

2009



Best Practices

American Sign Language and English Interpretation Within Legal Settings

This document sets forth the Best Practices and Protocols for American Sign Language interpreters working within legal settings.

SUBMITTED ON BEHALF OF THE NATIONAL CONSORTIUM OF INTERPRETER EDUCATION CENTERS (#H160A&B) BY Kellie Stewart, Anna Witter-Merithew and Margaret Cobb, Legal Interpreting Workgroup Members

March 2009



Official Publication of the National Consortium of Interpreter Education Centers © 2009

The National Consortium of Interpreter Education Centers is funded from 2005 – 2010 by the U.S. Department of Education, Rehabilitation Services CFDA #84.160A and B, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind. This project was led by the Mid America Regional Interpreter Education Center (MARIE) (#H160A050006).

Permission is granted to copy the materials enclosed herein, provided that National Consortium of Interpreter Education Centers is credited as the source and referenced appropriately on any such copies.

Table of Contents:

Introduction	7
Acknowledgements	7
Purpose of Best Practices	9
Overview of the Best Practices Document	9
Definitions	10
Section A: Best Practices in Producing Effective Interpretation in Legal Settings	13
<u>Best Practice A1: Best Practice in Producing an Accurate, Meaningful, and Effective Interpretation</u>	<u>13</u>
1.1 Due Process and Effective Interpretation	
1.2 Achieving a Meaningful and Effective Interpretation	
1.3 Time is Necessary to Produce a Meaningful and Effective Interpretation	
<u>Best Practice A2: Best Practice in Consecutive Interpretation During Testimony</u>	<u>14</u>
2.1 Evidence Supports Increased Accuracy and Error Reduction	
2.2 Consecutive Interpretation During Testimony of Deaf Witnesses	
2.3 Consecutive Interpretation Essential in Other Legal Settings	
<u>Best Practice A3: Best Practice is Note-Taking During Consecutive Interpretation</u>	<u>16</u>
3.1 Note-taking Enhances Accuracy in Consecutive Interpreting	
<u>Best Practice A4: Best Practice for Simultaneous Interpretation</u>	<u>16</u>
4.1 Evidence of the Limitation of Simultaneous Interpretation	
4.2 Factors Influencing the Accuracy of Simultaneous Interpreting	
4.3 Cautions in the Use of Simultaneous Interpretation	
Section B: Best Practice in Team Interpreting	18
<u>Best Practice B5: Team Interpreting is the Best Practice for Legal Interpreting</u>	<u>18</u>
5.1 Purpose of Effective Team Interpreting	
5.2 Evidence Supporting the Best Practice of Team Interpreting	
Section C: Best Practices in Collaborating With Deaf Interpreter Specialists	19
<u>Best Practice C6: Deaf Interpreters Enhance Effectiveness of Interpretation</u>	<u>19</u>
6.1 Appropriate and Reasonable Accommodation	
6.2 Evidence Supporting Effectiveness of Deaf Interpreters	

<u>Best Practice C7: Deaf Interpreters Present and Interpreting Throughout a Case</u>	21
7.1 Effectiveness of the Deaf Interpreter Requires Consistency	
<u>Best Practice C8: Deaf Interpreters Effective When Interpreting for Deaf Children</u>	21
8.1 Effectiveness of the Deaf Interpreter When Working With Deaf Children	
Section D: Best Practice of Visually Recording a Statement or Interpretation in ASL	22
<u>Best Practice D9: Creating a Record of the Statement and Interpretation</u>	22
9.1 Video Recording Statements in American Sign Language	
9.2 Video Recording the ASL/English Interpretation	
9.3 Recommended Video Recording Protocol	
9.4 Providing Effective Guidance to Court, Legal, and Law Enforcement Personnel	
Section E: Best Practices for the Training, Experience and Credentials of Highly Qualified Legal Interpreters	23
<u>Best Practice E10: Legal Interpreters as Specialist Practitioners</u>	23
10.1 Legal Interpreting Requires Specialized Expertise	
10.2 Specialist Legal Certification	
<u>Best Practice E11: Mentoring and Supervision for Newly Trained Legal Interpreters</u>	24
11.1 Mentoring and Supervision	
Section F: Best Practices for Staffing Legal Assignments	24
<u>Best Practice F12: Distinct and Specialized Roles for Legal Interpreters in Court</u>	24
12.1 Distinct and Specialized Functions of Legal Interpreters in Court	
12.2 Proceedings Interpreter (PI) – Officer of the Court	
12.3 Table Interpreter (TI)	
12.4 Monitoring Interpretations	
<u>Best Practice F13: Staffing for Effective Interpreting Outcomes</u>	26
13.1 Assessing the Interpreting Needs of Deaf Party	
13.2 Evaluating the Interpreter’s Qualifications Prior to Staffing	
13.3 Assessing the Need for Multiple Teams of Legal Interpreters	
13.4 Assessing the Need for a Deaf Interpreter Specialist	
13.5 Identifying External Factors Affecting Successful Interpreting Interactions	
13.6 Identifying Conflicts of Interest When Staffing Cases	
<u>Best Practice F14: Staffing for Interpreter Consistency and Continuity</u>	28

14.1	<i>Consistency and Continuity When Staffing Legal Interpreters</i>	
14.2	<i>Maintaining Consistent Interpreters for Deaf Jurors and Witness Testimony</i>	
Section G: Best Practices for Legal Interpreter Preparation in Court and Legal Matters		30
<hr/> Best Practice G15: Case Preparation Essential for Effective Interpreting		30
15.1	<i>Reviewing Case Files, Motions and Other Court Documents</i>	
15.2	<i>Researching Additional Relevant Information</i>	
<hr/> Best Practice G16: Best Practice for Prior Preparation With the Judge and Attorneys		30
16.1	<i>Preparing for Meetings With the Presiding Judge and Attorneys</i>	
16.2	<i>Resolving Seating, Sightline, Lighting, and Auditory/Visual Needs</i>	
16.3	<i>Assessing the Communication Needs of the Deaf Party or Witnesses</i>	
16.4	<i>Requesting Clarification of Ambiguous Questions or Statements</i>	
16.5	<i>Procedure for Correcting Interpretation Errors</i>	
16.6	<i>Identifying Procedural and Logistical Differences Between Bench and Jury Trials</i>	
<hr/> Best Practice G17: Best Practice for Qualifying the Court Interpreter		32
17.1	<i>Creating a Portfolio for the Qualifying Process</i>	
17.2	<i>Preparing for the Qualifying Process</i>	
17.3	<i>Taking the Oath Prior to the Qualifying Process</i>	
 Section H: Best Practice for Interpreting Depositions		33
<hr/> Best Practice H18: Best Practice for Staffing Depositions		34
18.1	<i>Justification for Staffing Legal Interpreters for Depositions</i>	
 Section I: Best Practice for Interpreting Attorney–Client Interactions		34
<hr/> Best Practice I19: Best Practice for Protecting the Attorney-Client Privilege		35
19.1	<i>Maintaining the Privilege</i>	
 Section J: Best Practices for Effectively Interpreting Law Enforcement Interactions		35
<hr/> Best Practice J20: Best Practices for Staffing Legal Interpreters for Law Enforcement		36
20.1	<i>Legal Interpreters for Law Enforcement Interactions</i>	
20.2	<i>Legal Interpreters for Law Enforcement Investigations</i>	
<hr/> Best Practice J21: Best Practice in Team Interpreting for Law Enforcement		36

21.1	<i>Effective Team Interpreting in Law Enforcement Interactions</i>	
	<i>Best Practice J22: Deaf Interpreters Enhance Effectiveness of Interpretation</i>	37
22.1	<i>Effective Interpreting With Deaf Interpreters</i>	
	<i>Best Practice J23: Visually Recording the Interpretation of the Miranda Warning</i>	37
23.1	<i>Video Recording the Interpretation of the Miranda Warning</i>	
	<i>Best Practice J24: Creating a Record of the Statement and Interpretation</i>	38
24.1	<i>Video Recording Statements in American Sign Language</i>	
24.2	<i>Video Recording ASL/English Interpretation</i>	
	References	39
	Other Resources	41
	Appendix A	43
	Appendix B	49

Introduction:

The mission of the National Consortium of Interpreter Education Centers (NCIEC) is to build and promote effective practices in interpreting education. The NCIEC draws upon the wisdom and energy of experts, consumers and other stakeholders to advance the field. The NCIEC is dedicated to challenging the status quo by promoting innovation, strong partner networks and multiculturalism throughout its programming. As responsible stewards of public funding, NCIEC is committed to products, programs and services that maximize resources and are replicable, measurable, sustainable and non-proprietary.

Towards the goal of increasing the number of qualified interpreters and advance the field of interpreting education, the NCIEC has established a number of work teams dedicated to a specific area of specialization. One such workgroup is the NCIEC Legal Interpreting Workgroup, comprised of a group of core and expert members focused on defining the best and effective practices associated with legal interpreting.

Interpreting in the legal setting is a long-recognized area of specialization in the field of ASL-English interpreting. Tradition from the field of spoken language interpreting and legal community contribute to the conventional way legal interpreting work is performed. As well, practices have been conceived by ASL-English interpreter practitioners over time through a process of application of theory drawn from the profession's scholarship. As more scholarship and research emerge, practices evolve, improve, and change.

The NCIEC Legal Interpreting Workgroup has sought to further this process by building a series of expert, practitioner, educator and consumer partnerships that deepen our understanding of the work of interpreters in the legal setting. Through a series of focus groups and expert consultations with Deaf and non-deaf interpreter practitioners specializing in legal interpreting, and with consultation from members of the judiciary, the NCIEC Legal Interpreting Workgroup has developed this document of current *Best Practice* that addresses some of the most critical and essential elements of legal interpreting work.

As the work of the NCIEC Legal Interpreting Workgroup continues, and the practices discussed within this document are applied more consistently by legal interpreting practitioners, these *Best Practices* are likely to be improved and to evolve further. As well, additional practices—particularly those relating to unique settings within the legal system such as immigration, custodial interrogation, video remote interpreting and juvenile matters—will be considered, examined, and documented. Therefore, this document is viewed as an evolving one that will continue to improve over time and application.

Acknowledgements

There are a number of individuals and entities that must be recognized as a part of this document. First, sincere appreciation and gratitude is extended to Drs. Linda Stauffer and Leilani Johnson, Co-Directors for the Mid-America Regional Interpreter Education Center

(MARIE) who both provided the administrative leadership and majority of funding for the Legal Interpreting Workgroup since its inception in 2005. MARIE is one of the six centers that comprises the National Consortium and from the beginning of the 2005-2010 RSA grant funding cycle, MARIE committed to legal interpreting as one of its project priorities.

Sincere appreciation and gratitude is also extended to all the other Directors who make up the NCIEC and administer one of the remaining five (5) Centers—Ms. Pauline Annarino (WRIEC), Dr. Laurie Swabey (CATIE Center), Ms. Cathy Cogen (NURIEC), Ms. Bev Hollrah (GURIEC), Dr. Betsy Winston (NIEC)—who offered guidance and direction throughout the development of the Workgroup’s scope of work and provided additional funding to support the Workgroup’s various activities.

The core Workgroup for this initiative is comprised of Anna Witter-Merithew, Team Leader (MARIE Center), Jimmy Beldon (MN), Margaret Ransom Cobb (CA), Jan DeLap (MD), Richard Laurion (CATIE), Carla Mathers (MD) and Kellie Stewart (MA). During 2005-2009, these individuals have provided countless hours to the discussion, organization and documentation of these *Best Practices*. Their contributions are significant and herein acknowledged with heartfelt appreciation. The writing intensive phase of this current iteration of the *Best Practices* is the result of extensive contributions made by three specific members of the core workgroup: Kellie Stewart (lead author), Margaret Ransom Cobb, and Anna Witter-Merithew.

The original source for much of the practice defined in this document is the expert opinions provided by a group of national experts in Legal Interpreting brought together in June 2007 for the purpose of examining various aspects of the work of legal interpreters. The individuals participating in that expert group follow.

Name	State
Keri Brewer	Oregon
Jan DeLap	Maryland
John Folker	Arizona
Jo Linda Greenfield	Colorado
Lisa Gonzales	California
Lorrie Kosinski	Colorado
Richard Laurion	Minnesota
Carla Mathers	Maryland
Priscilla Moyers	California
Rachel Naiman	Colorado
Cynthia Napier	New Mexico
Sharon Neumann Solow	California
Lynda Rimmel	Colorado
June Prusak	Illinois
Kellie Stewart	Massachusetts
Anna Witter-Merithew	North Carolina

The contributions of each of these individuals, as well as the many other practitioners and stakeholders who will offer insight and feedback through survey and focus group are greatly appreciated. As a result of their efforts, the field of legal interpreting will be advanced.

Purpose of Best Practices:

For the purpose of this document, a *Best Practice* is defined as the most efficient (least amount of effort) and effective (best results) way of accomplishing some element of work associated with a particular discipline—in this instance, interpreting in court and legal settings (*Tileston, 2000*). These practices have been applied by expert practitioners in the field, over time and in a wide range of legal situations. Consensus around these practices has been sought and will continue to be sought through survey and focus groups with a broad base of legal interpreting practitioners. Several of the practices within this document have been researched and found to result in the desired outcome, and where applicable, that research is cited. Scholarly works from the fields of interpreting and interpreter education that have contributed to these *Best Practices* are cited throughout the document.

The purpose of this *Best Practices* document is to offer an explanation and rationale for a series of practices that are deemed by expert practitioners to result in a desired outcome with fewer problems and unforeseen complications. It is anticipated that application of these *Best Practices* by interpreter practitioners and interpreter educators will result in more standardized, reliable and effective outcomes. It is also anticipated that as part of the evolving process associated with these *Best Practices*, more and more of these standards will be researched in an effort to determine if they are in fact the most effective practices for interpreting in the legal setting.

Overview of the *Best Practices* Document

These *Best Practices* are divided into ten (10) separate sections, each of which addresses a particular aspect of the work of legal interpreters. They are:

- A. *Best Practices in Producing Effective Interpretation in Court and Legal Settings*
- B. *Best Practice in Team Interpreting for Court and Legal Settings*
- C. *Best Practices in Collaborating With the Deaf Interpreter Specialists in Court and Legal Settings*
- D. *Best Practice of Visually Recording a Statement or Interpretation in American Sign Language*
- E. *Best Practices for Obtaining Training, Experience, and Credentials of Highly Qualified Legal Interpreters*
- F. *Best Practices for Staffing Legal Assignments*
- G. *Best Practices for Legal Interpreter Preparation in Court and Legal Matters*

H. *Best Practice for Interpreting Depositions*

I. *Best Practice for Interpreting Attorney-Client Interactions*

J. *Best Practices for Interpreting Law Enforcement Interactions*

Each section includes a best practice topic statement, followed by individual numbered practices describing the elements essential to the delivery of high quality legal interpreting services. These elements include explanations and/or rationales designed to assist in determining the relevance and value of those practices to the experiences of legal interpreting practitioners. Existing research and scholarship supporting the practice is cited when available and appropriate.

Definitions:

Throughout this document the following terms will be used. The definitions are provided to establish the meaning of the terms as used within this document.

1. **American Sign Language** – A visual-gestural language created by deaf people. It is not English. ASL has all of the elements of any spoken language. Its grammar and conversational rules are very different from spoken English, but like all languages, it comprises a set of abstract symbols agreed upon by those who “speak” it. (*Handbook for Ohio Judges*)
2. **Best Practice** – A best practice is a technique or methodology that, through experience through application by practitioners and/or research, has proven to lead reliably to a desired result. A commitment to using the best practices in any field is a commitment to using all the knowledge and technology at one's disposal to ensure success. <http://www.bitpipe.com/tlist/Best-Practices.html>
3. **Conflict of Interest** – Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. Interpreters shall be impartial and unbiased and shall refrain from conduct that may give the appearance of bias. Interpreters shall disclose any real or perceived conflict of interest. (*National Center for State Courts Model Code, p. 202*).
4. **Consecutive Interpreting** – The process whereby an interpreter waits until a complete thought or group of thoughts has been spoken or signed, in order to understand the entire segment before beginning the interpretation, resulting in a very high standard of accuracy in the interpretation. (*Russell, p. 52*)
5. **Court Interpreter:** The generic term used to refer to the interpreter who performs the proceedings function. The term "court interpreter" is used both by ASL interpreters and in the spoken language interpreting community. (*Mathers, p. 221*)
6. **Deaf Interpreter** – A specialized, professional sign language interpreter who is deaf, trained, and certified in communicating with semi-lingual deaf individuals. (*Mathers, C. and Witter-Merithew, A., 2008*).

7. **Direct Speech** – The most important standard technique an interpreter uses. While interpreting, the interpreter assumes the same grammatical voice as the original speaker and never interjects himself into the communication by using the third person (“*He says that...*”). The use of direct speech lessens confusion, keeps the written record clear by making it plain that is speaking, and enables the parties to communicate directly with each other as though no language barrier were present. (*NAJIT position paper*, www.najit.org.)
8. **Discourse** – a verbal, signed or written exchange; a conversation or communication. (<http://www.thefreedictionary.com/discourse>)
9. **Effective Interpretation** – The production of an interpretation from one spoken or signed language into another that is functionally equivalent and meaningful for all participants.
10. **Effective Practice** – Those practices that have been established through scientific research, case law, or other verifiable authority to be most successful for the purpose of achieving a desired outcome, for this discussion, effective interpretation.
11. **Hearing** – The term used to refer to an individual who is not deaf.
12. **Interpretation** – The unrehearsed, transfer of meaning from a spoken or signed message within one language into another language.
13. **Interpreter’s Oath** – The oath used to officially swear in a signed or spoken language interpreter prior to both the swearing in of witnesses and the commencement of an official court or legal proceeding. (*Federal Rules of Evidence 604, 2004*)

Example: “*Do you solemnly swear or affirm under the penalties of perjury to interpret accurately, completely and impartially using your best skill and judgment in accordance with the Code of Professional Responsibility for Court Interpreters?*”
14. **Legal Interpreter:** A highly skilled generalist interpreter who has had extensive training, experience and supervision working in a variety of legal settings and has demonstrated the requisite knowledge and skills to work in such settings through testing and certification as a legal interpreting specialist. (www.rid.org)
15. **Legal Interpreting:** A broad category of specialized interpreting work which is practiced in a variety of legal settings including, but not limited to: administrative hearings of governmental agencies; law enforcement and investigation interviews; depositions; attorney-client interactions; and courtroom proceedings.
16. **Limited English Proficiency** – The federal term for people who do not speak English as their primary language and have a limited or basic ability to communicate within or understand the English language. (*Executive Order 13166, 2004*)
17. **National Association of Judiciary Interpreters and Translators (NAJIT)** – A non-profit organization of judiciary-interpreting and legal-interpreting professionals with a mission of promoting quality interpretation and translation services in the judicial system. (www.najit.org)

18. **Privileged Communication:** Communication that occurs in a setting of legal professional confidentiality. Attorney-Client Privilege is an evidentiary privilege protecting the confidential communications between a client and his or her attorney from disclosure to another party; this can be waived by the client but not by the attorney. (*The Dictionary of Legal Terms, 2nd Edition, by Steven H. Gifis*).
19. **Registry of Interpreters for the Deaf (RID)** – The national association and certifying body for sign language interpreters in the U.S. (www.rid.org)
20. **RID Generalist Interpreting Certification** – National certification classified as generalist signifies that the practitioner has demonstrated interpreting knowledge and skills that have the potential to meet the needs of consumers in a broad range of general interpreting/transliterating assignments. (**Refer to Appendix A for a more detailed delineation of National RID Generalist certification.** www.rid.org)
21. **RID Specialist Interpreting Certification** – National certification classified as specialist signifies that the practitioner has demonstrated interpreting knowledge and skills within a specific domain or specialty of interpretation that goes above and beyond the knowledge and skills of generalist certified interpreter. (**Refer to Appendix A for a more detailed delineation of National RID Specialist certification.** www.rid.org)
22. **Sight Translation** – The unrehearsed interpretation of written documents from text into a spoken or signed language (*Adapted from the Handbook for Ohio Judges*)
23. **Simultaneous Interpretation** – The process whereby an interpreter begins the interpretation while another person is still speaking or signing overlapping the original message or source with the interpretation simultaneously. (*Russell, p 52*)
24. **Summary Interpretation** – A summarized paraphrase of a message from one language into another. Summary interpretations, by their very nature, are not dynamically equivalent to the original message nor can they be construed to be accurate and complete. (*Emerson Crooker, p 27*)
25. **Team Interpreting** – The practice of using two hearing interpreters who rotate to provide simultaneous or consecutive interpretation for one or more deaf or hard of hearing individuals. (*2007 - NAJIT Position Paper, Team Interpreting*)
26. **Translation** – The rehearsed conversion of a written text from one language into a written text in another language. (*Handbook for Ohio Judges*)

The Best Practices and Protocols

The *Best Practices* set forth in this document are critical in ensuring that professional interpreters specializing within court and legal proceedings perform their interpreting duties in the most effective, accurate and ethical manner.

Section A: Best Practices in Producing Effective Interpretation in Court and Legal Settings

Best Practice: A.1

The best practice for producing an effective interpretation in court and other legal settings is to achieve an accurate, meaningful, and effective interpretation that meets the cultural and linguistic needs of the deaf individual or party.

1.1 Due Process and Effective Interpretation

The U.S. Constitution guarantees individuals the right to due process and the right to meaningful participation in court and/or legal proceedings in which they are involved. Providing Limited English Proficient (LEP) and/or are deaf or hard-of-hearing individuals with legal interpreters who possess the knowledge, skills and ability to provide a meaningful and effective interpretation is essential to upholding these individual rights.

1.2 Achieving a Meaningful and Effective Interpretation

Court and legal settings constitute a “high risk” venue for deaf and hard of hearing individuals. Miscommunication can have devastating consequences for those who find themselves involved in legal matters. Russell notes, “There is widespread agreement among experts in the field of interpretation that the principle of accuracy of courtroom interpretation is extremely important to the integrity of the legal system and to ensuring non-English speakers have equitable access to justice” (p. 57). An interpretation is functional and effective when conveying meaning from one language into another in a manner that meets the communication needs of the deaf individual or party.

1.3 Producing an Accurate, Meaningful, and Effective Interpretation Requires Time

It is not uncommon for the general public to assume that interpreting between two languages occurs almost instantaneously. It may appear that while one speaks or signs an interpreter instantly and effectively formulates an accurate interpretation into the target language. In reality, interpreting between two languages is a highly

complex process requiring time, even from the most highly skilled, expert legal interpreters.

To achieve an accurate, meaningful, and effective interpretation, it is necessary for legal interpreters to put the fidelity of the interpretation above any pressure to produce a speedy, pseudo-efficient interpretation.

Best Practice A.2

When interpreting in court and legal settings, consecutive interpretation is the best practice for achieving an accurate, meaningful, and effective interpretation.

2.1 Evidence for the Increased Accuracy When Using Consecutive Interpretation Verses Simultaneous Interpretation

Spoken language interpreters have primarily interpreted consecutively, waiting for an utterance to come to a logical conclusion or stopping point before speaking the interpretation of that intact segment. They have done so for both pragmatic and technical reasons. Listening to a spoken interpretation at the same time a foreign speaker is speaking creates difficulty hearing the message, as well as monitoring the fidelity of the interpretation. Literature and research within the field of spoken language interpreting states that “consecutive interpreting is used whenever a high degree of accuracy is needed (Gonzalez, Vasquez and Mikkelson, 1991, p. 379) Research from the field of sign language interpreter reinforces that “consecutive interpretation allows for a greater degree of accuracy than simultaneous interpreting.” (Russell, p. 2) In its position paper titled, *Modes of Interpretation: Simultaneous, Consecutive and Sight Translation*, NAJIT states, “Consecutive interpreting is a true and accurate interpretation of one language to another...” (www.najit.org)

American Sign Language (ASL) is a distinct and separate language from spoken English. It is a highly visual language with its own grammar, syntax and cultural complexities that affect the way the language is used among Deaf people for whom ASL is a native or near native language. Interpretation between two languages requires an interpreter who is bi-lingual and bi-cultural in ASL and English in order for the interpretation to be effective. Because ASL/English interpreters are working between two distinct languages, experience and research demonstrate that consecutive interpreting substantially increases the accuracy, meaning, and effectiveness of ASL/English interpretation.

Dr. Debra Russell conducted a research study comparing the differences in the effectiveness of sign language interpretation using simultaneous and consecutive approaches. Russell found that when court interpreters used consecutive interpreting, a higher degree of interpreting accuracy was achieved (*Russell, 2002, p. 159*).

This study lends support to the experiences of highly qualified legal interpreters in the use of consecutive interpreting in court and legal proceedings to improve the accuracy and effectiveness of the interpretation (*Russell, p. 53*).

2.2 Consecutive Interpretation Essential during Expert Testimony, Direct and Cross Examination of Deaf Witnesses

In Russell's research (2002), evidence showed fewer error rates during expert witness testimony and in the direct and cross-examination of a deaf witness when compared to simultaneous interpreting. Russell notes that, "*While all aspects of a trial are important, the area of giving direct evidence and the subsequent cross-examination is critical*" (*p., 160*). Given that these discourse types play an evidentiary role in courtroom interactions and depositions, increasing accuracy and reducing errors in testimony is essential to the fidelity of the evidence and trial process (*Russell, p. 160*).

Although Russell's research study focused on courtroom interactions, it is recognized that depositions are legal proceedings that involve the taking of testimony under oath. Therefore, the same best practices of consecutive interpreting apply to depositions as they do to interpreting courtroom testimony.

2.3 Consecutive Interpretation Essential in Other Legal Settings

When interpreting in legal settings involving interactions other than taking a statement or testimony, the use of consecutive interpreting continues to be the most effective method for achieving a higher degree of accuracy when interpreting between two languages. These interactions may involve investigations, attorney-client interviews, interviews of witnesses, mediation, court ordered meetings, etc.

Best Practice A.3

When engaged in consecutive interpreting, note-taking is a best practice that significantly improves the interpreter's ability to recall details, organize ideas for deep processing and increase the accuracy, meaning, and effectiveness of an interpretation in court and legal settings.

3.1 Practice Shows Significant Benefits to Memory and Effective Interpreting When Note-taking During Consecutive Interpreting

Interpreting between two or more languages engages both short-term and long-term cognitive memory (Cokely, 1992). When interpreting consecutively, interpreters rely heavily on recalling details to ensure an accurate and effective interpretation. The high stakes nature of legal interpreting emphasizes the critical need for interpreters to take measures that will assist in the accurate recall of a message, particularly when interpreting witness testimony.

Both spoken language and sign language interpreting professions have identified significant benefits to the use of note-taking in consecutive interpreting. Note-taking is a skill that must be developed. According to Hanh (2006), note-taking helps improve the interpreter's concentration, relieves the pressure placed on an interpreter's working memory and helps to ensure that details are not lost in the interpretation (p. 13). This is critically important for consecutive interpretation within the court and legal proceedings where testimony becomes or has the potential to become evidence in a court case.

Best Practice A.4

Legal interpreters engage the use of simultaneous interpreting when it achieves accuracy, meaning, and effectiveness in the interpretation and meets the cultural and linguistic needs of the deaf party.

4.1 Evidence of the Limitation of Simultaneous Interpretation

Historically, simultaneous interpretation has become most prominent method of interpreting within the field of American Sign Language and English interpretation. This occurred, in part, because interpreting between a spoken language and a visual language does not create overlapping or competing sound between a message and the interpretation. Simultaneous interpretation has allowed for greater efficiency in the production of the interpretation because the interpreter is signing while listening to spoken English or listening to spoken English while producing the interpretation into ASL (Russell, p. 52).

While simultaneous interpretation is perhaps more efficient, it is not a guarantee of accuracy and effectiveness, particularly when interpreting between two languages such as ASL and English. In Russell's research, she indicates that interpreters were aware that simultaneous interpretation was less accurate, but that there often remained tremendous pressure on interpreters to "keep up with the volume" (p. 155). In particular, she found that there were increased errors during simultaneous interpretations of expert witness testimony, direct examination and cross examination. (p. 160)

Thus, it is critical for legal interpreters to always remain cognizant of the limitations of simultaneous interpretation. It is not uncommon for interpreters to experience mental interference while attempting to simultaneously process incoming and outgoing messages. This interference causes, not only increases the risk of errors in the interpretation, but also makes it increasingly more difficult for legal interpreters to catch interpreting errors as they occur.

4.2 Factors Affecting the Accuracy of Simultaneous Interpretation

There are situations in which simultaneous interpretation can be meaningful and effective, such as when interpreting for a deaf person fluent in the English language. Not all deaf people are fluent in American Sign Language (ASL). Some may be bilingual in both sign English and ASL. Others may only be fluent in sign English. When interpreting from spoken English to sign-based English, simultaneous interpreting can be both effective and efficient. It is important to keep in mind, however, that an efficient interpretation is not more important than an effective one, and the more dense or technical the material, the longer the interpretation process.

Whether or not simultaneous interpretation is effective can also be influenced by a number of other factors, such as the interpreter's familiarity with the subject matter, the predictability of communication, the amount of prior preparation, the speed at which the interpreter is expected to keep pace, mental and/or physical fatigue, the specific language needs of the deaf party, etc. (Russell, pp. 154 – 168). Thus, legal interpreters should evaluate all the interpreting-related demands of the situation to determine the most appropriate method of interpreting.

4.3 Cautions in the Use of Simultaneous Interpretation in Court

While simultaneous interpretation does have its application in court and other legal proceedings, and with particular deaf parties, legal interpreters must examine the assumption that it is the status quo approach. They must be able to assess the pragmatics of each situation, and determine whether or not the use of simultaneous interpretation meets the best practice of meaningful and effective interpretation.

Proceedings interpreters frequently use simultaneous interpretation while interpreting open court or legal proceedings in which the deaf party is "playing a passive role in court" (NAJIT Position Paper: Modes of Interpretation: Simultaneous, Consecutive and Sight

Translation, www.najit.org). Given the research on simultaneous interpretation, it is important to consider that for a deaf person who is fluent in ASL, effectiveness of the interpretation might be compromised when interpreting simultaneously. This can adversely affect whether a deaf person has sufficient understanding of the proceedings to assist counsel in his or her defense.

Section B: Best Practices in Team Interpreting for Court and Legal Settings

Best Practice B.5

Legal interpreters recognize that working in teams is the best practice for achieving an accurate, meaningful, and effective interpretation in court and legal settings.

5.1 Purpose of Effective Team Interpreting

“Team interpreting is the quality control mechanism, implemented to preserve the accuracy of the interpretation process in any circumstances” (www.najit.org). Within the field of sign language interpreting, it generally refers to the industry standard of hiring two hearing interpreters to work together to accurately and effectively interpret a communication exchange. Team interpreters are necessary for the purposes of turn-taking to reduce mental fatigue, reducing the potential for errors in the interpretation, monitoring the accuracy of the interpretation, assisting with note-taking, and monitoring the environment and logistics of the setting while the interpreting is produced.

5.2 Evidence Supporting the Best Practice of Team Interpreting

Studies from the fields of spoken and sign language interpreting have shown that mental fatigue sets in after approximately 30 minutes of sustained simultaneous interpretation, resulting in a marked loss in the accuracy of the interpretation (Cokely, 1992; Moser-Mercer, 1998). This is the case regardless of the level of experience or skill on the part of the court or legal interpreter (NAJIT Position Paper: Team Interpreting, www.najit.org). A study by Barbara Moser-Mercer and her colleagues at the University of Geneva’s École de Traduction et d’Interprétation on the affects of stress and fatigue on conference interpreting, showed that the interpreters not only exhibited an increase in errors after 30 minutes, but also “appeared to be unaware of this decline in quality” (Vidal, p. 1).

Broadly speaking, the need for team interpreting is determined by a variety of factors including, the length of the assignment, the number of deaf consumers, the varieties of communication modalities and language used by multiple deaf and hard of hearing

parties in a given case or legal setting, as well as the complexity of the subject matter and situation. “The subject matter of court hearings varies, but may include legal arguments in a motion to suppress evidence; cross-examination of experts; syntactically dense jury instructions; nervous witness testimony; or a complex or under-articulated recitation of facts. There is a limit to the focused concentration needed to comprehend complex language at high speed and render it accurately in another language. Inattention, distraction or mental exhaustion on the part of the interpreter can have adverse consequences for defendants, litigants, witnesses, victims, and the judicial process in general” (www.najit.org).

As Vidal (1997) points out, “Fatigue for interpreters is not primarily physical, as in the case of athletes, whose muscles become strained after sustained exertion: it is mental fatigue. It results from complex mental processing and the high degree of concentration the interpreter must have to hear, then understand, analyze and finally express ideas coherently in another language.” She quotes Patricia Michelson who reported in *The Court Management and Administration Report*, “Most people do not realize that an interpreter uses at least 22 cognitive skills when interpreting,” and goes on to state “other studies of simultaneous interpretation have shown that fatigue is exacerbated by environmental factors that interfere with various aspects of the cognitive process” (*The Ohio Handbook for Judges*, p. 107).

Unrecognized errors in legal interpreting constitute a risk, both to the deaf party and the administration of justice. Thus, to maintain the accuracy and effectiveness of the interpretation, team interpreting is necessary to reduce the rate of error within the interpretation due to mental fatigue.

Section C: Best Practice in Collaborating With Deaf Interpreter Specialists in Court and Legal Settings

Best Practice C.6

It is best practice to collaborate with deaf interpreter specialists in court and legal settings because deaf interpreters are able to enhance the accuracy, meaning, and effectiveness of the interpretation.

6.1 Appropriate and Reasonable Accommodation

“A significant population of deaf people exists in this country which research has demonstrated will be able to participate in the justice system to the level required by due process with the provision of a deaf interpreter” (March 2009, NCIEC Brief – *The Deaf Interpreter in Court*, p. 102). When deaf parties who could benefit from working

with a deaf interpreter are not provided one, the meaning and effectiveness of the interpretation will be adversely affected.

6.2 Evidence Supporting the Effectiveness of Deaf Interpreters

Legal interpreters recognize that working with deaf interpreters enhances the accuracy, meaning, and effectiveness of court and legal interpreting.

The National Consortium of Interpreter Education Centers (NCIEC), funded by the United States Department of Education, has undertaken two endeavors examining the benefits of working with deaf interpreters and the growing field of Deaf Interpreting. First, the NCIEC Work Team “surveyed the profession and concluded that deaf individuals with certain characteristics benefited from receiving interpretation services provided by a deaf interpreter” (*March 2009, NCIEC Brief – The Deaf Interpreter in Court, p.9*). These characteristics include:

- Underdeveloped ASL skills
- Limited socialization in the Deaf Community
- Limited education
- Cognitive challenges
- Delayed language
- Organic issues causing affect deficiencies
- Mental illness
- Problems caused by drug abuse
- Other physical challenges

Second, the NCIEC commissioned a lengthy document now completed in final draft form titled, “The Deaf Interpreter in Court: An Accommodation that is More than Reasonable,” prepared for the NCIEC by Carla M. Mathers, Esq., SC:L, CSC. This document outlines the numerous rationales in support of the best practice of hiring deaf interpreters in court and legal settings.

These recent NCIEC endeavors have laid out in explicit detail characteristics of deaf individuals who will benefit from working with a deaf interpreter, as well as evidence of situations in which hearing interpreters should insist a deaf interpreter be appointed to the team. The document further supports the findings of the NCIEC Deaf Interpreter Expert Work Team and takes the initiative a step beyond by examining benefits of hiring deaf interpreters in court and legal settings. This document also identifies statutory and common law authority for appointing deaf interpreters in court.

The document drafted for the NCIEC provides the detailed evidence for the best practice of working with deaf interpreters in court and legal settings. Court and legal interpreters should be familiar with this NCIEC document and adhere to its recommendations when working in court and legal settings.

Best Practice C.7

Because deaf interpreters improve the accuracy, meaningfulness, and effectiveness of an interpretation for a deaf individual or party, it is best practice for the deaf interpreter to be present and interpreting for the deaf party at all times during the court case, court or legal proceeding, deposition, legal interview, etc.

7.1 Effectiveness of the Deaf Interpreter Requires Consistency

When deaf interpreters are working with a particular deaf party or individual, those deaf interpreters should always be used for any communication that occurs with that individual, no matter how insignificant the communication may seem. If the deaf interpreter is not present at any time, interpreting for that deaf party should be suspended until the deaf interpreter has returned or is available. To do otherwise can be detrimental to the accuracy, meaningfulness, and effectiveness of the interpretation. In addition, it can undermine the relationship between the deaf party and the deaf interpreter. It can also perpetuate the false impression that the deaf party can receive an accurate, meaningful, and effective interpretation in the absence of the deaf interpreter—an impression that is counter to the very reason the deaf interpreters were used.

Best Practice C.8

It is best practice for deaf interpreters to interpret for deaf minors involved in court and legal matters.

8.1 Effectiveness of the Deaf Interpreter When Interpreting for Deaf Minors

The communication and interpreting needs of deaf minors involved in court and legal matters present unique and precarious challenges for interpreters. Many factors such as age of the minor, life experience, whether or not the minor has a secondary disability, level of education, type of education, exposure to American Sign Language, experience communicating through an interpreter, emotional state, etc., affect whether or not a deaf minor has the linguistic, developmental and cognitive abilities to effectively engage in communication via an interpreter, or even understand an interpreted message. As specialists, deaf interpreters are in a position to more accurately assess the interpreting needs of a deaf minor and to provide an accurate, meaningful, and effective interpretation.

Section D: Best Practice of Visually Recording a Statement or Interpretation in American Sign Language

Best Practice D.9

It is best practice to create a video recording of a deaf person's statement, interview, deposition, testimony, etc., and the interpretation of that interaction, when the deaf person's statement and/or the interpretation has the potential to become evidence or necessitate future analysis in a court or legal matter.

9.1 Video Recording Statements in American Sign Language

Creating a visual recording through the use of VHS or digital technology is the only way to preserve a statement made by a deaf person using sign language. Without a record of the deaf person's statement, the interpretation of the deaf person's statement is all that remains. Although legal interpreters take precautions to reduce the potential risk of error in an interpretation that risk does persist. Capturing the original statement of the deaf person on video is essential for preserving any evidence for a legal challenge that might arise during a court or legal proceeding.

NOTE: It is assumed that when creating a video recording, all sound is also simultaneously recorded.

9.2 Video Recording the ASL/English Interpretation

Using technology to visually record an ASL/English Interpretation is the only way to preserve an accurate video record of the interpretation a deaf person received in the course of making a statement. Recording the interpretation is essential for preserving any evidence or future need for analysis of the interpretation that might arise during a court or legal proceeding. NOTE: It is assumed that a video recording includes all signed and spoken information.

9.3 Recommended Video Recording Protocol

When visually recording a deaf person's statement and an ASL/English interpretation, it is important that the technology capture a simultaneous, full, and clear view of both the statement and the interpretation for later analysis—this means both the video and audio recorded simultaneously. If logistics prohibit obtaining a full and clear view of both the deaf person and the interpreter simultaneously on the screen, separate video cameras – one of the deaf person's statement and one of the interpretation – will be necessary to produce a clear video with audio recording of each.

9.4 Providing Effective Guidance to Court, Legal, and Law Enforcement Personnel

It is still routine procedure for many court, legal, and law enforcement personnel to audiotape statements by individuals who can hear, particularly in small towns and rural areas. Since producing audiotapes of statements is, the most familiar recording protocol, court, legal and law enforcement personnel may assume that audio recording the interpreter's verbal interpretation is sufficient for recording a deaf person's statement. Audio-recording the interpreter only preserves the voiced interpretation, not the original statement from the deaf person, or the non-verbal information conveyed by the interpreter which could be linguistically relevant to the exchange.. Thus, it is important that court, legal, and law enforcement personnel fully understand the options for preserving a deaf individual's statement on video and the ramifications of only preserving the spoken interpretation.

Section E: Best Practices for Obtaining Training, Experience, and Credentials for Legal Interpreters

Best Practice E.10

It is best practice for legal interpreters to have received specialized training, which includes the knowledge, skills, and experiences necessary to provide an accurate, meaningful, and effective interpretation in court and legal proceedings.

10.1 Legal Interpreting Requires Specialized Expertise

“High-level proficiencies in the source and target languages and cultures, including knowledge of geographic variations, an understanding of the legal process and related terminology, the ability to manipulate the various discourse styles used in the courtroom, along with interpreting skills and adherence to standards of ethics and professional conduct [which are] essential in protecting a non-English speaker's right to due process” (*de Jongh, 2008, pg. 21*).

The knowledge and skills required to provide a meaningful and effective interpretation in court and legal settings is vast and highly complex. ASL/English interpreters begin as generalist practitioners with a broad level of experiences and skills. Beyond a general practice, interpreters may pursue specialized training in legal interpreting in an effort to gain the knowledge, skills, and experience necessary to practice as a specialist in legal interpreting.

10.2 Specialist Legal Certification

Nationally certified generalist interpreters who meet the testing criteria may sit for the Specialist Certificate: Legal (SC:L) exam. Interpreters who hold this credential have

demonstrated specialized knowledge of legal interpreting, and greater familiarity with procedure and protocol followed within the court and legal system. These interpreters have also demonstrated the necessary skills in being able to interpret complex legal discourse (www.rid.org). A full explanation of all generalist and specialist certification through RID is outlined in Appendix A of this document.

Best Practice E.11

It is best practice for newly trained legal interpreters to be mentored and supervised by highly qualified and experienced legal interpreters while gaining the necessary hands-on experiences interpreting in court and legal settings.

11.1 Mentoring and Supervision of Legal Interpreters

Interpreters who have completed specialized training in legal interpreting need to gain supervised experience interpreting within court and legal settings prior to becoming eligible to sit for the SC:L exam. These intern practitioners require mentoring and supervision by highly qualified legal interpreters during this process. Being mentored and supervised are important parts of the specialized training process. Such oversight also provides a critical level of support and supervision for developing legal interpreters as they gain experience providing interpreting services in court and legal settings, while maintaining best practice for accuracy.

Section F: Best Practice for Staffing Legal Assignments

Best Practice F.12

It is best practice for legal interpreters to be placed according to distinct and specialized functions when interpreting within court or administrative proceedings.

12.1 Distinct and Specialized Functions of Legal Interpreters in Court

Court and legal personnel are generally under the assumption that one interpreter is sufficient to interpret any and all parts of a court or legal proceeding involving a deaf person (*Mathers, p. 82*). Yet, depending on the number of deaf people involved in the court case and the role of each deaf person in the case, one interpreter will most likely not be sufficient. Ethical, procedural, and legal conflicts can occur that will adversely affect the integrity of the interpreting process when interpreters do not maintain distinct roles for the various functions of court interpreting. When the

integrity of the interpreting process is compromised, communication from that point on is open to greater scrutiny.

12.2 Proceedings Interpreter (PI) – Officer of the Court

Interpreters functioning within the role of Proceedings Interpreter (PI) are officers of the court. They swear an oath to interpret accurately and to protect the integrity of the interpreted proceedings. As such, they interpret all aspects of the open court process such as all open court dialogue and witness testimony from both sides of the case. For example, in a civil case with adversarial deaf parties, Proceedings Interpreters interpret the open court process for opposing deaf parties, including witness testimony for both sides of the case. In criminal cases where there may be a deaf witness for the prosecution in addition to a deaf defendant, Proceedings Interpreters provide the interpretation for the open court process and witness testimony. Proceedings Interpreters do not engage in interpreting between a deaf party and counsel (*Mathers, p. 86*).

Normally the Proceedings Interpreters can effectively interpret for more than one deaf party during the open court process or witness testimony. When multiple deaf parties use different types of language or communication methods, one set of Proceedings Interpreters will not be able to provide an interpretation which is accurate, meaningful, effective, and accessible for all of them.

Considerations must also be given for creating effective sight lines when the Proceedings Interpreters must be visible to both a deaf party or parties and a deaf witness in a case. Interpreters must be able to face the deaf person when interpreting. Proceedings Interpreters should not be positioned where they block the jury's view of the witness. The configuration of some courtrooms may prevent a deaf person at counsel table from seeing the Proceedings Interpreters who are interpreting while facing a deaf witness, and with their backs to the counsel table. In such a configuration, the deaf person at counsel table cannot view the interpretation of what is being said to and from the witness. In that case, sight line considerations will have to be resolved prior to witness testimony.

12.3 Counsel or Table Interpreter (TI)

Interpreters functioning within the role of Counsel or Table Interpreter (TI) provide a deaf defendant access to counsel prior to, during, and following a court proceeding. Table Interpreters sit at counsel table next to the deaf defendant and interpret privileged communications that may arise between the deaf party and his or her attorney. Table Interpreters do not take an oath in court and do not interpret open court proceedings (*Mathers, p.91, 131*). Ethically, a conflict of interest exists when an interpreter works confidentially between a party and his or her attorney, and then proceeds to interpret open court proceedings as an officer of the court (*Mathers, p.92*). When there are multiple deaf defendants or parties involved in a court case, unless each defendant or party has access to a separate Table Interpreter, he or she would

not have an effective means of communicating with his or her attorney prior to, during, or following the proceeding (*Mathers, p.96*).

12.4 Monitoring of Interpretations

Interpreters functioning within the role of Table Interpreter observe the interpretation provided by the Proceedings Interpreters to monitor the accuracy and effectiveness of the interpretation. This function is normally handled by the interpreter hired by counsel for the deaf party. However, the court or any party, even one without a deaf client may hire an interpreter simply to monitor the Proceedings Interpreters for accuracy and to advise accordingly.

Best Practice F.13

It is best practice for legal interpreters to consider all of the complex factors that carry the potential to influence achieving effective interpreting outcomes prior to accepting and/or interpreting a court or legal assignment.

13.1 Assessing the Interpreting Needs of the Deaf Party

Deaf people communicate in diverse ways. American Sign Language (ASL) is the native language of many deaf people. Other deaf people may use English-based sign language, but may and may not also be fluent in ASL. Others may not know sign language at all, instead communicating in a number of other ways depending on when, where, and how they were educated as children. In addition to the communication diversity among American deaf individuals, some foreign born deaf individuals may be fluent in languages other than ASL and English, or may not possess standard language skills in any signed or spoken language.

Most court, legal, and law enforcement personnel are unaware of the communication diversity that exists among deaf people. As a result, when courts, attorneys, and law enforcement personnel attempt to hire legal interpreters or request legal interpreters from a referral service, little information is known about how the deaf person communicates. Thus, one important component of determining the interpreting needs of a deaf party is first understanding how the deaf person communicates.

13.2 Evaluating the Interpreter's Qualifications Prior to Staffing

Many factors can have a profound effect on whether or not an interpreter is qualified and sufficiently able to provide an accurate, meaningful, and effective interpretation for a deaf individual or party involved in a court case or legal matter. Just because an interpreter is nationally certified and may have experience interpreting in court and legal settings does not ensure that the interpreter will be successful interpreting for a specific deaf individual involved in a specific court or legal proceeding,

deposition or law enforcement interview. Interpreters must consider factors such as the interpreting needs of the deaf party, the role of the deaf party in the court or legal matter, the training and qualifications of the interpreter, whether or not the interpreter has sufficient experience within the particular legal domain or court jurisdiction, whether or not a more qualified interpreter is available, how many interpreting teams might be necessary, whether or not the court is prepared to hire the requisite number of interpreting teams, whether or not the interpreter has any real or potential conflicts of interest, etc.

The considerations that are important when determining whether or not an interpreter is able to provide an accurate, meaningful and effective interpretation are numerous and will change depending on the factors that arise within any specific case. While this Best Practices document cannot provide an inclusive prescription for all of possible considerations, interpreters, and those who staff interpreters for court cases, should be intimately familiar with the factors that can affect the accuracy and effectiveness of the interpretation in court.

13.3 *Assessing the Need for Multiple Teams of Legal Interpreters*

The number of deaf parties, the similarities or differences in their methods of communication, their roles in the case, their individual interpreting needs, and the length of the court proceeding, hearing, or deposition, will affect the number of interpreters required for a court case. Other unique factors may arise within specific cases which can also affect the need for additional teams of interpreters, such as interpreter availability, whether or not there are multiple deaf witnesses, and the ability of the Proceedings Interpreters (PI) to effectively interpret for every party present with a single interpretation. It is important that an accurate assessment of the number of interpreters needed for a case occurs prior to the start of the trial or proceeding. Court, legal, and law enforcement personnel will typically assume that only one interpreter is necessary for any number of deaf parties. Court interpreters must ask the right questions and gather sufficient information to best determine if a sufficient number of teams, and types of teams, have been hired for a case. Also refer to *Section B* of this document for guidance on Team Interpreting.

13.4 *Assessing the Need for a Deaf Interpreter Specialist*

Section C of this document discusses the effectiveness of working with Deaf Interpreter Specialists. When assessing the communication needs of deaf parties involved in a court proceeding, hearing, deposition, interview, etc., it is critical to assess whether or not a Deaf Interpreter Specialist will be necessary for one or more deaf parties or witnesses. The interpreter will analyze the case to ascertain a) if the interpretation to be provided may be unsatisfactory, and b) if a deaf interpreter would improve or enhance the accuracy of the interpretation. If the answer is in the affirmative, the interpreter's duty is triggered to inform the court as early as possible that a deaf interpreter is indicated. Once the determination is made that a Deaf Interpreter will be necessary for a deaf party or witness to

receive an accurate, meaningful, and effective interpretation, the Deaf Interpreter becomes a critical part of the staffing needs for a case or proceeding (*March 2009, NCIEC Brief – The Deaf Interpreter in Court, p.102*).

13.5 Identifying External Factors Affecting Successful Interpreting Interactions

Various factors can affect the success of an interpreting interaction. These factors include whether or not the deaf individual has a mental illness, is under the influence of drugs or alcohol, takes prescription medication that affects cognitive abilities or vision, or any other factor that may alter a deaf individual's ability to perceived and understand communication interactions.

13.6 Identifying Conflicts of Interest when Staffing Cases

The National Association of Judiciary Interpreters (NAJIT), the Registry of Interpreters for the Deaf (RID), and the National Center for State Courts ethically require interpreters to avoid and disclose conflicts of interest prior to accepting an interpreting assignment or case. Conflicts of interest can be subtle and difficult to identify at times. Conflicts affecting legal interpreters are generally of two types: *rehearsal conflicts*, which are implicated when an interpreter prepares a witness privately prior to interpreting the witness' testimony, and *appearance conflicts* in which the interpreter's relationship with the parties raises the specter of bias. Legal interpreters must be cautious when accepting the role of Proceedings Interpreter in court cases. Prior personal or professional involvement of the interpreter with any of the parties that may interfere with the objectivity of the interpreter can create a conflict of interest, or appearance of impropriety. Interpreting during any previous investigatory processes prior to a court case can also create a conflict of interest for an interpreter when accepting the role of Proceedings Interpreter.

Best Practice F.14

It is best practice to staff legal interpreters for court cases, hearings, depositions, and interviews in ways that promotes consistency and continuity in the interpreting team.

14.1 Consistency and Continuity When Staffing Legal Interpreters

Maintaining interpreter consistency refers to having the same team of legal interpreters remain consistent throughout a proceeding or part of a proceeding, rather than bringing in a new interpreter or team of interpreters to take over midstream. Interpreter consistency can mean that the same interpreter provides the interpretation from beginning to end. It can also mean that the same team of interpreters remains consistent, switching interpreters within the team when necessary and appropriate.

Maintaining consistent interpreters for lengthy court trials or proceedings plays a critical role in maintaining the accuracy, meaningfulness and effectiveness of the interpretation. Legal interpreters engage in extensive preparation prior to interpreting a trial, court or legal proceeding, or deposition. This preparation, along with the detailed knowledge of the case gained as the proceedings unfold has a positive effect on the interpreter's ability to interpret accurately and effectively for a deaf individual or party to a case. Legal interpreters appointed to lengthy cases should consider their availability to interpret the entirety of the trial or proceeding when accepting the appointment.

14.2 *Maintaining Consistent Interpreters for Deaf Jurors and Witness Testimony*

Assuming that the interpretation is accurate, meaningful, and effective from the start, maintaining interpreter consistency is an important consideration for all court and legal situations. Two specific situations, however, warrant additional guidance. Legal interpreters hired to interpret a trial for a deaf juror should remain the same interpreting team who interprets jury deliberations. After having interpreted trial evidence, arguments, and jury instructions, maintaining the continuity of the legal interpreters for jury deliberations is critical to maintaining the accuracy, meaningfulness, and effectiveness of the interpretation.

Likewise, when interpreting the testimony of a deaf witness, maintaining interpreter consistency is also critical to the accuracy, meaningfulness and effectiveness of the interpretation. Direct and cross examination discourse can often be linguistically complex. Questions and answers unfold in ways that can impact subsequent questions, as well as, connect to questions that have been previously asked of the witness. Thus, when interpreting teams remain consistent for witness testimony, the interpreters are informed by the same frame of reference as the participants. This provides a higher level of continuity within the interpretation thereby retaining the accuracy, meaningfulness, and effectiveness of the interpretation.

Although depositions are legal proceedings that take place outside a courtroom, the function of a deposition is to take testimony from an individual under oath. This testimony can be used as future evidence in a case. It can also lead to the discovery of other evidence or be used to impeach the testimony of a witness. Thus, depositions are considered witness testimony with the same need for interpreter consistency as courtroom testimony.

Section G: Best Practice for Interpreter Preparation in Court and Legal Matters

Best Practice G.15

It is best practice for legal interpreters to engage in preparation prior to interpreting for a deaf party or witness involved in a legal matter in order to become familiar with information that will assist the interpreter in providing an accurate, meaningful, and effective interpretation.

15.1 Reviewing Case Files, Motions and Other Court Documents

According to the RID Standard Practice Paper on Legal Interpreting, “The interpreter is ethically obligated to prepare for all assignments, particularly legal and court assignments” (p. 2). It is important for legal interpreters to review case files, as well as other pertinent legal documents prior to interpreting an interview, court proceeding, deposition, or trial. Legal interpreters must be familiar with the case-related details in order to provide an accurate, meaningful, and effective interpretation.

15.2 Researching Additional Relevant Information

In the course of preparing to interpret a court or legal proceeding or non-court situation, legal interpreters may need to engage in researching other relevant information, such as criminal charges, penal codes, vehicle codes, anatomy and physiology, specific medical or psychological conditions, medical or psychological tests or procedures, the various names and descriptions of illegal drugs, prescription medication, etc. This type of research and preparation will assist legal interpreters in being able to consider possible ways to interpret legal, medical, psychological or other information in an accurate, meaningful, and effective way.

Best Practice G.16

It is best practice for legal interpreters to meet with the presiding judge and all attorneys to resolve procedural and logistic questions prior to interpreting complicated court or legal proceedings.

16.1 Preparing for Meetings with the Presiding Judge and Attorneys

Certain legal proceedings call for a formal meeting with the presiding judge and attorneys. For example, most often, meeting with the judge and attorneys is prudent prior to the start of a jury trial. It might be necessary to request a meeting prior to a

bench trial when circumstances exist that give rise to the potential for complications involving the interpretation procedures, logistics, etc. Legal interpreters should use discretion when deciding whether or not a meeting is necessary.

When meeting with the presiding judge and attorneys, legal interpreters should arrive prepared to discuss all of the issues that pertain to the specific court case or legal proceeding. Interpreters should bring up procedural and logistic questions and offer recommendations and justifications that are reasonable and meet the interpreting needs of the deaf individual or party.

In the case of depositions, there is no presiding judge to oversee and help resolve conflicts with interpreting protocol and logistics. This creates a unique situation where legal interpreters must negotiate procedural and logistic issues with the opposing counsel at the deposition. Negotiating and resolving issues prior to the start of a deposition is just as important as it is to resolve prior to trial.

16.2 *Resolving Seating, Sightlines, Lighting and Auditory/Visual Needs*

Particularly in the case of trials (and in other instances as well), legal interpreters must be familiar with the courtroom seating protocol and determine whether the logistics of the room will meet the visual, lighting, and auditory needs of the deaf party and interpreter. For cases involving more than one deaf party and more than one interpreting team, these logistical issues can become quite complex. Taking the time to consider the various ways to resolve these issues in advance will benefit everyone in the long run.

In addition, other logistical needs may require discussion such as the need to switch interpreters, the need for breaks, protocol for administering of the Interpreter's Oath, where Proceedings Interpreters should wait when court is in recess, etc.

16.3 *Assessing the Communication Needs of the Deaf Party or Parties and Deaf Witnesses*

It is important for legal interpreters to meet the deaf party or parties and/or deaf witnesses prior to interpreting a hearing, trial, or deposition for the purpose of assessing the communication and interpreting needs of those deaf individuals. Without an opportunity to assess the communication of deaf individuals involved in a court or legal proceeding prior to interpreting, the potential for misunderstandings and errors in the interpretation increases.

16.4 *Requesting Clarification of Ambiguous Questions or Statements*

There will be times during a legal proceeding or trial when the interpreters will need to request clarification of ambiguous questions or statements from the judge or attorney prior to delivering the interpretation. Standard protocol expected by courts is that legal interpreters use third person, and break from reported speech, when there is a need to communicate directly with the witness.

In the case of jury trials, the court may request that interpreters ask to approach the bench prior to attempting to clarify ambiguous questions or statements.

In the case of depositions, a presiding judge will not be present to oversee the protocol for interpreters requesting clarification. These negotiations will need to occur between the interpreter and attorneys prior to the start of the deposition.

16.5 Procedure for Correcting Interpretation Errors

When an interpreter recognizes that there has been an error in the interpretation, the interpreter should, first, request to be recognized by the presiding judge. In the case of a bench trial, once the interpreter is recognized by the court, the interpreter can usually indicate that an error was made and state the correct interpretation for the record. When a jury is present, the interpreter must request to approach the bench prior to explaining that an error has occurred. Once the court is informed of the error, the interpreter then uses third person to clarify the record. The use of third person indicates that the communication came from the interpreter rather than the deaf person.

Again, in the case of depositions, negotiating the procedure for correcting the deposition record will need to take place between the interpreter and attorneys since no there is no presiding judge to assist.

16.6 Identifying Procedural and Logistical Differences Between a Bench and Jury Trial

Resolving procedural and logistical issues when interpreting for bench trials can be different than they are when juries are present in the courtroom. For example, during a jury trial, the presiding judge may require an interpreter to approach the bench to discuss the interpreter's needs at side bar rather than allowing the jury to hear the request in open court. Court interpreters should be aware of these types of differences and include them in the planning discussion with the presiding judge and attorneys when necessary.

Best Practice G.17

It is best practice for legal interpreters to be prepared to undergo the qualifying or voir dire process prior to the start of a trial, court proceeding, legal proceeding, or deposition.

17.1 Creating a Portfolio for the Qualifying Process

Creating a portfolio which includes copies of information regarding a legal interpreter's generalist certification, legal interpreting training, and specialist certification, among other things, is beneficial when undergoing the qualification or

voir dire process. In some instances, the court or attorneys may want to see copies of the documentation.

17.2 Preparing for the Qualifying Process

Even for legal interpreters who have experienced the qualifying process numerous times, preparing to be qualified in open court can help to ensure the qualifying process goes smoothly.

17.3 Taking the Oath Prior to the Qualifying Process

Courts will administer the typical witness oath to the court interpreter prior to the qualifying process. When a deaf interpreter is being qualified, the hearing interpreter will take the Interpreter's Oath prior to interpreting the witness oath to the deaf interpreter. This same process occurs during a deposition.

Section H: Best Practices for Interpreting Depositions

The purpose and final product of a deposition is to generate evidence from the person being deposed that may be used for future legal purposes. Testimony placed on the record during a deposition is used for the discovery of additional evidence. Depositions often become the basis for impeachment of witness testimony. Although depositions are not interactions that take place in a courtroom, they are, nonetheless, complex legal proceedings that function in similar ways to interactions that occur in a court of law.

Thus, all previous sections of this Best Practice Document also apply to interpreting depositions. Legal interpreters should consider all of these best practices prior to accepting this type of legal work.

Section A: Best Practices in Producing an Accurate, Meaningful, and Effective Interpretation in Court and Legal Settings

Section B: Best Practice in Team Interpreting for Court and Legal Settings

Section C: Best Practices in Collaborating With Deaf Interpreter Specialists in Court and Legal Settings

Section D: Best Practice of Visually Recording a Statement or Interpretation in American Sign Language

Section E: Best Practices for Obtaining Training, Experience, and Credentials for Highly Qualified Legal Interpreters

Section F: Best Practices for Staffing Legal Interpreters

Section G: Best Practices for Legal Interpreter Preparation in Court and Legal Matters

Best Practice H.18

It is best practice for legal interpreters to possess the training, credentials, experience, and skill sets for interpreting depositions as are best practice for interpreting courtroom interactions.

18.1 Staffing Legal Interpreters for Depositions

Although they most often take place in a law office and can have a less formal atmosphere than a courtroom, depositions create a written statement in the form of answers to questions in the same way witness testimony creates a written record. Therefore, best practice considerations for staffing legal interpreters for depositions are the same as staffing considerations for interpreting in a courtroom.

Section I: Best Practice for Interpreting Attorney–Client Interviews

Attorney – client interactions are legal situations which often have direct connection to broader court and legal proceedings. These interactions typically occur because an individual is a defendant or plaintiff in an active court case, is engaged in signing legal documents, or is involved in a legal matter that has the potential for involving a court of law.

Thus, all previous sections of this Best Practice Document also apply to interpreting attorney-client interviews. Legal interpreters should consider all of these best practices prior to accepting this type of legal work.

Section A: Best Practices in Producing an Accurate, Meaningful, and Effective Interpretation in Court and Legal Settings

Section B: Best Practice in Team Interpreting for Court and Legal Settings

Section C: Best Practices in Collaborating With Deaf Interpreter Specialists in Court and Legal Settings

Section D: Best Practice of Visually Recording a Statement or Interpretation in American Sign Language

Section E: Best Practices for Obtaining Training, Experience, and Credentials for Highly Qualified Legal Interpreters

Section F: Best Practices for Staffing Legal Interpreters

Section G: Best Practices for Legal Interpreter Preparation in Court and Legal Matters

Best Practice I.19

In order to maintain of the attorney-client privilege while interpreting attorney-client interviews, it is best practice for legal interpreters to be present in the room with the deaf defendant only when the attorney is present.

19.1 Maintaining the Privilege

Legal interpreters are cognizant of the importance of privilege that exists between an attorney and his or her client during confidential communications. For the protection of that privilege, legal interpreters are aware of circumstances that can waive the privilege that covers the confidentiality of communications in the presence of the interpreter while interpreting between an attorney and deaf client. It is best practice to take steps to ensure that the interpreter does not by their conduct compromise the privilege.

Section J: Best Practices for Effectively Interpreting Law Enforcement Interactions

Interactions with law enforcement personnel often mark the beginning stage of a potential court or legal action. When law enforcement personnel conduct interviews of suspects, individuals in custody, victims of a crime, or witnesses in an ongoing investigation, statements made to a police officer become evidence whether or not legal action has been initiated in a court.

Interpreting interactions between deaf individuals and law enforcement personnel are always a potential source for appeals. Interpretations conducted during these interactions, especially when a suspect or detainee is read the Miranda warning, are subject to analysis and review. In addition, whether or not an interpretation of the Miranda warning and subsequent statements given by a deaf individual are admitted as evidence in a court matter can depend on the interpretation's credibility as being accurate, meaningful, and effective. Given that law enforcement interactions carry a high risk for legal review and for involved parties being called to testify about the law enforcement interpretation, and that statements made during these interactions become evidence in court, all previous sections of this Best Practice Document also apply to interpreting law enforcement interactions. Legal interpreters must consider all of these best practices when accepting this type of legal work.

Section A: Best Practices in Producing an Accurate, Meaningful, and Effective Interpretation in Court and Legal Settings

Section B: Best Practice in Team Interpreting for Court and Legal Settings

Section C: Best Practices in Collaborating With Deaf Interpreter Specialists in Court and Legal Settings

Section D: *Best Practice of Visually Recording a Statement or Interpretation in American Sign Language*

Section E: *Best Practices for Obtaining Training, Experience, and Credentials for Highly Qualified Legal Interpreters*

Section F: *Best Practices for Staffing Legal Interpreters*

Section G: *Best Practices for Legal Interpreter Preparation in Court and Legal Matters*

Best Practice J20

It is best practice for legal interpreters who possess the specialized training, credentials, experience, and skill sets to interpret law enforcement interactions.

20.1 Legal Interpreters for Law Enforcement Interactions

Legal interpreters understand the implications that interpreting law enforcement interactions have in a future court case or proceeding. Interactions with law enforcement are high stakes legal assignments even though they do not take place in a courtroom. Therefore, it is best practice for those interpreters who provide services in law enforcement interactions to hold the same training, credentials, experience, and skill sets as are necessary for interpreters working in other court and legal settings.

20.2 Legal Interpreters for Law Enforcement Investigations

There are times when law enforcement officers must conduct interviews in specific settings where generalist interpreters may already be hired to interpret, such as in a K-12 school environment, at a hospital or medical setting, psychiatric facility, college or university, social service agency, etc. Given that legal interpreters are trained to understand the implications that interpreting law enforcement interactions have in a future court case or proceeding, legal interpreters should be employed to provide interpreting services in these instances where law enforcement investigations are taking place.

Best Practice J.21

Legal interpreters recognize that working within teams is the best practice for achieving an accurate, meaningful, and effective interpretation in law enforcement settings.

21.1 Effective Team Interpreting in Law Enforcement Settings

All Best Practices listed in Section B of this document also apply to this section. Due to the potential for scrutiny of interpretations of the Miranda warning and custodial

interviews, legal interpreters working in teams is essential to provide an accurate, meaningful, and effective interpretation.

Best Practice J.22

It is best practice to collaborate with deaf interpreter specialists in law enforcement settings because deaf interpreters are able to enhance the accuracy, meaning, and effectiveness of the interpretation.

22.1 Effective Interpreting Using Deaf Interpreter Specialists

In addition to the Best Practices written in Section C of this document, legal interpreters recognize that working with deaf interpreter specialists enhances the accuracy, meaning, and effectiveness of interpreting in law enforcement settings.

The potential for encountering deaf individuals who meet the characteristics of those who would benefit from working with a deaf interpreter specialist is high in law enforcement interactions. Legal interpreters recognize the factors that exist when a deaf interpreter is necessary and ensures that a deaf interpreter is present when the interaction with law enforcement personnel begins.

Best Practice J23

It is best practice to video record the interpretation of the Miranda Warning given to a deaf individual prior to being questioned by law enforcement personnel.

23.1 Video Recording the Interpretation of the Miranda Warning Prior to Questioning

Recording the entire interaction through the use of VHS or digital technology is the only way to preserve the actual interpretation of the advice of rights including the Miranda Warnings provided to a deaf individual prior to being questioned by law enforcement personnel. Recording the interpretation preserves the evidence of whether or not the constitutional rights of the deaf individual were understood and allows for future analysis related to any legal challenge that might arise during a court or legal proceeding.

Best Practice J24

It is best practice to video record interactions between deaf individuals and law enforcement personnel, such as interviews, taking statements, and other interactions that have the potential to become evidence in a court or legal matter.

24.1 Video Recording Statements in American Sign Language

As is the case with video recording the interpretation of the advice of rights, it is also important to video record interactions between law enforcement personnel and deaf individuals when the deaf individual is communicating in ASL or other form of sign language. Without a video record of the deaf person's statement or answers in ASL, the recorded interpretation of the deaf person's responses is all that remains. Although legal interpreters take precautions to reduce the potential risk of error in an interpretation that risk does persist. Capturing the original statement of the deaf person on video is essential for preserving any evidence that might arise during a future court or legal proceeding.

24.2 Video Recording the ASL/English Interpretation

Creating a video recording of an ASL/English Interpretation during law enforcement interactions is the only way to preserve an accurate record of the entire interpretation the deaf person and law enforcement personnel each received in the course of the exchange of questions and answers, or making a statement. Recording the interpretation is essential for preserving any evidence or future need for analysis of the interpretation that might arise during a court or legal proceeding.

References

- Anderson, L. (1994). Simultaneous interpretation: Contextual and translation aspects. In S. Lambert & B. Moser-Mercer (Eds.), *Bridging the gap: Empirical studies in simultaneous interpretation*. Philadelphia, PA: John Benjamin.
- BitPipe.Com: The TechTarget Library of White Papers, Product Literature, Webcasts and Case Studies. Available at <http://www.bitpipe.com/tlist/Best-Practices.html>
- De Jongh, E. M. (2008, July/August). Court interpreting: Linguistic presence v. linguistic absence. *Florida Bar Journal*, 2-32.
- Emerson Crooker, C. (1996). *The art of legal interpretation: A guide for court interpreters*. Portland State University: Continuing Education Press.
- Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools From the Field, (2004). Retrieved March 26, 2009, from <http://www.usdoj.gov/crt/cor/lep/Final%20Tips%20and%20Tools%20Document.%209%2021%2004.pdf>
- Federal Rules of Evidence, (2004). Retrieved March 26, 2009, from <http://www.lectlaw.com/files/crf13.htm>
- Gifis, Steven H. (1998). *Dictionary of legal terms: a simplified guide to the language of law*. Hauppauge, New York: Barron's Educational Series, Inc.
- Gonzalez, R., Vasquez, V., & Mikkelson, H. (1991). *Fundamentals of court interpretation: Theory, policy and practice*. Durham, NC: Carolina Academic Press.
- Hanh, Pham Hong. (2006). Note-taking in consecutive interpreting. Retrieved March 15, 2009, from: http://web.hanu.vn/en/file.php/1/moddata/forum/70/393/NOTE-TAKING_IN_CONSECUTIVE_INTERPRETING_.pdf.
- Hewitt, Williams. (1995). *Model Code of Professional Responsibility for Interpreters in the Judiciary*. In *Court Interpretation: Model Guides for Interpretation and Practice in the State Courts*. Retrieved March 26, 2009, from <http://www.ncsconline.org/WC/CourTopics/pubs.asp?topic=JudEth>
- Interpreters in the judicial system: A handbook for Ohio judges. Available at http://www.sconet.state.oh.us/publications/interpreter_services/IShandbook.pdf.
- Mathers, C. M. (2007). *Sign language interpreters in court: Understanding best practices*. Bloomington, Indiana: Author House.
- Mathers, C. M. (2009, March). The deaf interpreter in court: An accommodation that is more than reasonable. *Document Prepared for the National Consortium of Interpreter Education Centers*.
- Mathers, C and Witter-Merithew, A. (2008). NCIEC-RID Amicus Brief Filed in the Matter of *Linton v. State*, No. PD-0413-08, Tex. Crim. Court of Appeals. *Document Prepared for the National Consortium of Interpreter Education Centers and the Registry of Interpreters for the Deaf*.

- Moser-Mercer, B., Kunzli, B., & Korac, M. (1998). Prolonged turns in interpreting: Effects on quality, physiological and psychological stress. University of Geneva, École de Traduction et d'Interprétation. *Interpreting*, 3(1), p. 47-64. John Benjamins Publishing Co.
- NAJIT. (2006). *Position paper: Modes of interpreting*. Available at www.najit.org
- NAJIT. (2007). *Position paper: Team interpreting in the courtroom*. Available at www.najit.org
- NCIEC (2007). Legal expert workgroup, draft document of best practices workgroup.
- Registry of Interpreters for the Deaf (RID) Standard Practice Papers: www.rid.org
Interpreting in Legal Settings (2000), *Team Interpreting (1997)*, *Use of a Certified Deaf Interpreter (1997)*.
- Russell, D. (2002). *Interpreting in legal contexts: Consecutive and simultaneous interpretation*. Sign Language Dissertation Series. Burtonsville, MD: Linstok Press.
- The Free Dictionary.Com Website. Available at <http://www.thefreedictionary.com/discourse>
- Tileston, D. E. (2000). *Best Teaching Practices: How Brain Research, Learning Styles and Standards Define Teaching Competencies*. Thousand Oaks, CA: Corwin Press, Inc. 23-25.
- University of Rochester. (2004). Short term memory's effectiveness influenced by sight, sound. *Science Daily*. Retrieved March 15, 2009, from <http://www.sciencedaily.com/releases/2004/09/040901092240.htm>.
- Vidal, M. (1997, Winter). New study on fatigue confirms need for working in teams. *Proteus*, (6)1.

Other Resources

- Andrews, J. F., Vernon, M., & LaVigne, M. (2007). The Bill of Rights, due process and the deaf suspect/defendant. *Registry of Interpreters for the Deaf Journal of Interpretation*.
- Berk-Seligson, S. (1990). *The bilingual courtroom: Court interpreters in the judicial process*. Chicago, IL: University of Chicago Press. (KF8725 B47 1990).
- Boudreault, P. (2005). Deaf interpreters. In T. Janzen (Ed.), *Topics in Signed Language Interpreting* (pp. 323-355). Philadelphia, PA: John Benjamins.
- Cokely, D. (1992). *Interpretation: A sociolinguistic model*. Burtonsville, MD: Linstok Press.
- Collin, J., & Morris, R., (1996). *Interpreters and the legal process*. Winchester: Waterside Press.
- Conley, J. M., & O'Barr, W. M. (1998). *Just words: Law, language and power*. University of Chicago Press.
- Gerver, D. (1974). Simultaneous listening and speaking and retention of prose. *Quarterly Journal of Experimental Psychology*, 26(3), 337 – 341.
- Gile, D. (1995). Fidelity assessment in consecutive interpretation: An experiment. *Target*, 7(1), 151-164.
- Gile, D. (2002). Conference interpreting as a cognitive management problem. In Franz Pöchhacker & Miriam Shlesinger (Eds.), *The interpreting studies reader*. New York: Routledge.
- Hewitt, W. (1995). Model code of professional responsibility for interpreters in the judiciary. In *Court interpretation: Model guides for policy and practice in the state courts*. Richmond, Virginia: National Center for State Courts.
- Janzen, T. (2005). *Topics in signed language interpreting: Theory and practice*. Amsterdam: John Benjamins Co.
- Miller, K. R., & Vernon, M. (2001). Linguistic diversity in deaf defendants and due process rights. *Journal of Deaf Studies and Deaf Education*, 6(3), 226, 226-27.
- Mikkelsen, H. (1995.). On the horns of a dilemma: Accuracy vs. brevity in the use of legal terms by court interpreters. *Translation and the Law*, ATA Monograph Series, Vol. 8, Marshall Morris, (Ed.). Philadelphia: John Benjamins Publishing Co.
- O'Barr, W. M. (1982). *Linguistic evidence: Language, power, and strategy in the courtroom*. San Diego, CA: Academic Press.
- Parasnis, Ila, (Ed.). (1996). *Cultural and language diversity and the deaf experience*. New York, NY: Cambridge University Press.

Rozan, J. F.- (n.d.) *7 Principles of note-taking*. Interpreter Training Resources.
Retrieved March 15, 2009 from
<http://interpreters.free.fr/consecnotes/rozan7principles.doc> .

Seleskovitch, D. (1978a). *Interpreting for international conferences*. Washington, DC:
Pen & Booth.

Seleskovitch, D. (1978b). Language and cognition. in D. Gerver & H. Sinaiko (Eds.),
Language interpretation and communication. New York: Plenum, 333-342.

Appendices

Appendix A: National Certification System for Professional Interpreters

National Registry of Interpreters for the Deaf (RID) Certification

RID, Inc., is the national organization of professional sign language interpreters in the United States. Since 1975, RID has played a leading role in establishing a national standard of quality for interpreters and transliterators by providing education and certification through RID's National Testing System. The process of becoming a high-level quality interpreter starts with attaining credentials through certifications offered by RID and maintaining qualifications and membership through continued skill development. www.rid.org

A. RID Generalist (Sign Language) Certifications

Certificates classified as generalist signify skills in a broad range of general interpreting/transliterating assignments. Holders of generalist certificates have met or exceeded a nationally recognized standard of minimum competence in interpreting and/or transliterating. Individual certificates vary in their scope so it is important to know what each credential means.

1. Valid RID Generalist Certifications

a. NIC (National Interpreter Certification)

Individuals achieving the generalist certification at the NIC, NIC Advanced, or NIC Master level are all professionally certified (Generalist) interpreters.

- **NIC** - Individuals who achieve the NIC level have passed the NIC Knowledge exam. They have also scored within the standard range of a professional interpreter on the interview and performance portions of the test.
- **NIC Advanced** - Individuals who achieved the NIC Advanced level have passed the NIC Knowledge exam; scored within the standard range of a professional interpreter on the interview portion; and scored within the high range on the performance portion of the test.
- **NIC Master** - Individuals who achieved the NIC Master level have passed the NIC Knowledge exam. They have scored within the high range of a professional interpreter on both the interview and performance portions of the test.

b. CDI (Certified Deaf Interpreter)

Holders of this certification are interpreters who are deaf or hard-of-hearing, and who have completed at least eight hours of training on the NAD-RID Code of Professional Conduct; eight hours of training on the role and function of an interpreter who is deaf

or hard-of-hearing; and have passed a comprehensive combination of written and performance tests. Holders of this certificate are recommended for a broad range of assignments where an interpreter who is deaf or hard-of-hearing would be beneficial.

c. OTC (Oral Transliteration Certificate)

Holders of this generalist certificate have demonstrated, using silent oral techniques and natural gestures, the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing. They have also demonstrated the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf or hard-of-hearing.

2. Valid RID Generalist Certifications

- ***Exams for these generalist certifications are NO LONGER offered by the RID, however the certifications are still valid and recognized by the RID.***
 - **CI (Certificate of Interpretation)** - Holders of this certificate are recognized as fully certified in *interpretation* and have demonstrated the ability to interpret between American Sign Language (ASL) and spoken English for both sign-to-voice and voice-to-sign tasks. The interpreter's ability to transliterate is not considered in this certification. Holders of the CI are recommended for a broad range of interpretation assignments.
 - **CT (Certificate of Transliteration)** - Holders of this certificate are recognized as fully certified in *transliteration* and have demonstrated the ability to transliterate between English-based sign language and spoken English for both sign-to-voice and voice-to-sign tasks. The transliterator's ability to interpret is not considered in this certification. Holders of the CT are recommended for a broad range of transliteration assignments.
 - **CI and CT (Certificate of Interpretation and Certificate of Transliteration)** - Holders of both full certificates (as listed above) have demonstrated competence in both interpretation and transliteration. Holders of the CI and CT are recommended for a broad range of generalist interpretation and transliteration assignments.

3. Valid RID Generalist Certifications

- ***Exams for these generalist certifications are NO LONGER offered by the RID, however the certifications are still valid and recognized by the RID.***
 - **CSC (Comprehensive Skills Certificate)** - Holders of this full certificate have demonstrated the ability to interpret between American Sign Language (ASL) and spoken English, and to transliterate between spoken English and an English-based sign language. Holders of this certificate are recommended for a broad range of interpreting and transliterating assignments. ***The CSC examination was offered until 1987.***

- **MCSC (Master Comprehensive Skills Certificate)** - The MCSC examination was designed with the intent of testing for a higher standard of performance than the CSC. Holders of this certificate were required to hold the CSC prior to taking this exam. Holders of this certificate are recommended for a broad range of interpreting and transliterating assignments.
- **RSC (Reverse Skills Certificate)** - Holders of this full certificate have demonstrated the ability to interpret between American Sign Language (ASL) and English-based sign language or transliterate between spoken English and a signed code for English. Holders of this certificate are deaf or hard-of-hearing and interpretation/transliteration is rendered in ASL, spoken English and a signed code for English or written English. Holders of the RSC are recommended for a broad range of interpreting assignments where the use of an interpreter who is deaf or hard-of-hearing would be beneficial.
- **CDI-P (Certified Deaf Interpreter-Provisional)** - Holders of this provisional certification are interpreters who are deaf or hard-of-hearing, and who have demonstrated a minimum of one year experience working as an interpreter; completion of at least eight hours of training on the *NAD-RID Code of Professional Conduct*; and eight hours of training in general interpretation as it relates to the interpreter who is deaf or hard-of-hearing. Holders of this certificate are recommended for a broad range of assignments where an interpreter who is deaf or hard-of-hearing would be beneficial.
- **OIC:C (Oral Interpreting Certificate: Comprehensive)** - Holders of this generalist certificate demonstrated both the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf or hard-of-hearing.
- **OIC:V/S (Oral Interpreting Certificate: Visible to Spoken)** - Holders of this partial certificate demonstrated the ability to understand the speech and silent mouth movements of a person who is deaf or hard-of-hearing and to repeat the message for a hearing person. This individual received scores on the OIC:C examination which prevented the awarding of full OIC:C certification. ***This test is no longer offered.***
- **OIC:S/V (Oral Interpreting Certificate: Spoken to Visible)** - Holders of this partial certificate demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing. This individual received scores on the OIC:C examination which prevented the awarding of full OIC:C certification.

4. **Valid Partial (Sign Language) Generalist RID Certifications**

- ***Exams for these generalist certifications are NO LONGER offered by the RID, however the certifications are still valid and recognized by the RID.***

- **IC/TC (Interpretation Certificate/Transliteration Certificate)** - Holders of this partial certificate demonstrated the ability to transliterate between English and a signed code for English and the ability to interpret between American Sign Language (ASL) and spoken English. This individual received scores on the CSC examination which prevented the awarding of full CSC certification.
- **IC (Interpretation Certificate)** - Holder of this partial certificate demonstrated the ability to interpret between American Sign Language (ASL) and spoken English. This individual received scores on the CSC examination which prevented the awarding of full CSC certification or IC/TC certification. The IC was formerly known as the Expressive Interpreting Certificate (EIC).
- **TC (Transliteration Certificate)** - Holders of this partial certificate demonstrated the ability to transliterate between spoken English and a signed code for English. This individual received scores on the CSC examination which prevented the awarding of full CSC certification or IC/TC certification. The TC was formerly known as the Expressive Transliterating Certificate (ETC).

B. National Association of the Deaf (NAD) Generalist Certifications www.rid.org

- ***Exams for these generalist certifications are NO LONGER offered by the NAD, however the certifications are still valid and recognized by the RID.***

The RID accepts NAD Generalist Certifications as a credential granting holders the option of membership in and recognition of NAD certification under the RID. These exams are no longer available through NAD, however the certifications are still considered valid by the RID for those who hold the credential.

- **NAD III (Generalist) - Average Performance**
Holders of this certificate possess above average voice-to-sign skills and good sign-to-voice skills or vice versa. This individual has demonstrated the minimum competence needed to meet generally accepted interpreter standards. Occasional words or phrases may be deleted but the expressed concept is accurate. The individual displays good control of the grammar of the second language and is generally accurate and consistent, but is not qualified for all situations.
- **NAD IV (Advanced) - Above Average Performance**
Holders of this certificate possess excellent voice-to-sign skills and above average sign-to-voice skills or vice versa. This individual has demonstrated above average skill in any given area. Performance is consistent and accurate. Fluency is smooth, with little deleted, and the viewer has no question to the candidate's competency. With this certificate, an individual should be able to interpret in most situations.
- **NAD V (Master) - Superior Performance**
Holders of this certificate possess superior voice-to-sign skills and excellent sign-to-voice skills. This individual has demonstrated excellent to outstanding

ability in any given area. There are minimum flaws in their performance, and they have demonstrated interpreting skills necessary to serve in almost all situations.

C. RID Specialist Certifications www.rid.org

Certificates classified as *specialist* signify skills in a particular area or specialty of interpretation. Holders of specialty certificates have demonstrated specialized knowledge in a specific area of interpreting. Individual certificates vary in their scope so it is important to know what each credential means.

- **SC:L (Specialist Certificate: Legal)** - Holders of this specialist certificate have demonstrated specialized knowledge of legal settings and greater familiarity with language used in the legal system. Certification recognized by RID, documented training, and legal interpreting experience are required prior to sitting for this exam. Holders of the SC:L are recommended for a broad range of assignments in the legal setting. ***This test is currently available.***
- **Eligibility to Take the SC:L Exam** - An individual interested in taking the SC:L exam must either currently possess a valid legal interpreting certificate issued prior to 1987 or satisfy all of the eligibility criteria in at least one of the following categories:

Category #1 - Be a current certified member of RID, successful completion of a bachelor's degree in any field, or an associate's degree in interpreting and documentation of at least 50 hours of legal interpreting/mentoring experience and 30 hours of formal legal training. In addition, five years of general interpreting experience (post certified member of RID status) is strongly recommended.

Category #2 - Be a current certified member of RID, successful completion of an associate's degree in any field and documentation of at least 75 hours of legal interpreting/mentoring experience and 50 hours of formal legal training. In addition, five years of general interpreting experience (post certified member of RID status) is strongly recommended.

Category #3 - Be a current certified member of RID and documentation of at least 100 hours of legal interpreting/mentoring experience and 70 hours of legal training. In addition, five years of general interpreting experience (post certified member of RID status) is strongly recommended.

Category #4 – Possess a current SC:L.

Documentation of training may be in the form of college transcripts, signature(s) of individual(s) offering the training workshop, certificate of completion, etc. Documentation of legal interpreting/mentoring experience

should be in the form of an official letter stating hours and time from the interpreting service coordinator, court official, or mentor.

- **SC:PA (Specialist Certificate: Performing Arts)** - Holders of this certificate were required to hold RID generalist certification (CSC) prior to sitting for this examination and have demonstrated specialized knowledge in performing arts interpretation. Holders of this certificate are recommended for a broad range of assignments in the performing arts setting. ***This test is no longer available.***

Appendix B: Citation of Important Cases

Appellate Cases

Sixth Amendment Rights to Confrontation and Effective Assistance of Counsel

Federal

Ake v. Oklahoma, 470 U.S. 68, 76 (1985).

United States v. Sanchez, 928 F.2d 1450, 1455 (6th Cir. 1991).

U.S. ex rel. Negron v. New York, 310 F. Supp. 1304 (E.D.N.Y. 1970).

United States v. Carrion, 488 F.2d 12 (1st Cir. 1974).

United States ex rel. Navarro v. Johnson, 365 F.Supp. 676 (E.D. Pa. 1973).

United States v. Desist, 384 F.2d 889 (2d Cir.), *aff'd*, 394 U.S. 244 (1969).

States

State v. Lopez, 114 Ohio St. 3d 1411 (Ohio 2007).

State v. Roldan, 855 A.2d 455, 448 (N.H. 2004).

State v. Razo, 157 Ohio App. 3d 578 (Ohio Ct. App. 2004).

People v. Rivera, 480 N.Y.S.2d 426 (1984).

Salazar v. State, 93 S.W.3d 339 (Tex App. Texarkana 2002).

People v. Resendes, 210 Cal. Rptr. 609 (Cal. App. 5 Dist. 1985).

Bednarski v. Bednarski, 366 N.W.2d 69 (Mich. App. 1985).

State v. Van Pham, 675 P.2d 848, 856 (Kan. 1984).

State v. Gonzalez-Gongora, 673 S.W.2d 811, 816 (Mo. App. 1984).

People v. Carreon, 198 Cal. Rptr. 843 (Cal. App. 5 Dist. 1984).

People v. Aguilar, 35 Cal. 3d 785, 787, 677 P.2d 1198 (Cal. 1984).

People v. Rioz, 161 Cal. App. 3d 905 (1984).

People v. Mata Aguilar, 35 Cal. 3d 785, 677 P.2d 1198 (Cal. 1984).

People v. Rivera, 390 N.E.2d 1259 (1st Dist. Ill. 1979)

Standard of Interpretation

Valladares v. United States, 871 F.2d 1564, 1566 (11th Cir. 1989).

United States v. Cirrincione, 780 F.2d 620, 633 (7th Cir. 1985).

State v. Negash, 170 Ohio App. 3d 86 (Ohio Ct. App. 2007).

State v. Lopez, 2007 Ohio 202 (Ohio Ct. App. 2007).

State v. Rodriguez, 2001 Ohio 2179 (Ohio Ct. App. 2001).
State v. Mendoza, 2001 Ohio 2178 (Ohio Ct. App. 2001).
Denton v. State, 945 S.W.2d 793 (Tenn. Crim. App. 1996).
State v. Her, 510 N.W.2d 218, 222 (Minn. 1994).
• *Objections based on plea **not knowingly and voluntarily entered***
State v. Alvarez, 797 N.E.2d 1043, 1044-45 (Ohio 2003).
Tamayo-Reyes v. Keeney, 926 F.2d 1492, 1495 (9th Cir. 1991)
State v. Nieves, No. 90-L-14-003, 1990 WL 208821 (Ct. App. Ohio Dec. 14, 1990).

Interpreter's Oath/ Qualification as an Expert on the Record

State v. Newcomb, 2004 Ohio 4099, P17 (Ohio Ct. App. 2004).
State v. Alvarez, 797 N.E.2d 1043, 1046 (Ohio 2003).
Ledezma v. State, 626 N.W.2d 134, 149 (IA 2001).
State v. Gonzales-Morales, 979 P.2d 826 (Wash. 1999).
Choi v. State, 497 S.E.2d 563 (Ga. 1998).
Denton v. State, 945 S.W.2d 793 (Tenn. Crim. App. 1996).
State v. Rodriguez, 682 A.2d 764 (N.J. Super. Law 1996).
State v. Mendoza, 891 P.2d 939 (Ariz. App. Div. 1 1995).
Manbeck Nurseries v. Ohio Civil Rights Comm'n, 639 N.E.2d 1247 (Ct. App. Ohio, 1994).
People v. Bradley, 879 P.2d 410 (Colo. 1993).
State v. Burris, 643 P.2d 8, 14 (Ariz. App. 1988).
State v. Rosa, 547 N.E.2d 1232 (Ct. App. Ohio 1988).
Paucher v. Enterprise Coal Mining Co, 183 Iowa 86, 87 (1918).
Kley v. Abell, 483 S.W.2d 625, 628 (Mo. App. 1972).