was rejected.

In **State of Tennessee v Heck Van, 1993 (864 S.W 2d 465)**, the defendant charged with felony murder of three victims received three death sentences. At trial the Chinese interpreter who interpreted the testimony of the key prosecution witness was related to the victims (his brother and sister-in-law) and was the grandson of the key witness. According to the trial court, no competent disinterested interpreter was available for the rare dialect of Chinese. The trial judge was satisfied that the interpreter was competent and unbiased. The appeals court affirmed all convictions and two death sentences, and remanded one defendant for re-sentencing.

In **State v Tamez, 1987, LA App 1st Cir (506 So 2d 531)**, guilty pleas to marijuana possession charges were interpreted by a co-defendant. The judge made no attempt to find a neutral interpreter. The appeals court reversed, based on the finding that use of an unqualified, unsworn interpreter who was the defendant's co-defendant rendered the plea and conviction invalid.

In **Balderrama v State of Florida, 1983 (Second District No. 83-657)**, the defendant's brother, a former co-defendant, chose to cooperate with the prosecution and acted as the interpreter during the remaining brother's change of plea hearing. The conviction was reversed and the case remanded with instructions.

4. Confidentiality

State v Izaguirre, 1994 (272 NJ Super) The same interpreter was used for pretrial interviews with defense psychiatrist and state's psychiatrist. The claim on appeal was that defendant's conviction was tainted. The Court affirmed the conviction and ruled

that absent a showing of harm such as breach of confidentiality, the use of one interpreter does not invalidate a conviction. However, the appellate opinion stated it would be preferable to have two different interpreters in such circumstances.

5. Uncertified Interpreter Appointed

Generally, reversible error does not result from the presiding judge's appointment of an uncertified interpreter if (1) a timely objection is not raised; (2) there is no substantiated objection to the selection or performance of same; or (3) it was shown (upon request) that a certified interpreter was not reasonably available. As is stated frequently in appellate opinions, the trial court has broad discretion in matters regarding selection of the Court interpreter.

On the federal level, various cases have been appealed on this issue. In both **U.S. v López, 1993, CA 6 Ohio, (US App LEXIS 32103)**, **U.S. v Hernández, 1994, CA6 Ohio (WL 75846)** and **U.S. v Paz, 1992 Texas (CA 5)**, the appellants claimed that the appointment of an "otherwise qualified interpreter" resulted in inadequate interpretation at change of plea hearings. No objection had been raised during the hearings to the services of the interpreter. In the Lopez opinion, the Court acknowledged,

"The Act [Court Interpreter's Act] ensures that a party has comprehension of the proceedings and the means to communicate effectively with counsel. Accordingly, our ultimate determination in addressing a claim of inadequate interpretation is whether such failure rendered the proceeding fundamentally unfair. Given the broad discretion accorded the trial judge under the Act, we conclude that the district court did not err in finding that Lopez's understanding of the plea hearings was adequate."

Similar opinions were rendered in the two other cases.

State appeals courts have handed down similar rulings. In **State v Puente-Gómez, 1992, App (21 Idaho 702)**, the trial judge appointed an 'otherwise qualified interpreter' whose performance did not raise objections during the proceedings. A post-conviction objection was overruled. The Court stated that determination of an interpreter's qualifications is a matter of the trial court's discretion, and an objection with supporting evidence is required to preserve an error on the record.

Two Washington State cases are noteworthy. In **State v Pham, 1994 (75 Wash App 633)**, reversal was denied in the molestation and rape of a nine-year-old speech-impaired Vietnamese girl. The victim testified through an uncertified female interpreter although a certified male interpreter was available. Good cause was noted on the record. At pretrial competency hearing, the victim had testified through a male interpreter and was not comfortable. On appeal, the Court ruled that given the nature of the proceedings and the cultural differences the victim experienced, the trial judge did not err in using a non-certified interpreter. Counsel did not object at trial and therefore could not raise the issue for the first time on appeal unless the error had been of constitutional magnitude. Additionally, the opinion stated, "A defendant has a

constitutional right to a competent interpreter, not necessarily a certified interpreter." There was no indication the interpreter was incompetent.

The Pham decision was cited as precedent in **State of Washington v José López Serrano, 1999 (Wash. App Div. 3)**. The defendant was convicted of second-degree murder and second-degree unlawful possession of a firearm. The appeal alleged that error arose from the fact that the interpreter was 'qualified,' but not 'certified.' The Court found that the defendant failed to show that the interpreter was incompetent. Although the interpreter was 'qualified' and not 'certified,' there was no violation of the appellant's constitutional rights.

6. Attorney Serving as Interpreter

On occasion, bilingual attorneys believe their language skills are sufficient to render unnecessary the presence of an interpreter. Some judges have perceived this double-duty as an economic and administrative savings to the Court. However, ethical questions linger. If the accused makes an incriminating statement unwittingly, can counsel assert attorney-client privilege? Would the client have to defend himself in an adversary system without an advocate? While counsel is speaking for his client or examining a witness, who is interpreting the proceedings for the defendant? While counsel is interpreting, who is representing the client's interest? And finally, bilingual ability does not automatically translate into interpreting ability. Such ethical dilemmas, allegiances, and questions of competence suggest questionable practice in these instances.

Appellate courts have held differing opinions on this issue. In **Briones v Texas, 1980, Tex Crim (595 SW 2d546)**, and **State v Zambrano, 1989, Ohio App. Sandusky Co (LEXIS 3951)**, the Courts held that the attorney's bilingual competence was adequate to protect the defendant's Fourteenth Amendment rights. However, in **Giraldo-Rincón v Dugger, 1989, MD FLA (707 F Sup 504)** and in **State v Kounelis, 1992 (258 NJ Super 420)**, the Courts of Appeals reversed on this issue.

7. Borrowed Interpreter

Appellate courts have not had a consistent response to claims of due process violations resulting from 'shared' or 'borrowed' interpreters. Several convictions were overturned on these grounds in the 1980's. In **People v Resendes, 1985 (210 Cal. Rptr 609)**, the appellant contended that providing only one interpreter for himself and his co-defendant violated his Sixth Amendment right to an interpreter throughout the proceedings and to effective assistance of counsel. The appeals court ruled that in joint criminal prosecutions of two defendants who did not speak English, requiring the defendants to share one interpreter inhibited effective communication with counsel and therefore constituted reversible error. The Court relied on the California Supreme Court decision in **People v Aguilar, 1984 (35 Cal.3d785)**. In this appeal of a murder conviction, the Court held that the defendant was deprived of his constitutional right to

a proceedings interpreter when the trial court borrowed the interpreter to translate testimony of two state witnesses.

However, in **People v Baez, 1987, 4th Dist (195 Cal App 3d 1431)**, the appeals court found that defendant's ability to communicate with counsel was not improperly limited by "borrowing of the interpreter for witness testimony." The defendant had not received translation of colloquy between trial court and counsel or of trial court's ruling. In affirming the conviction, the appeal court observed that English-speaking defendants rarely understand much of the legal exchange among court and attorneys, and that no discussion was important enough to have affected the trial's outcome.

In **People v Rodríguez, 1990, NY 1st Dept (165 App Div 2d 705)**, the Court held that a Spanish-speaking defendant was not entitled to appointment of a second interpreter when the defendant's interpreter was used to translate testimony of Spanish-speaking witnesses because the defendant was able to comprehend the witness' testimony and the judge permitted the interpreter to return to defense table whenever the defendant needed to confer with counsel.

In **People v Chávez, 1991, 4th Dist (321 Cal App 3d 1471)**, the appellant alleged trial court's error in requiring a non-English speaking defendant charged with grand theft to share the interpreter with a co-defendant. The appeals court held that sharing an interpreter was harmless beyond a reasonable doubt, as there was no evidence of prejudice suffered by the defendant.

Similarly, in **U.S. v Yee Soon Shin and Yong Woo Jung, 1992 CA 9, (953 F2d 559)**, the appeals court ruled that two defendants sharing one interpreter did not violate the defendant's rights under the Fifth and Sixth Amendments, nor did the Court Interpreters Act [28 U.S.C.1827 (d)(1)] require separate interpreters for each defendant in multi-defendant cases.

Washington v Jairo Gonzáles-Morales, 1999 (WL 439091), a recent decision by the Supreme Court of Washington, arose out of a case in which the trial court had permitted a court-appointed Spanish interpreter to interpret for a prosecution witness as well. On appeal it was contended that this use of a 'borrowed interpreter' had prevented client and counsel from communicating while the Spanish-speaking witness was testifying. The Appellate Court, referring to other state and federal precedents which had denied the claim of abuse of discretion when ruling on this same issue, concluded that the petitioner's constitutional right to counsel was not violated. This particular case was the first time the issue of a 'borrowed' interpreter had come before the Washington state appellate court. The issue then was further litigated in the Supreme Court of Washington, which ruled that the Court of Appeals was correct in affirming the conviction.

In deciding this issue, appellate courts continue to examine such factors as whether the trial court afforded the defendant the opportunity to confer with counsel at all

times during the proceedings, the duration of the testimony, the ability of the defendant to understand testimony of non-English-speaking witnesses, the location of the interpreter in the Courtroom and his or her accessibility to the defendant, and the general availability of interpreters to the Courts.

8. Accuracy of Interpretation

Many courts have expressly or implicitly recognized that minor or isolated inaccuracies, omissions or other translation problems are inevitable, and as such, do not warrant relief from a criminal conviction if the translation is otherwise reasonably timely, complete, and accurate, and the defects do not render the proceeding fundamentally unfair. The critical determination depends on whether discrepancies affect material matters and issues central to the case. Courts have stated there is no such thing as a perfect translation, and therefore some minor discrepancies are inevitable. Since there is no precise criterion for an 'accurate translation,' appellate review must focus on how the error affected the ability to present a defense.

Interpreter errors are subject to review if the record shows that a witness's answers are unresponsive or confusing and if objections to the interpretation are placed on the record. In each case the appeals court reviews the testimony to determine if the errors were prejudicial to the defendant.

Rarely is a case overturned because of interpretation errors alone. Only one case stands out in this instance, *State of Illinois v Starling*, 1974, 1st District (21 Ill App 3d 217). Here the Court focused on the central question of whether the testimony of the sole prosecution witness was 'understandable, comprehensible and intelligible.' Both prosecutor and defense counsel had complained repeatedly of the ineffectiveness of the interpreter, and the trial judge had frequently admonished the interpreter for engaging in unrecorded discussions with the witness. The appellate ruling held that the defendant was denied his right to confront the state's sole witness when difficulties in interpretation became apparent and that the trial judge had indeed abused his discretion in not replacing the interpreter. The robbery conviction was overturned and the case remanded for a new trial. The appellate ruling stated, "The only cure upon discovery of an incompetent interpreter is to appoint another interpreter, one who will translate truly, competently, and effectively, each question and answer with due regard for his or her oath to do so."

In ***Pérez Lastor v INS, 2000 (Case Number 98-70266)***, the U.S. Court of Appeals for the Ninth Circuit in reviewing a decision by the Board of Immigration Appeals held that the deportation hearing of an asylum seeker did not satisfy the requirements of due process primarily because of incompetent translation. The opinion stated, "It is extremely difficult to pinpoint direct evidence of translation errors without a bilingual transcript of the hearing. Even without that aid, the English-language transcript of Pérez-Lastor's hearing provides direct evidence that the translator did not communicate the IJ [Immigration Judge]'s words to Pérez-Lastor."

These two cases notwithstanding, courts have stressed that occasional lapses from the 'complete and accurate' standard of interpreting do not render the proceedings fundamentally unfair. "If the meaning, substance and language of the testimony is conveyed, occasional lapses of word-for-word translation do not constitute reversible error." (U.S. v Joshi, op cit).

In **U.S. v Gómez, 1990, FL CA 11(902 F2d 809)**, the interpreter had taken liberty during witness testimony. When the prosecutor asked the witness where the defendant generally sold cocaine, the interpreter said: "Generally he sells at a location he says is the disco, but what he means is the Elks Lodge on Carson Street." She inserted a gratuitous explanation that when the witness said 'disco' he meant 'Elks Lodge.' The Court concluded that while defendants have no constitutional right to a flawless translation, interpreters should strive to translate exactly what is said and should not "embellish" or "summarize" live testimony. The error was prejudicial to the defendant, but proof against him was so overwhelming that the error did not render the entire trial so fundamentally unfair as to require a reversal of conviction.

Other alleged or actual interpretation errors have been cited on appeal, but appellate courts reviewing these issues have affirmed the trial courts' rulings. In **Spruance v State, 1994, Del Sup (LEXIS 106)**, the appellant convicted of attempted robbery and unlawful sexual intercourse claimed that the victim's testimony was not interpreted verbatim into English. The interpreter first translated, "The defendant took down her underwear" and then rephrased the answer when counsel asked her to repeat the statement, saying, "The defendant pulled them down." The trial judge ruled that when the interpreter adequately conveys the testimony's substance and meaning, and the translation is not subject to grave doubt, failure to translate exactly is not prejudicial.

In **Ohio v Sánchez, 1986, OH App (LEXIS 6536)**, the appellant asserted that the Spanish interpreter was not efficiently translating Puerto Rican Spanish into English. The Court ruled that although dialects may be different, the interpreter did demonstrate impressive credentials and experience. Relying on a precedent, the Court held that a "defendant is entitled to a fair trial, not a perfect one."

In **Liu v State, 1993, Del Sup (628 A2d 1376)**, a Chinese defendant convicted of murder, arson, and burglary claimed that the testimony of a prosecution witness was not accurately translated because of dialect differences between the interpreters and the witness. An anonymous Asian spectator had approached the prosecutor during trial and commented that one of the interpreters was doing a poor job. The record showed that the substance and meaning of the testimony was conveyed to the jury. The conviction was affirmed.

In a **Rhode Island case, State v Mora, 1993, RI (518 A2d 1275)**, during trial, the defendant presented a list of discrepancies between his Spanish testimony and the interpreter's renditions (as noted by defendant's own interpreter), objecting to the overall performance of the interpreter. A mistrial was requested on the second day of trial, and denied. On appeal, it was argued that the defendant was made to appear distraught and evasive as a witness. Additionally, the appeal alleged that the

defendant was not allowed to engage in narrative, and answers had to be split into two parts because the interpreter couldn't remember long sequences. The Appeals Court ruled that the trial judge had exercised proper discretion in allowing the interpreter to continue, noting that the interpreter requested repetitions so as to interpret the defendant's answers accurately, and that the trial judge instructed counsel to limit the length of answers so the defendant could testify through an effective interpretation process. The conviction was affirmed.

State v Rodríguez, 1994, LA App, 4th Cir (835 So 2d 391) dealt with what were perceived as non-verbal errors. The appellant claimed the interpreter did not adequately convey the defendant's emotions and passions while rendering his testimony. The Court held there was no denial of due process. No example cited in the appeal showed any inaccuracy.

Unless interpretation errors are egregious and challenged on the record with an offer of substantial proof, and no satisfactory remedy is provided, the appellate courts are unlikely to reverse the trial courts' rulings. In **Rodríguez v State, 1999, Supreme Court of Georgia (WL 371629)**, the Court held that despite the use of an uncertified interpreter, and interpretation errors in witness testimony before the jury, Rodríguez failed to show in which respect the faulty interpretation was harmful. The particular testimony at issue was cumulative of the testimony of other witnesses. Thus, the inaccuracies were harmless and did not alter the outcome of the case.

In **Check v State, 1999, Ga App (WL 236291)**, two witnesses had trouble understanding the interpreter's questions at certain points in the trial. Check used this evidence as grounds for appeal, but the Court found on the basis of all the facts that the defendant was guilty beyond a reasonable doubt.

In **Levario v Texas, 1999, Tex. App-Texarkana (WL 289239)**, the appellant sought to have his conviction overturned because the Court-appointed interpreter did not have adequate skills. However, since the defense failed to object to the qualifications and made no record, he waived his right to any recourse. The Court of Criminal Appeals ruling stated that "a defendant must impeach accurate or incomplete translation to cure it."

In **New York v Staley, 1999, N.Y.App. Div (LEXIS 6536)**, the appellant failed to establish during trial that an interpreter-related problem had occurred or that there was error in the interpretation of the complainant's testimony.

In the case of **U.S. v Mata, 1999 (4th Cir. Virginia)**, the interpreter admitted to defense counsel that she was having difficulty translating some of the legal terms and it was evident that Mata was not receiving a continuous simultaneous interpretation. However, Mata and counsel failed to object to the quality of translation during the trial. Despite the alleged lack of qualifications, evidence of guilt was found to be overwhelming and even the deficient translations "had not prejudiced Mata in any way."

In South Carolina, **State v Pérez, 1999 (WL 157644)** arose from a case in which a defendant was convicted of murdering his wife after 4 days of marriage. The appellant claimed he was denied an interpreter at his criminal trial. The trial court had allowed an interpreter to convey questions to the defendant, and if he testified, to interpret both the questions and answers. The defendant asked for pauses in the trial at certain crucial points to allow the interpreter time to explain the proceedings to him. The trial judge stated: "Well, I assume the interpreter has been in the business long enough that she can sit there and interpret for him everything that's going on. If it gets to be a problem, you will have to let me know; then we'll cross that bridge when we come to it." Nothing further was said, and the defense never objected to the Court's ruling, and never mentioned any problems. On appeal it was also contended that the trial judge had failed to administer an oath to the interpreter. No objections were raised on either point during trial, and therefore these issues were not preserved for appeal.

In **Kan v Texas, 1999, Tex. App San Antonio (WL 417827)**, Kan claimed that the Mandarin Chinese interpreter provided inaccurate and incomplete translations. Texas law does not require specific qualifications for interpreters, but only states "sufficient skill in translation and familiarity with the use of slang". [Tex. Code of Crim, Proc. Ann.art, 38,30 (Vernon 1989).] During the trial it was clear to the Court that the interpreter was having trouble with the legal terms and was not able to keep pace with the rapid questions by the attorneys. The Court ruled that the interpreter's difficulty was only a result of the attorneys not allowing sufficient time for translation. Kan was barred from appealing based on the accuracy of the translation since specific problems were not raised and documented during the trial. The conviction was affirmed.

Conclusions

Based on these examples drawn from several hundred appellate opinions, we can formulate the following general conclusions:

The majority of issues raised on appeal are procedural and beyond the interpreter's control. Objections to interpreting errors must be made during the proceedings and preserved for the record. Many interpreting issues are in fact resolved at the trial court level. Errors not preserved on the record cannot be raised on an appeal to which the "abuse of discretion" standard applies. Review under the "plain error" standard is far more stringent, and for the appeal to succeed a showing must be made of a substantial violation of the fundamental rights to a fair trial.

What can interpreters learn from these examples? The following suggestions may be considered.

- Review and apply the Interpreters Code of Professional Conduct. These are available from some court administrations and from professional organizations.

- Interpret only in the presence of, and at the direction of, court and counsel. Do not assume any independent role.
- Maintain confidentiality of all interpreted sessions.
- Do not engage in discussions with defendant or relatives and request permission from the Court before addressing the defendant about a matter of interpretation.
- Interpret all verbal exchanges in the Courtroom fully and accurately in the simultaneous mode.
- Make certain the interpreter oath is administered on the record before beginning to interpret. If an oath is required for interpreting between counsel and client, it should be administered at the earliest opportunity in order to ensure that the interpreter has been sworn to participate in confidential colloquies.
- Correct any error made on the witness stand immediately and on the record.
- If possible, ascertain whether interpreting will be needed for defendant and witness(es), and what the local court rules are in situations where only one interpreter is present in court.
- If the defendant does not want a simultaneous interpretation, this must be stated on the record. Waiver of the right to interpreted proceedings must be voluntary and so reported in open court and for the record.
- Use common sense. As interpreters we must often make decisions in situations for which no precedents may be known. Past experience and a moment of rational reflection will often point to a wise decision.

Finally, the possibility of appealable issues is one more incentive for interpreters to take advantage of all opportunities to improve skills and remain current in the profession.

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Appendix II **Survey - Test and Education Fees - 2001**
 Consortium For State Court Interpreter Certification

State	Fee for Orientation Workshops	Comments	Test Fees	Comments
Arkansas	\$50	to be determined	0	to be determined
California	\$65	\$180 for 2-day language-specific workshop for Spanish oral exam candidates	\$250	For written and oral; if candidate does not pass the oral, the fee to retake oral is \$250
Colorado	\$75		\$200	\$125 sight/simultaneous; \$75 consecutive
Connecticut	NA	Not offered at present	NA	
Delaware	\$35, 65	\$35 for Delaware residents; \$65 for out-of-state residents	\$35, 65	\$35 for Delaware residents; \$65 for out-of-state residents
Florida	\$75		\$100	
Georgia	0	Only one workshop held, in 1997	0	no program in place
Hawaii	\$50	Three 2-day workshops held, in 1997	0	no program in place
Idaho	\$50	\$75 for skills-building workshop	\$100	
Illinois	NA		NA	
Kentucky				
Maryland	\$140	\$280 currently for skills-building workshop; costs vary based on length of class	\$75	
Massachusetts	0		0	
Michigan	\$75	two-day workshop	0	to be determined
Minnesota	\$50		\$225	
Missouri	\$125	\$100 for skills-building training	\$150	for complete test; \$75 for each phase
Nebraska	0		\$100	
New Jersey	0		0	
New Mexico	\$65	\$65 for skills-building workshop	\$65	complete exam
North Carolina	\$100	\$25 intro. seminar; \$75 two subsequent training sessions (will change in 2002)	0	test fee included in workshop cost (will change in 2002)

Oregon	\$210	Orientation workshop is mandatory; \$150 for optional skills-building training; \$100 for language-specific training; \$10 per continuing education credit	\$200	\$50 for screening test; \$150 for final exam
Tennessee	\$100			
Utah	\$100		\$100	\$50 for sight/simultaneous; \$50 for consecutive
Virginia	\$100	two-day orientation workshop	\$150	no charge for written test
Washington	0	cost of 60-hour language-specific training: \$100 for WA residents and \$500 for non-residents	\$30-500	\$30 written screening; cost of oral test: \$100 for WA residents and \$500 for non-residents
Wisconsin	0	no program in place as yet	0	no program in place as yet

Appendix III Profile of General Demographic Characteristics for Arizona: 2000

Subject	Number	Percent	Subject	Number	Percent
Total population	5,130,632	100.0	HISPANIC OR LATINO & RACE		
SEX AND AGE			Total population	5,130,632	100.0
Male	2,561,057	49.9	Hispanic or Latino (of any race)	1,295,617	25.3
Female	2,569,575	50.1	Mexican	1,065,578	20.8
			Puerto Rican	17,587	0.3
Under 5 years	382,386	7.5	Cuban	5,272	0.1
5 to 9 years	389,869	7.6	Other Hispanic or Latino	207,180	4.0
10 to 14 years	378,211	7.4	Not Hispanic or Latino	3,835,015	74.7
15 to 19 years	367,722	7.2	White alone	3,274,258	63.8
20 to 24 years	362,860	7.1			
25 to 34 years	742,665	14.5	RELATIONSHIP		
35 to 44 years	768,804	15.0	Total population	5,130,632	100.0
45 to 54 years	627,904	12.2	In households	5,020,782	97.9
55 to 59 years	238,675	4.7	Householder	1,901,327	37.1
60 to 64 years	203,697	4.0	Spouse	986,303	19.2
65 to 74 years	363,841	7.1	Child	1,496,034	29.2
75 to 84 years	235,473	4.6	Own child under 18 years	1,197,438	23.3
85 years and over	68,525	1.3	Other relatives	319,414	6.2
			Under 18 years	132,782	2.6
Median age (years)	34.2	(X)	Non-relatives	317,704	6.2
			Unmarried partner	118,196	2.3
18 years and over	3,763,685	73.4	In group quarters	109,850	2.1
Male	1,859,746	36.2	Institutionalized population	63,768	1.2
Female	1,903,939	37.1	Non-institutionalized population	46,082	0.9
21 years and over	3,536,279	68.9			
62 years and over	787,520	15.3	HOUSEHOLDS BY TYPE		
65 years and over	667,839	13.0	Total households	1,901,327	100.0
Male	296,267	5.8	Family households (families)	1,287,367	67.7
Female	371,572	7.2	With own children under 18 years	608,218	32.0
			Married-couple family	986,303	51.9
RACE			With own children under 18 years	428,878	22.6
One race	4,984,106	97.1	Female householder, no husband present	210,781	11.1
White	3,873,611	75.5	With own children under 18 years	129,511	6.8
Black or African American	158,873	3.1	Non-family households	613,960	32.3
American Indian and Alaska Native	255,879	5.0	Householder living alone	472,006	24.8
Asian	92,236	1.8	Householder 65 years and over	162,822	8.6
Asian Indian	14,741	0.3			
Chinese	21,221	0.4	Households with individuals under 18 years	673,926	35.4
			Households with individuals 65 years and over	465,062	24.5
Filipino	16,176	0.3			
Japanese	7,712	0.2	Average household size	2.64	(X)
Korean	9,123	0.2	Average family size	3.18	(X)
Vietnamese	12,931	0.3			
Other Asian 1	10,332	0.2	HOUSING OCCUPANCY		
Native Hawaiian and Other Pacific Islander.	6,733	0.1	Total housing units.	2,189,189	100.0
Native Hawaiian	1,985	-	Occupied housing units	1,901,327	86.9
Guamanian or Chamorro.	1,354	-	Vacant housing units	287,862	13.1
Samoan.	1,197	-	For seasonal, recreational, or occasional use	141,965	6.5
Other Pacific Islander 2	2,197	-			
Some other race.	596,774	11.6	Homeowner vacancy rate (percent)	2.1	(X)
Two or more races.	146,526	2.9	Rental vacancy rate (percent)	9.2	(X)
Race alone or in combination with one or more other races: 3			HOUSING TENURE		
			Occupied housing units	1,901,327	100.0
White	3,998,154	77.9	Owner-occupied housing units	1,293,556	68.0
Black or African American.	185,599	3.6	Renter-occupied housing units	607,771	32.0
American Indian and Alaska Native.	292,552	5.7	Average household size of owner-occupied units	2.69	(X)
Asian	118,672	2.3	Average household size of renter-occupied units	2.53	(X)
Native Hawaiian and Other Pacific Islander.	13,415	0.3			
Some other race.	677,392	13.2			

- Represents zero or rounds to zero. (X) Not applicable.

1 Other Asian alone, or two or more Asian categories.

2 Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

3 In combination with one or more of the other races listed. The following six numbers may add to more than the total population and the six percentages may add to more than 100 percent because individuals may report more than one race.

Source: U.S. Census Bureau, Census 2000.