

# PROTEUS

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## An Attorney's Primer: Working With Interpreters

Isabel Picado

Working with a witness or client through an interpreter requires patience and practice. The interpreter is sworn to interpret truly and accurately, but source and target-language utterances rarely result in a perfectly neat match. The common perception is that interpreters just repeat words, but the process of interpreting is a complex task for the brain, one that involves many cognitive skills. Lawyers would do well to remember that interpreters convey concepts, not isolated words. This is why one cannot interpret in a vacuum. An interpreter needs a context, however limited, and for this, police reports, depositions, complaints, indictments or grand jury minutes are helpful. When lawyers provide interpreters with these basic documents, they help to prevent potential mispronunciations, misunderstandings, or requests for clarification.

When expert testimony is given by forensic doctors or ballistic experts, it is essential that interpreters be provided with a copy of their depositions or their reports ahead of time, if available. Interpreters are expected to handle vast vocabularies in both languages, but only a small percentage of these words spring immediately to mind. While interpreters know the most frequently used expressions in certain areas of expert testimony, they don't have every equivalent on the tip of their tongues, for that, they need to study the subject matter ahead of time because arcane or specialized terminology remains in the "hard disk" area of the brain, not in short term memory. Seeing a pathology report, for example, would enable the interpreter to get a preview of what the medical testimony will be, and to research unfamiliar words. Even so, surprises or unfamiliar terms can always come up, which is why interpreters arm themselves with dictionaries.

### Ambiguous Subject Pronouns

Lawyers who are not aware of the potential linguistic challenges of a trial may find themselves at a disadvantage when a language problem arises. Below I will illustrate some of the linguistic challenges that interpreters face, especially when interpreting for a witness at the stand. I will use examples in the language pair I work with, English and Spanish.

One aspect of grammar that can be a problem is pronouns. For example, in Spanish, the possessive pronoun "su" may refer to "your," "his," "hers," "its," or "their." This ambiguity is best illustrated by the following joke.

*A bank manager has a loyal employee who often skips lunch and works late. But when that employee starts disappearing at lunch time and returning late, the manager becomes concerned. He calls the bank detective and says, "I want you to follow Lopez at lunch time just to make sure he's not involved in anything shady."*

*The detective does so and reports back to the manager: "Lopez goes to his house (su casa) for lunch, makes love to his wife (su mujer), smokes one of his excellent cigars (sus cigarros excelentes), and returns to the office."*

*"Well, I don't see anything wrong with that," says the manager.*

*"May I address you in the familiar, sir?" (¿Me permite tutearlo?) asks the detective.*

*The manager consents.*

*The detective then says: "Lopez, I repeat, goes to your house (tu casa) for lunch, makes love to your wife (tu mujer), smokes one of your excellent cigars (tus cigarros excelentes), and returns to the office."*

This joke arises out of an ambiguity inherent to Spanish pronouns. The same pronouns in English would be unambiguous.

On first hearing "su casa" and "su mujer," the manager assumes logically that the pronoun refers to the employee, who goes home to "his wife," and "his house." It is only when the detective drops the formality that his boss can see the reality: his wife is cheating on him.

Plays on words often don't translate. This joke requires a long explanation in English for what is carried in Spanish by the dialogue alone.

Unfortunately, interpreters often find themselves in the position of the bank manager. They are the last ones to find out who everyone is talking about. One may spend ten minutes interpreting *su* as "his" because given the context, "his" is most logical, only to find out later that the witness was referring to a woman, not a man, and that *su* meant "her," not "his." By then it is too late. The interpreter can correct the record, of course, but the lawyer would have to recommence the examination to clear up the confusion and the witness may then appear less credible to the jury. Lawyers and interpreters cannot always foresee every possible linguistic trap, but the more context an interpreter has, the more avoidable these become.

In the example above, had the interpreter known that the witness could have been referring to either a man or a woman, she could have alerted the lawyer by interpreting *su* as "his or her," for example, as in "Then we went by his or her house." Lawyers have to listen for these cues, because interpreters are not allowed to ask their own questions, or clarify or edit in any way. Catching these problem areas is the responsibility of both lawyers and interpreters. Language is so vast, spontaneous and quirky, even the best of interpreters will be caught unaware on occasions. Fatigue, poor acoustics, and other factors may also interfere with message reception.

Additionally, native speakers of Spanish tend to omit subject pronouns. Instead of saying *El llegó* (he arrived), they'll say *llegó*, because usually the context will be enough to make the

subject clear. However, *llegó* may also mean "she arrived" or "you [polite form] arrived." In addition to these natural ambiguities of the language, witnesses may sometimes be deliberately ambiguous.

Another example: a witness, testifying about what the alleged victim in a rape case said right after the incident, states: "Dijo 'Me van a matar.'" ("She said, 'They are going to kill me.'") The problem is *Me van a matar*. The verb *van* corresponds to the third person plural, "they." The interpreter renders this sentence as "She said, 'They are going to kill me.'" But the assistant district attorney knows that only one person was involved. She asks a follow-up question, "Did she say 'They are going to kill me?'"

The interpreter now has to specify the subject. "*¿Dijo ella, 'Ellos me van a matar'?*" The witness responds: "No, ella no dijo 'Ellos me van a matar, dijo 'Me van a matar.'" A literal translation would be: "No, she didn't say 'They are going to kill me,' she said, 'They are going to kill me.'" How do you solve it? But an experienced interpreter would render this as: "No, she didn't say 'They are going to kill me,' she said, 'I'm going to get killed.'" By using the passive voice the interpreter is able to avoid the surface meaning that lurks in a literal translation. It is impossible for lawyers or even for interpreters to anticipate every linguistic pitfall. But lawyers who are familiar with the details of the case and who understand the limitations of interpretation can avoid the worst of these problems by keeping a keen ear out for the pronouns.

### The Gender Gap

Another problem area is gender. Let's say a lawyer asks a witness the following: "But the defendant was with his cousin at the time. Is this not so?" What is the accurate interpretation of "cousin?" In English, most nouns have no gender, and the word "cousin" alone may refer to either a man or a woman. The interpreter has three options:

1. Ask the question giving the witness the option of either gender ("... was with his male or female cousin (*su primo o su prima*) at the time?")
2. Construct the question with the plural ("... was with one of his cousins at the time?" Here, unlike in the singular, *primos* works well because the masculine plural may refer to both men and women.)
3. Interrupt the flow of the questioning and ask the questioner to specify the gender of the cousin.

### Verb Tenses

Yet another feature of Spanish grammar is the use of two past tenses, preterite and imperfect. For example, the following question was posed to a woman who had been talking about how she used to go back and forth with her mother between the Dominican Republic and the U.S. The lawyer asked when the last time was that she came back from the Dominican Republic. The next question was "Did your father stay in the Dominican Republic?"

The verb tense in English doesn't specify whether the father stayed once in the Dominican Republic (the last time he went, which requires preterite tense) or whether he habitually used to stay longer (imperfect tense) every time the family went back.

Whenever a past tense is used in English, the interpreter has to make a judgment call. Do I

use the preterite or the imperfect? To avoid confusion, lawyers would do well to distinguish between habitual action and one-time only action. Note the difference: "Did your father always stay in the Dominican Republic when you and your mother came to the U S ?" or "Did your father stay behind the last time you came?"

### Spanglish and other vocabulary issues

One of the main challenges in interpreting is when a word or concept in one language does not have an exact equivalent in the other. It is common for these problems to arise in discussing legal systems or kinship. For example, a lawyer may use a single English word such as "indictment," which in Spanish would need several words to convey the same thing. Or a Spanish speaker may use a word with no exact equivalent in English, such as *comadre*, which refers to the relationship between two women, either one of whom may be godmother to the other one's child. Another example is *concuñado*, which describes the relationship between two people married to siblings. My sister-in-law's husband is my *concuñado*. My brother-in-law's wife would be my *concuñada*. Interpreters get around these difficulties by rendering the concept clearly, i.e. by saying "She is on my in-law's side of the family" or, if nothing else works, by leaving the word in Spanish for the record, so that the lawyers can ask follow-up questions, as in: "He was a practitioner of santería."

Another area that can create hilarious, nonsensical, or embarrassing moments for interpreters is "Spanglish," the English/Spanish mixture that Hispanics in the U S sometimes use. It comes in two forms: code switching (the insertion of a word from one language into another) and "Spanglish," words built out of an amalgam of the two languages. An example of code switching is when in the middle of a Spanish sentence the speaker inserts a word in English. The pronunciation, however, is in the Spanish manner, so that the interpreter does not recognize it as an English word. The interpreter hears something that makes no sense, but must interpret it.

Here is an example of code switching:

Q. Miss Gálvez, can you tell us what's in the photograph to the right of the blood stain?

A. *A la par de la mancha de sangre hay una cuota*

Interp: Next to the blood stain there is a quota.

The witness is pronouncing the word "quarter" as it sounds to a Spanish ear, and what emerges is *cuota*, which means "quota" in Spanish. The interpreter is not expecting a mispronounced English word; hence the confusion. A trained interpreter knows to stop and say something like, "Your Honor, may the interpreter clarify the word "cuota" with the witness?"

People who use "Spanglish" typically either add Spanish endings and articles to English words (eg, *lo roofa* for "the roof," *la bossa* for "the boss") or they use a Spanish word that sounds close or identical to the English but has a different meaning (eg, *la ganga* for "the gang" though the word exists in Spanish and means "bargain"). In West Roxbury District Court a defendant told her lawyer she was "*en la roofa con la bossa de la ganga*."

Here is a compound example of "Spanglish" together with an interpreter's lack of context. In a case of two homeless men accused of stealing an air conditioner in a Demoulas supermarket shopping cart, the defendants speak English to their attorneys, but once in court they request

an interpreter. No one provides the interpreter with the details of the case. At one point, the D.A. examines one of the homeless men, asking him how he managed to carry the air conditioner away.

Defendant: En un carro de mulas  
 Interpreter: In a mule car  
 D.A.: A mule car?!!

The interpreter heard "*un carro de mulas*," which means a mule car, but in this case is a mispronunciation of Demoulas cart (*un carro Demoulas*). It takes several minutes to clear up the confusion, and it requires the interpreter to request that the witness explain what he has called *un carro de mulas*. When the man describes metal wheels and mimics with his hands the act of pulling a cart, it dawns on the interpreter that he must be talking about a shopping cart. If the interpreter had known the incident took place in a Demoulas supermarket she might have realized from the context what the witness was referring to.

### Context is key

Context, context, and more context. To avoid linguistic difficulties, the interpreter needs a minimum of context. That includes the defendant's name; the defendant's street address and that of the crime scene; the charges; the names of the main players; the docket number (numbers require the involvement of a different part of the brain). Also the interpreter should be provided with the names of police officers (the main ones); in drug cases, beeper numbers, license plates, etc.; in trials, expert witness depositions and reports. Because it is difficult for lawyers to know exactly what an interpreter might need, it is best to ask, and let the interpreter know as much of the basic information as is possible. Interpreters are bound by the same rules of confidentiality as lawyers, and contrary to a popular misconception, context does not interfere with the interpreter's neutrality. In fact, all the professional literature underscores the need for the interpreter to have context in order to render testimony accurately.

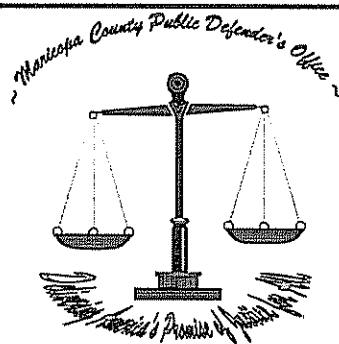
Interpreting is more complex than most people imagine, and even the best interpreters will be challenged at one time or another by a linguistic or cultural difficulty. In a court setting, it is in everyone's interest to keep interpreters well informed so that they can do their best. Attorneys are primarily concerned with the facts. The interpreter is on the lookout for linguistic pitfalls. The next time you work with an interpreter, remember: context is the key. A short briefing, before the interpreter goes into action, is the best insurance policy against error and misunderstanding.

*Isabel Picado, Ph.D., was born in Costa Rica and currently works as a freelance certified interpreter in Massachusetts. She is also a translator (English-Spanish), and editor specializing in Spanish textbooks.*

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# for The Defense

▶ ◀ James J. Haas, Maricopa County Public Defender ▶ ◀

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## Due Process and the Effective Use of Interpreters

**By Suzanne Sanchez  
Defender Attorney**

essential to the accused's "right to be present at every stage of a trial."<sup>4</sup>

An accused who is unable to speak and understand English to the degree necessary to participate in his defense has the due process right to the assistance of an interpreter.<sup>1</sup> In order to comport with the requirements of due process, courtroom interpretation at "crucial hearings," including sentencing, must be simultaneous.<sup>2</sup> If simultaneous interpretation does not occur, "[i]t would be as though a defendant were forced to observe the proceedings from a soundproof booth or seated out of the hearing at the rear of the courtroom."<sup>3</sup> Thus, simultaneous interpretation is

If the accused is indigent, the government must bear the cost of the interpreter.<sup>5</sup> Thus, "[t]he appointment of an interpreter is a proper county expense, not to be deducted from the remuneration accorded court-appointed counsel."<sup>6</sup> The role of the interpreter is not to give an advantage to either side, but to "place the non-English speaker, as closely as is linguistically possible, in the same situation as an English speaker in a legal setting."<sup>7</sup>

*(Continued on page 2)*

## Incorrigible Juveniles in the Context of the Public Defender Enabling Statute

**By Art Merchant  
Juvenile Durango Supervisor**

Over the past year, the Juvenile Division of the Public Defender's Office has been inundated with numerous appointments to represent incorrigible children. Incorrigible acts are status offenses; these acts can only be committed by juveniles. Examples of such acts are truancy, running away, curfew violations, disobedience to

parents and/or guardian, etc. These cases are extremely time consuming, and because of the numerous filings of incorrigible cases, both juvenile divisions of the Public Defender's Office have been struggling to handle them.

The attorneys of the Juvenile Division do not believe that we should be appointed to these cases under the law. The Juvenile Division's approach to the incorrigible

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*for The Defense*  
 Editor: Russ Born  
 Assistant Editors:  
     Jeremy Mussman  
     Keely Reynolds  
 Office: 11 West Jefferson  
         Suite 5  
         Phoenix, AZ 85003  
         (602)506-8200  
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### The Importance of a Certified Interpreter

It is a "misconception that if an individual is bilingual he can interpret . . ." <sup>8</sup> "Lay persons commonly believe that anyone who is 'good with language' or who 'speaks another language perfectly' will be able to interpret accurately in legal settings. Nothing could be further from the truth." <sup>9</sup>

"Bilingualism is relative rather than absolute." <sup>10</sup> An interpreter must "transfer all of the meaning he or she hears from the source language into the target language . . ." <sup>11</sup> "This task demands conserving the language level, style, tone, and intent of the speaker." <sup>12</sup> Thus, a qualified interpreter needs to be able to understand and instantaneously interpret technical legal terms, slang, profanity, and precise connotations and grammatical structures. <sup>13</sup>

Moreover, simultaneous interpretation is a learned skill. <sup>14</sup>

To grasp the nature of the skill required in consecutive interpretation, try reading the following sentence and simply repeating it in English to yourself, without looking at the text. "Well, uh, the thing is, like I told you, me and Joe and Rick had a couple, well maybe more than a couple, say four, I guess, beers apiece before the cops got there, but that was after we had had two scotch and sodas, and two, no one, or was it two, well a couple of margaritas at the bar on 5<sup>th</sup> and Folsom." <sup>15</sup>

Furthermore, the interpreter must be able to listen and speak at the same time. <sup>16</sup>

Thus, an effective interpreter must have advanced linguistic skills and the ability to interpret simultaneously. A certified court interpreter has passed a test, indicating possession of these requisite qualifications. Use of an unqualified interpreter compromises due process.

### Challenging the Unqualified Interpreter

Interpreters are presumed capable. <sup>17</sup> It is the defense's burden to show that an interpreter is unqualified. <sup>18</sup> The defense may inquire about an interpreter's

qualifications. <sup>19</sup> Rule 604, Arizona Rules of Evidence, provides that "[a]n interpreter is subject to the provision of these rules relating to qualifications as an expert and the administration of an oath or affirmation to make a true translation." Thus, pursuant to Rule 702, the defense can inquire as to whether the interpreter is "qualified as an expert by knowledge, skill, experience, training, or education . . ." <sup>20</sup>

### The Need for a Second Interpreter

In appropriate situations, defense counsel should anticipate the need for a second interpreter, and request one. During court proceedings, the accused needs to be able to confer with counsel. The sharing of an interpreter interferes with, or even prevents, such consultation. For example, the sharing of an interpreter by codefendants inhibits effective communication with counsel and is reversible error. <sup>21</sup>

The best procedure is to use two interpreters in multi-defendant proceedings with an electronic sound system. Thus, one interpreter interprets the proceedings through a closed circuit electronic transmission system, and all the defendants listen by means of individual headphones. This procedure also ensures a uniform interpretation. The other interpreter, who should be seated at counsel table, will assist in communication between client and counsel during the proceedings. <sup>22</sup>

In addition, the court violates the accused's right to due process when it borrows the accused's interpreter for interpretation of the testimony of witnesses. <sup>23</sup> Therefore, when both the accused and a codefendant or witness require an interpreter, the accused has the due process right to a second interpreter.

### Additional Considerations

Most people in Maricopa County who require an interpreter speak Spanish. Without intending to cause problems, attorneys often ask for the spelling of Spanish names.

Beware of asking Spanish speakers to spell words, even their own names. Spanish is a very phonetic, regular language so Latin

Americans are not routinely drilled in school in spelling aloud, as students are in this country. As a result, even highly educated Spanish speakers will have difficulty spelling aloud with ease. If they see their names written, they can readily confirm the spelling.<sup>24</sup>

Beware also of ambiguous subject pronouns.<sup>25</sup> “[I]n Spanish, the possessive pronoun ‘su’ may refer to ‘your,’ ‘his,’ ‘hers,’ ‘its,’ or ‘their.’”<sup>26</sup> Questions, and resulting answers, containing ambiguous subject pronouns, can create confusion that damages credibility.<sup>27</sup> “Lawyers and interpreters cannot always foresee every linguistic trap, but the more context an interpreter has, the more avoidable these become.”<sup>28</sup>

Bear in mind that cultural, as well as linguistic, differences can affect testimony. For example, “[c]oncepts of time and distance vary from culture to culture. It should not be assumed that a witness is trying to be evasive or vague when he doesn’t answer questions with the same precision expected from someone in this culture.”<sup>29</sup>

It also should not be assumed that a witness who repeats the question is trying to be evasive. “Spanish speakers often repeat the question before responding.”<sup>30</sup> A listener who does not realize this may assume that the speaker is trying to stall or is “exhibiting flippant or sarcastic behavior.”<sup>31</sup>

Interpreters can be more effective if they know what to expect. Interpreters are required to maintain confidentiality.<sup>32</sup> Thus, it will help, not harm, your client to inform the interpreter about the nature of the case. For example,

[w]hen expert testimony is given by forensic doctors or ballistic experts, it is essential that interpreters be provided with a copy of their depositions or their reports ahead of time, if available. Interpreters are expected to handle vast vocabularies in both languages; but only a small percentage of these words spring immediately to mind. While interpreters know the most frequently used expressions in certain areas of expert testimony, they don’t have every equivalent on the tip of their tongues; for that, they need to study the

subject matter ahead of time because arcane or specialized testimony remain in the “hard disk” area of the brain, not in short term memory.<sup>33</sup>

Thus, preparing the interpreter decreases the chance of miscommunication.

## Conclusion

Representation of clients who speak no English, or limited English, includes effective use of interpreters. Effective use of interpreters means insisting upon a qualified interpreter, requesting a second interpreter when appropriate, and maximizing the opportunity for accurate interpretation.

## Endnotes

1. *State v. Natividad*, 111 Ariz. 191, 194, 526 P.2d 730, 733 (1974).
2. *State v. Hansen*, 146 Ariz. 226, 232, 705 P.2d 466, 472 (App. 1985).
3. *Natividad*, 111 Ariz. at 194, 526 P.2d at 733.
4. *Id.*
5. *Id.* at 193, 526 P.2d at 732.
6. *State v. Rios*, 112 Ariz. 143, 144-45, 539 P.2d 900, 901-02 (1975).
7. R. Gonzalez, V. Vasquez, & H. Mikkelsen, *Fundamentals of Court Interpretation*, 155, 242 (1991).
8. Claus, *Court Interpreting: Complexities and Misunderstandings*, Alaska Justice Forum, 13(4), 1 (Winter, 2000).
9. Franer, *Through the Eyes of an Interpreter*, The Advocate, 23(3) (May 2001).
10. Claus, *supra*.
11. Gonzalez, *supra*, 155.
12. *Id.*
13. Claus, *supra*, 2.
14. *Id.*
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16. *Id.*
17. *State v. Navarro*, 132 Ariz. 340, 343, 645 P.2d 1254, 1257 (App. 1982).
18. *State v. Rios*, 112 Ariz. at 144, 539 P.2d at 901.
19. *State v. Mendoza*, 181 Ariz. 472, 475, 891 P.2d 939, 942 (App. 1995).
20. *State v. Burris*, 131 Ariz. 563, 568, 643 P.2d 8, 13 (App. 1982) (quoting Rule 702, Arizona Rules of Evidence).
21. *People v. Resendes*, 210 Cal Rptr. 609 (1985).
22. Gonzalez, *supra*, 171.
23. *People v. Aguilar*, 35 Cal 3d 785 (1984).
24. Claus, *supra*, 4.
25. Picado, *An Attorney's Primer: Working with Interpreters*, Proteus, IX, 1-2, 1 (Winter-Spring 2000).
26. *Id.*
27. *Id.*
28. *Id.*
29. Claus, *supra*, 4.
30. Gonzalez, *supra*, 242.
31. *Id.*
32. *Id.* at 475.
33. Picado, *supra*, 1.

