

Chapter 2

Interpreters

The first task force hearing was held in Woodburn in July 1992. It was a hot night. The meeting room was packed and people were standing in the rear and outside. A Spanish-speaking interpreter was available.

Shortly after the first Spanish-speaking witness began to testify, a murmur arose from the crowd. “The interpreter is not getting it right,” said one person. It quickly became apparent to everyone in the room that the person selected by the task force to provide Spanish interpretation was not equal to the task. Fortunately, a qualified back-up interpreter, Liliana Olberding, was available and she took over. Ms. Olberding volunteered to interpret at all subsequent task force hearings, and she was appointed to serve on the task force.

With the best of intentions, the task force failed in its first effort to get a qualified interpreter. Not surprisingly, courts have encountered similar problems.

The democratic ideal of equal justice under law requires that persons having disputes with one another or with the government have equal access to a tribunal in which they can hear and be heard and have their conflicts decided by a neutral and detached third party. The effectiveness of the court system is limited if parties or witnesses do not understand what is being said in court.

By law, “every writing in any action...in a court of justice in this state...shall be in English,” ORS 1.150. As a practical matter, almost all court business is conducted in English. Except for Native Americans, today’s Oregonians are immigrants or descendants of immigrants. In recent years, Oregon has experienced a new influx of pioneers from foreign lands. Increasingly, Oregon residents speak languages other than English, and many speak no English at all. The result: a commensurate rise of non-English-speaking court litigants.

Interpreters and the Judicial System

At the public hearings, non-English-speaking litigants, their interpreters and advocates, repeatedly voiced dissatisfaction with Oregon’s justice process. Many litigants felt misled by counsel; many argued that their legal theories and positions received little consideration from the court; many litigants believed that the court interpreter was not effective in presenting them with a clear understanding of what was taking place, or in adequately presenting their testimony. A picture emerged of confusion and frustration.

Many who came before us said that, because of cultural and language differences, they did not receive justice. The best they could hope for, they said, was to experience the process of justice even though it was unexplained and unintelligible.

“Most Hispanic litigants do not comprehend legal terminology... Hispanics feel they are not adequately represented and their cases are not adequately addressed.”

—*Edward Hernandez, Hispanic Club,
Oregon State Penitentiary, Salem*

Although the testimony usually focused on in-court proceedings, the task force also notes that interpreter services are sorely lacking in other related areas. It was repeatedly pointed out that non-English-speaking criminal defendants, in particular, face formidable obstacles in trying to comply with court directives because of the lack of interpreters in probation offices, Department of Motor Vehicle offices, alcohol and drug programs, and other more specialized treatment programs such as those for sex offenders. Without interpreters in such offices, an offender’s ability to complete probation or a diversion program or to avoid running afoul of court prohibitions is compromised.

Interpreters responding to the survey voiced a common concern—the absence of formal training in legal terminology and in basic interpreter skills for court interpreters. Other areas of concern centered on the inability of attorneys to work effectively with interpreters and a perceived lack of empathy from the bench regarding the difficult nature of simultaneous court interpretation.

“Many judges won’t make a record that there is an interpreter, won’t swear or won’t make a record regarding qualifications.”

—*Connie Crooker, bilingual (Spanish-
English) attorney, Portland*

Although laws mandate interpreter assistance during court proceedings, no laws existed before the 1993 legislative session to regulate the competence of interpreters. Although most non-English-speaking litigants seem to have been afforded court interpreters in recent years, no process was in place to assure that the job was done properly and uniformly.

Oral testimony before the task force spoke to this problem.

“Certification and qualification of interpreters are needed. Translation is a more apt term than interpretation. Some interpreters advise rather than staying neutral and interpreting.”

—*Annabelle Jaramillo, Executive
Director, Commission on Hispanic*

Affairs, Salem

“Interpreters need more education and training. With training, we would get more qualified people from the community. We need more interpreters; the ones we have are overworked.”

—*Pat Sullivan, District Attorney,
Malheur County*

Justice under the law may be denied to those who are not conversant in the language or prevailing culture. This not only handicaps the individuals involved, but also compromises the judicial system in the pursuit of justice for all. To assure equal access, while preserving the integrity of the process, cultural differences must be considered. Thinking and perception are shaped by more than vocabulary and grammar. This highlights the importance of the role and function of a court interpreter. To avoid injustice, it is imperative to measure the language skills *and* the cross-cultural capabilities of interpreters. The cultural skills of the interpreter should be compatible with the culture of the person whose testimony is being translated.

The task force worked with Kingsley Click, Deputy State Court Administrator, and Bill Linden, State Court Administrator, to secure the passage of legislation addressing these problems. Senate Bill 229 passed both houses and became law, 1993 Oregon Laws, chapter 687, now ORS 45.273 to ORS 45.297. (See Appendix 7.) The new law mandates, subject to available funds, statewide training, licensing and oversight of court interpreters as well as the implementation of an interpreter’s code of ethics. The State Court Administrator must promulgate administrative rules to implement the new interpreter law.

Pay for court-appointed interpreters must be considered, especially in view of the difficult task they are called upon to perform, often on short notice. The current rate for court interpreters is \$25 per hour. By comparison, the federal court system pays interpreters an average of \$32.50 per hour with minimum flat fee compensation of \$135 for zero to four hours of work and \$250 for four to eight hours of work. With adoption and implementation of certification requirements, interpreters will be called upon to undergo rigorous training and testing and to have their ethical performance reviewable by a higher authority. So far, they have no assurance of even a modest pay raise.

The American justice system is a complex amalgam of difficult jargon, concepts and procedures. What judges and lawyers take for granted often seems unintelligible, even nonsensical, to intelligent persons who use the courts. The problem is exacerbated for the non-English-speaking litigant. Many non-English-speaking litigants have no understanding of how American justice works. Legal concepts such as arraignment, reasonable doubt, jury trial, relevance, hearsay or motion to suppress are not always understood. Portland court interpreter Terry Rogers pointed this out in oral testimony:

“It takes longer to explain foreign concepts. It may take a long time to explain the right not to incriminate oneself, as well as the trial process.”

Many survey respondents cited the need for translated legal documents:

“I see Hispanic people more in criminal court because of their inaccessibility to the civil side. Small claims action are inaccessible to Hispanics—no interpreters, no forms in Spanish—so they resort to self-help remedies. We need interpreters on the civil side and forms printed in Spanish so people can use the forms themselves.”

—*Richard Rambo, attorney,
Klamath Falls*

“There is need to have court forms properly translated. Some of the forms used in Multnomah County are travesties. If the court understood what was being said in Spanish, it would void some of what people have signed.”

—*Terry Rogers, court interpreter,
Portland*

“Every court should have someone readily available (if not in the courtroom) to translate Spanish. Particularly the traffic departments run into problems with no one to translate basic information. A booklet with commonly used phrases would be helpful to let the defendant know what is going on.”

—*anonymous letter to the committee*

Equal access to the court also requires cross-cultural sensitivity on the part of judges, attorneys and court personnel. Letters and testimony reveal inconsistencies in intercultural awareness:

“I have seen *several* well-educated judges speak more loudly to non-English-speaking defendants who are appearing with interpreters. The last time I checked, a non-English-speaking person did not understand English any better when it was shouted at them!”

—*anonymous letter to the committee*

“My favorite interpreter was one who kept interrupting an interview to explain that I was asking all the wrong questions because I didn’t understand what the words meant to the defendant due to cultural differences. He did a great deal to educate me.”

—*anonymous letter to the committee*

Cross-cultural training of nonminorities can improve conditions for non-English-speaking minorities. However, the simple presence of bilingual and bicultural judges and court personnel would make the courthouse a more welcome environment for the non-English speaker.

“I think the major part of the solution is ethnic diversity in court personnel. When I took office there was no one in the building who even spoke Spanish.”

—*Pat Sullivan, District Attorney,
Malheur County*

“I work in District Court, Clackamas County. There is a dire need for Spanish-speaking court personnel. We have an abundance of Spanish clients that come to our counters or call on the phone and *no one* can assist them with their questions.”

—*anonymous letter to the committee*

“I have seen arraignment and release hearings continued until the following day because the defendant was Spanish-speaking and no one in the courtroom could speak Spanish. I can understand this type of situation with a less common foreign language or in a more rural country. However, this should never be the case for a Spanish-speaking person in the Portland Metro area.”

—*anonymous letter to the committee*

The words of one letter writer expressed the frustrations of many.

“In a time when our communities are becoming more ethnically diverse, I believe there is a need for court personnel to be able to communicate with minority litigants. It is difficult to assist anyone

through the maze of the court system when you cannot effectively communicate.

During my employment I have not witnessed intentional prejudice, but I am concerned that the language barrier itself creates room for error.”

People’s lives are affected by their experience with the legal system. It is fundamental to a democratic society that *all* litigants understand the process. Every lawyer should be sensitive to his or her responsibility of informing non-English-speaking clients about our legal system.

Interpreters, Minorities and the Courts

Findings

1. The number of non-English-speaking litigants is rising at a rapid rate.
2. Significant numbers of non-English-speaking litigants are disadvantaged because they cannot understand the court system and its decisions.
3. Interpreters are often not available in offices that are associated with the court system. For instance, few probation offices, drug and alcohol programs, and other treatment programs have bilingual resources. At times, interpreters are not readily available in the courtroom itself.
4. A strong perception exists in the non-English-speaking community that many interpreters are not trained or are undertrained. Sometimes court staff, friends or relatives with inadequate language translation skills are used in an attempt to “get by” when a qualified interpreter is not present.
5. No statewide system is in place to train, license or regulate court interpreters.
6. Qualified court-appointed interpreters, who currently earn \$25 per hour, are underpaid, considering the skill required for their work and its importance to the impartial administration of justice.
7. Simultaneous interpretation of oral testimony requires a high level of training and skill. Mere proficiency in a foreign language, in and of itself, does not qualify one to interpret in-court testimony from that language or to that language.
8. The bar, courts and attorneys must give greater consideration to the communication problems of non-English-speaking litigants and must understand that even excellent interpretation does not obviate many of the problems that arise because of cultural or class differences.

9. In a courtroom, not only is it essential that the interpreter understand his or her role; it is also essential that all persons in the courtroom understand the interpreter's role.

Recommendations

Recommendation Number 2-1

We recommend that the Judicial Department prepare an explanation of the court system and court process, drafted in simple format and language, to be made available to the public. This document should address essential issues including, but not limited to: the function and organization of the court system, the role and responsibilities of court litigants, interpreters and other participants, and appeal procedures. This document should be translated into the foreign languages most frequently spoken in Oregon. There should be a civil law version of this document as well as a criminal law version. The document is not expected to provide legal advice, but to highlight what a litigant can expect during the court process.

The Judicial Department should also prepare foreign language videotapes providing similar information.

Estimated date for implementation to be completed: July 1, 1995.

Estimated cost of implementation: Unknown.

Persons responsible: State Court Administrator with assistance of bench and bar.

Recommendation Number 2-2

Commonly used court forms should be translated into other languages. Small claims petitions, restraining order applications, forcible entry and detainer (FED) notices, plea petitions, diversion agreements, mediation documents and other forms to be determined by the State Court Administrator should be available not only in English, but also should be available in the foreign languages most commonly spoken in Oregon. All commonly used forms should include a question as to whether an interpreter is needed.

In counties with a significant minority population, trial court administrators should post signs in appropriate foreign languages.

Note: The task force believes that this recommendation can be accomplished without amending ORS 1.150. If there is doubt on this point, ORS 1.150 should be amended to permit the use of non-English forms.

Estimated date for implementation to be completed: January 1, 1996.

Estimated cost of implementation: Unknown.

Persons responsible: State Court Administrator, assisted by local court staff, court interpreters and bilingual attorneys.

Recommendation Number 2-3

Trial courts should:

- a. Increase the number of bilingual and bicultural court personnel who have contact with the public;**
- b. Through a personnel plan, provide financial incentives to employees who speak a second language and are called upon to use that language in dealing with the public;**
- c. For employees and judges who are willing to take foreign language courses, pay the tuition for the courses, if the language skills that are learned can be used at work;**
- d. Actively recruit bilingual court personnel;**
- e. Annually monitor and report on the status of the effort.**

Estimated date for implementation to be completed: Put plans in place by July 1, 1995, with pay enhancement. Recruitment and cross-cultural diversity training should be ongoing.

Estimated cost of implementation: Unknown.

Persons responsible: Local trial court administrators, State Court Administrator.

Recommendation Number 2-4

The Chief Justice and State Court Administrator should forthwith implement 1993 Oregon Laws, chapter 687. The Chief Justice or State Court Administrator should forthwith appoint a committee to draft the court interpreters code of ethics. This same committee should also recommend testing, certification and oversight procedures regarding court interpreter qualifications. We recommend that the code of ethics be modeled after that used by the Registry for the Deaf or the Washington State Code of Conduct for interpreters.

Estimated date for implementation to be completed: Committee appointed by September 1, 1994; ethics code completed by March 1, 1995; implementation of Chapter 687 by December 31, 1995.

Estimated cost of implementation: Unknown.

Recommendation Number 2-5

Certified interpreter fees should be raised from \$25 to \$32.50 per hour.

Estimated date for implementation to be completed: July 1, 1995.

Estimated cost of implementation: \$342,415 per year.

Person responsible: State Court Administrator.

Recommendation Number 2-6

A uniform trial court jury instruction should be drafted regarding interpreted testimony. The language of this jury instruction might be as follows:

“All parties and witnesses testifying in open court have the right to have their testimony articulated and heard. You are about to hear a trial in which one or more of the parties or witnesses do not speak English. Those parties or witnesses will be assisted by a court interpreter. The

interpreter is neutral. The interpreter has the responsibility to translate from English to another language, or from another language to English, truly and accurately to the best of the court interpreter's ability and training.

"You must evaluate interpreted testimony in the same manner as you would any other testimony. That is, you must not give interpreted testimony any greater or lesser weight than if such testimony was not interpreted. Neither shall you give greater or lesser weight to interpreted testimony based on your conclusions, if any, regarding the degree of English proficiency that the interpreted party or witness has."

In appropriate cases, this jury instruction should be given after the jury has been impaneled and before testimony is taken.

Estimated date for implementation to be completed: March 1, 1995.

Estimated cost of implementation: Minimal.

Persons responsible: Oregon State Bar Committee on Jury Instructions.

Recommendation Number 2-7

Governmental agencies should provide interpreters in administrative proceedings.

Estimated date for implementation to be completed: January 1, 1996.

Estimated cost of implementation: Unknown.

Persons responsible: Executive Department, local governments, Legislative Assembly.

Recommendation Number 2-8

Interpreters should be provided in all court proceedings, including court-supervised arbitration and mediation.

Estimated date for implementation to be completed: January 1, 1996.

Estimated cost of implementation: Unknown.