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# ACCESS TO JUSTICE JOURNAL

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A publication of the Oregon Judicial Department Access to Justice for All Committee

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## Access to Justice Journal

*The Access to Justice for All Committee works to ensure equal access to all who come into contact with Oregon's state court system. This journal is designed to educate interested parties on fairness related programs, activities, and issues as well as the work of the Committee.*

### **Editorial Subcommittee:**

Richard Baldwin  
Christopher Lundberg  
Leola McKenzie  
Cathy Rhodes

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### **Access to Justice for All Committee**

Supreme Court Building  
1163 State Street  
Salem, OR 97310  
phone: 503/986-5942  
fax: 503/986-5503

ty: 503/986-5504

[accesscomm@ojd.state.or.us](mailto:accesscomm@ojd.state.or.us)

## FOCUSING ON INTERPRETING

Santiago Ventura Morales. Those who *know* about interpreting *know* the name and the circumstances of his case. I am learning about interpreting. On March 16, 1999, I met Santiago Ventura Morales, and I learned firsthand about the "*Ventura case*." Mr. Ventura provided testimony before the Senate Judiciary Committee in support of two bills related to interpreters. (Senate Bills 38 and 71 are discussed elsewhere in this journal.) As part of his testimony, he recalled his experience with the courts more than ten years earlier.

He was arrested and charged with murdering a fellow farm worker. During his trial, he had difficulty communicating with the interpreter selected by the court. The interpreter spoke Spanish and English. He spoke Mixtec, a native Mexican Indian language. The jury said he was guilty. He was sentenced to life in prison.

Paul De Muniz, now a judge on the Oregon Court of Appeals, was one of Mr. Ventura's attorneys in Mr. Ventura's post-conviction case. After spending four years in prison, his conviction was overturned and Mr. Ventura was released. He attended the University of Portland, worked hard, and graduated with a degree in social work.

This case drew national attention and encouraged courts and judges across the country to begin to examine and improve the use of interpreters in the courts. Oregon also began efforts to improve the provision of interpreters. In 1993, at the request of the Oregon Judicial Department, the 67<sup>th</sup> Legislative Assembly passed Senate Bill 229 (Or Laws 1993, ch 687) instructing the Office of the State Court Administrator (OSCA) to establish a certification program to ensure a minimum standard level of quality of interpreters who work in the courts. Now, six years after the enabling legislation, OSCA seeks funding to administer and expand the certification program. In addition, the Access Committee continues earlier efforts of the Racial/Ethnic Issues Task Force and the Implementation Committee to expand the provision of certified interpreters.

It is for these reasons that this first Access to Justice Journal focuses on interpreter issues. We hope you will find it a valuable resource tool that will assist you with ensuring fair and accessible justice services for all non-English speaking individuals and people with disabilities involved in Oregon's courts.

Leola L. McKenzie, Staff Analyst for the Access Committee

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## COURT CERTIFICATION

Who can work as interpreters? The usual answer is "those people who can speak two languages, such as Spanish and English." Well, that is partially true. What happens if the person that speaks Spanish moved to America when he or she was nine years old, and the person's Spanish vocabulary is the equivalent of a Spanish grade-schooler's? How do you know if the interpreter can say the Spanish equivalent of *mandatory prison sentence*, *conditions of probation*, or *implied consent*?

An interpreter is someone who can interpret *completely and accurately* one language into another without *altering, omitting from, or adding to* what is spoken. If an interpreter says the Spanish equivalent of *prison sentence* instead of *mandatory prison sentence*, would the meaning be changed? If the *interpreter said parole instead of probation*, or *consent instead of implied consent*, then would the original English language term be accurately relayed?

How can the court have some assurances that the person who speaks two languages and is interpreting in the courtroom knows the needed vocabulary in both languages? Or, if the bilingual person doesn't know the term, how does the court know that the person is willing to say, "Excuse me, Your Honor, the interpreter is unfamiliar with the term . . . may I take a moment to consult my dictionaries?"

An Oregon Certified Court Interpreter, along with having a college level vocabulary in *both* languages, must have specialized cognitive skills.

Someone who is proficient in speaking both languages—using their own words—may still be unable to interpret at the level of a certified court interpreter.

An interpreter must listen to what is being said, comprehend the message, abstract the entire message from the words and the word order, store the idea, search his or her memory for the conceptual and semantic matches, and reconstruct the message (keeping the same register or level of difficulty in as in the source language). While doing this, the interpreter is speaking and listening for the next utterance of language to process, while monitoring his or her own output.

Just as all musicians do not have the proficiency or cognitive skills to play in a symphony, not all bilingual persons, even well-educated ones, have the skills or proficiency to interpret at the level of a certified court interpreter.

The court interpreter certification process exists to aid the court in identifying interpreters qualified to interpret in the courts. The Office of the State Court Administrator has administered four Spanish language court interpreter certification examinations, one examination for the Russian language, one for Korean, and one for Vietnamese. Additional testing, in Spanish and other languages, will be ongoing.

There are now over 50 interpreters who are Oregon Certified Court Interpreters for the Spanish language, and one who is an Oregon Certified Court Interpreter for the Vietnamese

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language, and two who are court certified for the Russian language.

Those interpreters have each passed the skills portion of the Oregon Court Interpreter Certification Examination or a recognized equivalent. The skills portion of the test consists of a simultaneous interpreting test, a consecutive interpreting test, and a two-part sight translation test. The interpreters also have each passed the written ethics portion of the Oregon Court Interpreter Certification Examination. The ethics portion of the test is based upon the *Code of Professional Responsibility for Interpreters in the Oregon Courts*, which was adopted by Chief Justice Wallace P. Carson, Jr., on May 19, 1995. The code can be found in the *Oregon Rules of Court—State* published by West Group.

If the court is using an interpreter who is an Oregon Certified Court Interpreter, then  the court can be sure that the interpreter is a professional interpreter who has passed rigorous testing. This can lessen the unknowns of using interpreters in the judicial process and also displays a commitment to fairness for non-English speaking persons in the judicial system.

*Written by Cathy Rhodes, Executive Analyst,  
Office of the State Court Administrator*

## A NIGHT AT THE SYMPHONY

“Could you do this? And help me out? It’ll be a piece of cake for you,” Brian said.

“Sure. Ah, sure. Seven o’clock, right?”

“Yep, the concert starts at seven.”

After getting the name of the piece they’d be playing from Brian, Jane replaced the receiver and stared at the phone. Her heart skipped a beat in giddy anticipation. A chance—this was a chance to play in an orchestra. She loved music. Even though it had been years since she’d played in a quartet in college, she’d always looked forward to chances to play her beloved violin. Brian had learned that she played when they chatted at the Johnson’s house-warming party.

If he thought she could fill-in and play in his symphony orchestra, then surely she could.

Jane arrived at six forty-five at the community concert hall. She calmed the butterflies in her stomach with pure logic. She knew the piece they were going to play. She had bought a copy from the music store last week right after Brian had called her. She had practiced. She had retrieved her old books on “balance and blend” from storage.

She entered the back door of the music hall and the other musicians were already there. Seated, they all stared at her. Sheets of music littered the floor. Empty latte cups lay on their sides in the debris.

Had they had a rehearsal? Brian hadn’t said anything about that. She should have checked. It was too late now.

All of the women were wearing black. Except her. It didn’t matter, she was there to play the violin, not as a fashion model. She loved

music. She was good at this, she knew. Brian knew.

Yes, she was there to play the violin, but where was she supposed to sit? Three empty chairs were near the violinists. She sat down in one of the empty chairs as the audience began to mill into the large community hall. A man in jeans waved frantically at her and pointed to another empty chair on the other side of the violinists.

Jane gathered up her music and moved.

As she walked by them, one of the violinists grabbed her arm and looked at the music in Jane's hand.

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"That's the wrong arrangement," the woman hissed. She grabbed Jane's music and shoved it under her chair.

Jane felt the color drain from her face, as the other violinists rearranged their music so they could share with her.

She stared at the sheets of music in front of her. The basic melody was the same as the one she'd practiced, but a lot of symbols crowded the pages. Some of the markings were printed on, some were handwritten. She recognized the markings but couldn't remember what they meant.

Her mouth went dry. She probably should know what all of the markings meant before the concert started. But there was no time to ask.

She had so much to remember. Balance volume with the other instruments. Blend in. Timing. Rhythm. Tonation. Stay in sync. Watch the conductor. Follow the music carefully. How was she supposed to read the music and follow the conductor at the same time?

She *would* get through this.

*I love music*, she reminded herself. *But this feels a whole lot different than practicing alone in my living room.*

The conductor waved his baton for the last note and Jane lifted her bow from the strings.

The audience applauded.

An hour and a half had passed, but it seemed like ten minutes. Or days. She wasn't sure which. She'd lost track of where the musicians were by the sixth measure and had resorted to improvising for the next five. The rest of the time she'd simply tried to keep up.

She hadn't. She wasn't in sync. She was too loud. She was too soft. She couldn't follow the conductor and read the music at the same time.

Her short solo piece was horrid.

And she still didn't know what those symbols all over the pages meant. This arrangement was far more difficult to play than she could have ever imagined. Her fingers had not cooperated to create the notes her mind knew she was supposed to be playing. Maybe she hit six out of every ten correctly.

The audience rose as the house lights went on, and Jane stole a look at the crowd. Brian was in the second row. He smiled and waved at her.

Why on earth would he smile?

She turned to the violinist who had told her she had the wrong arrangement. The woman snatched up her music, and shoved it into her bag, her face red. She turned and stalked away.

Jane glanced back at the other musicians. No one met her eyes, except the percussionist. He threw his sticks to the floor and walked away, leaving his music behind.

Shaking, Jane retrieved her jacket from backstage and walked outside. She leaned against the building, thinking she would vomit. Or leave town. Or both.

Why had Brian done this too her?

The cellist walked out the door and Jane pushed away from her spot. If she was going to vomit, she really shouldn't do it on one of the musicians.

She'd already done it on their concert.

"Are you okay?" the woman called.

"No." Jane was going to puke and she was leaving town and she was going to kill Brian. She stopped and turned around. "Why on earth did Brian ask me to play?"

The cellist shrugged.

"He had to postpone this concert twice already. He really didn't want to postpone it again. The tickets had already been sold."

That was no excuse.

"He waved at me from the audience. He acted like—like—I'd played great."

"He thought you did." The cellist chuckled.

"Really, in Brian's mind because you say you know how to play, then he's sure you can play Liszt in a symphony. Brian is a good guy to work for, he really is. But he's tone deaf. He didn't hear your mistakes."

Jane took a deep breath, wondering if Brian knew what he had done to his musicians. Or worse what he'd done to the audience. After all, wasn't the concert supposed to be for the

audience?

"I'm not sure even I knew all the mistakes I made. I was trying so hard to just keep up. The other musicians . . .," Jane shuddered.

The musicians had heard every one.

"They've worked a long time to get where they are. It's hard for them to sit back and see someone ruin the show because she's in over her head. As for the audience . . ."

The cellist laughed wickedly.

"Don't worry. They didn't hear your mistakes and they won't complain. They never complain."

They don't know what the music is supposed to sound like to begin with."

Epilogue:

Just like musicians vary in skills from beginner to professional symphony musician, bilingual people can have skills varying from those with only classroom study or casual exposure to the language, to professional linguists with years of practice and study. Unlike a musical setting, though, when an interpreter gets "just a few notes wrong" in court, an innocent person may be found guilty.

*Written by Cathy Rhodes, Executive Analyst, OSCA*

## SAMPLE JURY INSTRUCTIONS

The following instructions to jurors were prepared by Karen Bowman, Deaf Jury Coordinator in Los Angeles Superior Court. They are examples of instructions to jurors when a deaf/hard of hearing juror uses the services of a sign language interpreter.

1. The interpreter is NOT a member of the jury.
2. The interpreter DOES NOT participate in deliberations.
3. The interpreter is present to facilitate communication between the deaf/hard of hearing juror and other jurors.
4. The deaf/hard of hearing juror's words, as spoken by the interpreter, shall not be construed as being those of the interpreter.

5. The interpreter is bound by the Registry of Interpreters Code of Ethics, which states:  
"the interpreter shall keep all assignment related information strictly confidential."  
The inter-preter is bound by this Code not to reveal any information gathered in the course of his/her work.
6. Jurors are asked to refrain from interrupting each other during deliberations so that the Sign Language Interpreter can clearly interpret each speaker's words.

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## SURVIVAL ENGLISH:

### NOT SUFFICIENT FOR THE COURTROOM

Many people have a tendency to judge a person's ability to fluently speak the complex English language by asking a person for his/her name. If the **non-native speaker responds**, then some automatically determine that this person does not need an interpreter in court. Is this English proficiency test correct?

No! When people immigrate to the United States, they find themselves submerged in a country where English is the predominate language. It is expected that the people who come from other countries quickly grasp what is called "survival English." People learn to fill out simple documents requesting their name, address, phone number, and other essential data. They learn how to order a meal, request a hair cut, and ask where the nearest bathroom is. This does not indicate that the immigrant has a profound knowledge of the English language, let alone courtroom terminology.

For instance, a few years ago, a group of Pendleton High School students went to Mexico as part of a church group. Their mission was to help build homes for the poverty stricken. Even though this group was in Mexico for only a few weeks, the students quickly learned the words baño (bathroom), sed (thirsty), hambre (hungry), and other essential words. In order to function, these students had to quickly learn "survival Spanish." Did these students have the ability to walk into a Mexican courtroom and sit through court proceedings understanding everything that was being said in Spanish? Of course not. There is a significant difference between learning "survival" words in a foreign language and being fluent.

We all need to realize that the simple fact of someone knowing how to respond to, "What is your name?", "Where do you live?" or "How are you today?", does not indicate that the person responding speaks English fluently and does not need an interpreter in court. The purpose of providing an interpreter to non-English speaking defendants is to ensure that the proceedings in English reflect precisely what was said by a non-English speaking person, according to the *Code of Professional Responsibility for Interpreters in the Oregon Courts*, and to place the non-English speaking person on an equal footing with those who under-

stand English. For example, if an English-speaking person were to move to a foreign country, and after five years of living there, he/she had to face trial for a matter which would affect his/her life forever, then would it be too unreasonable for the person to request an interpreter?

Likewise, people who immigrate to the United States have the right to request a court interpreter in their native language. Therefore, we should not be determining that a person does not need an interpreter just because they have learned essential words in English that are needed to function in common daily life.

*Written by Maricela Pureco, OJD Staff Interpreter for Umatilla County Circuit Court*

What questions should you ask that would help determine someone's ability to speak English?

- (1) Avoid questions with "yes" and "no" answers.
- (2) Ask open-ended questions requiring complete sentences as answers, such as:
  - What has been your work experience in Oregon?*
  - What do you like or dislike about your present employment?*
  - How did you celebrate your last birthday?*

Some of the Languages Found in  
The Oregon Courts:

American Sign Language  
Arabic  
Bosnian  
Cambodian  
English  
French  
Gujarati  
Hmong  
Japanese  
Korean  
Mixtec  
Portugese  
Russian  
Samoan  
Tongan

## SHOULD ATTORNEYS BE SPEAKING SPANISH?

A subject often discussed among interpreters is that of “Spanish-speaking” attorneys and the problems they unwittingly cause by insisting on speaking Spanish to their clients even though a perfectly competent interpreter is sitting at arm’s length turning purple, green and red at some of the things he or she is hearing come out of the attorney’s mouth in “Spanish.”

Most interpreters have experienced the situation where they have been assigned to a case, for example, to interpret a change of plea. Attorney, defendant, and interpreter meet outside the courtroom before going in to enter the guilty plea with the interpreter fully expecting to interpret the conversation between attorney and defendant.

Instead, the attorney launches into an explanation of the plea petition and its consequences in “Spanish.” The words he does not know, he makes up. Maybe he’s thinking, *if somebody can “exit a car” in English, by golly that must mean that you can say, “El exitó el coche.”* Right? Not quite. Phonetically, to a Spanish speaker, this may sound like somebody *excited the car*.

While at times what is overheard is extremely amusing and the interpreter has to refrain from breaking into uncontrollable fits of laughter, but more often much of what is overheard is cause for concern.

Unfortunately, the interpreter, who is the only person aware of what is being said, is bound by confidentiality rules in the interpreter’s ethical code from tattling to the court. More often than not, the attorney is not saying what he wants to express, but instead is hopelessly and needlessly confusing his client.

Many attorneys have what I consider excellent “travel” Spanish. They can travel abroad and enjoy themselves at events held in Spanish more than most folks. But, why try to explain legal nuances in “travel” Spanish? Why not give the explanation in English and have the interpreter interpret? After all, that’s what the interpreter has been hired to do.

Sometimes after the attorney says something in Spanish, the defendant will then turn to the

interpreter with a blank look on his face and ask, “What did he say?” So, is the interpreter supposed to figure out what the attorney *meant* to say and interpret nonsensical “Spanish” back into *correct* Spanish? An interpreter making guesses at what an attorney meant comes very close to an interpreter practicing law. The defendants who speak up for themselves are the lucky ones, because they convey the message that they have not understood what was said. However, there are many unlucky defendants who are marched into court perfectly clueless as to what it was the attorney was talking about.

Interpreters fear interjecting themselves into what is happening because it might be construed as trying to tell the attorney how to handle the case. After all, they are sitting there, the attorney knows they are court certified or qualified and they are there to interpret. It’s not the interpreter’s job to do the attorney’s job for them, any more than it is the attorney’s job to do the interpreter’s.

It is my belief that a defendant subjected to an attorney’s travel Spanish is not getting equal access to justice because of the unnecessary language barrier created precisely by the person who is supposed to be the defendant’s advocate.

These type of situations happen from DUI’s to murder cases. If somebody is on trial for his life, can we really afford to take this type of chance? I know if my mother ever were on trial, I would not want legal issues being explained to her in somebody’s travel Spanish, but would want the attorney to utilize the services of a competent certified court interpreter.

Some states have safeguards built in that forbid attorneys from speaking to their clients in another language, if an interpreter for that language is ready, willing and able to interpret. Perhaps Oregon should follow suit and consider instituting this type of safeguard.

*Written by Gloriela R. Webster, Interpreter Supervisor, Multnomah County Circuit Court*

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QUESTIONS TO ASK  
NONCERTIFIED INTERPRETERS

1. Have you read and do you understand and agree to adhere to the *Code of Professional Responsibility for Interpreters in the Oregon Courts*?
2. Having that code in mind, are you aware of any conflicts of interest you may have in this particular case?
3. Have you had an opportunity to speak with the person in this case who needs an interpreter? Can you readily communicate with the non-English speaking person?
4. What is your native language?
5. How did you learn English and the target language?
6. How long have you been speaking English and the target language?
7. Have you had any formal training in either language? Where, and how long?
8. Can you read both languages? (Not for ASL interpreters.)
9. What is the highest grade you completed in school?
10. Have you ever interpreted in court before? Where? How often?
11. Are you certified by any other state or the federal courts? (Not for ASL interpreters.)
12. Do you hold one or more certifications from any national organizations? Please explain what was involved in obtaining this certification.
13. Have you received any special training in court interpreting?
14. Describe the simultaneous and consecutive modes of interpretation and how they differ.

15. Do you ever summarize statements while interpreting? Do you understand that the law requires you to interpret everything said by all parties?

*Adapted from Chapter 20 of the OJD's Judges' Criminal Law Bench Book written by The Honorable Nancy Campbell, Nori Cross, Education Division Director, and Cathy Rhodes, Executive Analyst, OSCA*

A MATTER OF MANNERS  
OR DUTY?

Sometimes we find ourselves seated in the courtroom listening to court proceedings and all of a sudden our ears are filled with obscenities being shouted by witnesses on the stand or by defendants at the counsel table. We may think to ourselves, "How rude! That person does not know what manners are!" As a result, the obscene person leaves a lasting bad impression before us.

What about interpreters who interpret foul language in open court or who interrupt the court proceedings to interpret something that a non-English speaking person is saying? Should we have the same bad impression about them?

Some people believe that an interpreter should tone down foul language when interpreting. Others believe that when the judge is speaking and if the non-English speaking person interrupts with a question in the foreign language, that the interpreter should wait for an opportune moment to convey the question to the court. Are these ideas correct? No! According to the *Code of Professional Responsibility for Interpreters in the Oregon Courts* (Code), "an interpreter shall render a **complete** and **accurate** interpretation or sight translation **without** altering, omitting anything from, or adding anything to what is stated or written, and without explanation." Therefore, the court interpreter **should not** "clean up" language before interpreting the comments to the court.

One of the purposes of providing an interpreter to a non-English speaking person is to place

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## A QUICK GLANCE AT REALITY

The morning was half over and finally a jury had been chosen to try a Spanish-speaking defendant's case. As the interpreter walked to the court lobby, she noticed that a couple of the people who had not been empaneled were walking ahead of her. She couldn't help overhear these two making comments about the fact that the court had provided an interpreter for the defendant. None of the other jurors were around.

"I don't know why those people don't learn English before they come to our country!" one said.

"Whenever I go to France or any other foreign country, I go to the library and read up on the culture, and I also buy tapes to learn some of the language," the other responded.

"Libraries!? Tapes!?" thought the interpreter. "What I would give to have these ladies spend a week in one of the underdeveloped villages, where most of these immigrants come from."

Yes, many people at one time or another may have the attitude of the two dismissed jurors. Perhaps they may think that because immigrants are not "from here," they do not deserve anything . . . not even a fair trial. But isn't that what we love about America? The fact that in this country we are all entitled to fair trials, equal access, and great opportunities for EVERYONE. Some people may agree with the attitude of the two jurors and think to themselves, "Yes, why don't they learn English before they come to our country?"

Well, lets take a look at that statement in a little more detail:

Most of the Hispanic immigrants who come to Oregon come from very poor, underdeveloped villages. Some don't even have the luxury of running water in their homes, much less access to books! When many of us, who live in the United States, are debating on whether to have steak or chicken for dinner, many parents in Mexico are ~~worried because they don't have anything at all~~

to feed their children. In the small towns and villages in Mexico, the typical weekly salary of a laborer is approximately 200-300 pesos, or approximately

\$20-\$30. Even though salaries are low in Mexico, that doesn't stop the food prices from sky-rocketing. Many parents cannot afford to send their children to school because of the cost. Though most parents work from sun up until sun down, they don't earn enough money to feed, cloth, and educate their children. So, the parents are faced with a great dilemma after depleting all of their options. The fathers are determined to give their children a better life than what they have had themselves. With great sorrow they leave their families and their homes in search for an opportunity. Then, after risking their safety and sometimes their lives, they arrive in the United States. Most of these immigrants perform jobs that require hard physical labor. Ironically, these jobs are the most low paying jobs; however, when traded in for pesos or other foreign currency, the money provides for food, clothing, and education for their families.

In most cases, immigrants put in great effort to adapt to the culture and learn the language. Because the English language is very complex, it does take time. Before coming to the United States, most immigrants are not in circumstances that permit them to search high and low for libraries. Furthermore, if they don't have enough money to feed their kids, it is clear that it would not be possible for these people to purchase tapes to learn the English language. We can all be assured that most of the Hispanic immigrants that come to the United States do not come as "tourists." They come to work in order to provide better living conditions for their families.

We should also think of our own families, our great-great-grandparents . . . who in our families were the first to set foot in the United States of America? Did they have the money or time for thoughtful study of the English language? Or did they, too, work twelve hour days in order to eat?

So before giving our opinion about immigrants too quickly, as the above prospective jurors did, we need to make sure we take a glance at reality.

*Written by Maricela Pureco, OJD Staff Interpreter for Umatilla County Circuit Court*

## EQUAL FOOTING

Court Interpreting in the Americas goes all the way back to the Spanish Colonization, where it was instituted in a very similar form to that which we have adopted in the United States.

In recent years, as civil rights and due process have become more center stage, court interpreting has become an important issue. We have found that there is a vital need in this country to have qualified professionals perform these duties.

The State of Oregon has been in the vanguard in implementing a certification program along with other states and the National Center for State Courts. The Oregon Judicial Department has developed and adopted a code of ethics. Workshops for court certification test candidates are required and continuing education workshops and seminars have been made available for certified interpreters.

As certified court interpreters, we have been well advised of our place in the courtroom, and the proper protocol in the performance of our duties for the court. Much has been said about interpreting completely without omitting or adding anything, and a lot has been said about maintaining the register and intent of what is being said in both languages. While interpreting in court, I have come across some main players in the courtroom setting, such as attorneys and court staff, who do not fully understand what this means.

Contrary to common opinion, it is not the interpreter's duty to make sure the non-English speaking person fully understands everything that is going on in the courtroom, or even everything that has been said. As a matter of fact, you can have the best interpreter in the country faithfully carrying out his/her duty of interpreting everything that is being said without omitting, adding or changing the register, and the party listening to

the interpretation may not have the slightest idea of what is being said, or what is going on.

You may ask, how can this be? That was also my first reaction when I was introduced to this concept.

Well, allow me to explain. The first rule in the "Professional Ethics and the Role of the Court

Interpreter," as presented in the interpreter pre-test workshop, reads as follows:

**A court interpreter's best skills and judgment should be used to interpret accurately without embellishing, omitting, or editing.** At the beginning of any legal proceeding, the interpreter takes an oath swearing to "well and truly interpret" that proceeding, or something to that effect. This provides the interpreter with a twofold duty: (1) to ensure that the official record of the proceedings in English reflects precisely what was stated by a non-English speaking witness or defendant in another language; and (2) to place the non-English-speaking participants in legal proceedings on an equal footing with those who understand English.

**Register: You must never alter the register, or language level, of the source language message (the language from which you are interpreting) when rendering it into the target language (the language into which you are interpreting) for the purpose of enhancing understanding or avoiding offense.** For instance, if the attorney asks, "What did you observe the subject to do subsequently?" you should not say in the target language, "What did you see him do next?" You should not try to bring it down to the witness's level, nor should you intervene and say you don't think the question is understandable to the witness. If the witness does not understand the question, he should say so; ~~it is not the interpreter's job to speak up for~~

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As certified court interpreters, we try to strictly adhere to our code of ethics. We endeavor to ensure that the record faithfully reflects what has been said by the non-English-speaking party. We also strive to interpret accurately and completely the English spoken in the courtroom, which puts the non-English-speaking party on equal footing with those who do speak English, to the extent that they will understand the same amount as a native English-speaking party that has their *same level of education and intelligence*.

Unfortunately—and this not only applies to the non-English speaking participants in court, but also to the undereducated English speaker—a lot of what is said in court is in a very high register of

English, and the interpreter has to interpret it in a high register of Spanish. Therefore, in many

cases the non-English-speaker, just like the undereducated English-speaker, does not understand what was said.

When a good certified interpreter is interpreting accurately and completely, those who do not understand the interpreter's role will still say: "the interpreter didn't do a good job, because the non-English-speaking party didn't understand what was being said."

Most judges I have worked with go to great pains to make sure people understand. They will often ask after each question or stage in the proceedings if the party has fully understood what has been said, or what has taken place. Unfortunately, this is not enough. The great majority of people participating in criminal or civil proceedings before the court, are very frightened by their surroundings. Out of respect or fear of the judge they will say they understand when in fact they do not.

The officers of the court that speak in open court need to be aware of the fact that the interpreter is not simplifying what they are saying, but merely interpreting it at the same level of language. It is up to judges, attorneys, and police officers to simplify the level of language they use according to the level of education of the parties to the proceedings. This gives the interpreter the op-

portunity to interpret words and phrases that will make sense to the non-English-speaking participants. Then, and only then, will access to justice really be achieved for the people to whom we are providing our service.

*Written by Katherine Watson-Parks, OJD Staff  
Interpreter/Translator for Malheur County Circuit Court*

**Does your local court's jury summons include a statement that the court will provide ADA accommodations and assistive listening devices upon request to jurors with disabilities along with the contact name and numbers (including the court's TTY number) of the person to contact for ADA accommodations? It should!**

## INTERPRETERS FOR HEARING-IMPAIRED PERSONS

When providing accommodations for persons who are deaf or hard of hearing, it is important to realize that the communication needs vary among

individuals. Generally speaking, an accommodation can be made in one of the following ways:

1. American Sign Language (ASL) is the language most commonly used by Americans with hearing-impairments, especially those whose hearing was impaired or who became deaf early or were born with the impairment. It is likely that these individuals would have learned sign language as a child—much like a child in any household would learn a primary language.
2. Other “manual communication systems” frequently used in English speaking countries are Pidgin Sign English, Manual English, and Finger Spelling. When making accommodations for persons from non-English speaking countries, be advised that foreign languages also have their own distinct sign languages.
3. Relay Interpreting may be needed if the person with a disability has never learned standard signing or finger spelling. For example, the person may communicate only with gestures. Relay interpreters have studied to become experts in communicating with gesture. If the relay interpreter is deaf, hearing- or speech-impaired, the court should appoint a second interpreter to interpret the relay interpreter’s ASL into spoken English.
4. Real Time Reporting or Computer-Assisted Transcription. The court may need to appoint a real time reporter with a monitor or other projection system to provide a written record of a proceeding as it occurs, so that a person who is deaf or hard of hearing and is not fluent in sign language may read the transcription in “real time.” This method is particularly effective with late-deafened people who have a high degree of literacy. While not considered “interpreting,” real-time transcription may be the best or only way to provide meaningful access to the proceeding.

*Adapted from Chapter 20 of the OJD’s Judges’ Criminal Law Bench Book written by The Honorable Nancy Campbell, Nori Cross, Education Division Director, and Cathy Rhodes, Executive Analyst, OSCA*

The Americans With Disabilities Act (ADA), among other things, requires that “a public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.” The ADA requires public agencies to “furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in and enjoy the benefits of a service, program, or activity.” It is the OJD’s position that a person with a disability who seeks to participate in any service, program or activity that the court offers to the general public is covered by the ADA. This includes people requesting information or assistance at the counters as well as members of the public wanting to observe any court proceeding that is open to the public.

When a party in a court case has a disability, requests for accommodations are to come through the attorney. The request goes to the court as a motion. The judge decides if additional accommodations should be ordered. If the person with a disability is not a party to a case, then requests for accommodations can be made by the person to the ADA contact in the local court. In either instance, the OSCA has suggested that courts use the 48-hour notice of request, as provided in UTCR 7.060 for court proceedings and for public meeting access under ORS 192.630(b) and (c), as a time line for providing accommodations, unless an accommodation is more readily available. Any costs incurred by the court, are to be paid out of the court’s mandated payments account and are not assessed on the person with a disability;

The OJD has an internal complaint procedure designed to provide prompt resolution of complaints alleging discrimination on the basis of a disability. The complaint procedure with the name of the person at the local level with whom a complaint should be filed is posted and available in each court location. If the person who files a complaint is dissatisfied with the determination made at the local level, then the procedure also includes the contact information of the person at the state level who can respond to a request for reconsideration. The use of the OJD internal complaint procedure does not limit the ability of any person to pursue other remedies under the ADA.

## American With Disabilities Act (ADA) and the Courts

MANNERS OR DUTY — continued from page 7

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English. The Code notes, a non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence would understand. Also, the interpreter must ensure that the court is receiving an accurate and complete interpretation of everything that the non-English speaking person says. If the interpreter were to tone down or omit language, then the interpreter would be in violation of the code.

If an interpreter waits for an opportune moment to interpret questions or comments, then he/she is not fulfilling the job. An interpreter is prohibited by the code to "coach" the non-English speaking person that he/she is interpreting for. Therefore, if a person speaks out of turn, the interpreter must interpret the statements even if it is not the right time for that person to speak. An interpreter, in simple terms, is a "voice box." The interpreter is provided to remove the language barrier, not to instruct people on proper language to use in the courtroom or as to when to speak.

People who do not require an interpreter do not have this assistance either.

So, next time you are in court during proceedings where an interpreter is being used, don't hold the interpreter accountable for the foul language or interruptions. Remember that the interpreter is merely doing his/her job according to the *Code of Professional Responsibility for Interpreters in the Oregon Courts* and according to the Interpreter's Ethics Code.

*Written by Maricela Pureco, OJD Staff Interpreter for Umatilla County Circuit Court*

#### THE MISSION OF THE ACCESS TO JUSTICE FOR ALL COMMITTEE IS TO:

**P**ursue and coordinate implementation of the recommendations of the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System, the Oregon Supreme Court Implementation Committee, and the Oregon Supreme Court / Oregon State Bar Task Force on Gender Fairness;

**M**onitor and evaluate the progress and effectiveness of implemented reforms; and

**M**ake recommendations for education, additional reforms, and study concerning gender fairness, access to justice for racial and ethnic minorities, and as otherwise directed by the Chief Justice.

#### ACCESS COMMITTEE ACCOMPLISHMENTS 1998-1999

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~~In addition to racial and ethnic issues, in 1998 Chief Justice Wallace P. Carson, Jr. charged the~~

~~Access Committee (AC) with monitoring the im~~  
plementation of the recommendations published in the May 1998 report of the Oregon State Bar/Oregon Supreme Court Task Force on Gender Fairness. Unique to the Oregon Gender Fairness Task Force was the commitment to study Intersectionality—the concept that negative gender experiences are sometimes compounded by other factors such as race, age, sexual orientation, and poverty. Because of this commitment, the Gender Fairness Task Force recommended that the Oregon Judicial Department’s Access Committee be charged with overseeing the implementation of the recommendations identified in their report.

The Access Committee has been involved in a number of efforts over the past year: the development and recommendation of educational programs for judges, activities related to the over-representation of minorities in the juvenile justice system, and advocating for policies, programs, and legislation related to access to justice issues.

The Access Committee has taken an active role in the 1999 Legislative session. The Access Committee developed and implemented a coordinated legislative strategy to propose legislative concepts, review proposed legislation on AC issues, determine AC support/opposition, and organize testimony/advocacy on AC issues. The Access Committee has monitored more than 50 bills with access-related issues and provided written or oral testimony in support or opposition to a dozen or more bills.

In addition, the Access Committee proposed five bills this session and is actively pursuing and advocating the passage of four of these bills. The Senate Judiciary Committee heard the bills in early March. At publication, each of those bills has been referred to Ways & Means with a “do pass” recommendation.

**SB 17** Allows the State Court Administrator to establish the juror mileage reimbursement rate and makes reimbursement of juror expenses more flexible. By increasing the flexibility to reimburse the legitimate costs a potential juror might incur during service, we would broaden access rather than limit it. The State Court Administrator would develop a policy to implement statewide.

**SB 38** Recommend that the OJD Court Inter-

~~preter Certification testing program be continued~~  
for Agency Administrative Proceedings. This includes a statute change that requires interpreters and requires the appointment of a certified over a noncertified interpreter. Recommend an increase in agency budgets for the provision of certified interpreters.

**SB 62** Increases the juror per diem rate after the first two days to a minimum hourly rate: third and subsequent days of service reimbursed at current minimum-wage rate based on an eight-hour day. Allows waiver of jury payment and election by juror that the funds be distributed to OJD programs identified by the Chief Justice.

**SB 71** Provides interpreters in all Juvenile Delinquency proceedings for the non-English speaking parents/guardians of youth before the court.

(Currently interpreters are only provided to the parent/guardians of youth at the dispositional phase.)

Education has also been an important goal of the Access Committee. We are encouraging and assisting with development of educational programs for judges, OJD employees, and lawyers. Committee members and staff have been involved in a number of educational programs and have advocated for the inclusion of topics related to racial and ethnic minorities in all educational programs.

Access Committee members and staff developed and served as faculty for the new judges’ seminar segment on Access & Fairness in the Courts and a seminar at the Juvenile Judges Conference on Judicial Responses to Over-Representation of Minorities in the Juvenile Justice System. In addition, committee members and staff are actively involved in Judicial Department policies and provide a consistent statewide voice for including topics related to racial, ethnic, and gender issues in all substantive courses.

Each court location has received a copy

of the book *Immigrants in the Courts*, edited by Joanne I. Moore.

The book provides judges and court administrators with information on the legal system in other countries as well as the cultural perceptions of individuals under those legal systems.

Detailed information is provided about China, Mexico, Russia, Vietnam,

and the Muslim world.

The introduction to the book was written by Paul J. De Muniz of the Oregon Court of Appeals.

## COMMITTEE MEMBERS

**Richard C. Baldwin, chair**  
Attorney at Law  
Director, Oregon Law Center

**The Honorable Janice R. Wilson, vice-chair**  
Circuit Court Judge  
Multnomah County Courthouse

**The Honorable Paul J. De Muniz,**  
Judge, Court of Appeals

**The Honorable Avel Gordly**  
State Senator  
Senate District 10

**Mark D. Huddleston**  
Jackson County  
District Attorney

**Raleigh Lewis**  
Affirmative Action Officer  
Governor's Office

**Nancy Lamvik**

Trial Court Administrator  
Lincoln County Circuit Court

**The Honorable Terry A. Leggett**  
Circuit Court Judge  
Marion County Courthouse

**Christopher G. Lundberg**  
Attorney at Law

**Jeffrey B. Millner**  
Attorney at Law  
Miller, Nash, Wiener, Hager  
& Carlsen

**The Honorable Edwin J. Peterson**  
Former Chief Justice

**Ingrid Swenson**  
Attorney at Law  
Metropolitan Public Defender  
Services, Inc.

## SPECIAL ADVISORS

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Supreme Court of Oregon

**Kingsley W. Click**  
State Court Administrator

**Nori J. McCann Cross**  
OJD Education Division  
Director

## STAFF

**Leola L. McKenzie**  
Trial Court Programs Analyst

## A DAY OF ACKNOWLEDGMENT

When House Speaker Lynn Snodgrass lowered her gavel a few weeks ago to commence the Day of Acknowledgment ceremony, the packed chamber rose as one in standing ovation.

The highest public officials in the state participated in this extraordinary event. This was a reality check about the history of race relations in Oregon that

was long overdue.

The enthusiastic speakers and the 800 people in the audience fully reflected both the racial diversity of our state and the promise of inclusion.

The Associated Press began its report of the event as follows:

It wasn't that long ago.

"Coloreds" in Oregon were banned from white neighborhoods. Signs above shops read "Dogs and Mexicans not allowed." Japanese-Americans were shipped out of their homes and into internment camps.

Now, 150 years after passing a law to bar "Negroes and

Mulattoes” from the Oregon Territory, Oregonians gathered yesterday to recognize the states discriminatory past.

“No more will we tolerate injustice,” Myrlie Evers-Williams, former chairwoman of the NAACP, told those at the Capitol for the Day of Acknowledgment.

“No more will we tolerate hatred and intolerance.”

This is not to suggest that racial prejudice and discrimination no longer occurs in Oregon. To the contrary, one of the purposes in planning the Day of Acknowledgment was to raise public awareness about how deeply ingrained racial prejudice is in many of us because of our long history of exclusion and bigotry.

*Written by Dick Baldwin, Director of the Oregon Law Center and Chair of the Oregon Judicial Department Access to Justice for All Committee*

### Then—1849

“A bill to prevent Negroes and Mulattoes to come to or reside in Oregon.

“Whereas situated, as the people of Oregon are, in the midst of an Indian population, it would be highly dangerous to allow free Negroes and Mulattoes to reside in the territory or to intermix with the Indians, instilling into their minds feelings of hostility against the white race; therefore:

“Be it enacted by the Legislative Assembly of the territory of Oregon, that it shall not be lawful for any Negro or Mulatto to come into or reside within the limits of this territory. . .”

*Office of the Secretary of State, Archives Division, Territorial Doc. #3666*

Whereas such mistreatment based on race has been allowed and enforced through our laws and legal system; and

Whereas an example of a law was an Act passed by the Oregon Territorial Assembly in 1849 (and later repealed) that expressly excluded African Americans from the Territory; and

Whereas the legislative session that convened in January 1999 is the 150th anniversary of this exclusionary Act; and

Whereas one lingering effect of this history causes harm and pain to people of color and limits the quality and dignity of all of our lives; and

### Now—1999

Whereas history has been marred by racial discrimination, exclusion, bigotry and great injustice toward people of color, including Native Americans, African Americans, Latinos, Chinese Americans, Japanese Americans and Pacific Islanders; and

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MONITORING AND EVALUATION  
SUBCOMMITTEE

The Access to Justice for All Committee's Monitoring and Evaluation Subcommittee is charged with developing an evaluation model to determine the impact of implemented reforms. This subcommittee is currently in the process of designing an evaluation of the impact of using certified interpreters in the courts. This is the first study of this kind in the country, and the subcommittee is searching for financial and technical support with this evaluation. The members of the subcommittee include:

**Mark Huddleston, chair**  
Jackson County  
District Attorney

**Lili Olberding**  
Public Relations Director  
Pinnacle Exhibits

**Neisha Saxena**  
Attorney at Law  
Legal Services of Oregon

**Raleigh Lewis, vice-chair**  
Affirmative Action Officer  
Governor's Office

**Gloriela Webster**  
Interpreter Supervisor  
Multnomah County Courts

**Rudy M. Murgó**  
Presiding Judge  
Umatilla County Circuit Court

**Tom Rastetter**  
Municipal Court Judge  
Oregon City

**Cathy Rhodes**  
Executive Analyst  
Office of the State Court  
Administrator

**Martha Spence**  
Northwestern School of Law -  
Lewis & Clark

**May Cha**  
Private Realtor

1999—continued from previous page

Whereas we believe that an honest acknowledgment of our racial history and open dialogue can lead to racial healing and reconciliation and free us to move constructively into a better future for all if we take personal responsibility for change by examining and changing our personal attitudes that perpetuate structural, economic and racial separation; now, therefore,

Be It Resolved by the State Legislature:

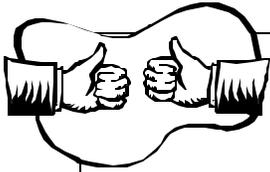
That we, the members of the Seventieth Legislative Assembly, recognize Oregon's discriminatory history, acknowledge people of all races and ethnic backgrounds who have worked for positive change and celebrate the progress made and encourage participation in honest interracial dialogue essential to positive social change; and

Be It Further Resolved:

That we, the members of the Seventieth Legislative Assembly, resolve to increase public awareness of racial discrimination and work

toward the full participation of racial minorities in all aspects of Oregon life, and that this Day of Acknowledgment provide focus for planning constructive dialogues and actions as we work toward a future of racial equality.

**Look for information about the  
Oregon Judicial Department  
at the OJD Website  
<http://www.ojd.state.or.us/>  
Additional information on the  
Access to Justice for All  
Committee  
will soon be added  
to the website!**

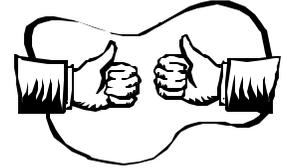


## Two Thumbs Up

### Oregon Department of Corrections . . .

The 1994 Task Force on Racial & Ethnic Issues in the Judicial System heard a number of complaints regarding the lack of competent interpreters being used in DOC hearings.

One primary complaint was that the DOC regularly used bilingual inmates as interpreters. Today, the DOC uses the AT&T Language Line interpreter service and interpreters certified under the OJD Court Interpreter Certification Program, as well as other qualified interpreters. DOC management testified in support of Senate Bill 38 that, if enacted, would require them and other executive branch agencies to use certified interpreters over non-certified interpreters whenever possible. The DOC has made significant progress in the use of interpreters over the past five years!



### Gloriela Webster . . .

Gloriela began her employment at OJD in 1972 as an arraignments clerk. On her own initiative, she obtained certifications as a court interpreter in the Spanish language from the U.S. District Court (1989), Washington State (1991), and Oregon (1996). In addition to advising the State Court Administrator on the development of Oregon's certification program, Gloriela has taught pre-test interpreting skills courses for the State of Washington for seven years. Today, after many years of hard work, she is the Interpreter Supervisor for the OJD, directly supervising OJD staff interpreters in the Multnomah County Circuit Court and overseeing language skills of OJD staff interpreters in the other courts. Gloriela has also been an active member on statewide committees and task forces addressing access and fairness issues in the courts. Gloriela's knowledge, skills, and ability to guide others regarding access and language issues have accelerated the Oregon Judicial Department's growth and accomplishments in removing barriers experienced by non-English speaking people involved in Oregon's courts.

**OJD Access to Justice for All Committee  
Supreme Court Building  
1163 State Street  
Salem, OR 97310**

### Highlights In This Issue...

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Future issues of this journal will focus on other topics related to access to the courts.

**If you receive duplicate copies of this Journal, please share extras with coworkers or other persons interested in access to the courts!**