

## New Interpreter Code of Ethics

Formalizing the role of court interpreters as professionals improves access to justice to persons who are deaf and to people who speak foreign languages or are not fluent in English.

by *Hon. Elsa Lamelas*

**B**y enacting a code of ethics for interpreters, the Wisconsin Supreme Court took an important first step to resolve one of the most urgent problems of the trial courts - how to provide access to justice to deaf persons and foreign language speakers.

The new code of ethics, codified as Supreme Court Rule 63, became effective on July 1, 2002, and is published in its entirety with the Rules of the Supreme Court.<sup>1</sup> Enactment of the code signifies the high court's recognition of the need to formalize the role of court interpreters as professionals.



### Interpreter Committee

In 1999, J. Denis Moran, the director of the Office of State Courts, created the Committee to Improve Interpreting and Translation in Wisconsin Courts (Interpreter Committee). To achieve geographical diversity, Moran appointed members from many Wisconsin communities. To achieve a diversity of viewpoints, Moran sought the views not only of judges, clerks of court, and court administrators, who traditionally comprise most court committees, but also of other persons who have a stake in the integrity of the courts. For that reason, Interpreter Committee members included not only appellate, circuit, and municipal court judges, but also legislators, a prosecutor, and a member of the defense bar. Perhaps the most significant contributions came from foreign language (Hmong and Spanish) and sign language interpreters. Meetings attracted remarkable public attention and support; the observations and concerns of lay persons served as a constant reminder of the importance of this issue to so many Wisconsin residents.

In October 2000, the Interpreter Committee presented its report to the supreme court.<sup>2</sup> The report recommended a comprehensive program of training, testing, and certification for interpreters, and urged the high court to seek funding to provide interpretation for all who need it regardless of the type of case or ability to pay. Currently, counties receive limited reimbursement for interpreters provided to indigent persons in a limited array of proceedings.<sup>3</sup> Finally, the committee recommended adopting an

interpreter code of ethics and submitted a proposed code.

The supreme court adopted the committee recommendations and included them in its 2001-03 biennial budget request. While budgetary constraints precluded legislative support for the concept of providing interpretation for all persons who need it in all types of cases, the training, testing, and certification provisions were approved and included in the budget presented to the governor. Ultimately, Gov. McCallum vetoed all funds intended for training, testing, and certification because of their fiscal implications.<sup>4</sup> Since Wisconsin still does not test for language proficiency by court interpreters for any language, and since there is no certification program, even conscientious judges are at a disadvantage when appointing an interpreter.<sup>5</sup>

### **The Need for Competent Interpreters**

The frequency with which Wisconsin courts must rely on the services of an interpreter to communicate with parties and witnesses has grown dramatically in recent years. According to the U.S. 2000 census, Wisconsin's Hispanic and Hmong populations doubled during the 1990s. Brown County's Hispanic population grew by an astounding 470 percent during the same period. Four Wisconsin counties have Hispanic populations in excess of 5 percent: Milwaukee, Racine, Kenosha, and Walworth.<sup>6</sup> While obviously most persons of Hispanic or Hmong background do not require interpreters, these numbers nevertheless confirm what trial courts know firsthand: Wisconsin has a serious need for qualified Spanish and Hmong interpreters.

Speakers of other languages also have become more numerous. Consequently, judges must, with increasing frequency, find and appoint interpreters for Russian, Polish, Somali, Laotian, Vietnamese, Bosnian Serbo-Croatian, and Arabic speakers, among others.<sup>7</sup> In addition, significant numbers of people are deaf or hard of hearing. They, too, may require interpreters.

Without competent and honest interpreters, the courts can neither understand, nor be understood by, a significant segment of the community. An inability to communicate compromises the courts' ability to decide cases intelligently and justly. This is not only an affront to justice but also implicates broader societal costs. A court system that is, or appears to be, disinterested in the voice of witnesses and victims who are not fluent in spoken English discourages cooperation with authorities. Wisconsin, still battling a severe crime problem, can ill afford to do this. While it is in everyone's best interest that all who can do so learn to speak English, the work of the courts cannot wait.

Given these circumstances, the new code of ethics is a particularly welcome change. As part of its submission to the supreme court, the Interpreter Committee drafted a code of ethics based primarily on the model code created by the National

Consortium of State Courts but also incorporated certain elements from other states' codes.<sup>8</sup> The principal distinction from the codes of other jurisdictions is that from the outset we in Wisconsin viewed the challenge as one of access to the courts. This implicates not only foreign language speakers but also persons who are deaf or hard of hearing.<sup>9</sup> For that reason, Wisconsin's new interpreter code of ethics also draws from the Registry of Interpreters for the Deaf and has a greater recognition of the Americans with Disabilities Act.

### **Ethics Code Defines Interpreter Duties**

The immediate significance of the Interpreter Code of Ethics, SCR 63, is that it defines the duties of court interpreters. In doing so, the code not only informs court interpreters of their duties but also educates judges and lawyers as to what they should expect from qualified interpreters. The code of ethics implicitly recognizes, consistent with the critical role interpreters have come to play in the administration of justice, that court interpretation is a professional endeavor worthy of respect. While the new code of ethics cannot, of itself, generate competent interpreters, its adoption should naturally lead to higher expectations and a higher level of performance from interpreters.

The code should forever dispel the notion that virtually anyone with a working knowledge of American Sign Language or a foreign language can step into a courtroom and fulfill the duties of a qualified interpreter. Even to be bilingual is not enough, a concept that all too often is still poorly understood. To be fluent in English and in the language of the foreign language speaker or of the person who is deaf (usually, but not always, American Sign Language) is necessary. In addition, to interpret reliably, the interpreter must be familiar with dialectical variations and slang terminology. If the listener is to be able to distinguish between sincerity and dissimulation, if the trier of fact is to be able to evaluate credibility, court interpretation must be faithful to detail and capture tone and manner. All of this must take place in a setting generally controlled by others, that is, by lawyers and judges.

This leads to another important requirement of court interpretation - an absolute command of the language of the courts. Some of our most common legal terms are part and parcel of a jurisprudence wholly unlike the legal systems of jurisdictions in which the primary language is not English. Therefore, even a fully bilingual person may at first find it challenging to translate historic terms such as "probable cause," "preliminary hearing," "proof beyond a reasonable doubt," or the more current inventions of our new "truth-in-sentencing" laws, terms such as "initial confinement" and "extended supervision." Should the interpreter translate Latin terms such as "prima facie" or "mens rea" that are commonplace in American courtrooms? These questions pale in significance by comparison to what a Hmong language interpreter revealed: there is no word in Hmong for "constitution."

To navigate in the courtroom, the interpreter must have a basic understanding of the substantive framework of the hearing. Interpretation is intrinsically a cognitive process. Faithful interpretation is not just about language skills, memory, or stamina. It requires an understanding of what is being said. In other words, to interpret well, an interpreter should have at least a general understanding of the nature of the proceeding, of its purpose, and of what relief, if any, is being sought.

But the challenge of court interpretation is even more complex than this. It flows from the notion that language itself is the primary tool of the courts. Good lawyering, whether during witness examination or legal argument, is about the use of language. Lawyers routinely engage in exchanges in which meaning lies in the subtext of what is said. These processes may implicate the arts of exaggeration, sophisticated obfuscation, and subtle evasion. There is an inherent ambiguity to certain situations and certain legal concepts. To navigate these gray areas may delight legal practitioners but bedevil and weary the finest interpreters. A good court interpreter must master more than the vocabulary of the law.

There are also the peculiarities and limitations of language. It would seem that languages should mirror each other. Yet while virtually all languages have words for table and chair, the translation of other words is less readily accomplished. Spanish speakers, for instance, will readily say "pistola" for an automatic handgun; the distinction between a pistol and an automatic weapon is not drawn as clearly as in English. The translation of terms cannot at times be perfectly achieved because there is no perfect match in the other language. For this reason, many English speakers have adopted words, such as "déjà vu" and "angst," from other languages. Certain words are so apropos that with time they are fully integrated and lose their foreign character; we have done this with the Spanish word "guerrilla."

Sometimes the target language fails to offer a perfect match. Interpretation requires judgment. In the space of a fraction of a second, the interpreter must select, from the range of words in his or her vocabulary, that word or words that most precisely reflect the meaning of the speaker. These swift but nuanced decisions underlying interpretation become unreviewable by a higher court. (While more and more often we prepare an audio record of the interpretation of witness testimony, we do not record interpretation provided at the counsel table to criminal defendants. Even if we were to do so, review would require listening to the interpreted trial and comparing it to the transcript. Such a cumbersome and time-consuming process is rightly regarded as generally impossible.) In a legal system in which appellate courts and public observers scrutinize the judgments of the lower courts and the performance of lawyers, the word of the interpreter becomes the record.

Therefore, the integrity of the court interpreter must be above question. Unfortunately, the Interpreter Committee repeatedly heard reports of disturbing practices. These included inmates providing interpretation for other inmates;

husbands criminally charged with domestic abuse interpreting for victim wives; and social workers present in court in a victim support role pressed to interpret for the accused. There also were references to law enforcement officers interpreting for defendants.

All of these practices are rendered impermissible under the new code. It is comprised of 10 separate rules, each of which is followed by advisory comments. The rules are presented in an accompanying sidebar. The code applies to sign and foreign language interpreters as well as real-time court reporters when providing access to people who are deaf or hard of hearing.

The new code of ethics has recently been the subject of judicial education. It will continue to be addressed at judicial conferences. It is equally important for lawyers to become familiar with SCR 63. Lawyers who become involved in litigation in which interpreters are used should consult the rules to learn what to expect. Lawyers also should learn the code so that they too can refrain from improper conduct.

One last welcome sign of change is that certain statutory language recommended by the Interpreter Committee recently became law. These new provisions include definitions of "limited English proficiency" and of a "qualified" interpreter.<sup>10</sup> The spirit that animates the new code of ethics is readily apparent in the statutory definition of a qualified interpreter as someone who "readily and accurately interprets, without omissions or additions, in a manner that conserves the meaning, tone, and style of the original statement, including dialect, slang, and specialized vocabulary."<sup>11</sup>

It is likely that the need for competent interpreters will continue to be with us. Much work remains to be done to make access to the courts a reality. But for now, our highest Wisconsin court has taken a firm step in the right direction.

## Endnotes

<sup>1</sup> Rule 63 (the interpreter code of ethics) can be found at [www.courts.state.wi.us/circuit](http://www.courts.state.wi.us/circuit); [www.courts.state.wi.us](http://www.courts.state.wi.us); and at [www.courts.state.wi.us/rules/CHAP63.pdf](http://www.courts.state.wi.us/rules/CHAP63.pdf). 9.26 KB

<sup>2</sup> Committee to Improve Interpreting and Translation in the Wisconsin Courts, October 2000 (Report), *available at* [www.courts.state.wi.us/circuit/pdf/Interpreter\\_Report.pdf](http://www.courts.state.wi.us/circuit/pdf/Interpreter_Report.pdf). 477 KB

<sup>3</sup> See [Wis. Stat. § 885.38](#) (3)(a).

<sup>4</sup> 2001 Wis. Act 16, § 9147, and § 395 at 20.005 at 20.625(1)(c); Governor's 2001-03 Budget Veto Message at 112.

<sup>5</sup> Despite the extraordinary challenges posed by lack of funding, the Office of the Director of State Courts obtained funding from the Department of Workforce Development Office of Refugee Services for orientation programs to train court interpreters on ethics, English legal terminology, court procedure, and basic legal interpreting skills. Six programs took place in 2002, and four more will be scheduled for 2003. Interested persons should contact Marcia Vandercook, 110 E. Main St., Suite 410, Madison, WI 53703; (608) 267-7335; email [Marcia.Vandercook@courts.state.wi.us](mailto:Marcia.Vandercook@courts.state.wi.us).

<sup>6</sup> U.S. Census Bureau 2000 Census, [www.census.gov](http://www.census.gov); U.W.-Madison Applied Population Laboratory, Wisconsin's Racial and Ethnic Diversity (2000), available at [www.ssc.wisc.edu](http://www.ssc.wisc.edu).

<sup>7</sup> See Report, *supra* note 2, app. 2 (Refugee Population of Wisconsin May 2000).

<sup>8</sup> *Court Interpretation: Model Guides for Policy and Practice in the State Courts* ch. 9 (National Center for State Courts 1995), available at [www.ncsconline.org/wc/publications/Res\\_CtInte-pub.pdf](http://www.ncsconline.org/wc/publications/Res_CtInte-pub.pdf).

<sup>9</sup> Registry of Interpreters for the Deaf, Code of Ethics, [www.rid.org/coe.html](http://www.rid.org/coe.html); Americans with Disabilities Act, [42 U.S.C. § 12101](#) et. seq., Title II (1990).

<sup>10</sup> [Wis. Stat. § 885.38](#) (1). The complete text of all interpreter statutes (which are codified at diverse places of the Wisconsin Statutes) can be found at [www.courts.state.wi.us](http://www.courts.state.wi.us).

<sup>11</sup> [Wis. Stat. § 885.38](#) (1)(c)3.

- [SCR 63 - Interpreter Code of Ethics Summary](#)