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The Counsel Table Interpreter  
Role and Function

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What We Will Cover

- ✓ What is the difference between a TI and PI?
- ⚖️ What is the legal basis for having a TI?
- 🔍 Where does a TI work?
- ❓ Why is there a need for a TI?
- 📋 How does a TI work?  
What skills are needed  
Discussion with attorney  
Monitoring and correcting of errors  
Preparing a deaf party/parties

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Read the 6th Amendment

Read the 14th Amendment

From these two Amendments, what is the legal rationale for a counsel table interpreter?

Handwriting lines for notes corresponding to the first three prompts.

### Rationale for TI

- 6th Amendment guarantees right to counsel
  - the right to be present
  - the right to assist in one's own defense
  - the right to have the assistance of experts
- 6th Amendment does not apply in Civil Cases
- 14th Amendment - Due process right to be "meaningfully present (linguistic presence) at his or her trial" and ability to assist counsel
- ADA and 504 for Civil cases - ADA provides for assistance of counsel

Handwriting lines for notes corresponding to the Rationale for TI section.

### Roles

- Defined by
  - Court Interpreter Code of Ethics
  - Rules of Evidence
  - Statutes
  - Case Law

Handwriting lines for notes corresponding to the Roles section.

## Definitions

- Court's view:
  - Witness Interpreter
  - Proceedings Interpreter
  - Defense Interpreter

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## Court's View

- Interpreters play three (3) different essential roles in criminal proceedings
  - Make the questioning of non-English speaking witness possible (witness interpreter)
  - Facilitate the non-English speaking defendant's understanding of the colloquy between attorneys, the witnesses, and the judge (proceedings interpreter)
  - Enable the non-English speaking defendant and his English speaking attorney to communicate (defense interpreter)

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## Sign Language Role Definition

- We define our roles as:
  - PI - Proceedings Interpreter
  - TI - Counsel Table Interpreter
  - Following the court's definition, we collapse WI & PI roles
  - Keep TI role separate

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## Differences Between Spoken Language and Sign Language Interpreters

Placement:	Spoken language PI sits next to the defendant
	Sign language PI sits/stands in front of, facing defense table and will move to accommodate witnesses
	Sign language TI sits between attorney and client
Roles:	Spoken language interpreters collapse PI and TI role
	Sign language interpreters collapse PI and WI role

Spoken language view of Counsel Table role and it's affect on court

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## Why TI Role is Separate




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## Proceedings Interpreter PI

- Officer of the Court
- Interprets all of the proceedings, including witness testimony
- Obligation is to the Court
- Interpreter of record
  - Not all hearings are of record

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### Counsel Table Interpreter TI

- TI interprets privileged communication between attorney and client for out of court meetings, as well as at counsel table during hearings or at trial
- Has an expanded role:
  - Interprets between attorney and client
  - Is the "expert" regarding interpreting for the deaf, deaf/blind and hard of hearing parties for the team they serve
  - Monitors the work of the PI(s)

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### Counsel Table Interpreter cont . . . .

- Role and Function:
  - Know what is privileged communication and what is not
  - Clarify communications not understood by deaf party during court hearings
  - Do not take court oath. TI does not do any "record interpreting."
  - Follows RID Code of Professional Conduct

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### Privileged Communication

- A confidential communication
- Made by a client to an attorney
- For the purpose of obtaining legal assistance
- And in which the professional cannot be compelled to reveal the content unless the holder waives the privilege
- Each element must be met in order for the communication to be privileged (Mathers, pg. 41)

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### Wisconsin Statute

- Interpreters in Wisconsin claim privilege under those who carry the right
- 905.015 Interpreters for those with language difficulties, limited English proficiency, or hearing or speaking impairments. If an interpreter for a person with a language difficulty, limited English proficiency, as defined in s. 885.38 (1)(b), or a hearing or speaking impairment interprets as an aid to a communication which is privileged by statute, rules adopted by the supreme court, or the U.S. or state constitution, the interpreter may be prevented from disclosing the communication by any person who has the right to claim the privilege. The interpreter may claim the privilege but only on behalf of the person who has the right. The authority of the interpreter to do so is presumed in the absence of evidence to the contrary.
- **Only the holder of the communication has the authority to waive**

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### Clarifying Communication

- Above table - relation to PI
- Below table
  - Confidential/ privileged communication
  - Checking in
- Know the line between clarifying and reinterpreting the hearing

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### TI Follows RID Code of Professional Conduct and Does Not Take Court Oath

- Group Activity
- Use IRAC to figure out why
  - Issue - TI does not follow Court Code
  - Rule - Where does it tell us that
  - Application - How does the rule apply
  - Conclusion - What do we conclude from this

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### TI as Expert Role and Function

- Monitor
- Provide resources and consults with attorney (People v. Carrion, Mathers, pg. 169) about interpreting process, linguistics, culture, etc.
- Assist attorney in preparing deaf party for hearing/trial
- Consult with PIs when appropriate
- Become expert witness if needed

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### TI as Expert

- Qualifications - fully qualified as court interpreter
  - Challenging PI
- Part of the "team" (defense, respondent)
- Access to Court (PI) and attorneys (TI)
  - Sixth Amendment right to be present
  - Fourteenth Amendment "due process guarantees fundamental fairness"

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- FRE 604 and 702
- Article VI - Witnesses
- Rule 604 - Interpreters
  - An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation
- Article VII
- 702 - Testimony by Experts
  - If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

### Rules of Evidence also Define Expert

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What happens if the TI is called as an expert witness?

What are other options?

When would a TI be called as an expert witness?

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Calling TI as Expert Witness

906.04 Interpreters An interpreter is subject to the provisions of ch 901 to 911 relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true translation

907.02 Testimony by Experts If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

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Wisconsin Rules of Evidence

TI as Monitor Role and Function

- Contemporaneous Objection Rule ( Carrion and Resendes)
- Assist attorney in accurate interpretation of Pls
- Preserve interpreting related errors for appeal
- Know how to identify, classify, and address non-equivalent messages
- TAKE NOTES, TAKE NOTES
- Obligation to correct errors
- Errors cannot be detected in the record that consists solely of the English transcript. Talk about video taping as the only way to preserve the source for any questions of the interpretation for future appeal

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### Skills and Competencies of TI

- TI should be fully qualified as a court interpreter. In addition a TI should also possess the following skills and competencies:
  - Protocol - know and understand appropriate protocol
  - Work under the philosophy that all the interpreters working in the case are a team, working with the same professionalism, protocol and respect
  - Have the ability to explain the role, function and duties
  - Interpersonal skills
  - Ability to identify errors, articulate the errors and correct errors using rules, laws and codes

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### Skills and Competencies of a TI cont . . .

- Maintain dialogue with deaf defendant
- Know what and how to prepare deaf party about the roles and functions of different interpreters in the court proceedings
- Be proactive in your role - attend to attorney and help solve their concerns regarding the interpreting process and techniques

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### Group Activity

In groups discuss what you want the attorney to know

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### Meeting with Attorney

- Explain the differences in interpreting
  - Between sign language and spoken language interpreters
  - Different interpreter roles and teams
- Know when to explain the normal process of interpreting and what needs attention (theories, best practices, language issues, cultural issues)
- Be ready with resources related to interpreting such as laws, RID Code of Professional Conduct, Code of Ethics for Court Interpreters, articles, oath, credentials, experts in deafness, linguistics, and interpreting, psychologists who have experience in deafness, jury instructions related to interpreting, voir dire questions for jury and for interpreters

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### Meeting with Attorney cont . . . .

- Apprise attorney of potential problems/complications that may arise (i.e. use of depositions, objections, written documents that will be used in court, and how these issues will be addressed) Talk about logistical issues, placement, handcuffs. Attorneys want to hear what the problem is as well as the possible solution. You are the expert Explain that taking the time to prepare their client will alleviate many of the potential problems that may come up.
- Assist the attorney in understanding the differences with deaf witnesses - help attorney formulate questions successful strategy related to language and other issues that are problematic in ASL. Describe the difficulties with time lines.

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### Meeting with Attorney cont . . . .

- Talk with the attorney about how they want you to function: correction of errors (sometimes you will articulate the challenge and sometimes the attorney will), when the deaf client has questions during court - does the attorney want you to write, whisper, etc
- Explain to the attorney how important it is to prepare the deaf client before each hearing
- Help attorney understand how important it is to prepare the PIs and what information the PIs need
- Attorney may ask you to do other functions like keep the deaf party calm
- Discuss your physical position in the courtroom when the deaf party is testifying (TIs ability to communicate with attorney and monitor PIs)
- Talk with counsel about eye fatigue

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### Correcting Errors

- Try to use other options other than interrupting the proceedings
- Choose least disruptive way to correct
- Always inform attorney and deaf party (discuss how attorney wants to be informed)
  - Attorney may re-ask the question or have it read back so the PIs can correct, or the court may ask the witness to repeat his statement
- Write it down
- Check in with PIs during break
- Challenges/corrections must be provided to court out of hearing of the jury
- Errors that are not substantive:
  - May opt to clarify error above the table where PIs may see the correction
  - Be sure to write down the error
  - Know the line between clarifying and reinterpreting (may indicate PIs inadequate)

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### Correcting Errors cont . . . .

- Know the structure of trial work
- Open/closing arguments:
  - NOT interrupted
  - Are not evidence
  - Done in simultaneous mode
- Expert testimony by hearing witness:
  - Difficult, technical and fast
  - Should not be interrupt
  - Discuss with deaf party before hearing/trial
  - Simultaneous interpreting
- Witness testimony
  - Deaf witness consecutive, interrupt if necessary
  - Jury instructions
    - Fast. Make sure to get a copy

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### Correcting Errors cont ....

- Note taking
  - Write down what you saw/heard in both languages
  - Practice note taking as much as you can, as often as your can
- Monitor register and affect
  - Consider influences of testimony on judge and jury (witness' credibility)
- Understand and be able to identify a substantive error A substantive error is one that may "materially alter" a statement. Use this language when addressing an error. Interrupting the court proceeding should be the last option.
- When challenged, the PIs will either agree to stand corrected, or to stand by their interpretation

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## Correcting Errors cont . . . .

- Evaluating an error:
  - Direct evidence of incorrectly translated words
  - Circumstantial evidence related to unresponsive answers, and
  - The petitioner's expression of difficulty in understanding the translation (Mathers, pg. 152)
- Know how to articulate errors:
  - If with a jury, attorney will ask to approach along with the interpreter. Interpreter will need to articulate the error
  - You may be sworn in as a witness to address the linguistic issue
- Challenging PIs work is challenging the court. PI has been appointed and sworn by the court , challenger must prove the PI error to the court

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## Correcting Errors cont . . . .

- Practice precise language to use when challenging
- Use your notes
- State the SL and TL interpretation error (what was produced)
  - The question was "so you had the cocaine in your jacket pocket" and the interpretation was "so you had the weed in your jacket pocket."
- If necessary, state the miscue (see Cokley, omissions, additions, substitutions, etc.) The court is familiar with some of his language from SCR 63
- The court will ask the PIs if they agree and direct everyone what to do next
- Have a solution ready
  - The PIs are missing too much information. Could be due to unfamiliarity with expert witness testimony , hasn't had an opportunity to review PSI report, hasn't had opportunity to review CHIPS update, etc.

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## Preparing a Deaf Party for Court Proceedings



Group Activity:



As a TI, develop a list of preparations to prepare a deaf party for court proceeding

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- Function of interpreters (PI)
- Swear in interpreters
  - TIs not sworn in
- Cannot converse with PIs or ask q's. PIs must sign everything and voice everything. Questions must be asked through the attorney
- Different signs - ask TI for clarification
- If answering a yes or no question must use sign for yes or no (head nods are not allowed)
- Consecutive interpreting for deaf witness testimony. All other is simultaneous except in cases where CDIs are used. Then mode remains consecutive
- Interpreters need prep paperwork and should have read the prep prior to court
- PIs must become familiar with deaf party and get background info (school attended, family makeup including names signs for family members, sports) Interpreting needs assessment must be done prior to court to make sure language needs are being accommodated

## Preparing a Deaf Party for Court Proceeding

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## Preparing Deaf Party for Court Proceeding cont . . . .

- Strategies when deaf party doesn't understand something:
  - Interpretation
  - Questions
  - Speed of proceedings
- Cross Examination
  - Opposing attorney will ask questions requiring yes or no answers They are trying to get the witness to answer yes as often as possible so later, during closing arguments the attorney is able to say that the witness "agreed"

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## Preparing Deaf Party for Court Proceeding cont . . . .

- Objections:
  - Describe the different types
  - What they mean
  - Speed
  - Partial interpretation (sole holder of uninterpreted information)
  - As a TI pay attention to objections. Due to speed they tend to get lost in interpretation but if they have been explained prior, process will be more clear, easier to comprehend and easier to follow
- Prior depositions, statements, police interviews, other reports and evidence, etc.
- Different interpreters
- Different signs used
- Describe the reason and format used and how they are talked about in court

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### Preparing Deaf Party for Court Proceeding cont . . . .

- Describe side bar
  - What happens
  - Why PIs don't interpret
- Describe the concept of "let the record reflect"
  - Gestures must be described for the record
    - Ex. Pointing. Do you see that person in court today?
    - Ex. Describing an action or motion. Police officer demonstrates the gesture of the defendant's finger in the police officer's face. Attorney will say "let the record reflect that the right pointer finger is pointing directly at the nose of the officer approximately two inches away."
    - Ex. Demonstration of how the officer extended his nightstick and the attorney describes the action

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### Preparing the Deaf Party for Court Proceeding cont . . . .

- Sometimes the judge will speak directly to the interpreters or the interpreters will need to speak with the judge, describe what happens when this occurs
- Describe the concepts in jury instructions, especially regarding direct/circumstantial evidence (TI would do this with attorney)
- Role play
- Describe different types of hearings to deaf party
- Describe the charges, the elements of each charge, and the potential sanctions
  - Initial appearance
  - Motions
  - Arraignment
  - Plea/sentencing
  - Status
  - Pre-trial conference
  - Trial

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