

Lynn Seaks - Franco Gamero's comments on ADM File No. 2012-03.

From: F G <fg.mitin.2008@gmail.com>
To: <MSC_clerk@courts.mi.gov>
Date: 8/31/2012 8:14 PM
Subject: Franco Gamero's comments on ADM File No. 2012-03.
Attachments: InterpretersFrancoGamero.docx; Attachment A TheNewJerseyCase.pdf; InterpretersAct1978.pdf; Attachment B.docx

Dear Clerck of the Michigan Supreme Court.
My name is Franco Gamero.

I am a retired BioMechanical Engineer from General Motors, since 2002. Presently I am a consultant and Expert Witness in Automobile Accidents and Injury Causation. I am a MultiDisciplinary Accident Investigator and Reconstructionist. I am also an expert analyst of national accident databases as well as an internaional certification engineer for international standards and regulations. I jave also been a translator/interpreter for English, Spanish, Portuguese, French and Italian, since 1963.

I began to interpret as a freelance contractor for the courts around 2002.

I have been Vice President and President of the Michigan Translators/Interpreters Network (MiTiN), 2008-2012.

I have acted as a Liaison between MiTiN and Sharon Fox.

I took the Spanish Court Interpreting tests in 2008.

I respectfully submit the following:

1. ADM File No. 2012-03, with my comments in *Italics*.
2. Attachment A TheNewJerseyCase.
3. Attachment B: Franco Gamero's experience with the Language Certification Test. My initial letter to Sharon Fox. I asked her not to take action.
4. InterpretersAct1978, for reference.

I am available to answer questions or provide clarifications at any time.

Thank you for the opportunity to provide comments. I hope you find useful.

Respectfully submitted,

Franco Gamero

248-217-5550

Order Michigan Supreme Court

May 2, 2012

ADM File No. 2012-03

Proposed Adoption of
Rule 1.111 and Rule 8.127
of the Michigan Court Rules
(Foreign Language
Interpreters)

Robert P. Young, Jr.,
Chief Justice

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

On order of the Court, this is to advise that the Court is considering adoption of new Rule 1.111 and Rule 8.127 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at the following:

www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm.

Please note that three alternative provisions are offered for consideration in MCR 1.111 at subrules (B) and (F)(4).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[The text below is new.]

Rule 1.111 Foreign Language Interpreters

(A) Definitions

When used in this rule, the following words and phrases have the following definitions:

- (1) "Case or Court Proceeding" means any hearing, trial, or other appearance before any court in this state in an action, appeal, or other proceeding,

including any matter conducted by a judge, magistrate, referee, or other hearing officer.'

Jurisdiction:

Comment: It should specify that only in venues under the jurisdiction of the MI Supreme Court: Appeals, Circuit, District, Probate and those under their jurisdictions (jails, juvenile, friend of the court, probation, etc.)

Reasons: 1) There are other legal venues, conducted by judges, magistrates, referees, or other hearing officers, that are not under the jurisdiction of the above mentioned courts, are independent, and have different protocols, requirements, terminology, etc.: Social Security, Workers Compensation (both require knowledge of medical terminology), Department of Labor, Immigration, Federal, Depositions, Interviews under Oath, etc. 2) State Certified interpreters should not feel entitled or qualified to interpret in these other venues just because they have said certification.

- (2) "Certified foreign language interpreter" means a person who has:
- (a) passed a foreign language interpreter test administered by the State Court Administrative Office or a similar state or federal test approved by the state court administrator,
 - (b) met all the requirements established by the state court administrator for this interpreter classification, and
 - (c) registered with the State Court Administrative Office.

*Comment: for (a): 1) Considering that all parties expect 100% efficiency in both languages, especially in English, the mere passing of the Tests, at 80% for the written, and 70% for the oral, should not be the sole qualifier to prove expertise in interpreting. The tests do not reflect actual court conditions. 2) There should be a process of **Exoneration** of the Tests. Certification should also include other Certifications or Diplomas. It should also consider education and proven experience as proven foreign language interpreter, especially when involved in legal proceedings. i.e., having interpreted in courts in other states, or countries, where certifications have not been adopted or the Test Consortium has not been approved. A court interpreter should be treated the same as an Expert Witness.*

Reasons:

1) There is a high rate of “failures” passing the tests. The concern was voiced very early by Sharon Fox. The “New Jersey case” clearly explains what happens when candidates are limited to a set of criteria. Please see Attachment A.

1.1) The written test, required only since around 2007, does not reflect the English proficiency of a person. I believe that many interpreters that did not have to take this test before, would score low or would not pass. Native English speakers, college educated, could not obtain 100%. It is a “multiple choice” type of test. It cannot be studied for, yet it allows for “guessing”. It is similar to the SAT/ACT/GRE tests. (I spoke with a tutor who mentioned about the “SAT scandal”). In Spanish, spelling is so important that a misspelled word in any test is discounted from the total. The test I took contained terms totally unrelated to any court situation. (“elbow grease”, a term I haven’t heard since the summer of 1977 when my wife asked me to clean the stove. I failed to see the relation to a court proceeding, unless this caused domestic violence, etc.). Interpreters should be able to write correctly in English because this is now a part of the “sight translation” mode. With the advent of written communications, such as e-mails, texting, chatting, etc., the need to render these communications in correct English is extremely important. During the course of a trial, Defendant A received a written note from Defendant B. The court asked me to translate it over lunch.

1.2) The oral tests are designed to be failed. None of the tests are the culmination of classroom, workshops, or formal training. A medical certification is given only after completing a 40-hour course by a certified instructor/interpreter, and passing a test. The only person that has passed all tests at a high percentage attended the Monterey Institute. The State Certification test mentions that it accepts regionalisms. It does not. It would be impossible for a test or any grader to be aware of all the regionalisms in Spanish. Considering that even within a city, or a state, the same word can have different meanings. Add to this the criminal jargon, known only to a certain group. At the Police Museum in Peru there was an exhibit showing the jargon used by the underworld and their respective meanings. This situation has increased in volume with the advent of illegal drugs and their variations or derivatives. On the other hand new technologies bring new names that did not exist before. A “hit” means different things when speaking of analyzing a hard drive, drug consumption, a conspiracy, etc. There have been individual efforts by some interpreters to “help” pass the tests (Kevin Casillas, Evelyn

Villarruel, Jinni Bromberg, etc) It has become a training to pass the tests (learn the terminology used), rather than to teach interpretation. I have reviewed the training materials and found serious errors. The majority of the presently Certified interpreters had to take the test several times.

1.3) The passing of the test is calculated by the words "missed". Nominally, it simply means that the "misses" are subtracted from 100. According to the criteria, if the score is 71 (29 misses), it's a Pass. However, the words are statistically weighted, in such a manner that if a candidate provides one incorrect interpretation (per their criteria) it might mean a 5 point weight. In my personal experience I only missed ONE word that I could not remember its meaning in English (barbed wire). In real court situations weighing the words does not exist.

1.4) The tests are based on a terminology that is antiquated, sometimes erroneous, and which doesn't take into consideration regionalisms or words that do not need to be translated because they have been adopted worldwide, and for all languages: "Probation". Please see Attachment B for my personal Test experience.

2) Exoneration: Michigan has been seeing a large number of people retiring from the large corporations. I am one of them. Some of us are foreign nationals who have been involved in the legal departments at the international level, as well as translating and interpreting in our different areas. We are older and not interested in full-time employment but driven by a desire to contribute to this country. Many possess diplomas and certificates in Linguistics and many have had to take rigorous classes in English. If a candidate can prove that he/she has taken the SAT/ACT/GRE tests, should exoneration of the written test be in order?

3) Many possess diplomas and certificates in Linguistics and many have had to take rigorous classes in English. Myself, I possess a Diploma from the Peruvian-North American Cultural Center. This is an institute founded to help professionals move to the U.S. Mostly physicians and engineers. The founders and sponsors were: The U.S. Department of Justice, The U.S. Embassy, and USIS (United States Information Service). It was, and continues to be, affiliated to the University of Michigan. Many professors were invited to give talks and workshops in their fields. There was no bigger accreditation in the English Language. The graduates became, if they decided to stay in Peru, English teachers, translators, interpreters, guides, etc. Presently they are qualified to perform the TOEFL/GRE, SAT I and II, and the Cambridge Michigan Tests, ECCE/ECPE.

4) *Many of us have been involved with our respective legal departments and participated in legal proceedings, U. S. and international. Myself, I have participated in the U.S., Mexico, Brazil, Colombia, Europe, etc., as an expert witness and advisor,*

5) *Myself, I was an interpreter for the Iowa courts in Blackhawk Co., Iowa. The only proof I have is a check from the courts and a letter from the Assistant prosecutor.*

6) *A very important item that an interpreter should always have: a dictionary. All training and suggestions require the interpreter to have a dictionary in all proceedings. Should a dictionary be allowed for the test?*

- (3) "Interpret" and "interpretation" mean the oral rendering of spoken communication from one language to another without change in meaning.

Comment: The definition should be expanded to include completeness, form, etc.

Reasons: 1) Completeness: the interpretation should be complete or 100%. 2) Form: The interpretation should take into account the regionalism of the LEPP. While the translation from English to Spanish is correct intrinsically, it could lose meaning depending on the region the source term originates. In other words, the same word can have two different or opposite meanings. In one region it could be an insult, and in another, a compliment. Additionally, the State Certification test mentions that it accepts regionalisms. It does not. 3) This would mean that the certified interpreter is knowledgeable of ALL regionalisms, ALL disciplines, and ALL terminologies. An impossibility.

- (4) "Limited English proficient person" means a person who does not speak English as his or her primary language, and who has a limited ability to read, write, speak, or understand English, and by reason of his or her limitations, is not able to understand and meaningfully participate in the case or court proceeding.

Comment: This is a limited definition of LEPP.

Reasons: 1) Many LEPPs have an extensive ability to read, write, speak and understand English. They, however, request an interpreter because they don't know the legal terms of a proceeding; neither in English, or in their own language. They believe the interpreter will clarify or explain the terms. 2) I found that many have a high percentage of understanding (70% or

more) but a lower percentage to express themselves in English (40% or less). They hope the interpreter can help them increase this percentage to a 100%.

- (5) "Qualified foreign language interpreter" means:
- (a) A person who provides interpretation services, provided that the person has:
 - (i) registered with the State Court Administrative Office; and
 - (ii) met the requirements established by the state court administrator for this interpreter classification; and
 - (iii) been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services, or
 - (b) A person who works for an entity that provides in-person interpretation services provided that:

¹ This provision would not be necessary if Alternative B (for subrule [B]) is adopted, which includes the definition for "court proceeding" and "court operations."

- (i) both the entity and the person have registered with the State Court Administrative Office; and
- (ii) the person has met the requirements established by the state court administrator for this interpreter classification; and
- (iii) the person has been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services, or

© A person who works for an entity that provides interpretation services by telecommunication equipment, provided that:

- (i) the entity has registered with the State Court Administrative Office; and
- (ii) the entity has met the requirements established by the state court administrator for this interpreter classification; and
- (iii) the person has been determined by the court after voir dire to be competent to provide interpretation services for the proceeding in which the interpreter is providing services

Comment: I would like to suggest that all interpreters should be treated as Expert Witnesses, and be subject to voir dire, at least once.

Reasons: As an expert witness I have to prove Education, Experience, Publications, etc. not only to the court, but be subject to questioning by the participating attorneys. It is therefore possible that a non-certified interpreter be qualified over a certified interpreter. i.e., in the case of a highly technical proceeding. 3) If a Qualified interpreter participates in all legal proceedings, including trials, in a District Court, and the case is bound over to a Circuit Court, then the Qualified interpreter becomes "less qualified" than the Certified interpreter. The Qualified interpreter might have acquired all the terminology necessary which might be new to the "new interpreter". This is very common at the present time.

Alternative A

(B) Appointment of a Foreign Language Interpreter

- (1) If a person requests a foreign language interpreter and the court determines such services are necessary for the person to meaningfully participate in the case or court proceeding, or on the court's own determination that foreign language interpreter services are necessary for a person to meaningfully participate in the case or court proceeding, the court shall appoint a foreign language interpreter for that person if the person is a party, a participant, or a witness while testifying in a civil or criminal case or court proceeding.
- (2) The court may appoint a foreign language interpreter for a person other than a party who has a substantial interest in the case or court proceeding.
- (3) In order to determine whether the services of a foreign language interpreter are necessary to provide a person with a meaningful opportunity to participate under subrule (B)(1), the court shall conduct an examination of the person on the record. During the examination, the court may use a foreign language interpreter. For purposes of this examination, the court is

not required to comply with the requirements of subrule (F) and the foreign language interpreter may participate remotely.

Alternative B

(B) Appointment of a Foreign Language Interpreter

- (1) The court shall assign an interpreter for a Limited English Proficient person during or ancillary to a court proceeding or court operations for all parties in interest. For purposes of this rule, the following definitions apply:
- (a) A court proceeding is any hearing, trial or other appearance before any Michigan state court in an action, appeal, or other proceeding, including any matter conducted by a judicial officer.
 - (b) Court operations include offices of the courts, services, and programs managed or conducted by the court and probation which involve contact with the public or parties in interest.
 - (c) Parties in interest include a party to a case; a victim; a witness; the parent, legal guardian, or custodian of a minor party; and the legal guardian or custodian of an adult party.

Alternative C

(B) Appointment of a Foreign Language Interpreter

- (1) If the case or court proceeding is one in which the court would be required to appoint an attorney for a person if he or she were indigent, the court shall appoint a foreign language interpreter if that person requests interpreting services and the court determines that such services are necessary for the person to meaningfully participate in the case or court proceeding, or on the court's own determination that court appointed foreign language interpreter services are necessary for that person to meaningfully participate in the case or court proceeding.
- (2) The court may appoint a foreign language interpreter in other instances at the court's discretion.
- (3) In order to determine whether the services of a foreign language interpreter are necessary to provide a person with a meaningful opportunity to

participate under subrule (B)(1), the court shall conduct an examination of the person on the record. During the examination, the court may use a

- (f) The appointment of the interpreter would not serve to protect a party's rights or ensure the integrity of the proceedings;

foreign language interpreter. For purposes of this examination, the court is not required to comply with the requirements of subrule (F) and the foreign language interpreter may participate remotely.

Comment: Many LEPPs are educated enough as to demand that the interpreter is fully knowledgeable of the regionalisms of the LEPP.

Reasons: 1) Many LEPPs have an extensive ability to read, write, speak and understand English. They, however, request an interpreter because they don't know the legal terms of a proceeding; neither in English, or in their own language. They believe the interpreter will clarify or explain the terms. 2) I found that many have a high percentage of understanding (70% or more) but a lower percentage to express themselves in English (40% or less). They hope the interpreter can help them increase this percentage to a 100%. The ones with very low or no understanding/expressing rely and trust completely on the interpreter.

(C) Waiver of Appointment of Foreign Language Interpreter

A person may waive the right to a foreign language interpreter established under subrule (B)(1) unless the court determines that the interpreter is required for the protection of the person's rights and the integrity of the case or court proceeding. The court must find on the record that a person's waiver of an interpreter is knowing and voluntary. When accepting the person's waiver, the court may use a foreign language interpreter. For purposes of this waiver, the court is not required to comply with the requirements of subrule (F) and the foreign language interpreter may participate remotely.

Comment: The court should still have an interpreter present for the protection of the court.

Reasons: The interpreter would be there to participate on an "as needed" basis, for the possibility of interpreting or improving on the pronunciation.

(D) Recordings

The court may make a recording of anything said by a foreign language interpreter or a limited English proficient person while testifying or responding to a colloquy during those portions of the proceedings.

Comment: Of the three modes of interpretation, sight-translation, consecutive, and simultaneous, only the consecutive can be recorded. The simultaneous mode is usually done by whispering or using a transceiver. By the way, the simultaneous mode comprises almost 100% in trials. This means that only the LEPP can judge whether the interpretation is complete and accurate.

(E) Avoidance of Potential Conflicts of Interest

(i) The court should use all reasonable efforts to avoid potential conflicts of interest when appointing a person as a foreign language interpreter and shall state its reasons on the record for appointing the person if any of the following applies:

- (a) The interpreter is compensated by a business owned or controlled by a party or a witness;
- (b) The interpreter is a friend, a family member, or a household member of a party or witness;
- (c) The interpreter is a potential witness;
- (d) The interpreter is a law enforcement officer;
- (e) The interpreter has a pecuniary or other interest in the outcome of the case;

- (f) The appointment of the interpreter would not serve to protect a party's rights or ensure the integrity of the proceedings;

- (g) The interpreter does have, or may have, a perceived conflict of interest;
- (h) The appointment of the interpreter creates an appearance of impropriety.

Comment: There are other areas of conflict specified in the Code of Ethics.

Reasons: Having an acquaintance with a party. Lack of knowledge of the terminology. Direct or indirect knowledge of the case.

② A court employee may interpret legal proceedings as follows:

- (a) The court may employ a person as an interpreter. The employee must meet the minimum requirements for interpreters established by subrule (A)(2). The state court administrator may authorize the court to hire a person who does not meet the minimum requirements established by subrule (A)(2) for good cause including the unavailability of a certification test for the foreign language and the absence of certified interpreters for the foreign language in the geographic area in which the court sits. The court seeking authorization from the state court administrator shall provide proof of the employee's competency to act as an interpreter and shall submit a plan for the employee to meet the minimum requirements established by subrule (A)(2) within a reasonable time.
- (b) The court may use an employee as an interpreter if the employee meets the minimum requirements for interpreters established by this rule and is not otherwise disqualified.

(F) Appointment of Foreign Language Interpreters

- (1) When the court appoints a foreign language interpreter under subrule (B)(1), the court shall appoint a certified foreign language interpreter whenever practicable. If a certified foreign language interpreter is not reasonably available, and after considering the gravity of the proceedings and whether the matter should be rescheduled, the court may appoint a qualified foreign language interpreter who meets the qualifications in (A)(5). The court shall make a record of its reasons for using a qualified foreign language interpreter.

- (2) If neither a certified foreign language interpreter nor a qualified foreign language interpreter is reasonably available, and after considering the gravity of the proceeding and whether the matter should be rescheduled, the court may appoint a person whom the court determines through voir dire to be capable of conveying the intent and content of the speaker's words

- (f) The appointment of the interpreter would not serve to protect a party's rights or ensure the integrity of the proceedings;

sufficiently to allow the court to conduct the proceeding without prejudice to the limited English proficient person.

- (3) The court shall appoint a single interpreter for a case or court proceeding. The court may appoint more than one interpreter after consideration of the nature and duration of the proceeding; the number of parties in interest and witnesses requiring an interpreter; the primary languages of those persons; and the quality of the remote technology that may be utilized when deemed necessary by the court to ensure effective communication in any case or court proceeding.

Comment: A qualified interpreter might be more qualified than a certified interpreter.

Reasons: It could be because of the accent and region (wrongly referred as "dialect"); or because of terminology, such as traumatic injuries, technical terminology, etc.

Alternative A

- (4) The court may set reasonable compensation for interpreters. Interpreter costs are to be paid out of funds provided by law, by the court, or by one or more of the parties, as the court directs.
- (a) In criminal proceedings, the court may order the defendant to pay the interpreter costs as allowed by law.
- (b) In civil proceedings, the court may order a party to reimburse the interpreter costs.
- (c) If a party shows by ex parte affidavit or otherwise that he or she is receiving any form of public assistance or is unable because of indigence to pay the interpreter costs, the court shall order those costs waived or suspended until the conclusion of the litigation.

Alternative B

- (4) The court shall pay for all language interpretation services provided for a party in interest. The court may, at its discretion, provide and pay for language interpretation for Limited English Proficient persons other than parties in interest directly impacted by a court proceeding.

Alternative C

- (4) The court may set reasonable compensation for interpreters. Interpreter

costs are to be paid out of funds provided by law, by the court, by one or more of the parties, or by the person requesting the interpreter, as the court directs. Interpreter costs may be taxed as costs, in the discretion of the court. In all proceedings, the court may order a person (including a party)

to reimburse the court the cost of providing interpreting services, subject to the following:

- (a) If an interpreter is appointed pursuant to MCR 1.111(B)(1), and the person requiring the interpreter demonstrates by ex parte affidavit or otherwise that he or she is receiving any form of public assistance or is unable because of indigency to pay the interpreter costs, the court shall not impose interpreter costs on that person until the conclusion of the litigation.
- (b) If an interpreter is appointed pursuant to MCR 1.111(B)(1), the person requesting the interpreter may not be required to pay for interpreter costs prior to a court proceeding as a condition of having an interpreter present at the proceeding.
- (c) In all other cases, the court may require a person (including a party) to arrange for the payment of interpreter costs prior to the provision of interpreter services in a court proceeding.

(G) Administration of Oath or Affirmation to Interpreters

The court shall administer an oath or affirmation to a foreign language interpreter substantially conforming to the following: "Do you solemnly swear or affirm that you will truly, accurately, and impartially interpret in the matter now before the court and not divulge confidential communications, so help you God?"

Rule 8.127 Foreign Language Board of Review and Regulation of Foreign Language Interpreters

(A) Foreign Language Board of Review

„The Supreme Court shall appoint a Foreign Language Board of Review, which shall include:

- (a) a circuit judge;
- (b) a probate judge;
- (c) a district judge;
- (d) a court administrator;

- (e) a fully-certified foreign language interpreter who practices regularly in Michigan courts;

Comment: There will be a disagreement among interpreters to choose this person. At a public hearing, as President, I offered to have the Michigan Translators/Interpreters Association (MiTiN) to provide a person precisely for this function. The Board would elect this person. As a President, I appointed a Liaison with the Supreme Court. I was initially the Liaison along with Steve Meier, MiTiN's Legal Advisor. Presently, Evelyn Villarruel is the liaison. The court would have an organization that has the majority of the interpreters as members, and a person that would represent all the LEPP populations in Michigan as indicated in the item below (f). The court would always have a representative, in case the appointed person cannot participate.

- (f) an advocate representing the interests of the limited English proficiency populations in Michigan;
- (g) a prosecuting attorney in good standing and with experience using interpreters in the courtroom;
- (h) a criminal defense attorney in good standing and with experience using interpreters in the courtroom;
- (i) a family law attorney in good standing and with experience using interpreters in the courtroom.

- (2) Appointments to the board shall be for terms of three years. A board member may be appointed to no more than two full terms. Initial appointments may be of different lengths so that no more than three terms expire in the same year. The Supreme Court may remove a member at any time.
- (3) If a position on the board becomes vacant because of death, resignation, or removal, or because a member is no longer employed in the capacity in which he or she was appointed, the board shall notify the state court administrator who will recommend a successor to the Supreme Court to serve the remainder of the term.
- (4) The state court administrator shall assign a staff person to serve as executive secretary to the board.

- (f) The appointment of the interpreter would not serve to protect a

(B) Responsibilities of Foreign Language Board of Review

The Foreign Language Board of Review has the following responsibilities:

- (1) The board shall recommend to the state court administrator a Michigan Code of Professional Responsibility for Court Interpreters, which the state court administrator may adopt in full, in part, or in a modified form. The Code shall govern the conduct of Michigan court interpreters.
- (2) The board must review a complaint that the State Court Administrative Office schedules before it pursuant to subrule (D). The board must review the complaint and any response and hear from the interpreter and any witnesses at a meeting of the board. The board shall determine what, if

any, action it will take, which may include revoking certification, prohibiting the interpreter from obtaining certification, suspending the interpreter from participating in court proceedings, placing the interpreter on probation, imposing any fines authorized by law, and placing any remedial conditions on the interpreter.

(3) Interpreter Certification Requirements

The board shall recommend requirements for interpreters to the state court administrator that the state court administrator may adopt in full, in part, or in a modified form concerning the following:

- (a) requirements for certifying interpreters as defined in MCR 1.111(A)(2). At a minimum, those requirements must include that the applicant is at least 18 years of age and not under sentence for a felony for at least two years and that the interpreter attends an orientation program for new interpreters.
- (b) requirements for interpreters to be qualified as defined in MCR 1.111(A)(5).
- (c) requirements under which an interpreter certified in another state or in the federal courts may apply for certification based on the certification already obtained. The certification must be a permanent or regular certification and not a temporary or restricted certification.
- (d) requirements for interpreters as defined in MCR 1.111(A)(2) to maintain their certification.
- (e) requirements for entities that provide interpretation services by telecommunications equipment to be qualified as defined in MCR 1.111(A)(5).

(C) Interpreter Registration

- Interpreters who meet the requirements of MCR 1.111(A)(2) and MCR 1.111(A)(5)(a) and (b), must register with the State Court Administrative Office and renew their registration before October 1 of each year in order to maintain their status. The fee for registration is \$60. The fee for renewal is \$30. The renewal application shall include a statement showing that the applicant has used interpreting skills during the 12 months preceding registration. Renewal applications must be filed or postmarked on or before September 30. Any application filed or postmarked after that date

must be accompanied by a late fee of \$100. Any late registration made after December 31 or any application that does not demonstrate efforts to maintain proficiency shall require board approval.

- (2) Entities that employ a certified foreign language interpreter as defined in MCR 1.111(A)(2), or a qualified foreign language interpreter as defined in MCR 1.111(A)(5) must also register with the State Court Administrative Office and pay the registration fee and renewal fees.

(D) Interpreter Misconduct

- (1) An interpreter, trial court judge, or attorney who becomes aware of misconduct on the part of an interpreter committed in the course of a trial or other court proceeding that violates the Michigan Code of Professional Responsibility for Court Interpreters must report details of the misconduct to the State Court Administrative Office.

Comment: Again, the simultaneous interpreting mode is not transparent to anybody but to the interpreter and the LEPP.

Reasons: Since simultaneous interpreting comprises almost a 100% of a proceeding such as a trial, the court should take steps to assure itself that the interpretation has been complete correct. Perhaps by asking the LEPP if he/she is satisfied that the interpretation is complete and correct.

There have been many appeals because the LEPP complained of the interpretation. There are conversations regarding mala praxis insurance for interpreters.

- (2) Any person may file a complaint in writing on a form provided by the State Court Administrative Office. The complaint shall describe in detail the incident and the alleged misconduct or omission. The State Court Administrative Office may dismiss the complaint if it is plainly frivolous, insufficiently clear, or alleges conduct that does not violate this rule. If the complaint is not dismissed, the State Court Administrative Office shall send the complaint to the interpreter by regular mail or electronically at the address on file with the office.
- (3) The interpreter shall answer the complaint within 28 days after the date the complaint is sent. The answer shall admit, deny, or further explain each allegation in the complaint. If the interpreter fails to answer, the allegations in the complaint are considered true and correct.

- (4) The State Court Administrative Office may review records and interview the complainant, the interpreter, and witnesses, or set the matter for a hearing before the Foreign Language Board of Review. Before setting the matter for a hearing, the State Court Administrative Office may propose a resolution to which the interpreter may stipulate.
- (5) If the complaint is not resolved by stipulation, the State Court Administrative Office shall notify the Foreign Language Board of Review, which shall hold a hearing. The State Court Administrative Office shall send notice of the date, time, and place of the hearing to the interpreter by regular mail or electronically. The hearing shall be closed to the public. A record of the proceedings shall be maintained but shall not be public.

- (6) The interpreter may attend all of the hearings except the board's deliberations. The interpreter may be represented by counsel and shall be permitted to make a statement, obtain testimony from the complainant and witnesses, and comment on the claims and evidence.
- (7) The State Court Administrative Office shall maintain a record of all interpreters who are sanctioned for misconduct. If the interpreter is certified in Michigan under MCR 1.111(A)(2) because of certification pursuant to another state or federal test, the state court administrator shall report the findings and any sanctions to the certification authority in the other jurisdiction.
- (8) This subrule shall not be construed to:
- (a) restrict an aggrieved person from seeking to enforce this rule in the proceeding, including an appeal; or
 - (b) require exhaustion of administrative remedies.
- (9) The State Court Administrative Office shall make complaint forms readily available and shall also provide complaint forms in such languages as determined by the State Court Administrative Office.
- (10) Entities that employ interpreters are subject to the same requirements and procedures established by this subrule.

Comment: The courts should consider, for certain cases, the presence of at least two (2) interpreters, or the presence of a "check interpreter" who monitors the correctness and completeness of the interpretation.

Question: What would be the reaction of the Courts to a "Rebuttal interpreter", similar to a Rebuttal witness? I am aware of situations in which a qualified interpreter observing a trial was permitted to comment on an ongoing proceeding. This interpreter corrected the participating interpreter's interpretation, with the agreement of the LEPP. The judge would've provided an undeserved sentence. (Available upon request).

Staff Comment: This proposal includes two separate proposed rules that relate to foreign language interpreters. The first proposed rule, MCR 1.111, would establish the procedure for appointment of interpreters, and establish the standards under which such

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201.

appointment would occur. The proposed rule includes alternative language for subrules (B) and (F)(4).

The second proposed rule, MCR 8.127, would create a board to oversee certification of interpreters and other interpreter-related functions, and provide a procedure for imposing discipline upon interpreters who commit misconduct. The board's structure and responsibilities are similar to those of the Court Reporting and Recording Board of Review described in MCR 8.108.

The staff comment is not an authoritative construction by the Court.

- (f) The appointment of the interpreter would not serve to protect a party's rights or ensure the integrity of the proceedings;

Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by September 1, 2012, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2012-03. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.

Thank you for the opportunity to provide comments.

Franco Gamero (fg.mitin.2008@gmail.com)

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 2, 2012



Corbin R. Davis
Clerk

New Jersey: Is a Crisis Looming in the Court Interpreting Field?

By Virginia Pérez-Santalla

The need for professional court interpreters across the country has been steadily increasing. The demand for interpreting services has become an even more pressing need in states like New Jersey, which has a large immigrant population.

The fact that people are aware and are actively seeking out our services as qualified professionals indicates quite a bit about our successful efforts to gain professional recognition. Just a few years ago, the interpreting profession did not have the respect it is currently shown. Many people thought that being bilingual automatically qualified a person to be an interpreter. Of course, much still remains to be done on this front. There are still many places where people are not aware of what it takes to be a professional interpreter. This leads to ridiculous situations, such as a recent one where a judge sentenced a bilingual defendant to community service to be served interpreting for others just because the defendant had lived a couple of months in Mexico.

Great strides have been made to provide defendants with Limited English Proficiency (LEP) the same understanding of the judicial system that is available to those who speak English. A case in point is the passage of the Court Interpreters Act of 1978, requiring federal courts to supply interpreters to LEP defendants. Shortly after passage of the 1978 Act, the personnel office of the Administrative Office of the U.S. Courts developed the first Federal Court Interpreter Certification Examination. However, the federal exam only offers certification in Spanish/English, Haitian Creole, and Navajo, so there is still a need to offer certification in the many other languages that require interpreting services.

In 1985, the Supreme Court

adopted the principle of "equal access to courts for linguistic minorities." In 1987, New Jersey was among the first few states to start testing and certifying judiciary interpreters. Robert Joe Lee, court executive of the Language Services Section, was instrumental in the move to develop the test and hire professional interpreters. Until that time, New York was the only city on the East Coast that offered a test for interpreters. Currently, the Administrative Office of the New Jersey Courts offers interpreting tests in 14 languages.

In 1995, the National Center for

...There are still many places where people are not aware of what it takes to be a professional interpreter...

State Courts Consortium for State Court Interpreter Certification was established to facilitate the creation and administration of tests, provide testing materials, develop educational programs and standards, and facilitate communication between members. New Jersey became one of the founding members, together with Minnesota, Oregon, and Washington. Currently, the Consortium consists of 33 member states.

The need for judiciary interpreters in New Jersey has grown almost exponentially in the past few years. The Administrative Office of the New Jersey Courts began keeping statistics regarding the need for interpreters and the languages requiring interpreters during the 1996-1997 court year. At that time, interpreters were needed in the state's superior courts for over

45,000 events in 46 languages. By 2002-2003, the volume of interpreted proceedings increased by 59% to 71,370 events. Unfortunately, there are no specific records kept for municipal courts. If these courts kept records of interpreted events, the statewide number would increase significantly. As can be expected, the language most often needed in the courts is Spanish (see the chart below—source: www.judiciary.state.nj.us/interpreters/intro.htm).

There is a greater need for interpreters in the more densely populated northern half of the state, even though the demand is growing all over due to an increase in—mostly illegal—immigration. Since the adoption of "equal access to courts for linguistic minorities," several programs for training court interpreters have been implemented in New Jersey. Among them, one of the most thorough is the program at Rutgers University, chaired

YEAR 2002-2003: Volume of Interpreted Court Events by Language

Spanish:	61,980
Portuguese:	1,299
Polish:	1,092
Korean:	1,061
American Sign Language:	986
Haitian Creole:	780
Chinese, Mandarin:	553
Russian:	513
Vietnamese:	375
Turkish:	273
Italian:	215
Chinese, Cantonese:	164
Hindi:	149
Gujarati:	147
Arabic, Levantine:	134

(Note: Languages used in less than 100 events per year were omitted.)

by ATA member Phyllis Zatlín, where many fine interpreters have received their degree. Unfortunately, Ms. Zatlín is planning to retire in the near future, so the university is considering phasing out the program. This would be a great loss and disservice to the profession that sorely needs more educational programs.

Many aspiring interpreters in New Jersey also take advantage of courses offered by New York University. Of course, it is harder for people who live far away from the city to attend this program.

Most superior courts in New Jersey have staff interpreters, some as many as five, because of the great need to provide and coordinate interpreting services. Not surprisingly, the principal requirement for the post of staff interpreter is to interpret Spanish and to have achieved a score of 70% or more on each part of the test administered by the Administrative Office of the New Jersey Courts or on tests administered by any of the members of the Consortium for State Court Interpreter Certification. Passing the federal exam is also accepted in lieu of the state or Consortium test.

With so much opportunity for professionals in this field, it comes as a surprise that there is a dearth of proficient Spanish interpreters available for full-time positions in courthouses around the state. Qualified interpreters do apply whenever an opening is announced, but many already hold staff positions and prefer a lateral career move for a variety of reasons. As a result, there are very few New Jersey approved interpreters applying for available positions.

In the following section, I would like to explore the various reasons for the problems I have discussed here and suggest some possible solutions.

Lack of Awareness

Problem: Many people are unaware that court interpreting is a real profession.

Analysis: The good news is that more people are becoming cognizant of what it takes to be a qualified interpreter. However, those who are not involved with the court system or in providing services to LEP defendants still do not realize that in order to be approved for interpreting work by the courts, interpreters must pass a test administered by the Administrative Office of the U.S. Courts. Many are not aware that professional interpreters are used until they are involved in a court proceeding.

Possible solution: More professional interpreters need to reach out to schools to make students aware of the career possibilities that exist in the language industry. As students become aware of the profession, it is conceivable that many more will decide to pursue careers as translators or interpreters. The ATA's School Outreach Program is a good start for pointing candidates in this direction. (Go to www.atanet.org/ata_school/welcome.htm to learn more about how you can become involved in this important outreach program.)

Certification Process

Problem: To some candidates, the period they have to wait for the results of the exam seems to be very long. As a result, candidates get disheartened and some even decide to leave the field.

Analysis: Test results are supposed to arrive in two to three weeks. It might take longer due to unforeseeable reasons, but a long wait might make interpreting candidates reconsider their career options.

Possible solution: One solution would be to hire more graders to expedite matters and schedule more tests. Even though examinations in Spanish are given almost monthly in New Jersey in Trenton and Paterson, possibly some other sites should be added across the state for the convenience of candidates.

High Failure Rate

Problem: In New Jersey, 91% of the people who take the interpreter's test fail. When candidates take the test and are not able to pass even after taking it several times, they lose interest in the profession.

Analysis: Being able to achieve a professional level of competency interpreting takes many hours of practice and study. People sometimes take the test just because they are bilingual, without realizing that it takes more than that to become a good interpreter.

Possible solution: More universities around the state should offer interpreting programs to provide more opportunities for training. One possible way to increase the available pool of interpreters is to award grants for court internships.

Income

Perceived problem: Many certified interpreters believe they are able to make more money freelancing full-time than working as staff interpreters.

Analysis: Looking strictly at the numbers, the above might be true, but there are many variables to consider. Freelance interpreters have to work many long hours to achieve a high income. They cannot take sick days or

Continued on p. 29

The Court Interpreters Act of 1978: A 25-Year Retrospective, Part II

By Nancy Schweda Nicholson

The first installment of this series (published in the August issue) presented a general overview of the developments at the federal and state levels within the legal interpreting field since passage of the Court Interpreters Act of 1978. It included background information on Constitutional provisions and the rules that were in effect before the 1978 law was enacted. To conclude this series, the following article will briefly review some of the ongoing challenges, controversial issues, and new developments in the court interpreting domain, including telephone interpreting, team interpreting, and collective bargaining efforts. Many states have formed task forces to study interpreter use and to suggest ways to meet the burgeoning need for qualified interpreters. This article also briefly discusses the most recent federal-level endeavor: the State Court Interpreter Grant Program Act (Senate 1733), introduced in October of 2003. A new law in California, the Trial Court Interpreter Employment and Labor Relations Act—Senate Bill 371, which entered into force on September 28, 2002, will also be examined (Rainof, 2004). In addition, this overview looks at the efforts of interpreters in various states to improve their working conditions and professional standing. The goal of this two-part series is to provide a better understanding of the progress that court interpreters have made as well as the work that still remains.

Telephone Interpreting

Telephone Interpreting is a relatively recent development in the court interpreting realm, and has engendered much discussion since its inception (Divers, 2003; Hewitt, 2000, 1995; Lucas, 2000; Nikolayeva-Stone, 2001; Samborn, 1996; Shields, 1996; Stone, 2001; Swaney, 1997; Vidal, 1998). The

AT&T Language Line, for example, has over 500 clients, and the list is growing (Heh and Qian, 1997; Hewitt, 1995; Huppke, 2000; Shields, 1996).

The Telephone Interpreting Program (TIP) was created by the Administrative Office of the United States Courts (AOUSC), which launched a pilot project in 1989 (Schweda Nicholson, 2002; van der Heide, 2005, 2003). TIP is used only for short proceedings. Figures for Fiscal Year 2003 show that there were 2,585 TIP events during that year.

“...While we have seen considerable improvements in many areas, shortcomings still exist...”

The total number of languages required was 39; however, 87% of all TIP events used Spanish. Also of interest is that a full 67% of TIP events were handled by staff interpreters. This number is significant because staff interpreters earn a salary, so no additional costs are incurred by the AOUSC. In fact, the estimated amount saved by the AOUSC during Fiscal Year 2003 was calculated at \$765,379 (van der Heide, 2004).

Telephone interpreting is becoming more widespread, but it is controversial. Some interpreters object to the process because they miss all of the extralinguistic components of the interaction (Vidal, 1998). They feel that they are at a disadvantage because they cannot see the principals and are not physically present. They state that they don't have a “feel” for the courtroom dynamic. (See Schweda-Nicholson,

1987, for a detailed discussion of extralinguistic factors.) Others do not support this type of interpreting due to problems with signal transmission and sound quality.

Interpreters are not the only ones who have strong feelings about the use of telephone interpreting. Some defense attorneys have also lodged their objections. For example, in February 2003, a new interpreting policy went into effect in Virginia's Prince William County General District Court. Interpretalk now provides telephone interpreting via speakerphone for all cases. As background, the Virginia Supreme Court signed a contract with Language Services Associates (Interpretalk's parent organization) in 2002. Attorneys are not pleased to hear a “disembodied voice floating into a Manassas courtroom” (Hegstad, 2003). Also upsetting to lawyers is the lack of access to interpreters outside the formal courtroom setting, removed from the judge's presence.

At the state level, New Jersey promulgated standards for telephone interpreting in 2001 (Operational Standards, 2001), and the National Center for State Courts (NCSC) has carried out research on telephone interpreting (Hewitt, 1995). Also outside the federal umbrella, Network Omni, “the second largest provider of telephone interpreting services worldwide” (www.networkomni.com), has entered into a training partnership with the Monterey Institute of International Studies (MIIS) to teach students the techniques of telephone interpreting (Network Omni and MIIS, 2003). In the fall of 2003, Network Omni offered a one-day seminar on telephone interpreting at no cost to students in the MIIS Graduate School of Translation and Interpretation (GSTI). Also in 2003, Network Omni provided

\$7,000 in scholarship funds for GSTI students. As a future commitment, Network Omni has agreed to make a donation of audiovisual equipment to the GSTI in 2005 (Bao, 2005).

It appears that telephone interpreting, even with its limited scope, is definitely here to stay. Perhaps with additional technological advances, its use will become even more prevalent in the future. Discussion to date, however, suggests that this method will most likely remain controversial.

Team Interpreting

Team interpreting has been the standard in the field of conference interpreting for many decades. Using this method, interpreters share the booth with a colleague. Due to the strenuous nature of the task, they relieve one another every 20-30 minutes to avoid fatigue. Having two interpreters present also allows the person who is not on the mike to assist his/her boothmate in terms of looking up words/expressions and/or writing down numbers.

The concept of team interpreting is relatively new to the world of court interpreting for spoken languages (Festinger, 1999; Salazar and Segal, 1999). Most courts have balked at the use of this framework. After all, cost has often been cited as a reason for appointing no interpreter at all, or for hiring uncertified interpreters when certified people are readily available. Various courts have taken the approach that it is more important to save money than to work toward ensuring a fair trial for a non-English-speaking client by providing the services of a competent interpreter.

Happily, team interpreting is generally the rule in the federal courts, but this approach is far from being universally accepted in state, county, and municipal courts. As a recent example

taken from an enlightened state, New Jersey Standard 3.4 addresses the issue of team interpreting: "[a] team of two interpreters should be provided by the vicinage for proceedings if they are projected to last more than two hours" (Standards, 2004). Interpreters have a long way to go to convince judges to authorize funds for two interpreters, especially when the courts complain that they don't even have the money to hire one!

The issue of team interpreting can also be examined from another perspective. In terms of the guarantees provided by Title VI of the Civil Rights Act of 1964, the Department of Justice has offered guidance regarding "Competent Language Providers (CLPs)." These guidelines state that CLPs must be "physically/mentally capable" (Aloot, 2003). Not providing teams of interpreters could be viewed as a violation of this law. Forcing individual interpreters to work alone could certainly diminish their physical and mental capability. (Schweda Nicholson, 1999, provides an overview of interpreting at the Executive Office for Immigration Review, another branch of the Department of Justice.)

Finally, Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency [LEP]," signed into law by President Bill Clinton on August 11, 2000, mandates that federal agencies improve the availability of assistance for LEP persons. The order does not institute new rights; rather, it was created to improve the enforcement of current obligations under Title VI of the Civil Rights Act of 1964 (Executive Order 13166, 2000).

Collective Bargaining

Even with the numerous accomplishments and progress in the area of

court interpretation during the past decades, some interpreters have decided that a good way to improve their overall treatment (for example, salaries, benefits, and promotion opportunities) is to become involved in union activities (Bajaña, 2004; Choate, 1999; Roder, 2000). The Translators and Interpreters Guild (TTIG), established in 1993, is the only nationwide union of translators and interpreters (www.ttig.org). It counts over 250 free-lance interpreters among its ranks. Subsequently, the TTIG joined the Newspaper Guild (NG) (a journalists' union), as the organization had been looking for a larger group with which to affiliate (Kissell, 2003). In 1997, following a trend for small unions to merge with larger ones, the NG joined the Communications Workers of America (CWA). The CWA is one of the largest union components of the much bigger and very powerful American Federation of Labor - Congress of Industrial Organizations (www.afcio.org). It offers a number of services to its members, including a newsletter, mentoring, advocacy, lobbying, and, of course, assistance with contract negotiations.

Cook County, Illinois

In 1998, some Cook County, Illinois, interpreters decided to take steps to improve their overall status as well as their work environment within the courts. They were successful in forming a union in order to proceed with collective bargaining through the Chicago Newspaper Guild Communications Workers of America (CNG/CWA). These interpreters were also the beneficiaries of two Illinois State Labor Relations Board decisions, which acknowledged their status as court employees. Beginning in October 2002, these dedicated professionals partici-

The Court Interpreters Act of 1978: A 25-Year Retrospective, Part II *Continued*

pated in 17 negotiating meetings until mid-2003 (Orozco, 2003). Collective bargaining has continued since that time. Finally, after more than two years of wrangling, the first Cook County, Illinois, interpreter contract went to the membership for a vote on January 20, 2005 (Minkinen, 2005).

Hawaii

Hawaii joined the NCSC Testing Consortium in 1997, but has never implemented a testing and certification program. There are no full-time staff interpreters in the Aloha State. Interpreters in Hawaii made contact with the Hawaii Newspaper Guild in the summer of 2002 and formed the Interpreter Action Network (IAN). The principal goal of the IAN was to secure a pay raise, which was long overdue (Boido and Harpstrite, 2002). Work continued through 2003, during which time the IAN lobbied the Hawaii state legislature. Its efforts were successful, and a pay increase was implemented on January 1, 2004. The judiciary made some other changes as well: 1) instead of the then-current "half-day/full-day" framework, an hourly structure was introduced; and 2) people who were certified in other regions were accepted for a higher pay rate. In terms of additional legislative attempts, House Bill 1655 was introduced in 2003 to the Hawaii state legislature by Representative Roy Takumi. The primary focus of this bill was securing collective bargaining rights for Hawaii interpreters, but the bill died in committee. In 2004, Representative Takumi sponsored House Bill 2856. The goal of this proposed legislation was to "...require the [Hawaii] judiciary to take the first step toward a court interpreter certification program by formally creating the category of 'Hawaii Certified Court Interpreter' for interpreters with recognized certifications

from other jurisdictions" (Harpstrite, 2004). Finally, HCR 144 was introduced by Representative Marcus Oshiro in an attempt to recognize court interpreting as a "regulated profession" with Hawaii state certification. Both of the 2004 initiatives also died in committee (Harpstrite, 2004). One very positive recent development in the Aloha State is the creation of a full-time interpreter coordinator, who manages interpreter scheduling for the First Judicial Circuit on O'ahu, which includes both the district and circuit courts (Harpstrite, 2004).

While there has been some progress on limited fronts in Hawaii, there is still much to be done. It is a frustrating situation for the dedicated interpreters who have turned activists. For example, in December 2003, the Honorable Sabrina McKenna, the head of the Hawaii State Supreme Court Committee on Court Interpreter Certification, informed interpreters that important steps would be taken during 2004 in order to move forward with implementing the NCSC Consortium's testing and certification program. Hawaii interpreters, however, have not been contacted by the judiciary in this regard since that open meeting (Harpstrite, 2005).

In December 2004, the IAN formally joined the Hawaii Newspaper Guild and became the Hawaii Interpreter Action Network (HIAN). Inasmuch as interpreters are not legally considered judiciary "employees," they do not yet enjoy collective bargaining rights. The HIAN is now focusing its efforts on introducing court interpreter certification legislation in 2005 (Harpstrite, 2005).

California

In September 2002, former California Governor Gray Davis signed the Trial Court Interpreter

Employment and Labor Relations Act, which went into effect in January 2003. This law created a new interpreter classification: "court interpreter *pro tempore*." These interpreters are hired as required and are compensated through a per diem framework at the rate of \$265/day. On January 6, 2005, a group of approximately 40 certified interpreters marched on both the Vista and San Diego County courthouses. They are disappointed in the slow progress of the contract negotiations currently taking place in San Diego, Los Angeles, the North Bay (San Francisco area), and the Central Valley (Fresno area) (Geist, 2005). Although interpreters are considered court employees, this group is upset because the benefits extended to court reporters (also court employees) do not extend to them. The CWA has been involved in negotiations with California County courts for a period of months. The goal is to secure pay increases as well as benefits for court interpreters. Although there is no firm deadline by which a negotiated contract agreement must be reached, Yvonne Pritchard, a negotiator for the courts, indicated that she had hopes that the talks would not continue for years, as they have in some other states. Pritchard stresses that the courts are cognizant of the vital contribution that interpreters make to the judicial system (Littlefield, 2005).

New Jersey

In May 2003, the New Jersey Public Employment Relations Commission's Representation Director decided that freelance court interpreters meet the criteria to be considered "employees" rather than "independent contractors" within the New Jersey Judiciary. The ruling was based on the finding that

the New Jersey "...system exercised a significant degree of control over the interpreters' work" (Freelance, 2003; New Jersey State Judiciary, 2003). In issuing the ruling, the director cited a 2002 Illinois Labor Relations Board decision regarding freelance interpreters in the Cook County Circuit Court (Freelance, 2003; Illinois Labor Relations, 2002). The CWA had filed a petition that sought to represent approximately 300 contract interpreters in a bargaining unit. The New Jersey Judiciary disagreed with this move, claiming that the court interpreters were not employees, but independent contractors (Freelance, 2003). In July 2004, 50 New Jersey freelancers approved their first contract, which incorporated the most substantial pay raise for this group in the history of the New Jersey Judiciary (and the first one for freelancers in approximately nine years) (Freelance Court, 2004). The agreement also included a grievance procedure. The wheels of justice move slowly, as evidenced by the fact that this collective bargaining accord was reached approximately five years after freelancers initially sat down with representatives of the CWA Local 1034.

State Court Interpreter Grant Program Act (Senate 1733)

On October 15, 2003, Senate Democrats Herbert Kohl (Wisconsin) and Edward M. Kennedy (Massachusetts) introduced the State Court Interpreter Grant Program Act (Senate 1733). This bill was intended "[t]o authorize the Attorney General to award grants to States to develop and implement State court interpreter programs (2)." Other goals for use of the projected \$15,000,000 allocation for each Fiscal Year 2005 through 2008

include: 1) to encourage states without certification programs to implement them; 2) to assist states with newly-established programs to develop them; 3) to assist states with limited programs to improve and enhance them; and 4) "to recruit, train, and certify qualified court interpreters (3)." Senate 1733 was sent to the Senate Committee on the Judiciary on the same day that it was introduced. There was no further action beyond this date, so the bill died there. Kohl, however, was able to obtain \$250,000 for Fiscal Year 2003 to fund court interpreter initiatives in Wisconsin. The money has been earmarked for court interpreter testing and certification in Spanish and Hmong (Hirsch, 2003).

The Indiana Supreme Court Commission on Race and Gender Fairness

As of 1999, 40 states (including Delaware) had created task forces and other investigative bodies to study critical issues confronting the judiciary. As a case study, the Indiana Supreme Court created its Commission on Race and Gender Fairness in 1999. I am proud to say that I have served as a consultant to the Commission since 2000, advising this august body of judges, legislators, and attorneys on court interpreter matters. A Language and Cultural Barriers Subcommittee was appointed to examine how non-English-speaking and limited-English-speaking persons fare in the Indiana judicial system. It published its executive report and recommendations in 2002 (*Honored to Serve*, 2002). As a result of its efforts, the State of Indiana joined the NCSC Consortium and has moved ahead to implement the orientation, testing, and certification program in Spanish.

Continuing Legal Education Seminar for the Delaware State Bar Association

In April 2004, I was one of several instructors at "The Importance of Court Interpreters," a Continuing Legal Education (CLE) program for Delaware State Bar Association members. Other trainers included María Pérez-Chambers (a federally and Delaware-certified [through the NCSC Consortium] Spanish/English interpreter), Mary Beth Tkach (a sign language interpreter instructor at Delaware Technical and Community College), Franny Haney (Delaware Administrative Office of the Courts), and Patricia Griffin (Chief Magistrate, Justice of the Peace Courts, Delaware). Approximately 100 attorneys, judges, and court administrators attended. The major topics included: the role of the court interpreter; standard practices and the Code of Conduct; how to voir dire an interpreter; the modes of interpretation used in the courts; and legal and linguistic challenges. This half-day seminar was the first such CLE for legal personnel in Delaware. (For a judge's perspective on court interpreting, see Grabau, 1996.)

Conclusion

This article series has examined court interpretation services from a variety of perspectives during the past 25 years since the passage of the Court Interpreters Act of 1978. While we have seen considerable improvements in many areas, shortcomings still exist, and much remains to be done. As with many things in life, funding (or the lack thereof) for federal and state programs has helped or hindered progress in this regard.

In terms of federal court language requirements at the beginning of 2005, Spanish still remains the number one language (behind

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English) at all court levels in the U.S. In fact, Federal District Court statistics for Fiscal Year 2004 show that 212,223 "court interpreting events" required the use of Spanish. It is no surprise that Spanish has consistently been the number one language requiring interpreter services at the federal level since the early 1980s (*Annual Reports: 1980-2004*).

The existence of the 1978 Court Interpreters Act in no way guarantees that the courts will stop using ad hoc and/or uncertified interpreters (Schweda Nicholson, 2004). For example, the Iowa Civil Liberties Union recently estimated that "...[c]ertified interpreters are used in only about 10% of federal cases tried in Iowa" (Associated Press, 2003). Clearly, this number represents an unacceptably low usage rate for certified interpreters, who are likely to be "reasonably available" more than 10% of the time. The judge is the king/queen of the courtroom, however, and much discretion is allowed. Although significant progress has been made at the federal level and in the NCSC Consortium states, one still finds instances (especially in the lower courts) of incompetent, uncertified "interpreter" use.

What does the future hold in terms of court interpreter issues? Increased needs for specific languages, for example, may well be tied to changes in U.S. immigration laws. Numerous unanswered questions persist. Will the use of ad hoc interpreters become a thing of the past? Will judicial interpretation of the phrase "reasonably available" result in stricter standards for use of certified interpreters, making their services more frequently mandated in the federal courts? Will a language other than Spanish ever lead the list of required languages? Will court inter-

preter training opportunities become more widespread? Will the pass rate on the Federal Court Interpreter Certification Examination ever progress beyond approximately 5%? Will new federal laws regulating interpreter use and/or providing additional funding be passed? Will team interpreting become the norm in the state and lower courts as it has at the federal level? Will collective bargaining activity spread throughout the profession? Will more state and local bar associations sponsor programs to educate their membership on interpreter issues? Will the AOUSC move ahead to develop certification tests in languages other than Spanish, Haitian Creole, and Navajo? Will 100% membership in the NCSC Consortium be attained? All of these questions remain to be answered as the 21st century unfolds. As this article series demonstrates, an understanding of, and appreciation for, the work of interpreters continue to grow. Change in the legal world, however, takes time, so it remains to be seen whether these trends will continue in the future.

References

- Aloot, Sebastian. 2003. Ensuring Meaningful Linguistic Access Under Title VI of the Civil Rights Act of 1964. Presentation at the 2003 National Association of Judiciary Interpreters and Translators Annual Conference, Nashville, Tennessee.
- Annual Report of the Director of the Administrative Office of the United States Courts*. 1980-2004.
- Bajaña, Lionel. 2004. "Collective Bargaining." *Proteus*, XIII/1: page 9.
- Bao, Chuanyun. January 13, 2005. Personal Communication.
- Boido, Alohalani M., and Patricia Harpstrite. 2002. "Hawaii's Interpreters Take Action: Twenty Years and No Pay Raise." *Proteus*, XI/4: pages 1, 14-15.
- Choate, Denise L. 1999. "Labor Issues and Interpreters in the California Courts: An Exchange" (Letter to the Editors). *Proteus*, VIII/3 and 4: pages 20-21.
- Divers, Douglas S. 2003. "Telephone Interpreting: It's Not All About the Money." *ATA Chronicle*, September, pages 35-37, 39.
- Executive Order 13166. Improving Access to Services for Persons with Limited English Proficiency. August 11, 2000 (www.usdoj.gov/crt/cor/pubs/eolep.htm).
- Associated Press, State & Local Wire. August 13, 2003. "Federal Courts Say Iowa Judges Should Use Interpreters."
- Festinger, Nancy. 1999. "When is a Team Not a Team?" *Proteus*, VIII/3 and 4: pages 6-7.
- "Freelance Court Interpreters Ratify First Contract." 2004. *CWA Local 1034 News and Views*, 13/2: page 3.
- "Freelance Interpreters Were Public Employees Entitled to Representation." 2003. *National Public Employment Reporter: Representation Petitions* Vol. 7, No. 2.
- Geist, Eric. January 13, 2005. Personal Communication.
- Grabau, Charles M. 1996. "Court

- Interpreting: View from the Bench." *State Court Journal*, 20/1: pages 6-11.
- Harpstrite, Patricia. January 14, 2005. Personal Communication.
- Harpstrite, Patricia. 2004. Interpreter Action Network. Unpublished paper.
- Hegstad, Maria. "Trouble with Translation? Some Question Accuracy, Convenience of New Courtroom Phone System." *Potomac News*, February 23, 2003. Media General Operations, Inc. (www.lexis-nexis.com).
- Heh, Yung-Chung (Winnie), and Qian, Hu. 1997. "Over-the-phone Interpretation: A New Way of Communication Between Speech Communities." *Proceedings of the 1997 American Translators Association Annual Conference*. (Muriel Jérôme-O'Keefe, Ed.) Medford, New Jersey: Information Today, Inc., pages 51-62.
- Hewitt, William E. 2000. *Language Interpreting Over the Telephone: A Primer for Court Policy Makers and Managers*. Williamsburg, Virginia: National Center for State Courts.
- Hewitt, William E. 1995. "Court Interpretation: Model Guides for Policy and Practice in the State Courts." Chapter 8: *Telephone Interpreting*. Williamsburg, Virginia: National Center for State Courts.
- Hirsch, Deborah. 2003. "Kohl: Fund More Court Interpreters." *Capital Times* (Madison, Wisconsin), October 17, 2003, page A4.
- Honored to Serve: Indiana Supreme Court Commission on Race and Gender Fairness Executive Report and Recommendations*. December 20, 2002. Indianapolis, Indiana: Division of State Court Administration.
- Huppke, Rex W. "Telephone Translators Bail Out Courts." *Indianapolis Star*, May 8, 2000, page B3.
- Illinois Labor Relations Board, 18 PERI 2016 [Ill. LRB SP 2002].
- Kisséll, Rick. October 29, 2003. Personal Communication.
- Littlefield, Dana. "Raises, Benefits are Being Sought." *San Diego Union Tribune*, January 7, 2005 (www.signonsandiego.com/news/metro/20050107-9999-7m7inter.html).
- Lucas, Kelly. "Language Line Bridges Courtroom Communication Gaps." *Indiana Lawyer*, May 10-23, 2000, page 13.
- Minkinen, Gerald. January 14, 2005. Personal Communication.
- Mintz, David. 1998. "Hold the Phone: Telephone Interpreting Scrutinized." *Proteus*, VII/1: pages 1, 3-5.
- "Network Omni and Monterey Institute of International Studies Announce Strategic Partnership for Excellence in Interpreting." PR Newswire Association, Inc. October 3, 2003 (www.lexis-nexis.com).
- New Jersey State Judiciary v. Communications Workers of America, AFL-CIO, Local 1034*, 29 NJPER 39 (N.J. PERC Rep. Dir. 2003). (Nos. RO-2001-60 and RO-2003-43).
- Nikolayeva-Stone, Irena. 2001. "If You Cannot See It, How Can You Tell? The Meaning and Significance of Voice in Telephone Interpreting." *ATA Chronicle*, October, pages 28-29, 39.
- Operational Standards for Telephone Interpreting (Directive #14-01). New Jersey Judicial Council, April 24, 2001.
- Orozco, Kathleen M. 2003. "Making News in Cook County: First Contract Negotiations." *Proteus*, XII/3: pages 1, 6.
- Rainof, Alexander. 2004. "California's Senate Bill 371." *Proteus*, XIII/1: pages 1, 5-6.
- Roder, Tony. 2000. "Court Interpreters Join Communications Workers of America." *ATA Chronicle*, January, page 18.
- Salazar, Teresa, and Segal, Gladys. The Importance of Teaming in Consecutive Interpretation. Paper presented at the 1999 National Association of Judiciary Interpreters and Translators Annual Conference.
- Samborn, Hope Viner. 1996. "Tongue-tied." *ABA Journal*, February, pages 22-23.
- Schweda Nicholson, Nancy. 2004. *Díaz v. State of Delaware: An Appeal Based on Language and Interpreter Issues*. Presentation at the ATA Annual Conference, October, Toronto, Canada.

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Attachment B: Franco Gamero's experience with the Language Certification Test.

Hi Sharon,

Thank you for the great job you did with the Tests. I appreciate your time and professional conduction of the tests.

These are my comments. Please let me know how they can arrive to the hands of the "powers that be", unless you are "the one". MiTiN has "new" sections. I have taken the initiative to form the "Spanish Section" of which I am the "Chairman". The main idea is to help the members to become better interpreters/translators. I have taken the tests to have an idea of what they are and what type of training is needed to pass the tests. We call our meetings "Tertulias" and we are meeting every 2 weeks at a local coffee shop. We pick a theme and talk about it for the next three hours.

Many of MiTiN members want to be Certified. So my job is to help them pass the tests. We have already gone through the Ethics of the Translator and there are several conclusions and aids that we will share with the other "less populated" sections. I am serving as the Liaison with you (your office) and we want to become the main place for the training which will be based on your office's requirements. So hopefully we will be working with you. Kevin Casillas and Reyna Fabríz, already certified, are part of the team.

Written Test:

Many members have not passed the English test. Even people who have been born here and are teachers by profession.

One of the first things we did at the Tertulia was to talk about ourselves.

I was pleasantly shocked at the amount of talent and experience we found. There are executives, accountants, engineers, doctors, ministers (Kevin Casillas is one), etc.

You can probably guess that not passing the English test is quite depressing.

Overall comments:

- The tests are not representative of normal court procedure.
- Just before the test I was involved in a complete case that started with interpreting in jail.
- First was interpreting for the defendant and the detectives in charge of taking him to court for arraignment.
- A sight translation of the Advice of Rights followed, which the Def. has to fully understand before he dates and signs it.

Sight Translation:

- Language (Spanish and English) and Interpreting skills are "Acceptable". To me this means I was understood in both languages and the Interpreting (intonation, etc.) was clear.
- "Paraphrases" and "changes meaning" (which, of course results in "need to improve accuracy") in both languages.
- Score is 74%. Sight translation is one of my strengths. I believe there are no errors or paraphrasing; definitely no changes in meaning. I disagree with this for the following reasons:

- Regionalisms are accepted. It's one of the rules. It seems that the reviewers are not aware of certain translations that are not only regionalisms, but accepted in whole countries, and in all Spanish countries.

Consecutive Interpretation Test.

- I also disagree with the review and the test itself.
- The test itself:
- It's quite "researched". In an attempt to present a test, the preparers have created a hypothetical deposition that renders it nonsensical, resulting in a lack of logical flow.
- It deals with a lady that cannot describe a vehicle (a station wagon), and doesn't remember an event, to all of a sudden describe, in full detail, an individual with a **crew cut and an orange tank top**, and then proceeds to describe an impound lot surrounded by a fence with barbed wire (no mention whether it was coiled on top, or straight throughout; and a car whose back seat was stained when her daughter spilled a strawberry drink, etc., etc.
- I score myself close to 100%. I believe I translated it correctly with just one error. I could not remember the Spanish word for **barbed wire**.
- My comments: It does not do any justice, or reflect, the very serious and important (and quite different) content of the most common cases that interpreters have to deal with.

Simultaneous Interpretation

- The reviewers said it was "choppy".
- Note taking is ineffective, at least for me.
- It was too fast.
- My main complaint is that there was/is total disregard for the presence of an interpreter.
- I don't believe 'anybody', especially the test reviewers would have gotten 100% of this portion of the test. And 100% is a MUST. I put myself in the position of the LEPP (Limited English Proficiency Person). I would "demand" 100% interpretation.
- I believe this also was "prepared" and not a reflection of real life court room drama. As such, it defeats the purpose.
- My portion of the test was the presentation of the conclusions by an attorney, being interrupted by the other attorney, and at other times by the lady judge (Mr. so and so, please stick to the facts!!!).
- I would score myself at around 85%.
- Compare this test to my simultaneous interpretation of a Jury selection process in which the client (accused of conspiracy to sell cocaine) had been asked by his attorney, through me, to provide input on each and every juror, based on their statements, demeanor, etc. I believe around 36 jurors were questioned, by both attorneys, (and the judged) prior to selection. The client was actively taking notes and providing his input. He proved to be very smart and aware of his active role. He kept me on my feet as he depended totally on my interpretation as he observed the potential jurors. All kinds of reasons and excuses were being given by the potential jurors. In the same case I had to interpret simultaneously, prior to the jury selection, the decoy officer's interrogatory. As I was

whispering to the two defendants, a person, an officer in civvies, told me to shut up!. The judge told him I was the interpreter. He was quite embarrassed

Specific comments to the tests:

- I believe the reviewers should be well versed in the language. Spanish is regulated by the Royal Academy of the Language. Therefore it is the same for all people who have learned it. In a few words, if it's in the Dictionary of the "Academy", it is valid and MUST be accepted.
- It seems that the reviewers of 'my' test are not familiar with certain words.
- Examples, from the test:
- I believe the following words were the ones that triggered the above comments:
- Crew cut: in Spanish it's "Corte Aleman", literally translated as "German Cut". This website: <http://www.youtube.com/watch?v=BgenCWkOCiw> you can see a specific study on hair cuts. The photos have captions in English. Barbershops all over Spain and Latin America offer a "menu" of haircuts. If you ask for the "German cut" you get a "crew cut".
- Tank top: Chompa, a word used in south Peru that comes from the English word "Jumper", generally thought as a wool sweater, is also used to refer to a soccer team's top, AND also, to a Basketball team's top. I have googled all these words, and I was surprised that chompas are also 'turtlenecks' and windbreakers: http://www.maletec.com/productos/chompas/chompas_deportivas/chompas_deportivas.html.
- Station Wagon: This is an accepted term from Mexico to Argentina. Just look at the automotive ads in any newspaper and you will see "station wagons". There is no other way to refer to them.
- Chin: This word, like many other words, has several meanings in Spanish that are more specific as to the location in the chin area: **menton**, **quijada** (from where Don Quixote gets his name, meaning 'large chin', larger than Jay Leno's), **mandibula**, etc. Mandibula is more general; quijada is 'vulgar', menton is just the front central part of the chin, under the lower lip; **barbilla**, the lower part of the menton, where the goatee grows.
- If the reviewers did not accept these words, then I was 'misgraded'(?)

General comments.

- The tests have to be changed. The preponderance of quality and quantity should govern the testing.
- The tests should be audio-visual. It's not the same as listening on a microphone from a recording. The reverberations make it difficult to understand as they depend on the volume and treble. ideally, the test should be LIVE first and foremost; next would be audio visual. DVD's are readily available. Being able to see the lips of the speaker is very important.
- I compare these tests to the tests I took with Ellen Donahue, after the training for the Oakland Co. Courts. It was much better. I got 100%. Mainly because it was 'live'. A note of praise for Ellen. Excellent trainer. She should administer and review the Spanish tests.
- A note of common interest on the above: almost all the Court Reporters, in depositions, prefer to have a clear view of the interpreters' lips.

- The tests should reflect **actual** cases. Audio-visual depositions have been used for a long time already. The freedom of information act allows to obtain actual cases that can be used for training and testing.
- Importance of the Court Reporters:
- I have come to the conclusion that the most important person in a deposition is the Court Reporter.
- I always ask the CR where she wants me sit.
- Speaking of CR's, I have gotten very high compliments from ALL of them. They said I spoke loud and clear. (I do let the client know that I have to speak very loud for the CR's benefit). And it's hard for me because, as you know, I am soft spoken .
- Perhaps, simultaneous testing should be done for interpreters and CRs??
- There are many instances that you should be aware and should be included in the training and should be included in the Ethics portion of Interpreters and CRs:
- If there is an interpreter present the Deposition should be conducted in English and only in English. The LEPP, for whom the interpreter was brought in, should only declare through the Interpreter. Otherwise it becomes a disaster.
- In an actual case, and with previous pre-deposition conversation with the client, I informed the attorneys that the client had been informed about my role as the interpreter, that we understood each other's Spanish (he was from Honduras) and that even though he understood some English, he had agreed to have the deposition in English. However the opposite attorney, whose office was being used, decided to have it in English and that I would only intervene "when needed". It didn't take long before the CR started asking to repeat because she was not understanding the client.
- Later, the deposition turned into back and forth discussions with both persons interrupting each other, forcing the CR to constantly yell "Please!!!, One at a time!!!".
- It was a disaster. After that experience, I have been insisting, with the support of the CR, to conduct the deposition in English, even though the client understands "some" English. I tell them that is good and that way they know that I am interpreting correctly. It's been working very good
- Just today, I was told that the word Fraud can only be used if it can be proven in court; otherwise it is replaced by "non meritorious".

In conclusion (finally):

- I would like to contest the grading of my tests.
- I believe the graders are not familiar with the regionalisms. I would like to see the specific grading.
- Because of the above, the graders might not be qualified. I question their qualifications. It comes to mind a comment you made during the test about a lady from west Michigan who seemed to breeze through the test. That alone told me that that person was probably misgraded also. When an interpreter "doesn't know", he/she hesitates. I don't think she just blurted out words. Personally, I think a good interpreter has just been denied an opportunity.
- I would like to know if they would pass one of "my" tests. They wouldn't, because it is designed to be failed. Even though it contains regular and daily words.

- State-Certified interpreters have told me that they had to take the simultaneous portion several times. Yet, I have seen them "in action" and they have interpreted excellently.
- I find it interesting, and suspicious, that Grader 1, does not sign his name and makes a scribble, while Grader B printed her whole name. This is very typical of a person, at least in Latin America, doing something wrong and not wanting to be held responsible for it. My comments go this specific grader (A). Grader B is just agreeing to it.
- The testing, as it is now, does not reflect what the Spanish interpreters actually experience in the courts.
- There are many English/Spanish-speaking attorneys, judges, and clients who "grade" us on the spot. Every interpretation I have, is commented by all participants. So far, my grading has been Excellent.
- The best compliments, and most acceptable, are the comments from the Recorders, and from the clients.
- The potential test takers are now very "scared" about the tests. And they are excellent interpreters. There is much waste of time in preparing to pass a test than in training to improving their interpretation skills.

Thank you,
Franco.