



LEGAL INTERPRETING: UNRAVELING THE  
MYSTERIES OF COURTROOM PROTOCOL  
& OTHER QUAGMIRES

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CSC/OIC:C/PROV. SC:L

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### ADDITIONAL READINGS:

"Women's Language" or "Powerless Language?", William O'Barr & Bowman Atkins  
Law and the Courts: A Layman's Handbook of Court Procedures, With a Glossary  
of Legal Terminology, American Bar Association

## NOTE ON TERMINOLOGY

Increasingly, members of the American Deaf Community use the capitalized spelling of Deaf when referring to themselves in writing. The lower case 'd' is used to identify deaf or hard of hearing individuals who are not, by choice or otherwise, members of the Deaf Community and who likely do not use American Sign Language. Adopting the preferences of the Deaf Community, I make this distinction throughout the booklet. The lower case 'd' is also used when referring to deaf people with minimal language competence (MLC) since these individuals often do not identify as members of the Deaf Community. When the issues raised in this booklet address both Deaf and deaf people, D/deaf is used.

Gay Belliveau  
March, 1990

## GOLDEN RULES OF INTERPRETING IN THE LEGAL REALM

1. Be able to articulate the services you have to offer and the reasons you should be paid the wage you're requesting. Never use legal mandates to "strong arm" your position, rather use as added support for your argument.

Be flexible in negotiating a wage for an extended assignment. Attempt to put yourself in the administrator's shoes. More often than not, reluctance to pay a fair and reasonable wage has more to do with a restricted budget than a lack of respect for you as a professional. Consider that there may be instances when having a written contract would be advantageous.

2. Remain calm and level-headed at all times. Remember, this is a male-dominated arena and women, no matter how frequently they appear, may not be considered equals or even particularly welcome. If confronted with sexist attitudes and/or language, clearly articulate your dislike, without apologizing, and state the name you would like to be called or the terminology you request the court or attorneys to use with you. Do not raise your voice at the end of a sentence if you are making a statement. Save that for interrogatives.

Likewise, remain calm if confronted with anachronistic vocabulary, ideas, or attitudes. Assume ignorance rather than bigotry. Explain clearly, and without apology, that terms such as deaf mute and deaf and dumb are outmoded and offensive to the Deaf community. Assume the judge and attorneys want to be enlightened and then give them the appropriate term, deaf and, when applicable, hard of hearing or hearing impaired.

3. View court personnel as peers. Judges, lawyers, clerks and other judicial personnel are experts in their fields. You are an expert in yours.
4. Know their "stuff." Follow the dress, vocabulary choices, and demeanor of attorneys as a key on how to proceed. However, do not assume a demeanor or style of talk that is inconsistent with your own professional image of yourself. Slowly assimilate behaviors you see in court that you feel are worthy of emulating and that you believe will help you better fit the decorum of the courtroom.
5. Use the language of the court. For example, when discussing the need to be sworn before the proceeding begins, consider phrases the court may use, such as, "the legislation mandates," instead of, for example, "the law says." Likewise, if the judge with whom you're working is a particularly casual individual, it may be appropriate to call him or her "Judge" instead of "Your Honor." Allow the attorneys present to give you clues. If they're calling the judge "Your Honor," stick with that.
6. Maintain a respectful but assertive posture. Don't apologize for any professional or personal needs you may have.

7. Know the legislation under which you're functioning as well as the court in which you'll be interpreting (e.g, does a jury function there or does the judge not only determine the law but decide the verdict as well?). Make sure requests you make of the court are consistent with the legislation you're following.
8. Before advocating for a meeting with the judge, discern the need. If you are scheduled to interpret an arraignment or a short municipal court matter, it may not be necessary. If you are interpreting a matter of greater length, such as a trial, always try to meet with the judge and attorneys beforehand. Regardless of the length of the assignment, anytime you will be working with a deaf person with minimal language competence (MLC), you will need to speak with the judge to alert him or her to the special communicative challenges of working with an MLC deaf person.
9. Consider yourself a trainer, even though you are not training the Court in any official capacity. In other words, consider that each time you meet with a judge and/or attorneys you are providing them with information that helps them to work more effectively with interpreters and increases their sensitivity to D/deaf people. Viewed as contributing to the administration of justice, this could give you an increased sense of personal power.
10. If you've interpreted for a litigant in any other interpreting situation prior to the legal matter, inform the attorney with whom you're working and/or the judge.
11. Finally, remember that the judge has the final say on everything that goes on in his or her courtroom.

## SPECIAL CONSIDERATIONS FOR TEAM INTERPRETING TRIALS/

### MEETING WITH JUDGE AND ATTORNEYS

These suggestions for how to conduct a preproceeding meeting with a judge and attorneys assume a team interpreting approach in a trial setting. Also assumed is the preference for American Sign Language by the Deaf litigants. If the deaf person for whom you're interpreting uses Sign English or an MCE, modify your remarks. Many of these suggestions can be applied to other interpretation settings.

1. Arrive at least thirty minutes prior to the time of trial. This will give you enough time to see the courtroom and review your notes prior to meeting with the judge and attorneys.
2. At the same time you introduce yourself, provide the judge's secretary with your business card. S/he will likely pass it to the judge.
3. Once in the judge's chambers, introduce yourself and your colleague to the judge and attorneys. Initiate handshaking if you're comfortable doing so. Regardless of who initiates, shake hands firmly.
4. Have the list of concerns you want to discuss with the court in front of you. Never hesitate to look at your notes; they're there to give you reassurance and aid you in clearly articulating your concerns.
5. Be familiar with the legislation under which you will be functioning. Make sure that any requests/requirements you make of the court are consistent with the legislation; for example: when to be sworn. Use the statute annotated number when referring to the legislation (e.g., in New Jersey, the legislation is N.J.S.A. 34:1-69.8 et seq). Have several copies with you so you can supply one to the judge and/or the attorneys, if requested.
6. Maintain a demeanor of dignity and respect but never apologize for requests you make of the court (either while in the judge's chambers or in the courtroom). Consider prefacing your remarks with "May it please the court," "With your permission," and/or "With all due respect," among others. "With all due respect," is particularly useful when you must

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1. There may be times when it is advantageous for you to document on paper some of the issues you would normally discuss face-to-face with a judge. The reasons to document may vary: the judge may be unable (for whatever reason) to meet with you prior to the proceeding; s/he may want the information to refer to in the future; s/he may want information on paper as well as provided verbally. In any event, the printed information should be concise; it should take no more than two pages, and preferably one.



confront the judge on a decision s/he's made, such as not to swear you in until the D/deaf witness testifies. You might say, "With all due respect, Your Honor, the legislation mandates that I be sworn prior to the beginning of the proceeding."

7. If the judge and/or the lawyers have had previous experience with interpreters (which many have, albeit foreign language interpreters), acknowledge how important that is since they're "sure to be more sensitive to and familiar with the logistical and technical concerns of using interpreters." Stress, however, that even though they're experienced, you'd like to note a few logistical concerns regarding American Sign Language/English interpreters with which they may not be familiar.
8. If you and a relay interpreter will be working with a deaf person with minimal language competence, you will need to articulate the special concerns of working with a person who possesses no formal language skills. You will need permission from the court to employ whatever techniques are necessary for the transmittal of information to and from the MLC deaf person. Many techniques will be unorthodox and the court and attorneys must be prepared for what to expect. (Manual for judges, attorneys, and interpreters working with MLC deaf people forthcoming.)

#### SUGGESTED COMMENTS<sup>2</sup>

Each time you speak with a judge, your comments will vary slightly. Consider the following remarks, but reword them to fit your own style:

We appreciate your taking this time to speak with us. We'll be as brief as possible. We ask for this time because experience shows us that when everyone understands the logistics of using interpreters prior to the start of a proceeding, the proceeding moves along more efficiently. In other words, we don't want you to have any surprises once we get into the courtroom and we don't want to waste the court's valuable time.

Here are the items we'd like to cover, Your Honor:

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- 2 Consider initiating this discussion by noting that you follow a code of ethics which mandates certain behaviors of you. In other words, you are not making these points up but are following recognized professional standards. For those of you that work in states which have a code of ethics or code of professional responsibility designed specifically for interpreters in the legal realm (e.g., New Jersey), refer to that particular code. Bring a copy of the code with you to court.
  - 3 Present logistical concerns in whatever order seems most appropriate to you.

1. We'd like to remind you that we are supposed to be sworn in prior to the start of the proceeding, that is, even before counsel make their appearance for the record. This assures that we are accountable for the interpretations we provide at every step of the proceeding (not just when the deaf witness is testifying).
2. We will sign or speak in English in whatever 'person' an individual is speaking at any given time. For example, when you or counsel are speaking in first person, we will be signing in first person. When the D/deaf witness is signing in first person, we will be speaking in first person. Using the first person we would say, for example, "I arrived at 7:00pm," rather than, "She said she arrived at 7:00pm."
3. Since American Sign Language (ASL) is a language separate and distinct from English, there will be phrases used during the proceeding for which no direct equivalent exists. This is the case with English and any foreign language as well. For example, sometimes phrases in English require only a few words but numerous signs, or vice versa. Therefore, if you have stopped speaking and we are still signing or if the D/deaf witness has stopped signing and we are still speaking, do not be alarmed. The time we use for processing what we hear is normal and to be expected.
4. Your Honor, how would you like us to handle our need for clarification or our need to inform the court that we've made an interpretation error? (Response). With your permission, Your Honor, may we raise our hands and wait to be recognized, at which time we will then notify the court of our need. And if concerns arise during the trial, Your Honor, which we feel we need to communicate to the court outside the presence of the jury, how would you like us to handle that?<sup>4</sup>

Your Honor, when we are making a need known to the court,<sup>5</sup> we will use the third person voice; in other words, we will say, "The interpreter needs clarification," "Interpreter error," etc. This is in contrast to interpreting in whatever voice it is a speaker might be using at any given time, for example first person. This way we clearly distinguish the interpreter from his or her interpretation.

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5. Your Honor, the reason there are two of us here today is because interpreting is a very fatiguing task, both mentally and physically. In order to provide the highest quality interpretation services possible, we will

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4 It is important to ask the judge how s/he would like you to handle any given problem. Experience shows, however, that the judge will often refer the question back to the interpreter. Be prepared with a suggestion. In this particular case, you might suggest that such issues be addressed at sidebar.

5 For interpreters working in New Jersey's Courts, see CANON 5, C., of the Administrative Office of the Courts's Code of Professional Responsibility.



need to "spell," or relieve, one another. We ask your permission to do so about every thirty minutes or as we deem appropriate.

You may notice, Your Honor, that even when one of us is in the "off" position, we may, from time to time, sign something to the "on" interpreter. This is called feeding. If I miss something, I will give my colleague subtle eye contact which indicates the need for him/her to "feed" me a sign. This technique is commonly used so interpreters do not have to interrupt the proceedings to gain small bits of information which may have been missed. Naturally, if we need information beyond a simple word or phrase, we will notify the court.

Likewise, Your Honor, when the (defendant, plaintiff) testifies, I ask your permission to have my colleague stand near me, or me near her (him) to provide both a check for errors I might make and to "feed" something that might be missed. This ensures a faithful rendering of the witness's testimony.

6. Also, Your Honor, because we are communicating visually, we will need to be positioned such that the D/deaf witness(es) and the jury can see us. Where do you suggest we sit, Your Honor? (Response). With your permission, I suggest the best place may be (wherever it is, considering the layout of the courtroom).
7. Your Honor, people who communicate visually use different techniques for acknowledging the intake of information than do those of us who communicate through auditory means. What that means in practical terms is that Deaf people and interpreters acknowledge that they have understood what's been said by nodding affirmatively and using facial expression. This is a critical feature of discourse in American Sign Language and is analogous to a person who can hear saying, "Uh huh" or "I see." Unfortunately, this nodding may be misinterpreted as collusion between the interpreters and the Deaf person by people unfamiliar with the rules of language use in American Sign Language.

Experience shows us, Your Honor, that when attorneys and judges are not familiar with this very important aspect of language use in American Sign Language that they do, in fact, misinterpret the nodding of Deaf litigants and interpreters. May we suggest, then, Your Honor, that the jury may also misinterpret the nodding of a Deaf witness. It follows, then, that the jury may be better able to accurately assess the Deaf witness's testimony if they had this information. We understand that it is in Your Honor's discretion to share this information with the jury or to withhold it as you deem appropriate.

8. Finally, suppose the witness makes a comment directly to the interpreters, something that is clearly meant only for the interpreters (such as "Look at that ugly tie on Juror #7!", or "How do you think the trial is coming

along?," or even something as innocuous as "What time is lunch?"); how would you like us to handle that, Your Honor?<sup>6</sup>

Ask your colleague if he or she has anything to add. If so, proceed. If not, ask the judge if s/he has any questions or any instructions s/he'd like to give you before the proceeding begins. Then thank the judge and the attorneys for their time.

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<sup>6</sup> Again, be prepared with a suggestion. This may well be handled at sidebar.

\*This handout expands notes taken during an RID Legal Interpreter Training, Charlotte, NC, 1983; Anna Witter-Merithew, Instructor

### QUALIFYING THE INTERPRETER

Qualifying is the process by which the court determines the qualifications of the official court interpreter and his or her ability to effectively assist the court. It is often referred to as voir dire and is almost always done as a matter of court record.

As judges around the country come to expect interpretation services delivered in their courtrooms to be of highest quality, they will likely begin qualifying interpreters as a matter of practice. Therefore, it is essential that we understand the process of being qualified and that we practice it prior to attesting to our qualifications in court. The following notes will help you prepare for this experience.

#### REASONS FOR QUALIFYING:

1. To establish for court record the qualifications of the interpreter, especially that the interpreter satisfies the statutory requirements.
2. To describe to/for the court the process of interpreting. This may be important when interpreting for users of American Sign Language and is critical when interpreting for persons with minimal language competence.
3. To help the judge and/or lawyers who may be concerned about the integrity of the interpretation understand techniques American Sign Language interpreters may use which may vary from their experience with foreign language interpreters (for example, showing more vocal intonation than they may be used to with foreign language interpreters).

If the judge and/or attorneys are not satisfied with the qualifications as stated, this gives them an opportunity to challenge the interpreter and possibly bring in another certified interpreter (or other professional familiar with the interpreter's skills) to make a statement as to the qualifications (or lack thereof) of the official court interpreter.

4. To provide courtroom players with an understanding of the interpreting profession in general.

#### WHO MIGHT INITIATE THE QUALIFYING PROCESS:

1. The judge, so that the record clearly reflects the qualifications of the interpreter (this helps safeguard the appeal process) or because a jury needs to understand why seemingly unorthodox interpretation techniques may be employed by interpreters working with MLC deaf people.
2. The D/deaf people, so that the interpreter's qualifications appear on the record.

3. The prosecuting, defense, or plaintiff's attorney, because of need for clarification or comfort, or to impose doubt on or question the integrity of the interpreter's ability to assist.
4. A family member or other individual familiar with the communicative idiosyncracies of the deaf person with minimal language competence.
5. The interpreter, especially if the deaf litigant has minimal language competence and the interpreter will be working with a relay interpreter or will receive assistance from a member of the deaf person's family. However, the request to be qualified should be made to the judge or attorney prior to the start of the proceeding. Making the request during the proceeding with no prior notice to the court could prove fruitless. In other words, the request may be denied or met with serious resistance.

#### TIPS FOR RESPONDING TO QUESTIONS OF COMPETENCE:

1. Rehearse beforehand. Get a list of questions from an attorney with whom you have a cordial relationship or develop a list of questions an attorney or judge could potentially ask you. Since most attorneys and judges understand very little about D/deaf people and/or interpretation, it may be to everyone's advantage for you to generate questions which will aid the court in understanding your credentials, your role, and, to some degree, the process of interpretation between languages and cultures. Thoroughly review these questions as well as anticipate any that may arise from your responses. Practice with an attorney or another interpreter.
2. Have your legal portfolio on hand and refer to it when necessary. Have, especially, any information regarding special training you've had with legal interpretation (or, if pertinent, training you've had in working with people with minimal language competence). If the need arises, be prepared to refer to professionals (judges, lawyers, certified interpreters [D/deaf and hearing] or D/deaf professionals) who are qualified and willing to address issues of your competence.
3. Keep your answers brief and limited to your understanding of the interpretation and/or language issues. Do not make statements you cannot factually back-up. Make it clear that you are not a linguist (unless you are) but that your extensive professional experience indicates to you that the D/deaf litigant requires a particular form of interpretation services. Be prepared to refer to academic works written by professionals in our field, such as Cokely, Colonomos, Baker-Schenk or Frishberg.<sup>1</sup>
4. Be prepared to articulate your need for the services of a relay interpreter. Since the relay interpreter may also be qualified on the stand,

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1 For interpreters working in states in which a code of professional responsibility for interpreters working in the legal realm has been promulgated (e.g., New Jersey) refer to the code as well.

work with that individual to prepare him or her to respond to questions regarding his/her own competence and qualifications. Use RID certified relay interpreters whenever possible, unless someone else can more ably assist.

Be aware of the potential ramifications of using family members or others who may think they understand the deaf person better than they really do or who may have an interest in the outcome of the case. If you must use a family member to assist, ask the judge to explain the court's expectations of that person's behavior while they are serving in this official capacity (refer to NJ's Standards for Interpreted Proceedings).

5. If you are asked about American Sign Language, consider that since the use of foreign language interpreters in many areas of the country is common, it may be advantageous to compare interpreting between ASL and English to interpreting between foreign languages and English. You might say something like, "American Sign Language is a language separate and distinct from English. Just as there are few word for word equivalents between foreign languages, say, Spanish or German and English, there are few word for word equivalents between American Sign Language and English. These differences in languages result in what is called processing time, the time between hearing and understanding a statement and rendering it in another language. Processing time is used by interpreters of all languages, is normal, and should be expected."
6. Refrain from signing and speaking while being qualified. Few of us are adept at articulating clearly while performing both tasks. If you are making a case for using ASL and/or working with a relay interpreter, using Signed English while being qualified will confuse the court. After all, you've just spent time explaining that there are few, if any, direct equivalents between American Sign Language and English or other languages, so speaking and signing could cast doubt on the credibility of your earlier statements. Besides, if the litigant is an ASL user, speaking and signing English will not give that individual access to the proceeding and may cause further confusion or misunderstanding.

If you're working with a relay interpreter, and since you likely won't be signing and speaking during the qualifying process, it will be necessary to thoroughly familiarize your D/deaf colleague with what you plan to say on the stand. Naturally, some of your responses will be spontaneous and cannot be anticipated. There may be times when a third interpreter would be helpful and even necessary--specifically when the non-deaf interpreter is being qualified, being sworn, or addressing the court on logistical matters prior to or during a proceeding.

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- 2 Use of a third interpreter in this capacity is almost unheard of at this time but may be a concept whose time has come. Resistance to the presence of the third interpreter could be financial or philosophical in nature.

Whether or not you're working with a relay interpreter, the D/deaf litigant should be informed that you will be qualified and that you will not be speaking and signing at the same time. This should be done by the attorney, with you interpreting, prior to the start of the proceeding. The information the attorney provides the D/deaf person should include what s/he anticipates asking you and how you are likely to respond.

7. If you and/or your teammate have been unable to establish effective communication with an MLC deaf litigant, state this for the record. (See sample statement, following.) Never pretend that something is going to happen for which you cannot deliver. The act of "saving face" at the expense of the D/deaf person has no place in the courtroom, or in any interpretation setting.



\*This handout is modified from an original produced by Anna Witter-Merithew and Jill Hartman for a 1981 RID Legal Interpreter Training (William Mitchell School of Law)

#### QUALIFYING THE INTERPRETER: Sample Questions

1. State your full name and address. Spell your last name.
2. By whom are you presently employed? For what time period have you been so employed? In what position are you so employed? What are your job duties? Is it a full-time position?
3. What is your educational background?
4. Have you had any formal training in the area of legal interpretation? When? Where?
5. What did this training prepare you to do?
6. Have you ever been a certified Sign Language interpreter? In which state(s)? Certified by whom? What is the National Registry of Interpreters for the Deaf? How long have you been so certified? Are you currently so certified?
7. How many times have you interpreted in a court of law? In what kinds of situations? When was the last time you interpreted? Have you ever interpreted in this type of proceeding?
8. Have you met the (defendant, plaintiff) in this matter? When and where? How much time did you spend with that person?
9. Were you able to establish communication with (him, her)? How do you know?
10. What type of language does (surname) use?
9. What is American Sign Language? (depending on who's questioning you --hostile or friendly attorney-- this line of questioning could shift from questioning the validity of ASL as a language and your ability to interpret accurately to support for ASL as a language and an affirmation of your exposure to users of the language and your ability to interpret).
10. Are you fluent in American Sign Language? What do you mean by "native-like" competence?
11. Is interpreting American Sign Language similar to interpreting Spanish or other foreign languages? How so?
12. What, if any, special interpreting techniques do you use when interpreting American Sign Language?

13. Please tell the court what it means to have minimal language competence (this question could occur sooner if your response to #7 was negative).
14. In your opinion, does the (defendant, plaintiff) have minimal language competence? On what do you base your opinion? What special problems will that create for you? What special tools will you need to aid the court in communicating with this person?
15. What does the term relay interpreter mean and what function does that person serve?<sup>1</sup>
16. If you've been certified as being able to communicate with a variety of D/deaf persons, why would you need a relay interpreter's help? Why is a relay interpreter more qualified to communicate with this person than you are? (Questioning could shift at this time positively or negatively depending on the attitude of the questioning attorney)
17. Please explain to the court how you will work with the relay interpreter.

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1 Consider suggesting that the judge or attorney question the Deaf interpreter directly on the use of relay interpreters and the task they will perform.

SAMPLE STATEMENT REGARDING INABILITY TO EFFECTIVELY COMMUNICATE  
WITH A DEAF PERSON WHO IS MINIMALLY LANGUAGE COMPETENT (MLC)

Note: This statement<sup>1</sup> is intended as a sample only since any statement must address the particular MLC deaf person involved in litigation. If the interpreters wish to make a statement for the record, the judge should be so informed prior to the start of the proceeding.<sup>2</sup> Such statements can be made by the relay interpreter with the non-deaf interpreter voicing.

As follows:

Your Honor, with your permission we, the interpreters, would like to make a statement for the record. (Permission granted.)

Your Honor, we are unable to communicate effectively with the defendant, (surname), for the following reasons:

1. Our past and present exposure to (surname) shows us that (he, she) has no formal language skills whatsoever. We are unable to use American Sign Language or any form of English, such as Signed English, written English, or speech reading with (him, her).
2. Neither does this defendant have an effective gestural communication form with which to communicate information to the interpreters or receive information from the interpreters (i.e., the court).
3. We would like to remind the court that for the past several months during (his, her) incarceration, the defendant has not had any contact with those who can effectively communicate to any degree with (him, her). Therefore, what minimal communication skills the defendant has possessed in the past have been further compromised, making it even more difficult for the interpreters to communicate in any effective manner with the defendant.

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1 This example regards a defendant who has minimal language competence. Naturally, the MLC deaf person involved in litigation could as well be a plaintiff, witness, juvenile (in any of these capacities) or a deaf parent of a juvenile.

2 On at least one occasion, an attempt to make a statement for the record was met with serious resistance by the prosecutor. The prosecutor was able to convince the judge that the Deaf interpreter would have to be called as an expert witness. Once called, the Deaf interpreter was grilled mercilessly by the prosecutor. This occurred in part because, due to circumstances beyond the interpreters's control, they were unable to let the judge know prior to the proceeding that they needed to make a statement. In order to avoid experiences such as this one, make every effort to solicit the judge's support prior to the proceeding.

On the basis of the issues we have articulated, Your Honor, we commit to doing our utmost best to convey information from the court to the defendant and from the defendant to the court. However, Your Honor, we cannot guarantee what (surname) will understand or not understand.

Finally, we beg the court's indulgence for the time it will take to process information in a manner we think will enable the defendant to grasp some understanding of the issues at stake here.

## TESTIFYING TO THE PRIOR PROVISION OF INTERPRETATION SERVICES

The RID Code of Ethics<sup>1</sup> precludes interpreters from sharing information gained during an interpreting assignment. However, there may be times when you are compelled to testify. If you find yourself in such a situation, here are a few things to keep in mind and some suggestions for dialoguing with the attorney who has subpoenaed you.

1. You are covered by privilege when interpreting between the D/deaf person and his/her attorney. Such communications are privileged because any communication between a client and his/her attorney is generally privileged. The fact that you were a party to such communications means that no one except the D/deaf person can compel you to testify about such communications.

Know what is considered privileged communication within your state or the state in which you'll be interpreting. Normally, lawyer/client, psychiatrist/patient, priest/penitent, and husband/wife relationships are privileged (or covered by the "cloak of confidentiality," as it is commonly called). These people cannot be compelled to testify against one another under most circumstances.

2. You are NOT covered by privilege when interpreting between a prosecutor and the State's witness. The prosecutor is not the witness's attorney and is providing no defense for the witness. That means if defense counsel wishes, s/he can call you to testify regarding what transpired between the prosecutor and the witness. Since it is imperative that you meet with the witness and the prosecutor prior to interpreting, this is potentially a catch-22 situation that you may not be able to avoid. If you are compelled by the defense to testify, consider making a statement for the record as to the inappropriateness of testifying. Here is a sample statement:

Your Honor, the interpreter would like to make a statement for the record with regard to counsel's request. (Permission granted.)

I understand, Your Honor, that defense counsel may call me to testify as to what was said between the prosecutor and the State's witness. With all due respect to defense counsel's trial strategies, Your Honor, it is not appropriate to call me to testify. Here's why. I

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1 Codes of ethics (or professional responsibility) written expressly for legal interpreters likely include a canon which precludes interpreters from sharing information gained during an assignment (e.g., New Jersey Administrative Office of the Courts's Code of Professional Responsibility for Interpreters, Transliterations, and Translators, Canons §5 and §7).

am here, Your Honor, as an official court interpreter. That necessitates that I remain in a completely impartial position. If counsel compels me to testify, I would be constrained to violate the code of professional responsibility under which I function and would have to ask to be removed from further involvement in this matter. Additionally, Your Honor, if I am required to testify, this provides defense counsel and the jury with the advantage of hearing testimony twice, an advantage they would not have were the witness not D/deaf.

The rules of privilege vary from state to state. Some states (such as New Jersey) include relationships other than the traditional. Never assume a privilege exists in one state just because it did in another, except for the attorney/client privilege which is covered in virtually all states. If a person unnecessary for the transmittal of information between client and attorney is present, the privilege may be nullified. KNOW WHEN THE PRIVILEGE DOES NOT APPLY.

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- 2 These canons of the New Jersey Administrative Office of the Courts's Code of Professional Responsibility may provide an argument against testifying:

CANON 3 IMPARTIALITY AND CONFLICTS OF INTEREST

Interpreters and translators shall be impartial and avoid any appearance of bias or favoritism. They shall avoid not only conflicts of interest but also the appearance thereof.

CANON 5 LIMITATIONS OF PRACTICE

B. Interpreters and translators should not engage in any other activities which may be reasonably construed to constitute a service other than interpreting or translating while engaged in such a capacity.

CANON 6 CONFIDENTIALITY

Interpreters and translators shall protect the confidentiality of all privileged or other confidential information which they obtain during the course of their professional duties.

CANON 7 ABSTENTION FROM COMMENT

A. Interpreters and translators 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.

- OR These sections of the National Registry of Interpreters for the Deaf Code of Ethics may provide an argument against testifying:

1. INTERPRETERS/TRANSLITERATORS SHALL KEEP ALL ASSIGNMENT-RELATED INFORMATION STRICTLY CONFIDENTIAL.

3. INTERPRETERS/TRANSLITERATORS SHALL NOT COUNSEL, ADVISE, OR INTERJECT PERSONAL OPINIONS.



If you've spoken with a D/deaf defendant in a setting in which no attorney was present, you were not covered by privilege at that time and could be compelled to testify at a later date. Sometimes this cannot be avoided (for example, if you accompanied a D/deaf victim to the police station to report an assault). Regardless of the fact that you considered yourself to be an impartial party and regardless of the mandates of the RID Code of Ethics, you are vulnerable to being called to testify when such circumstances prevail.

Never lose sight of the fact that as a currently certified interpreter you are functioning under a code of ethics designed and implemented by a professional organization. You could and should use the RID Code as a defense against testifying, but you must recognize its limitations in protecting you. It is not legally binding in a court of law and cannot keep you from testifying (unless mandated by state statute or rules of evidence or by some other legal authority, such as a state Supreme Court).

If you find yourself compelled to testify regarding interpretation services you've provided in the past, there are numerous arguments you can use in hopes of the request being withdrawn. There may be others which are not listed here.

#### POTENTIAL ARGUMENTS AGAINST TESTIFYING

The golden rule while articulating your concerns is to remain calm. Don't argue, panic or become defensive. Simply state your case, using your own words and style:

To begin, acknowledge that you were not covered by privilege during the interpreting assignment about which you've been subpoenaed to testify. However, you have several reasons for asking the (prosecutor, defense attorney) to withdraw his/her request and you would appreciate the opportunity to discuss them with her (him).

1. The incident took place 'x' (weeks, months, years) ago. Since that time you have interpreted on (several, numerous, dozens) of occasions, making your recollection of specific details hazy.

Before making this claim, however, it may prove useful to review your files to see exactly how many matters you interpreted since the assignment in question. If the number is high enough to lend credence to your argument, note how many of those assignments were legally-related.

2. An attorney requesting that you testify is usually looking for information related to a person's communicative abilities or their emotional state at the time you interpreted. Unless you are a linguist or a mental health professional, you may argue that you are not qualified to testify as an expert witness on these matters. You would, however, be glad to refer the attorney to a colleague who could more appropriately respond. Naturally, your colleague would only be able to speak in general terms, but having another resource for the attorney to turn to may be advantageous for both you and the attorney: you may be excused from testifying and the attorney will have an appropriate expert witness to call. Simply avoiding the attorney's need for an expert witness without helping to locate other resources may result in the attorney compelling you to testify.

3. Since the police were present during the taking of the (report, complaint), there is nothing you could add that is not already reflected in the police report.
4. Revealing confidential information gained during an assignment could cause irreparable damage to your professional reputation within the Deaf Community by calling into question your ability to maintain confidences. To a community vulnerable to the integrity of an interpreter's word that s/he will not reveal information gained during an assignment, that you have been compelled to testify may be meaningless.
5. By making this request, the (prosecutor, defense attorney) compels you to violate your professional code of conduct. As a certified interpreter and member of the National Registry of Interpreters for the Deaf, you are bound to follow the canons of the RID Code,<sup>3</sup> including the canon which prohibits the sharing of confidential information.<sup>4</sup> Therefore, because of this (and the other reasons you've stated), you respectfully ask that the request to testify be withdrawn.
6. Finally, if called to testify, you intend to make a statement for the record indicating the reasons why it is inappropriate for you to be called, and you will --if ordered to testify-- do so under protest.

Your own attorney may be able to provide you with additional arguments, as may other experienced interpreters.

If despite your best arguments the attorney refuses to withdraw the subpoena, provide testimony, but don't give any more information than is requested. In the event the subpoena comes from the opposing attorney (e.g., prosecutor when the D/deaf person is the defendant), the D/deaf person's attorney should explain to his/her client the predicament with which you're faced.

Finally, this:

Prevention is worth a pound of cure. Whenever possible, particularly in criminal matters, avoid speaking with the D/deaf person out of the presence of his/her attorney. Also, if you interpret at the police station, ask to be videotaped. Then, if an attorney insists on providing the jury with information about what happened while you were interpreting, being on videotape may save you from having to testify in person.

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3 And possibly other codes if your state has adopted a code of professional responsibility written expressly for official court interpreters.

4 RID CODE OF ETHICS  
SECTION 1: INTERPRETERS/TRANSLITERATORS SHALL KEEP ALL ASSIGNMENT-RELATED INFORMATION STRICTLY CONFIDENTIAL

## NEGOTIATING FOR A FAIR AND REASONABLE WAGE

1. Understand the stipulations of the legislation under which you're functioning: Are fees outlined in the legislation? If not, what administrative or other body has been mandated to set such fees? Has that body taken action on its mandate? If not, who is setting fees? Are you, as a free-lance interpreter, expressly or implicitly expected to abide by fees which may be set by a Council for the Deaf and Hard of Hearing or other governmental agency?
2. Be proactive. Once you have received the information from the coordinating agency or the court contact person, discuss the conditions of your employment with an administrator within the court system with whom you can negotiate and who has the power to accept or reject your terms of employment. In your discussion include:
  - a. The fee you intend to charge the court (clarify whether or not you will be charging for waiting as well as actual interpreting time. If you charge for waiting time, this may motivate the court to move your case more swiftly than it ordinarily would.
  - b. Any charge for parking, tolls, travel time or mileage for which you intend to bill the court (and if traveling by public transit, any transit fare and/or hourly portal to portal fee you may intend to charge).
  - c. A request for the name, title, address, and phone number of the person to contact if payment is delayed or there is some other snafu.
  - d. Your preference for handling payment if the case for which you're contracted does not last as long as anticipated, is cancelled, or postponed. Consider this:
    1. If you are scheduled to interpret a lengthy assignment, outline the terms of your employment in contract form, including whatever cancellation policy you intend to effect if the matter is cancelled or postponed prior to the start of trial. Put in writing when the policy becomes effective (e.g., is it within 24 or 48 hours prior to trial, the morning of trial, during the trial? What do you intend to charge if the case is cancelled prior to its intended beginning --your entire fee, a partial fee?). Discuss these terms with the court administrator and agree upon their content prior to signing and sending the contract to him/her. Always keep a copy for your records.
    2. Be flexible. If you're working on a long term assignment, and especially if you are working with a teammate who will be billing similarly, the court administrator may have very real concerns about how s/he is going to pay both of you and still be able to cover as yet unanticipated interpreting fees. Be

willing to at least consider a compromise on how much or for what you will bill the court. Here are some alternative billing possibilities to your usual fee covering hourly rate plus mileage, tolls, and parking:

- a.) Charge a flat fee for the week. This fee includes all the incidentals for which you usually charge separately.
- b.) Charge a flat fee which does not include incidentals.
- c.) Charge your hourly rate for the days you are actually interpreting, and some percent of that amount for any days you do not provide services but for which you agreed to be available to the court. This charge might or might not include incidentals.
- d.) Charge your hourly rate for the week (regardless of whether or not the case goes all week) but no fee for travel time, mileage, tolls, or parking.
- e.) Charge your hourly rate with a minimal addition for incidentals.

As you can see, the possibilities for negotiating a fee you and the court can live with are almost limitless. If the person with whom you are negotiating feels unable to agree to whatever your proposal might be, you are free to alter your proposal or to decline the assignment. Whatever agreement you make, it will be to almost everyone's advantage if you put it in writing. If you do not make the effort to clarify what you intend to charge the court, don't be surprised if the administrator is prepared to pay you a wage much different from what you anticipated.

Other considerations:

1. Find out if you are to mail a personal invoice to the court administrator or if you are to bring it to her/him at the completion of the assignment. Does the court want you to provide it with a personal invoice and sign one of their invoices? Get a name, phone number, address, and room number of the person who's going to handle your invoice.
2. Find out how long you can expect to wait for payment. Be aware that during the fiscal year change-over you may experience delays in getting paid. The fiscal year usually starts in the summer sometime. Check with the court system in which you work so you don't find yourself waiting for a check that's not going to arrive any time soon. In most instances it will take up to eight weeks for payment and sometimes longer.
3. Check the court's policy on mileage reimbursement. Charge accordingly.
4. Be aware of the potential for setting a negative precedent, either by charging so high a fee that the court assumes a negative attitude

about ASL/English interpreters and English transliterators or by charging so low a fee that no interpreter who comes after you will be able to work for that amount. Whatever the outcome of your negotiations, always remain calm.



## DEVELOPING A LEGAL PORTFOLIO

A "legal portfolio" is a packet of information about you which outlines your credibility as a legal interpreter. It can be used to refer to when talking with a judge or an attorney or when being qualified on the stand. It should include, but is not limited to:

A copy of your RID membership card showing your status as a current member.

Your resume. Since this copy of your resume will be shared with professionals in the legal realm, it should emphasize your education and training as a legal interpreter. In other words, if your bachelor's degree is in economics but you've been through the RID Legal Interpreter Training, your resume should begin with a section on "Professional Training" and "Professional Experience." However, do not eliminate information about your formal schooling.

A copy of state (and federal) legislation. Although judges and attorneys have access to statute books, it is advisable for you to have on hand at least one copy (and preferably several) of the legislation under which you will be functioning. That way if you need to refer to it during a discussion, no one has to go in search of it. Be prepared to give copies to the judge and the attorneys with whom you are meeting.

A copy of the code of ethics or code of professional responsibility which you are professionally bound to honor.

A copy of an oath for interpreters. While you may never have to provide the court with an oath, it can't hurt to have one on hand<sup>1</sup> which you can give to the judge and/or the clerk of the court if need be.

Letters of recommendation from judges, attorneys, or other professionals with whom you've worked in the legal realm and who are qualified and willing to address your competence as a legal interpreter. The most likely individuals to approach for such a recommendation would be an attorney or a judge with whom you've worked during a trial or a judge you have appeared before numerous times. While they may not be able to

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1 Oaths will differ from court to court; however, most include this basic request: "Do you solemnly swear that you will truly and accurately interpret the oath about to be administered to (defendant/plaintiff) the questions which may be asked of (him, her), and any answers (s/he) shall give, to the best of your skill and ability, so help you God?" (If the interpreter affirms rather than swears, the clause, "so help you God," would be omitted.)



address specific questions about your technical skills (i.e., your competence with American Sign Language), they may be able to address your professional demeanor, attitude, and the quality of service they feel they received from you. Having recommendations from legal professionals may increase your credibility if your competence is challenged.

Your business card. While you may not always pass your business card to an attorney or the court, don't take the chance of getting caught having to jot your name, address, and phone number down on a piece of scratch paper. Make the monetary investment of business cards that you would be proud to pass to another professional. Consider purchasing stationary with your professional logo printed on it.

An invoice for services. Many courts provide invoices which the interpreter only has to sign. Other courts expect a copy of your own invoice as well as your signature on theirs. Have your invoice in your legal portfolio so it's available whenever you need it.

- f. Notes - OH, send ... cards

- f. ... - Edly ... M. ...

- Q.A. ... of ... benefit ...

## NONTRADITIONAL RESOURCES FOR CONTINUED PROFESSIONAL GROWTH

Traditionally, our resources for professional growth as legal interpreters have been limited to a legal dictionary or two, possibly some training by our local or state RID chapter or the National RID, and discussions with colleagues. While these resources are a valuable and crucial part of our growth, there are others available to us. Be creative in getting what you need so the service you provide in legal settings can be of the highest quality. These suggestions are not exhaustive. Consider:

1. Developing an apprentice-mentor relationship with an experienced legal interpreter. View this person during court or other legal proceedings and be viewed by your mentor so s/he can provide you with feedback. Consider bartering with your mentor (mow her lawn, change the oil in his car) in exchange for the services s/he provides. Reciprocity is critical so both you and your mentor feel as though you're contributing something valuable to the relationship.
2. Taking courses related to the courts or the administration of justice at your local community college or university. Understanding the way the court system in which you're functioning works will boost your confidence in your ability to move about comfortably and knowingly in the court and will give you a feeling of personal power. Remember: Knowledge is power.
3. Viewing court proceedings. Attend as many proceedings as your schedule will allow. These proceedings need not be interpreted. The purpose of this activity is to familiarize you with the protocol and language of the court.
4. Developing a peer relationship with an attorney or a judge with whom you've had positive professional interactions. Negotiate with this person on how you might barter for his/her time and advice or be prepared to pay for consultation services. Be aware, however, that the essence of this professional relationship could be misconstrued by some as affecting the impartiality of those involved in it. To avoid this, keep this relationship completely separate from your work within the legal system. For example, don't appear in front of the judge and don't accept work with the attorney with whom you have this type of relationship.
5. Finding out if the court system in which you most frequently work has a unit set up to ensure equal access to the courts for Deaf and other linguistic minority persons or if there is an interpreter coordinator in the system. Contact that office or person and work to develop a professional relationship. Because these people have an administrative viewpoint, they may be able to provide you with valuable feedback about experiences you have in court which you don't fully understand or which cause you concern. They may also be able to provide you with information about activities in the field of interpretation about which you are not familiar and/or give you access to current written materials about legal

interpretation or the judicial system of which you may not be aware or otherwise not have access to.

6. Availing yourself of written materials not generally familiar to or used by legal interpreters. The following list is not of legal works only, but includes other materials which can help improve your stature as a legal interpreter and well-rounded individual.

Black's Law Dictionary, Henry Campbell Black, M.A. West Publishing Co., St. Paul, Minn., 1983.

Book of Court Rules - your state (published yearly). Try law libraries.

Code of Criminal Justice - your state (published yearly). Try law libraries.

Case Law Reporters - your state (published regularly). Try law libraries.

Cross-Cultural Encounters, Face to Face Interaction, Richard W. Brislin. Pergamon Press, 1981.

Elements of Style, The, Strunk and White. The Macmillan Company, New York, 1959. Classic text on writing. A must for interpreters.

Interpreting for International Conferences, Danica Seleskowitch. Pen and Booth, Publishers, Washington, DC, 1978. Now classic text on interpretation. A must for interpreters.

Language and Woman's Place, Robin Lakoff. Harper & Row, Publishers, New York, 1975.

Language of the Law, The, David Millinkoff. Little, Brown, and Company, Publishers, Boston, 1963. Classic text on legal language.

Legal Rights of Hearing Impaired People, National Center for Law and the Deaf, Gallaudet College Press, 1982

Linguistic Evidence - Language, Power, and Strategy in the Courtroom, William O'Barr. Academic Press, New York, 1982. Excellent text on the impact of powerful and powerless language used by witnesses in court.

Meaning Across Culture, Eugene A. Nida and William D. Reymann. Orbis Books, Maryknoll, New York, 1981.

Rules of Evidence - your state (published yearly). Try law libraries.

Statutes Annotated - your state (all state legislation, published regularly). Try law libraries.

Synonym Finder, The, J.I. Rodale. Rodale Press, Emmaus, Pa., 1978. Excellent resource for general vocabulary development. A must for interpreters.

Want's Federal-State Court Directory, Want Publishing Company, Washington, D.C. This book contains diagrams of the nation's court systems.

\* Words and Women: New Language in New Times, Casey Miller and Kate Swift. Anchor Press/Doubleday, Garden City, New York, 1977.

Word Play - What Happens When People Talk, Peter Farb, Tatam Books, 1973.