



National Association of Judiciary Interpreters & Translators

NAJIT POSITION PAPER DIRECT SPEECH IN LEGAL SETTINGS

The information provided in NAJIT position papers offers general guidance for court administrators, judiciary interpreters and those who rely on interpreting services in legal settings. This information does not include or replace local, state or federal court policies. For more information, please contact: National Association of Judiciary Interpreters & Translators, 206-267-2300, or visit the NAJIT website at www.najit.org.

■ Introduction

When the participants in the judicial process do not speak the same language, an interpreter is used to relay messages. Interpreters use industry standard techniques to maintain accuracy and impartiality and ensure clear communication. These interpretation techniques are especially important in legal settings. The purpose of this paper is to illustrate one such technique — the use of direct speech as opposed to indirect speech — and to explain why all interpreters and users of interpreter services should speak to each other directly, rather than in the third person.

■ What is indirect or third-person speech?

Some people believe that indirect speech, which is sometimes referred to as third-person speech, is the best way to communicate through an interpreter (e.g., *Ask him... She is saying...*); but, in fact, the opposite is true. The most effective way to work across language barriers is for all speakers to use direct speech. Even when the communication has to pass through an interpretation process, people should address each other directly.

Participants in the judicial process — attorneys, judges, courtroom personnel, witnesses — or inexperienced interpreters may resort to indirect speech occasionally, unwittingly or as a matter of habit. However, it is essential to be vigilant against this practice. To understand why, consider the differences between direct and indirect speech in the following examples:

• DIRECT SPEECH

Judge: "Could you state your full name?"

Interpreter (in foreign language): "Could you state your full name?"

Witness (in foreign language): "My name is John Doe."

Interpreter: "My name is John Doe."

• INDIRECT SPEECH (by interpreter)

Judge: "Could you state your full name?"

Interpreter (in foreign language): "He's asking you to state your full name."

Witness (in foreign language): "My name is John Doe."

Interpreter: "His name is John Doe."

The use of indirect speech in the example above is an instance of unwarranted interference by the interpreter. The interpreter could have simply relayed the message directly, as it was said, without making any independent contribution to the communication process. The behavior of an interpreter using indirect speech may be compared to that of a narrator who reports to the participants what the speaker has said. The message is restated from the interpreter's narrative point of view (e.g., *He's asking... His name is...*), but the speaker's actual words are never rendered.

Notice how the use of indirect speech by other participants in an exchange can easily create communication problems:

• INDIRECT SPEECH (by judge)

Judge: "Ask him to state his true name."

Interpreter (in foreign language): "Ask him to state his true name."

Witness (in foreign language): "Who?"

Interpreter: "Who?"

Judge: "Doesn't the interpreter know who I'm talking to?"

• INDIRECT SPEECH (by attorney)

Attorney: "Ask her if she went to Mrs. Smith's house?"

Interpreter (in foreign language): "Did you go to Mrs. Smith's house?"

Female Witness (in foreign language): "Yes."

Interpreter: "Yes."

Attorney: "Was she with anyone?"

Interpreter: "Would counsel clarify for the interpreter who she refers to?"

In the first example, the judge uses indirect speech. The interpreter restates the message exactly, as, in fact, interpreters are required to do. But communication quickly gets derailed. This can happen with the simplest of questions.

In the second example, it is the attorney who uses indirect speech. The interpreter is attempting to "clean up" the attorney's indirect questions and make them direct. But the danger in doing so is that the attorney may continue asking questions in the third person. This will not only muddy the record, it may also lead to a situation where the interpreter does not know to whom the attorney is referring when third-person pronouns are used.

All of the examples above indicate that participants in interpreted-assisted exchanges should address each other directly, as though there were no interpreter present. The interpreter should assume the voice of the speaker for whom s/he is interpreting and, accordingly, use the same grammatical person as that speaker (i.e., the same pronouns and verbs).

■ Why is indirect speech unacceptable in legal settings?

As the examples above have already suggested, indirect speech should never be used in legal settings when interpreters are involved, because it hinders both communication and the judicial process. The following specific problems can be identified:

MISCOMMUNICATION. The use of the third-person pronouns *he, she* and *they* in indirect speech is a common source of confusion. For instance, when the attorney uses indirect speech in the last example above, the interpreter has no way of knowing who *she* refers to: Is it the female witness or Mrs. Smith? In the worst-case scenario, misunderstanding can take place if the recipient of the message, that is, the interpreter, makes the wrong assumption. The consequences can be serious because the credibility of witnesses depends on the consistency and accuracy of the information they provide.

DELAYED COMMUNICATION. The confusion created by the use of third-person pronouns needlessly slows communication down, since the speakers will have to interrupt each other often to ask for clarification. Any type of exchange, from the relatively informal attorney/client meeting to the highly formal presentation of courtroom testimony, can fall victim.

ADVERSE EFFECT ON INTERACTION BETWEEN THE PARTIES. Indirect speech focuses too much on the interpreter and reinforces the parties' natural tendency to talk to, make eye contact with and turn toward the interpreter, rather than to focus on each other while speaking. When communication is indirect, the parties may be more likely to seek clarification, make comments and solicit extra-linguistic information from the interpreter, none of which are part of a court interpreter's role. If the interpreter is no longer a conduit, s/he is assuming or being allowed to occupy a position of considerable power, which undermines the relationships between the parties (e.g., the rapport between defense attorneys and their clients during out-of-court meetings or the adversarial relationship between prosecutors and defendants during cross-examination.)

INTERPRETATION NOT LEGALLY EQUIVALENT. Court interpreters are bound by a code of ethics to provide a complete and accurate interpretation, without altering, omitting, or adding anything to what was stated. Likewise, their duty is to preserve the speaker's language level and discourse features, such as pauses, hedges, false starts and repetitions.¹ Once all these requirements are met, the message transmitted by the interpreter will have the same effect on the target-language audience as the original message had on the source-language audience.

The court interpreter's strict conservation of the content, form, and style of a message is known as legal equivalence,² and it is ultimately grounded in the due process and the equal protection clauses of the United States Constitution. The role of the interpreter is to put non-English speakers on an equal footing with individuals who do speak English during their interactions with the judicial system. However, interpreting rendered through indirect speech cannot be legally equivalent for the following reasons:

The interpreter has to modify the speaker's original words from a grammatical point of view, at the very least, to reflect the interpreter's narrative point of view: "I regret what I did" → "She regrets what she did."

Messages lose their immediacy when transmitted through indirect speech. Some messages, particularly those involving emotive language, become less forceful: "I didn't do it. I swear to God I didn't. Please, believe me." Now, compare this utterance with the following: "He says he didn't do it. He swears to God he didn't. Please, believe him." In English, statements like *he/she says (that)...* can suggest a certain degree of speaker disbelief.

Direct speech readily allows the interpreter to put her/himself in the speaker's frame of mind, which in turn facilitates the faithful transmission of the message. Indirect speech is one step removed and thus immediacy is lost, which may affect the interpreter's memory of the original message.

POSSIBLE VIOLATIONS OF DUE PROCESS. Pursuant to the Federal Rules of Criminal Procedure and the Rules of Criminal Procedure for state and municipal courts, a guilty plea must be entered into knowingly and voluntarily. When a defendant enters a plea of guilty or no contest, s/he waives important rights:

In order for such waiver to be valid under the due process clause of the United States Constitution, it must be shown to have been an intentional relinquishment or abandonment of a known right or privilege. If a guilty plea is not knowingly, voluntarily, and intelligently made, it has been obtained in violation of due process and is therefore void.³

When an interpreter uses indirect speech (i.e., "He says he's guilty, Your Honor." Or, "Yes, she understand her rights.") the record reflects the conclusion of the interpreter, not of the defendant. This key linguistic and legal distinction has led to the nullification of a number of guilty pleas.⁴

INTERFERENCE WITH PRESERVATION OF THE RECORD. The integrity of the record is of utmost importance, whether a proceeding be in-court (e.g., a trial) or out-of-court (e.g., a deposition). The ambiguity that arises from the use of third-person pronouns in indirect speech hinders the court reporter's task of maintaining a clear record. Transcripts, particularly those that are prepared from recordings

after the fact, will be less intelligible. They are bound to contain statements such as, “INTERPRETER: He doesn’t understand.”

Furthermore, the legal equivalent provided by the interpreter is the record. If the interpreter fails to faithfully render the speaker’s message by using indirect speech, one cannot meaningfully speak of an accurate and complete record: There is no record of the speaker’s actual words and justice has not been served.

■ Recommendations

Canon 5 (Protocol and Demeanor) of NAJIT’s *Code of Ethics and Professional Responsibilities* explicitly bans interpreting in the third person, “...Court interpreters are to use the same grammatical person as the speaker...”⁵

NAJIT recommends that all indirect speech be excluded from interpreted-assisted exchanges in legal settings. The following guidelines are intended to help interpreters and the other participants in the judicial process comply with professional standards:

JUDGES

- Judges should not permit the use of indirect speech during interpreted-assisted proceedings. At every opportunity, judges should instruct the parties to speak directly to each other, instead of to the interpreter. The parties should never say to the interpreter, “Tell her (that)...” or “Is he asking me...?”
- Judges should support an interpreter’s request that all parties address each other directly.
- When a judge addresses a non-English speaking defendant or witness, it should always be done directly rather than speaking to the interpreter. Judges should not say to the interpreter, “What is his name?” or “How does she plead?”
- When the judge needs to address the interpreter, the record should be clear. For example, “Would the interpreter raise his voice?” If a judge says, “Would you raise your voice?” the interpreter is required to interpret exactly what was said; the witness will raise her/his voice, instead of the interpreter.

ATTORNEYS

- Attorneys should speak directly and maintain eye contact with the non-English speaking client/defendant/witness, just as with someone who speaks English. Attorneys should not ask the interpreter, “Does he understand?” but ask the non-English speaker, “Do you understand?”
- If this is the first time the non-English speaker is communicating through an interpreter, attorneys are well advised to take a minute to explain how the process works (i.e., “talk to me and speak as though there were no interpreter present”), or allow the interpreter to instruct the speaker about the correct mode of address.

- If addressing the interpreter at any point, attorneys need to make it clear (e.g., “Does the interpreter know where that is?”). Even during an informal meeting, the interpreter should not have to decide whether a particular remark is an aside or not meant for the non-English speaker.

INTERPRETERS

- The interpreter should always use the same grammatical person as the speaker.
- If there is time in advance of the proceeding, the interpreter should instruct the parties to speak to each other directly. The interpreter may explain that direct speech avoids confusion and ensures that the parties will be fully understood by everyone, including the interpreter.
- If any of the participants (including the attorneys or the judge) addresses the interpreter instead of the speaker, or if the speaker addresses the interpreter instead of the other participants, the interpreter, referring to her/himself in the third person, should politely remind everyone to use direct speech. This *modus operandi* includes any requests for clarification. Some suggested ways of making this request are:

“Your Honor, to maintain the accuracy of the record, the interpreter requests that counsel be instructed to address the witness rather than the interpreter.”

“The interpreter requests that the deponent not address her, but rather that he respond directly to counsel so as to protect the integrity of the record.”

“Your Honor, so as not to confuse the record, the interpreter requests that you address the defendant directly.”

“Counsel, please speak directly to your client to avoid any misunderstandings.”

- In open court, if a judge addresses the interpreter instead of the witness or the defendant, it should be corrected immediately. It is not easy to point out to judges that they may have misspoken. However, it happens to everyone and judges generally appreciate the clarification. Some interpreters may prefer to address the issue at sidebar; others choose to do so in open court with a phrase similar to the ones that appear above. Most important is to be polite and to convey that the main concern is the accuracy of the interpreting process and/or the record.
- If a party continues to use indirect speech after several polite requests, then one technique to highlight the problem is simply to interpret the utterance exactly, “Ask him where he was living.” The witness is likely to respond, “Ask who?” This is an indirect way of getting the parties to rephrase the question using direct speech.

- Interpreters should resist the temptation to ignore the use of indirect speech by other parties so as not to be disruptive. Not only would the interpreter be failing to comply fully with the requirement of accuracy and completeness, s/he might also get into trouble down the line (as in the last example on page 1). It is best to address the problem as soon as it comes up.
- To ask for clarification or request that the court instruct the parties, interpreters should always use the third person. This practice is essential to identify the interpreter as the speaker. A comment from the interpreter should be clearly distinguishable from one coming from the witness. Compare: “The interpreter didn’t hear the question” to “I didn’t hear the question.”
- Occasionally, speakers will use the interpreter as a point of reference. For instance, a witness might say in the foreign language, “The man was as tall as you are.” If the interpreter becomes aware (either through linguistic information and/or body language) that the speaker is referring to the interpreter, this fact should be placed on the record by saying, “The man was as tall as you are (indicating the interpreter).”

■ Conclusion

When words are especially important and clarity is sought, all parties need to be aware that the interpreter is not a narrator but a repeater. Clear communication is essential in legal settings where the rights of others and life itself are at stake. For the communication process to be effective and objective, the parties should at all times use direct speech.

Footnotes

¹ National Center for State Courts. *Model Code of Professional Responsibility for Interpreters in the Judiciary*. See Canon 1 (www.ncsconline.org/wc/publications/Res_CtInte_ModelGuidePub.pdf).

² González, D. G., Vásquez, V. F., & Mikkelson, H. (1991). *Fundamentals of Court Interpretation: Theory, Policy and Practice* (p. 16). Durham, NC: Carolina Academic Press.

³ 26 Ohio Jurisprudence 3d section 1097 Pleas.

⁴ The Racial Fairness Project, Cleveland, OH (www.racialfairness.org/interpreters.htm) lists several cases under the heading *Speaking in the Third Person*. See also: U.S. v. Gregorio Camejo (333F3d. 669) appealed in 2003 before the U.S. Court of Appeals for the Sixth Circuit.

⁵ *NAJIT Code of Ethics and Professional Responsibilities* (www.najit.org/ethics.html).

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