

The Bilingual Courtroom

Court Interpreters in the Judicial Process
Second Edition

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The University of Chicago Press / Chicago and London

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1

Introduction

The Bilingual Courtroom

Since the late 1960s, with America's awakening sensitivity to the social needs and rights of linguistic minorities, there has been a veritable explosion in the use of foreign-language interpreting in American courtrooms. The climate engendered by the civil rights movement of the 1960s certainly laid the foundation for the growing sensitivity to linguistic minorities. But one seminal event can be seen as the driving force behind the current growing trend toward greater use of court interpreting in American courtrooms: the enactment in 1978 of Public Law No. 95-539, the federal Court Interpreters Act. Although it is restricted to the jurisdiction of federal courts, it has served to stimulate parallel measures in state and municipal courts. Thus, through the precedent of federal legislation, courts of lower-level jurisdiction are increasingly assigning foreign-language interpreters to non-English-speaking defendants, litigants, and witnesses. This change in judicial policy comes as a result of a now well-established recognition by the courts that to deny the non-English speaking and the hearing-impaired the services of a court-appointed interpreter is to deny them their constitutionally guaranteed right to a fair trial.

For judges, attorneys, defendants, litigants, and witnesses alike, the presence of a foreign-language interpreter transforms normal courtroom proceedings into bilingual events. In this updated edition of *The Bilingual Courtroom*, I show how the courtroom is transformed in the presence of the court interpreter, and how these transformations have an impact on judicial proceedings. The study will present findings based on seven months of ethnographic observation and tape-recording of interpreted judicial proceedings in three tiers of court: federal, state, and municipal. Drawing on 114 hours of taped recordings, I will show that in a number of ways—some subtle, others quite dramatic and obvious—the nature of judicial proceedings is altered when these proceedings are mediated through the mechanism of a foreign-language interpreter. Specifically, I will demonstrate how interpreting is a highly complicated process, and that the role of the interpreter

within the social structure of the courtroom poses its own problematic. Whereas court personnel assume that the interpreter is nothing short of a machine that converts the English speech of attorneys, judges, and English-speaking witnesses into the mother tongue of the non-English-speaking defendant or witness, and the foreign-language testimony of non-English speaking witnesses into English for the benefit of the court, the output of that machine is by no means perfect, nor can it ever be, because of the problems inherent in the interpreting process. At best, it can be excellent; at worst, a gross distortion of what has been said.

The problematical role of the court interpreter is not limited to the difficulties inherent in the interpreting process, but rests on the more fundamental contradiction between how the interpreter defines her¹ role and how other court personnel and court clients perceive it. Her very social status in the courtroom is perceived differently by different elements in the social structure of the courthouse. I will highlight that many of the problems regularly encountered by the court interpreter are a result of a misunderstanding of her role not only by clients (defendants, litigants, and witnesses), but also by lawyers and judges.

While one major source of problems commonly found in interpreted judicial proceedings stems from contradictory perceptions of the interpreter's role, another important source of difficulty is the general lack of awareness on the part of most interpreters of a field of linguistics called "pragmatics."² Professional interpreters overwhelmingly view vocabulary as their number one linguistic problem. Problems of syntax and pragmatic scope are given slight attention, if any at all. Yet observation of interpreters at work reveals that inattention to pragmatic aspects of language results in a skewing of a speaker's intended meaning: an interpreter can make the tone of a witness's testimony or an attorney's questions more harsh and antagonistic than it was when it was originally uttered, or, conversely, she can make its effect softer, more cooperative, and less challenging than the original. For the most part, these changes are made unconsciously. On the whole, when interpreters make such fine alterations in the conversion of one language to another they seem completely unaware of the important impact that these alterations can have on judges and jurors. On the other hand, an interpreter who has either unconscious or conscious biases can take full advantage of such linguistic mechanisms to suit her own purposes, and where there is a conflict of interest but it is not perceived as such by court personnel, the interpreter's interpretations can and do serve to slant what a speaker is trying to say. Thus,

as chapter 6 will show, an interpreter has the power to make a witness's testimony cast more (or less) culpability than it did in the source language—that is, the language in which it was originally uttered, and, alternatively, she can remove from the testimony any blame-laying strategies it may have contained. Moreover, an interpreter can make an attorney look more polite and less aggressive to a witness, and a witness more, or alternatively, less cooperative to an attorney. Finally, I will convey how interpreters often introduce an element of coercion into the examination process when they interpret for witnesses and defendants.

Spanish in the Courtroom

Court interpreting is currently being conducted in federal, state, and municipal courts in a variety of languages (see tables 1.1 and 1.2). As the interpreter logbooks of federal courthouses and state courthouses show, the need for interpreting arises in a multitude of languages. These range from what are historically the more commonplace American immigrant mother tongues, such as Spanish, Italian, German, and Polish (i.e., languages brought to the United States by immigrants from Europe and Latin America), to what interpreters' organizations call "exotic languages"—that is, the languages of Asia, Africa, the Middle East, and the languages spoken by Amerindian groups.³ In addition, a great deal of court interpreting is carried out in various sign language systems for the benefit of hearing-impaired defendants and witnesses. Whereas the preponderance of such interpreting is done in American Sign Language, often the need arises for foreign sign language systems.⁴

Table 1.1, which is drawn from the logbooks of two Southwestern courthouses, a Northeastern metropolitan courthouse and a Midwestern metropolitan courthouse,⁵ and table 1.2, a summary of data derived from all federal U.S. district courts, both point clearly to the same conclusion: Spanish is the language of most frequent use in American court-interpreted proceedings. This is not unexpected if one considers that Spanish is the most commonly spoken non-English mother tongue in the United States.

The importance of Spanish in the American courtroom becomes obvious if one looks at the log of one U.S. district court (i.e., a federal court) located in a Northeastern metropolis. As table 1.2 shows, during the course of 1987 there were 2,636 court appearances of interpreters for Spanish interpreting alone. That figure should be compared with the total of 607 court appearances for *all* the other twenty-six languages that required interpreting.⁶ In other words, there were nearly 4.5 times

Table 1.1. Court Interpreter Appearances for Spanish versus All Other Languages.

	Southwestern Federal Court (1982)		Northeastern Federal Court (1987)		Southwestern State Court (1982)		Midwestern State Court (Jan.–June, 1985)	
	Number	%	Number	%	Number	%	Number	%
Appearances for Spanish	1,298	96.6	2,636	81.3	3,331	96.3	8,574	92.0
Appearances for all other languages	45 ^a	3.4	607 ^b	18.7	129 ^c	3.7	741 ^d	8.0
Total court appearances	1,343	100.0	3,243	100.0	3,460	100.0	9,315	100.0

^a The category of “other languages,” usually designated as “exotic languages,” in this court comprised only four: Hindi, Punjabi, Mandarin Chinese, and Apache.

^b The category of “other languages” included the following twenty-five languages: Arabic, Armenian, Bulgarian, Chinese (designated as “Cantonese,” “Fukienese,” “Mandarin,” “Taiwanese”), Creole (i.e., Haitian Creole), Dutch, Farsi, French, German, Gujarati, Hakka, Hebrew, Hindi, Ibo, Italian, Korean, Pashto, Polish, Portuguese, Punjabi, Russian, Serbo-Croatian, Urdu, Vietnamese, and Yoruba.

^c In this court, the category of “other languages” comprised the following twenty-three languages: American Sign Language, Arabic, Cambodian, Cantonese, Farsi, French, Greek, Japanese, Italian, Korean, Laotian, Mandarin, Navajo, Papago, Pima, Polish, Portuguese, Punjabi, Russian, Serbo-Croatian, Thai, Vietnamese, and Urdu.

^d The category of “other languages” included the following twenty languages: Albanian, Armenian, Bulgarian, Cambodian, Chinese, Filipino, Greek, Korean, Lithuanian, Pakistani, Polish, Rumanian, Russian, Serbo-Croatian, Sign Language, Thai, Turkish, Ukranian, Vietnamese, and Yugoslavian.

Note: Whereas one of the courthouses reports three times as many interpreter appearances in its first six months as do two of the other courts in a twelve-month period, the wide disparity may be due to differences in the way that interpreter appearances are reported in different courthouses. The figures appearing in this table were provided by the chief interpreter in each of the respective courthouses, and are based upon logs that they are required to keep on a daily basis. The annual statistics are broken down more finely, reporting the number of appearances for each “exotic” language. For the purposes of this table, however, what is important is not the raw number of interpreter appearances per language, but rather the percentage use of Spanish versus that of all the other languages.

as many Spanish interpreted proceedings as there were interpreted proceedings for all other foreign languages combined. The particular courthouse from which these data are derived is located in a city that has a highly varied non-English-speaking population. One would expect the typical Southwestern large city to have a much higher proportionate use of Spanish. In fact, judging by the logbook of interpreting services in the federal court of one such city (see table 1.1), Spanish constitutes 96.8 percent of all foreign-language interpreting in the courthouse. Even in the Midwestern metropolitan courthouse Spanish comprises 92 percent of all court interpreting.

Spanish is the foreign language of most widespread use in the United States today, and can be expected to remain in this position of dominance for the foreseeable future (Bills 1987; Fishman 1966).⁷ Coupled with the evidence found in tables 1.1 and 1.2, this indicates that if any interpreting situation needs to be studied in the American courtroom, it is the one involving Spanish. For this reason, this study bases its analysis exclusively on observations of Spanish/English interpreted

Duties of the Court Interpreter

The Court Interpreters Act does not prescribe specific judicial proceedings at which interpreters must be present, yet a look at the annual interpreter log of two federal district courts reveals a virtually identical concordance of tasks performed (see table 1.3). More striking still is the fact that state courts make use of their interpreters in much the same way, despite the fact that they are not subject to the jurisdiction of the federal act.

A look at the interpreter's log of a federal district court located in an eastern metropolis, a federal district court located in a Southwestern medium-sized city, and a superior court (i.e., criminal trial court) of a large Southwestern city, reveals that in all three courts interpreters are on duty for basically the same range of procedures: initial appearances,⁹ hearings related to the setting of bail bond, preliminary hearings, pre-trial and in-trial motions, pleas and changes of plea, sentencings, trials, and probation department recommendations. Where federal district courts differ from one another and from superior courts is in the use of court-appointed interpreters for attorney/client conferences. As can be seen in table 1.3, below, one federal district court uses its interpreters extensively for attorney/client conferences, whereas the other federal district court does so on rare occasions. This may simply be a function of the high availability of bilingual Spanish-speaking attorneys in the jurisdiction of the latter court: every case requiring a Spanish interpreter that was observed in this particular court employed a Spanish-speaking defense attorney. Thus, for interviews or conferences with defendants, such attorneys would not have needed the services of an interpreter. In the other federal district court, however, not a single case observed during the fieldwork involved a Spanish-speaking defense attorney. In the case of the superior court, a clear, written policy stipulates that court-appointed interpreters are made available to all court-appointed defense attorneys, prosecutors, probation officers, court-appointed psychiatrists, and investigators for interviews with a defendant in preparation for trial or sentencing, but that privately retained attorneys in both civil and criminal matters must contract with a private interpreter for attorney/client interviews. This explicit, official policy of the courthouse may account for the high number (557) of interpreter-assisted attorney/client interviews.

An additional difference in interpreter task load between one court and another has to do with the structure and legal purview of federal courts versus those of state courts. For one thing, superior courts can

subsume under their jurisdiction juvenile courts. Thus, in some state court systems, court-appointed interpreters working in superior courts are responsible for juvenile cases. The log of the superior court in question shows that during a one-month period court interpreters were present at advisory hearings, adjudication hearings, disposition hearings, and dependency review hearings in juvenile court. Furthermore, because of the role of justice of the peace (J. P.) courts in carrying out preliminary hearings on persons who have been arraigned in superior court, superior courts send their interpreters to J. P. courts for such hearings. The superior court log in question shows that court interpreters are sent to J. P. court not only for preliminary hearings, but also for pretrial disposition hearings, arraignments, and trials, including civil trials.

Finally, superior court interpreters do a great deal more interpreting in civil matters than do federal court interpreters, as table 1.3 demonstrates. Superior court interpreters appear not only in cases involving litigation, but also in matters associated with domestic relations: default dissolutions, orders to show cause, conciliation court sessions, and arbitration hearings. Orders to show cause why family support is not being met is one of the more common types of domestic relations proceedings at which superior court interpreters will appear.

Whereas some state courts make specific provision for the assignment of court-appointed interpreters to civil cases, as does the Southwestern superior court referred to in table 1.3, other states are more restrictive in their policies in this regard. New Jersey, for example, provides free interpreting services to defendants in criminal cases, but does not guarantee it to parties involved in civil cases.¹⁰ This is particularly troublesome given the finding of one legal scholar (Hippchen 1977: 269) that "bilingual interpreter services are needed in a much greater number of civil cases compared with criminal cases" in New Jersey county and municipal courts.¹¹ Municipal courts in general, insofar as they hear traffic cases and infractions of municipal ordinances, are heavily oriented toward civil cases, and so in areas of high concentrations of non-English-speaking populations, they would be in greater need of court interpreters for civil than for criminal cases. The reason why the need for interpreters is particularly acute in municipal court is that much of what goes on there involves persons telling their version of an incident directly to a judge, without the benefit of a defense attorney to speak for them. Perhaps for this reason, in large cities in the Southwest some municipal courts routinely assign staff interpreters even to civil cases.

Like many state courts and most municipal courts, federal courts tend to restrict the use of court-appointed interpreters largely to criminal cases and to only narrowly defined civil cases. The federal Court Interpreters Act, as will be shown in chapter 3, permits the use of court-appointed interpreters in civil cases only when it is the United States government that initiates an action against some party. If non-English-speaking litigants were to sue the federal government, under the terms of the law, they would not be entitled to free interpreting services provided by the court. As a response to this federal restriction on the use of court-appointed interpreters in federal court, some lawyers have entered into contractual agreements with federally certified interpreters, guaranteeing to pay their fees in civil cases that are not covered under the terms of the federal law. These lawyers guarantee to pay the interpreters, whether or not their client wins the lawsuit. In this way, even a poor litigant who initiates a suit against the federal government can benefit from the services of a highly qualified interpreter. Such informal arrangements between lawyers and interpreters, however, are not the norm. Consequently, non-English-speaking persons who are poor are not likely to sue the federal government. Even in a federal courthouse where lawyers have an informal private arrangement with interpreters, such as the eastern courthouse referred to in table 1.3, the instances of civil cases employing interpreters are very infrequent, compared to criminal cases.

What the preceding discussion demonstrates, then, is that for the most part non-English-speaking persons involved in civil actions do not receive the benefit of free court-interpreting services. The consequence of this reality is that such individuals must provide their own interpreter in civil court. Because the vast majority of the non-English-speaking fall into socioeconomically disadvantaged groups, this means in effect that the American judicial system places the non-English-speaking at a distinct disadvantage in civil court. This drawback lies in the inevitable consequence of such judicial policy: parties to a civil action tend to bring bilingual relatives or friends to serve as their interpreter, and as the present study and one other major study has found (New Jersey Supreme Court Task Force 1986), the quality of interpreting rendered by such nonprofessional interpreters is quite poor indeed.

One final finding that emerges from a comparison of federal and state log records is that a state court can do a great deal more interpreting per year than a federal court. This is probably a function of the fact that a state court covers the needs of other courts related to it (i.e., J.P.

Table 1.3. Official Appearances of Spanish Interpreters, 1982.

	Federal U.S. District Court (East Coast)	Federal U.S. District Court (Southwest)	State "Superior" Court (Southwest) ^a
Trial	72	49	132
Initial Appearance	42	243 ^b	297
Arraignment	82	108	138
Plea and Change of Plea ^c	37	157	54
Motion	15	112	36
Bail Hearing	7	85	—
Preliminary Hearing	94	4	246
Sentencing	84	143	228
Assorted Hearings (Probation Status, etc.)	117	55	450
Attorney/Client Conference	60	13	557
Conciliation Court	—	—	27
Domestic Relations	—	—	182
Civil	—	—	94
Juvenile	—	—	321
J. P. Court	—	—	695 ^d
Deposition	—	35	—
Waiver	—	206	—
Petty Offenses	—	101	—
Appointments of Attorneys and Defendants' Requests for Attorneys	—	36	—
TOTAL:	610	1,347	3,460

^a Since the statistics provided by the chief interpreter of the southwestern superior court were not broken down by *type* of judicial procedure for the year—such records were kept only on a monthly basis—and because only two months of such itemized logged appearances were available, data for the superior court are projected from the months of January and February 1983, and are used in conjunction with the more global figure from 1982. Note that the "total" figure in the table (3,460) is not a projected figure, but an actual one for 1982. The total number of appearances calculated by adding the projected figures comes to 3,457, revealing a high congruence with the actual total.

^b This figure includes the initial appearance of material witnesses.

^c The category "plea and change of plea" includes only those appearances that were listed by chief interpreters in such a separately labeled category. It does not include those pleas that were counted by interpreters as part of the arraignment.

^d The figure of 695 does not include the J. P.-court-held preliminary hearing proceeding. The 246 preliminary hearings, all of which took place in J. P. court, were listed separately.

court, primarily through preliminary hearings, and juvenile court). In addition, state courts cover certain noncriminal areas of law (e.g., conciliation court, domestic relations) that do not fall under the purview of federal courts.

This examination of the duties of court interpreters demonstrates that in federal and state courts alike, court interpreters are assigned to the non-English-speaking and hearing-impaired at all the various judicial proceedings at which a given defendant is required to be present. While the task of interpreting is a constant, the contexts in which interpreters must perform their job are highly varied.

Overview of This Book

The purpose of this introduction is to help the reader see the extent to which foreign-language court interpreters, especially Spanish/English interpreters, are employed in contemporary American courtrooms. Chapter 2 explains why and how language is a crucial dimension in court proceedings, and it concentrates particularly on spoken legal language and the issue of control of witness testimony. Chapter 3 lays out the legal *raison d'être* behind the growing trend among courts to provide linguistic minorities with court interpreting services. It explains why the federal government has passed a Court Interpreters Act, and how that piece of legislation is implemented in terms of interpreter certification. Insights into court interpreter training programs are presented, based upon the author's experience as a participant in one such training program. Chapter 4 describes the fieldwork procedures that were used to come to the ethnographic conclusions that are presented in chapter 5. Chapter 5 analyzes the verbal and nonverbal interaction between interpreters and other participants in the courtroom, showing how all parties involved in some way misconstrue the interpreter's role. Chapters 6 and 7 demonstrate the various ways in which interpreters alter pragmatic elements of attorneys' questions and witnesses' answers, changing passive voice to active voice and vice versa, and inserting a number of different pragmatic elements that have been found to characterize what has been termed "powerless testimony style" (O'Barr 1982).

Chapters 8 and 9 demonstrate that the linguistic alterations made by interpreters are not inconsequential. Rather, they have an impact on mock jurors, leaving them with a significantly different social-psychological evaluation of a witness's trustworthiness, convincingness, intelligence, and competence. In addition, as chapter 9 shows, there is a growing awareness on the part of defense attorneys that the quality of interpreting services provided by the courts for their clients is deficient. With this awareness comes a dramatic increase in appeals based upon the claim of poor interpreting quality. In other cases, appeals have been based upon the failure of the courts to provide an interpreter altogether. In short, actors in the legal process are increasingly becoming aware of the importance of foreign-language interpreting, and are beginning to pay closer attention to the issue surrounding it as a basis for appeal.