



*The Editor asked **Isa Framer\*** : How can a criminal defense attorney overcome a Court's reluctance to spend public funds for a qualified interpreter? (republished from 2008)*

A: There are two issues that come to mind while pondering the question of complaints about the cost of obtaining qualified interpreters, Title VI National Origin Discrimination and Due Process of Law. Let me point out first however, that I'm not an attorney and it is not my intent to interpret the law. Attorneys would need to conduct their own research on case law, statutes or court rules applicable to their particular state referencing interpreters, and then develop arguments having applied their own knowledge and analysis of the law and how to best apply it to their case.

However, as someone that has consulted nationally on access policies dealing with interpretation and translation services and on cases that have been successfully reversed, dismissed or resulted in reduced charges due to the use of untrained and unqualified interpretation and translation services, I can however, share my personal observations and analysis.

1. ***Make sure that the request is documented and in the record.***

The first suggestion I would make before I continue with the answer to the original question is that attorneys need to make sure that they request a certified (when certified interpreters are available) or professionally qualified interpreter (when certification is not available in the particular language) for their client and that the request be made on the record. Any objections or concerns should also be raised on the record. As you know, if objections are not recorded, the issue cannot be brought up later during the appeal. The only way that the issue could be brought up is during an ineffective assistance of counsel (IAC) claim.

The Constitution of the United States does not explicitly provide for interpretation and translation services. However, one can safely assume that without the services of a qualified interpreter, a non-English or limited-English proficient (LEP) individual would not be competent to stand trial. The LEP individual would not be present to hear the nature of his or her charges, to consult with an attorney, to cross examine witnesses and competently participate in his or her defense as afforded to all persons by the 4th, 5th, 6th and 14th amendments to the Constitution.

However, this is only part of the equation, a critical part, but only one part.

**2. *Make sure the Court and prosecuting attorney understands her or his responsibility.***

The Courts must ensure that the proper administration of justice is carried out. They are responsible for ensuring an accurate record of all of the proceedings and trials to the disposition of a case. They must understand and be understood in order to carry out their own duties.

Without a certified and/or professionally qualified interpreter, the court cannot function properly. The Court cannot competently communicate with the LEP individual. They would not be able to convey the exact nature of the charges or take a plea and ensure an accurate record. Therefore, for the purpose of due process, equal protection and equal access, the court has a responsibility to provide a certified and otherwise professionally qualified interpreter for court proceedings.

As we well know, the right to an attorney is an absolute right whether the attorney is privately retained, court appointed, or a public defender and a defendant must show indigence in order to obtain a court appointed attorney or a public defender. The beneficiary of this right is the defendant but the issue of who benefits from the services of an interpreter for in court proceedings is different. It is not one and the same. As already mentioned, the court has responsibilities such as ensuring that due process is carried out and that the court record is accurate for review. This responsibility is not a defendant's responsibility but the courts responsibility. Absent the court's ability to appoint and pay for a certified or qualified interpreter how can the court conduct business and its duty to ensure that justice is carried out? This responsibility cannot be shifted upon a defendant because the court lacks money. The state has brought charges upon a person; it is the states responsibility to be understood and to competently understand.

For the most part, the issue of who pays for an interpreter for in court proceedings for non-indigent defendants in state courts has not been argued from the standpoint of the issue being of particular interest to the court (court is the main beneficiary) but arguments have been more focused on a defendants right to consult with counsel, confront witnesses, understand the proceedings etc and only regarding cases in which the defendant is indigent. Interestingly enough, in 28 USC Section 1827, the federal courts do not differentiate between indigent or non-indigent defendants or litigants when it comes to in court proceedings including trials and the courts will pay for interpreters for all in court proceedings whether civil or criminal initiated by the United States.

The appointment of interpreters for in-court proceedings is necessary to conduct day-to-day business of the courts and other justice services. Arguments have been made, for example, giving the analogy of the courts responsibility to have a stenographer and that such cost is not billed to a defendant. A court interpreter falls under that same category. In other words, a stenographer is present to make an accurate record of the proceeding for the court's record and review. An interpreter is summoned to assist the courts in the administration of justice and to provide both the court and the defendant with an accurate interpretation of what all of the parties are saying, except orally as opposed to the stenographer's job to preserve the information in written form.

By shifting the cost to a defendant or litigant to access the court, the court places the financial burden upon the non-English speaker or LEP individual instead of on it's own responsibility to ensure due process, provide equal access and equal protection under the law (to be competently understood and understand) due to the courts own lack of funds. This is an added burden that neither an English speaker or a deaf or hard of hearing person would have.

The lack of funding or budgeting for certified and qualified interpreter services is not an excuse to defeat the 4th, 5th 6th and 14th amendments to the Constitution.

3. ***Make the Court aware of Your Responsibility***: Defense attorneys have an obligation to defend their client zealously and to protect their client's constitutional rights. Therefore it is incumbent upon the attorney to familiarize themselves with the issues at hand, argue and to preserve matters for later appeals.

If untrained and unqualified interpreters are utilized or no interpreter is appointed for court proceedings, attorney-client interviews or in other legal or quasi legal settings, such as for police interrogations and interviews because an individual may speak a little English, it will not matter how effective an attorney is or how diligent a court or other judicial officer may be. The use of unqualified interpreters or no interpreter at all, can and has rendered an attorney and other officers of the court ineffective, statements have been suppressed or cases reversed. It is also very important to keep in mind that to appoint an incompetent (ad hoc) interpreter for the sake of saving money is tantamount to having no interpreter at all.

The monetary cost of an appeal and retrial can be great, not to mention the cost of an individual's liberty and life, the loss of their children, a victim's life put in jeopardy, loss of property, innocent persons wrongfully accused or a guilty person going free, based on poor and inaccurate interpretation.

The interpreter is the vehicle (the nexus) to assist all of the parties in the administration of justice through competent, accurate and unbiased interpretation.

Title VI: In addition to Constitutional safeguards, there is Title VI of the Civil Rights Act of 1964 which states that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

In 2000 the President signed Executive Order 13166. The President's Executive Order did not "create an entitlement to services provided in languages other than English." EO 13166 was issued to further clarify the obligation under Title VI and that language has a direct link or otherwise associated with National Origin. It acknowledges, recognizes and supports English language acquisition programs but is to ensure that non-English or limited English proficient individuals are not discriminated against while they are acquiring the English language. EO 13166 further directed federally funded recipients to issue guidance based on the DOJ August 2000 guidance. Under the President's constitutional authority to manage the Executive Branch, the President directed that federal agencies follow the same department of justice guidance in developing their own language assistance programs. Therefore, there is an obligation under Title

VI for the courts, law enforcement, justice partners and any other federally funded recipient to provide competent language (interpretation and translation) services at the recipient's expense. Since 1964 Title VI then has provided this access right that is not in reality a language rights issue.

In summary, the issues attorneys need to take into account when arguing the appointment of certified and qualified interpreters when the courts complain about the cost of interpreters, is that the court has a responsibility, the attorney has a responsibility and that the issues are directly connected with due process, equal access and equal protection. All of the parties directly benefit from the appointment of a certified and/or qualified interpreter and not just the LEP defendant or litigant and that the lack thereof, could render all parties ineffective. A court's lack of funds should not be an excuse to exclude someone from meaningful participation, access and equal protection.

\* **About Ms. Framer:** The Editor asked Expert Isabel Framer. She is an Oregon and Tennessee Certified Court interpreter living and working in Ohio. She currently serves as Chair of [NAJIT](#), the National Association of Judiciary Interpreters and Translators, is on the Supreme Court of Ohio's Advisory Committee on Interpreter Services, on Governor Ted Strickland's Ohio Judicial Appointments Recommendation Panel and on the API Institute on Domestic Violence Interpreter Technical Assistance and Resource Center Advisory Committee. She has testified as an expert in court proceedings regarding interpreter standards and has served as a consultant to judges, defense attorneys, prosecutors and law enforcement throughout the U.S. regarding interpreting standards. Isabel has taught workshops to aspiring and practicing interpreters on ethics and professional responsibilities of judiciary interpreters and she presents CLE courses to judges and attorneys and training to law enforcement regarding legal issues, ethics, role and professional responsibilities of the interpreter in legal settings. She is the author of various articles including, "Through the Eyes of an Interpreter, published by The Kentucky Department of Public Advocacy's legal journal The Advocate, Interpreting The Interpreter: What Every LAV Attorney and Advocate Needs To Know About Legal Interpretation", published by Office on Violence Against Women Newsletter: The LAPTOP, Interpreters and Their Impact on the Criminal Justice System: The Alejandro Ramirez Case, and Interpreters as Officers of the Court: Scope and Limitations of Practice," published in the NAJIT journal, Proteus. You can contact Ms. Framer at: [isainterp@aol.com](mailto:isainterp@aol.com).

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Posted By Federal and Extradition Defense to [Extradition and Cross Border Criminal Defense News](#) at 8/24/2010 03:25:00 PM