

THE ADVOCATE

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THROUGH THE EYES OF AN INTERPRETER

by Isabel Framer

Mr. Santos Adonay Pagoada, a Honduran citizen who had been working in Kentucky for some months, was illiterate in Spanish and did not speak English. On July 17, 1997 he was arrested and charged with the murder of Jose Enrique Arambul.

Mr. Pagoada went to trial on February 17, 1998 and was found guilty of murder. On March 13, 1998, Mr. Pagoada was sentenced to 40 years, as per the jury recommendation. On direct appeal, only one issue was raised: failure of the trial court to grant the defendant's motions for directed verdict. On December 17, 1998 the Kentucky Supreme Court affirmed the conviction.

Mr. Pagoada filed a RCr 11.42 motion on December 27, 1999 alleging ineffective assistance to counsel (IAC). A supplemental RCr 11.42 motion was filed on May 12, 2000. Several of the IAC claims centered around the interpretation provided (or lack thereof) to Mr. Pagoada both before and during his trial. The trial court ordered an evidentiary hearing on the motions. The hearing was held on September 7, 2000, and was completed on October 20, 2000.

As an interpreter who had been involved in issues of standards, training and certification testing in Ohio, I was asked by the appellate attorney in this case to review the record and give an expert opinion about the interpretation rendered up until and including the trial. In preparation for this assignment, I viewed the videotapes of Mr. Pagoada's arraignment, suppression hearing and trial. What follows is a summary of the circumstances, followed by my analysis.

IN-COURT PROCEEDINGS

During the arraignment, the interpreter hired by the court sat next to Mr. Pagoada and did not interpret until the Judge gave the next hearing date and directed the interpreter to inform the defendant accordingly.

During the suppression hearing, the same court-appointed interpreter again sat next to the defendant and throughout the entire hearing, which lasted approximately an hour, spoke only sporadically. Sometimes the interpreter sat with his back to the defendant, hand on his chin, listening to the testimony.

When the trial judge, who noticed that the interpreter was not interpreting, brought this fact to the parties' attention, the interpreter informed the court that he, the interpreter, had asked the defendant if he understood and the defendant had said that he did. This verbal exchange between the interpreter and the trial judge was not interpreted to the defendant, nor did the judge ask the defendant whether such a conversation with the interpreter had taken place.

The trial judge informed counsel of her concerns with this interpreter's ability to interpret the trial. The defense attorney recommended another interpreter, whom he had used to interpret jail interviews. The trial judge accepted that interpreter for the trial, but stated that she wanted the interpreter's qualifications to be placed on the record.

TRIAL

At trial, the interpreter was never asked to state her qualifications or experience and was never administered an oath of accuracy.

On the videotape of the trial proceedings, the interpreter can be observed saying a few words every now and then. At a later hearing, the interpreter testified that she had been provided with the medical report but due to her school schedule was unable to review the material. She also stated that she pointed to pictures because she did not know certain medical terminology.

During a crucial part of the trial, the judge held a side bar with the attorneys, Mr. Pagoada, and the interpreter to be certain that Mr. Pagoada understood his right to testify or not to testify. At times the interpretation was nonsensical, composed of words that sound like Spanish but which are not part of the Spanish lexicon, such as "carecto," "satusfichado," "factos," and "consecuencias." Instead of the word "vida" which means "life" in Spanish, she used the word "libra" which means "scale" in Spanish. The effect was that of listening to Sid Caesar imitate a person speaking a foreign language. The interpreter also carried on independent conversations with the defendant and did not interpret these conversations back to counsel or the judge. A small excerpt illustrates the tenor of these exchanges:

Judge: And based on their decision, if he is convicted if they find him guilty of any level on which I instruct.

Interpreter [to Mr. Pagoada, in Spanish]: In their decision, in any part of the court if it's high low it's theirs, they will make the decision.

Judge: As to whether he committed the murder.

Interpreter: [in Spanish] If you committed the assassination.

Judge: Here is what he needs to know. If he is, if he believes that he can convince a jury that he was defending himself, he needs to make that decision as to where enough has been said, or if he needs to say more.

Interpreter: [in Spanish] She says that the [*judados*] are going to make that decision. If you think that they have heard a lot of evidence to defend you, that you were defending your life, then that's fine, but if not, then you should give them an explanation why you think you, you were defending your life. Do you think that they did hear lots of evidence to say, oh yes, this guy was defending his life?

Judge: All right then, I think that whether he accepts it or not, it has been explained to him as adequately as it possibly can be.

ANALYSIS

It was clear from a review of the material that the interpreters used for the interrogation and the in-court proceedings were unable to render the communication accurately. And quite apart from their language ability, all the interpreters observed were unaware of court protocol as well as the interpreter's ethical obligations.

1. An interpreter should not take it upon himself to ask independent questions, omit information or add spin to questions, or engage in private conversation with a defendant. An inexperienced interpreter may, thinking she is "helping," solicit information not otherwise solicited or stop information that might be crucial, substituting her own opinion for that of the interrogating officers. Nor should an interpreter ever be permitted to interview a defendant without an attorney being present. *The interpreter cannot give legal advice.*
2. In court, an interpreter's role is to interpret everything stated by the parties without altering, omitting, editing, or summarizing anything. If an interpreter does not interpret all of the witness testimony in a trial, a defendant cannot participate in his own defense. The interpreter is to interpret accurately what all parties have stated, and not to give brief narrations or summaries. A full rendition of in-court proceedings can only be done if the interpreter interprets simultaneously. Inexperienced interpreters can only render a few words at a time. It is immediately obvious if an interpreter is only speaking sporadically, with long periods of silence, that no simultaneous interpreting is being delivered. Untrained people will resort to summaries or long periods of silence because they do not have the skill—which must be honed through much practice—to listen and speak and process units of meaning in two languages at the same time. This skill cannot be developed overnight or in the course of a trial. It requires much training and practice, as well as understanding of legal terminology and procedure.

3. The judge should have inquired as to the interpreter's background and experience before the trial began. An oath of accuracy should have been administered. Although the trial judge was sensitive to the issue, she believed that anyone claiming to be bilingual was qualified to interpret in court proceedings. 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.
4. A defendant's ability in conversational English is not sufficient to be able to participate meaningfully in legal proceedings. At any rate, the interpreter should not take it on himself to elicit or assess a defendant's ability to understand English. The interpreter's role is to *interpret* unless directed otherwise by the court. If the defendant tells the interpreter not to interpret, the interpreter must immediately make this known to the court.
5. The standard procedures and rules applicable to all defendants in a criminal case should be equally applied to a non-English speaking person. The fact that an interpreter is present is no reason to deviate from those procedures. The interpreter is a vehicle to enable communication to take place between defendant, litigant, or victim with the court and all parties. An interpreter may not step outside his role by encouraging or limiting a defendant's answers.
6. There is a professional code of ethics and practice for court interpreters that is essentially the same for state and federal courts in the United States. There are accepted norms of testing in the field, which vary from state to state, but it is generally agreed that the only way to judge interpreters' competence is through accuracy testing of typical court proceedings. Professional interpreters can offer clear answers when queried as to their knowledge and experience. They belong to associations which assist them in improving their skills and language proficiency through continuing education. They abide by their professional code of ethics and responsibilities. A professionally trained interpreter will uphold the integrity of the profession and the courts. They will accurately represent their credentials and always remain neutral parties, regardless of who has hired them.

SUMMARY

There is no substitute for a professional interpreter, and all parties should beware of imitations. An interpreter should be queried on the record as to court experience and qualifications.

Throughout the years of my experience as a court interpreter, I have heard and personally observed numerous cases where untrained, unqualified interpreters have been provided to the court. I have seen untrained interpreters act as advocates for one or the other party. I have seen interpreters disclose privileged information to the adversary. I have seen interpreters give legal advice, summarize, or explain on their own, legal concepts. I have

seen interpreters who, instead of interpreting, have advised defendants or victims on what to do. I have seen the use of wrong terminology and misinterpretation, leading to wrong impressions by law enforcement, attorneys, judges, juries and defendants. I have seen cases ranging from minor misdemeanors to felonies where friends, advocates from churches, or family members have been used to provide interpretation for law enforcement, prosecutors, defense attorneys and even for the courts. In most of these cases, the persons providing interpretation meant well but end up causing great harm.

I have seen cases reversed due to poor interpretation, and cases dismissed because an interpreter was not used for a consent to search. I have seen cases where evidence was suppressed because *Miranda* was improperly interpreted. I have seen possible rape charges erroneously charged as domestic violence and then later amended to a lesser charge; instead of a qualified interpreter an officer (that claimed to be versed in the Spanish language) was providing the interpretation and did not understand when the victim said that she was being forced to have sex. I have seen family members charged with obstruction of justice because law enforcement used a family member to interpret and then later found out it was misinterpreted.

CODA

Mr. Pagoada's case is still pending. Since the time I gave testimony in this matter, Kentucky joined the National Center for State Courts' Consortium for State Court Interpreter Certification. Twenty-four states are now members of the consortium, which tests interpreters in Spanish and several other languages.

The many problems addressed above are important not only because of the obvious denial of constitutional rights, but to permit such atrocities to occur only calls into question general fairness and due process concerns of us all.

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