

When the Court Interpreter Cannot Hear,

DUE PROCESS STOPS

By A. Samuel Adelo
Federal and State Certified Court Interpreter

One of the best kept courtroom secrets may be that court interpreters frequently cannot hear courtroom discourse. The interpreter usually sits next to the defendant and defense counsel, the most difficult place for the interpreter to adequately hear all the parties who speak during a hearing. Moreover, the interpreter's voice overlaps the speaker's voice, making it even more difficult to hear what is being said. By contrast, court reporters and monitors are positioned where their ability to hear every word spoken is maximized.

All objective criterion referenced studies concerning the court interpreter's task conclude that the principal causes of interpreter fatigue are faulty acoustics, prolonged periods on task, lack of familiarity with relevant subject matter, complex terminology and excessively fast and incoherent discourse which negatively affects the interpreter's task. Interpreters are under intense pressure because they know that the life and liberty of the defendant depends on the interpreter's ability to interpret precisely and exactly what is being said. The interpreter is acutely aware that misinterpretation or omission of any part of the discourse will violate the defendant's constitutional rights.

The discourse to be interpreted completely and accurately includes legal and technical terms, jargon, slang, mumbo jumbo, hesitations, false starts, repetitions and inaccuracies. The court interpreter faces very demanding and stressful working conditions compared with interpreters who work in non-legal settings.

This article is offered to respectfully solicit the judges' enlightened cooperation to enable court interpreters to interpret hearings accurately and to comply with their professional obligations and ethically do their part to mete out constitutional due process and equal protection. Close-knit teamwork is necessary in cases wherein linguistically challenged defendants require the services of an interpreter. The following recommendations are respectfully offered so all

parties in the courtroom form a team that ensures ethnic and racial fairness to defendants who require the services of an interpreter.

1. Speak directly to the defendant, witness or party and avoid prefacing questions or statements directed to the interpreter, such as "ask or tell the defendant"
2. Before a hearing begins, brief the interpreter. Explain the basic issue(s) of the case and summarize the evidence you plan to introduce.
3. Refrain from using false starts, unnecessary fillers and foggy terms. Instead, use familiar, concrete, crisp and concise terms.
4. Refrain from using ambiguous terms, double negatives and lawyerly clichés.
5. Before the hearing, ask the interpreter if there is any relationship between the interpreter and any of the parties that may create a conflict of interest or an appearance of a conflict of interest
6. Before the hearing, ask the interpreter if he or she has previously interpreted in any stage of the case now before the court.
7. As the case progresses, do not ask the interpreter for his or her opinion concerning any aspect of the case.
8. If you disagree with any part of the interpretation, do not object on the record; instead, ask for permission to address the court and explain your objection to the judge with other counsel and the interpreter present.
9. Do not ask the interpreter to do a sight translation of a document without your being present to answer questions the defendant raises while the interpreter orally interprets the content of the document.
10. From time to time, ask the interpreter if he or she needs a break to avoid interpreter fatigue.

In view of the above, all parties who actively participate in hearings are reminded to speak at reasonably understandable, audible levels not to exceed 140 words per minute. Courtroom discourse spoken at a moderate speed makes it possible for the interpreter to effectively assist the court to ensure that defendants clearly understand the discourse interpreted. Consequently, the court will have taken all reasonable steps to ensure compliance with the defendant's constitutional rights of equal protection and racial ethnic fairness.

About the Author:

Sam Adelo, now retired, has been a free lance court interpreter for 24 years in the U.S. District Court and the New Mexico state district courts. He taught court interpreting for the Haury Court Interpreter Institute at the University of Arizona. He has interpreted in Texas, Oklahoma, Nebraska and Arizona. Adelo served as chair of the New Mexico Court Interpreters Advisory Committee to the New Mexico Supreme Court.

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