

# Role of the Japanese-English Court Interpreter

By  
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## THE MISSION OF THE COURT INTERPRETER

- The mission of a court interpreter is:  
***to place a non-English speaking party in the same position as an English-speaking party in a legal proceeding.***
- Practically-speaking:  
The interpreter is to be the ears, the eyes and the mouth of a person whose primary language is not English, so that that person may be on an equal or comparable footing in a legal proceeding as someone whose primary language is English.

## The "Right to have an Interpreter in Court" Constitutional Basis: The U.S. Constitution

There is no specific mention of a Right to Court Interpretation. However, courts have construed such a right based on the following Federal Constitutional Amendments:

(1) **the Fifth Amendment**

*No person "shall be deprived of life, liberty or property, without the due process of law"*

(2) **the Sixth Amendment**

*"An accused shall enjoy the right to a speedy and public trial... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against himself; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence"*

(3) **the Fourteenth Amendment**

*No State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"*

## Constitutional Rationale

United States ex rel. Negron v. New York (1970) 434 F. 2d 386

- "To Negron, most of the trial must have been a babble of voices." (388)
- "Negron's incapacity to respond to specific testimony would inevitably hamper the capacity of his counsel to conduct effective cross-examination."
- "...as a matter of simple humaneness, Negron deserved more than to sit in total incomprehension as the trial proceeded."
- "Particularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its criminal processes chooses to put in jeopardy." (390)

## Constitutional Rationale

United States ex rel. Negron v. New York (1970) 434 F.2d 386

"Considerations of fairness, the integrity of the fact-finding process, and the potency of our adversary system of justice forbid that the state should prosecute a defendant who is not present at his own trial..."

"...[I]t is equally imperative that every criminal defendant -- if the right to be present is to have meaning -- possess 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.'"

"Otherwise, 'the adjudication loses its character as a reasoned interaction... and becomes an invective against an insensible object.'" (389)

## Constitutional Rationale

United States v. Carrion (1973) 488 F.2d 12, cert. den. 416 U.S.

- "[T]he right to confront witnesses would be meaningless if the accused could not understand their testimony, and the effectiveness of cross-examination would be severely hampered."
- "If the defendant takes the stand in his own behalf, but has an imperfect command of English, there exists the additional danger that he will either misunderstand crucial questions or that the jury will misconstrue crucial responses."
- ***"The right to an interpreter rests most fundamentally, however, on the notion that no defendant should face the Kafkaesque spectre of an incomprehensible ritual which may terminate in punishment."***

## California State Constitution

Article I, section 14 of the California Constitution

(enacted by voters in 1974)  
Title: "Felony prosecutions; Arraignment"

*A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.*

"In the ethnic richness of California, a multiplicity of languages has been nurtured. Historically, many peoples speaking diverse tongues have formed large portions of our population. The people of this state, through the clear and express terms of their Constitution, require that all persons tried in a California court understand what is happening about them, for them, and against them. Who would have it otherwise?" People v. Aguilar (Calif. Supme. Ct., 1984) 35 Cal.3d 785, at 795.

## What if this happened to you?

State v. Karumai (1942) 101 Utah 592, 126 P.2d 1047

During the second World War, a Japanese defendant, whose native language was Japanese, was accused of murder. He was found guilty after a trial.

At the trial, the court's official interpreter provided the defendant with no interpretation of testimony by several English speaking prosecution witnesses.

On appeal, the court ruled that Karumai was not denied his right to participate at trial or confront adverse witnesses.

The court rationalized that:

- the defendant had lived and done business in the U.S. for at least 18 years;
- the deputy sheriff testified that he was able to answer questions in English without hesitation;
- a physician testified that he explained his medical condition in English.

## What if this happened to you?

As a practical matter, legal proceedings are complex and highly demanding on the language ability of the accused, and anyone facing the possibility of a long-term incarceration ought to be permitted to fully participate in such a proceeding in the language at which he is most comfortable with.

- "Midnight Express": Just a movie?
- Read the Wall Street Journal or the Economist
- Read some Amnesty International reports
- **Due Process is often an elusive right which is too often taken for granted.**

## What a Court Interpreter Does

- **MISSION:** The interpreter's role is to put the non-English speaking individual in the same position as if he or she were an English-speaking person.

You are helping:

- The Non-English speaking person
- Judge and jury (to make proper determination of facts)
- Courtroom staff (for ministerial matters)
- Other parties (to understand the non-English speaking person's position and perspective)
- Attorney representing the client

## Attorney-Client Communication

- Interpreter will help the client to explain his or her perspective of facts, issues and goals to the attorney
- Interpreter thus will help the attorney to judiciously evaluate the case, appropriately advise the client and prepare the case.
- **INTERPRETER IS BOUND BY THE ATTORNEY-CLIENT PRIVILEGE, AND MUST KEEP CONFIDENTIALITY OF ALL SUCH COMMUNICATIONS INVIOLEATE.**

## Who will be the non-English speaking party? Criminal (and other "governmental") Proceedings

- 1) A defendant accused of a crime in a criminal proceeding, or a juvenile accused of a crime in a delinquency proceeding;
- 2) A victim or third-party witness to a crime, who is called upon to testify in court, or who is reporting the occurrence of an incidence to law enforcement;
- 3) A person whose mental competence is being evaluated, to determine:
  - whether the person requires psychiatric treatment in a secure facility, or
  - whether the person is competent to stand trial, or
  - whether the person requires an appointment of a conservator;
- 4) A parent, a child or other witnesses in cases where the parental rights over the child may be terminated due to allegations of child abuse or neglect;
- 5) A person who is seeking a civil restraining order in a domestic violence matter, or conversely, a person who is challenging the issuance of such an order.

Who will be the non-English speaking party?  
Civil Litigation ("Private Party") Proceedings

- 1) A party (plaintiff or defendant) or witness in a civil lawsuit, usually represented by an attorney.
- 2) A party (plaintiff or defendant) in a small claims trial, not represented by an attorney, and witnesses thereto;
- 3) A party (petitioner or respondent) or witnesses in a family law matter, in cases of dissolution or marriage. These kinds of cases often involve interpreting in child custody evaluations as well.

Who will be the non-English speaking party?  
Other Venues

- Parties and witnesses in administrative law venues apart from the Federal and state criminal and civil courts:  
Examples: In Federal administrative matters, Applicants or Petitioners in Immigration hearings or interviews (dealing with deportation, issuance of permanent residency); parties, companies or witnesses in investigations by IRS, FDA, EEOC. In State administrative matters, applicants, companies or witnesses in Worker's Compensation hearings, Unemployment, Administrative Judges' Offices (e.g., for grant/denial of benefits).
- Patients in medical interviews, such as IME's for Workers' Compensation Cases, personal injury litigations, etc.
- Parties in mediations (litigation, employment, community relations, etc.)
- Parents or students in School District meetings
- Parties in private in-house mediations (e.g., employer-employee relations, sexual harassment, etc.)

**Licensing of Court Interpreters**  
Rationale

Why license court interpreters?

The words interpreted by the court interpreter will have direct bearing or consequence on the outcome of a case.

In the most extreme instances:

- a defendant in a criminal case may be subjected to death penalty or decades of incarceration, or
- a company in a civil suit may be liable for millions of dollars.

There should be strict regulations that govern certification or licensing of interpreters so as to control the quality and competence of court interpreters.

**Licensing of Court Interpreters**  
Jurisdictions

- Federal Courts are governed by the Court Interpreters Act, 28 U.S.C.S. section 1827.
- State Courts are governed by individual state's laws, if there are any such laws to address court interpreter licensing.

Example: California

**Licensing of Interpreters**  
State of California

(1) Court Interpreters

May interpret in all state court proceedings, administrative hearings and medical settings.

(2) Administrative Hearing Interpreters

May interpret in administrative hearings and medical settings.

(3) Medical Interpreters

May interpret in medical settings (IME's, mental health evaluations)

**Licensing of Court Interpreters**  
in the State of California

Licensing or "certification" examinations for court interpreters currently in twelve "designated languages" (meaning, languages which had been determined by the State at various periods to have the highest number of speakers in the population).

Currently, the languages designated for certification are: Spanish, Arabic, Portuguese, Vietnamese, Korean, Cantonese, Japanese, Togo, and recent additions are Russian, Mandarin, Eastern and Western Armenian.

Interpreters for all other languages are examined for English competency, and licensed as "Registered Interpreters."

See State of California Judicial Council's website:  
<http://www.courtinfo.ca.gov/programs/courtinterpreters/>.

## California Statutes dealing with Court Interpreters

- There are dozens of laws dealing with interpreters scattered throughout the California Codes.
- Government Code section 68561. It specifically requires that *"any person who interprets in a court proceeding using a language designated by the Judicial Council ... shall be a certified court interpreter..."* (emphasis added).
- Government Code 68560.5(a) defines "Court proceeding" to mean "a civil, criminal or juvenile proceeding, or a deposition in a civil case filed in a court of record." But small claims proceedings are not included.
- Government Code 68560.5(b) further defines "interpreter" for the purposes of these sections to exclude interpreters for deaf or hearing impaired persons, as well as "an interpreter qualified for administrative hearings or noncourt settings..."
- The court may for good cause appoint an interpreter for a designated language who does not hold certification; however, the court must follow the good cause and qualification procedures and guidelines as set forth by the Judicial Council. See California Rules of Court, section 984.2, and Forms adopted by the Judicial Council of the State of California, Form INT-100 et seq.

## Where an Interpreter Might Be Working Criminal Proceedings

1. Investigations
2. Filing of Charge (Complaint, Information) or Grand Jury Indictments
3. Arraignments
4. Pre-Trial Proceedings
5. Plea Bargaining
6. (In Felony cases) Preliminary Hearing
7. Trial
8. Sentencing
9. Post-Conviction Proceedings

## Where an Interpreter Might Be Working Additional Notes on Criminal Proceedings

- Procedures may be called by different names in different jurisdictions (e.g., Arraignment = Initial Appearance)
- Juvenile Delinquency procedures are criminal in nature, but may follow different terminologies as adult criminal courts.
- Standard of Proof: "Beyond Reasonable Doubt"
- Jury Instructions are good sources for studying terminologies and concepts.

## Where an Interpreter Might Be Working Civil Proceedings

1. Filing of Complaint by Plaintiff
  2. Service of Summons and Complaint upon Defendant
  3. Answer by Defendant; Motions (for Summary Judgment, Demurrer, etc.)
  4. Discovery – Document Production, Interrogatories, Depositions
  5. Pre-Trial Motions, MSC's, Mediations
  6. Trial – judge or jury
  7. Verdict
- Standard of Proof: Preponderance of the Evidence  
Note on Arbitration

## Where an Interpreter Might Be Working Administrative Law Proceedings

- Federal Administrative Law matters:  
Immigration and Customs Enforcement, Internal Revenue, Equal Employment Opportunity Commission, Securities and Exchange Commission, etc.
- State administrative law matters:  
Workers compensation matters, unemployment insurance, OSHA, Office of Administrative Appeals, State Labor Board.
- Note: in California, Administrative Hearing Interpreters are licensed by the State Personnel Board, as distinguished from Court Interpreters who are licensed by the Administrative Office of the Courts.

## Court Interpreter Professional Standards and Ethics

- Varies from Jurisdiction to Jurisdiction
- Federal: Code of Professional Responsibility of the Official Interpreters of the United States Courts (see Fundamentals of Court Interpretation: Theory, Policy and Practice, Carolina Academic Press, 1991)
- States: Varies from state to state.  
Examples:  
Code of Professional Conduct for Court Interpreters of the Trial Court (from the Office of the Chief Administrative Justice, Massachusetts Trial Court, Court Interpreter Services, Boston, Massachusetts, 1988).  
California's "Rules of Court Interpreter Ethics," a part of the California Rules of Court.

California Rules of Court, Rule 984.4  
(Page 1)

- **CRC Rule 984.4 (a) Representation of qualifications**  
*"An interpreter shall accurately and completely represent his or her certifications, training, and relevant experience."*
- **CRC Rule 984.4 (b) Complete and accurate interpretation**  
*"An interpreter shall use his or her best skills and judgment to interpret accurately without embellishing, omitting, or editing. When interpreting for a party, the interpreter shall interpret everything that is said during the entire proceedings. When interpreting for a witness, the interpreter shall interpret everything that is said during his or her testimony."*

California Rules of Court, Rule 984.4  
(Page 2)

- **CRC Rule 984.4 (c) Impartiality and avoidance of conflicts of interest**  
*"An interpreter shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias.  
An interpreter shall disclose to the judge and to all parties any actual or apparent conflicts of interest.  
Any condition that interferes with the objectivity of an interpreter shall constitute a conflict of interest.  
A conflict may exist if the interpreter is acquainted with or related to any witness or party to the action or if the interpreter has an interest in the outcome of the case.  
An interpreter shall not engage in conduct creating the appearance of bias, prejudice or partiality.  
An interpreter shall not make statements about the merits of the case until the litigation has concluded."*

California Rules of Court, Rule 984.4  
(Page 3)

- **CRC Rule 984.4 (d) Confidentiality**  
*"An interpreter shall not disclose privileged communications between counsel and client."*
- **CRC Rule 984.4 (e) Giving legal advice**  
*"An interpreter shall not give legal advice to parties and witnesses, nor recommend specific attorneys or law firms."*
- **CRC Rule 984.4 (f) Professional relationships**  
*"An interpreter shall maintain an impartial, professional relationship with all court officers, attorneys, jurors, parties and witnesses."*
- **CRC Rule 984.4 (g) Continuing education and the duty to the profession**  
*"An interpreter shall, through continuing education, maintain and improve his or her interpreting skills and knowledge of procedures used by the courts. An interpreter shall seek to elevate the standards of performance of the interpreting profession."*

California Rules of Court, Rule 984.4  
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- **CRC Rule 984.4 (h) Assessing and reporting impediments to performance**  
*"An interpreter shall assess at all times his or her ability to perform interpreting services. If an interpreter has any reservation about his or her ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the court or other appropriate authority."*
- **CRC Rule 984.4 (i) Duty to report ethical violations**  
*"An interpreter shall report to the court or other appropriate authority any effort to impede the interpreter's compliance with the law, this rule, or any other official policy governing court interpreting and legal translating."*

**COURT INTERPRETATION ISSUES PARTICULAR TO  
THE JAPANESE AND ENGLISH LANGUAGES**

(Please refer to Japanese-English interpretation examples handout)

- Precision v. Vagueness
2. Tonal Inflections  
- *Isaac Stern example*
3. Non-Verbal Cues
4. Other Issues & Possible Solutions

*Conclusion - some final thoughts*

"What you have is God's gift to you;  
How you use it is your gift to God."

"Work is love made visible.  
And if you can't work with love but only with distaste,  
It is better that you should leave your work and sit at the  
gate of the temple and take alms of the people who  
work with joy."

Kahlil Gibran, "The Prophet"

Role of Japanese-English Court Interpreter

Explanatory Interpretation Examples:

1) Sample “Trap” Question

Attorney: So you no longer beat your wife?

Int.: \_\_\_\_\_

2) In a trade libel case:

Attorney: So how many man-hours were expended by your company in order to prepare this report that was intended to mislead the public?

Interpreter: \_\_\_\_\_  
\_\_\_\_\_?

Witness: 300\_\_\_\_\_

Interpreter: 300 hours.

Attorney: Thank you....

3) In an extortion case:

\_\_\_\_\_

\_\_\_\_\_

Interpretation 1: The chairman said that maybe it would be good to get your balls. Using a sling. Click!

Interpretation 2: The chairman said that maybe it would be good to take your life. Using a gun. A small handgun.

3) Sight translation of a police report in a drug possession case:

Original English police report:

“The suspect had watery red eyes and had unsteady gait... When I searched his backpack, I discovered two baggies filled with white powdery substance.”

Japanese sight interpretation:

\_\_\_\_\_

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4) Cultural nuance example, from a testimony in a traffic trial:

Judge: What color was the traffic light when you crossed the intersection?  
Int.: \_\_\_\_\_  
Witness: \_\_\_\_\_  
Int.: The traffic light was blue.  
Judge: The traffic light was blue?

5) Testimony in a Personal Injury deposition:

Attorney: Did the doctor prescribe any medication?  
Int.: \_\_\_\_\_  
Witness: \_\_\_\_\_  
Int.: Yes.  
Attorney: What medication?  
Int.: \_\_\_\_\_  
Int.: \_\_\_\_\_  
Witness: Medication for my back pain.  
Attorney: For example?  
Int.: \_\_\_\_\_  
Witness: \_\_\_\_\_  
Int.: Mood stabilizer.  
Attorney: Mood stabilizer?  
Int.: \_\_\_\_\_  
Witness: \_\_\_\_\_

6) At a mental hospital, in a 5150 proceeding (California legal proceeding to determine whether a person should be detained in a mental institution:)

Judge: Why did you set your bed on fire?  
Int.: \_\_\_\_\_  
Ward: \_\_\_\_\_  
\_\_\_\_\_  
Judge: What did he say?  
Int.: He's crazy.

6) Sample from court:

Judge: Ask him if he has paid his fines.  
Int.: \_\_\_\_\_?  
Deft.: \_\_\_\_\_  
Int.: Your Honor, he said he paid his fines.

7) In a rape case:

Prosecutor: And what part of your body did the defendant touch?

Int.: \_\_\_\_\_

Witness: \_\_\_\_\_

Int.: To my.... dark area.

Judge: To her what?

Int.: To my dark area.

Judge: What's that?

7) What would you do as an interpreter in this testimony in a traffic case:

Judge: Did you pay your fines?

Int.: \_\_\_\_\_

Deft.: \_\_\_\_\_

Int.: Yes I did.

Judge: But I don't see any proof that you paid.

Int.: \_\_\_\_\_

Deft.: \_\_\_\_\_

Int.: But I paid it last month.

Judge: Oh I'm sorry. Yes, you did pay it. I just found the receipt.

Int.: \_\_\_\_\_

Deft.: \_\_\_\_\_

8) Tonal Inflection Examples:

Witness: \_\_\_\_\_

Int.: They had iron bars in their hands and came at me. So I had no choice but to get out of the car and so I gave it to them. (I let them have it)

Gang testimony:

Witness: I thought that they would jump me. So I gave it to them.  
(I let them have it)

Int.: \_\_\_\_\_

9) Try interpreting Isaac Stern's sample phrases. Define the nuance and the mood of the statements.

10) Character witness:

Attorney: Do you think that he is honest?

Int.: \_\_\_\_\_

Witness: \_\_\_\_\_