



## **State of Our Art: A Discussion of Changing Trends in the Field of Legal Interpreting**

### **NCIEC Legal Interpreting Workgroup**

Anna Witter-Merithew, Team Leader

Panelists: Jimmy Beldon, Margaret Cobb, Jan Delap, Carla Mathers, Kellie Stewart

**Workgroup Purpose:** The NCIEC is a consortium of five regional centers and one national center working collaboratively to change the way our field traditionally thinks of and provides education and professional development to sign language interpreters. We foster networks among all stakeholders in our academic, professional and consumer communities and investigate and disseminate proven approaches to teaching, mentoring, program administration, and consumer education. As one of the NCIEC initiatives, the purpose of the NCIEC Legal Interpreting Workgroup is to build and promote effective practices in the specialization of legal interpreting and education of legal interpreters by drawing on the wisdom and energy of expert practitioners, teachers, consumers and other stakeholders to advance both the practice and teaching of legal interpreting. The goal of this workgroup is to increase the number of certified and qualified practitioners specializing in legal interpreting.

**Presentation Goal:** The NCIEC Legal Interpreting Workgroup has been engaged in a number of research-based activities that capture the current legal foundation, trends and evolution in practices impacting the specialization of legal interpreters. The goal of this panel presentation is to report and deepen our understanding of the findings to-date. To this end, a panel of NCIEC Legal Interpreting Workgroup members will report on various research activities relating to the work of Deaf interpreters in court, defining competencies of practitioners in various legal settings, and documentation of Best Practices in legal interpreting. This reporting will be followed by small group discussion designed to gain further practitioner insight. Practitioners will be asked to value the findings through completion of an expert opinion survey.

## Products of the Workgroup

**NOTE:** All products available on the NCIEC website under the Projects/Legal Interpreting Workgroup link at <http://www.nciec.org/>.

### **Observational Tool for Deaf-Hearing Interpreting Teams**

The NCIEC Legal Interpreting and Deaf Interpreters Workgroups, in collaboration with the NCIEC Effective Practices Team, worked with a research team from the Ventura County Superior Court to develop an observational tool for use in observing Deaf-hearing interpreting teams working during court proceedings. Ventura County Superior Court, and the research team comprised of Tracy Clark, Margaret Cobb, Lisa Gonzales, is the 2008 recipient of RID Research Grant.

This observational tool has ground-breaking, yet limited use. There is very little research on DI interpreting techniques; there has been NO formal research on the interface between DI interpreting techniques and the expectations and limitations of interpreters in the American Judicial System. The Ventura County research team expects to start identifying patterns which can then be specifically researched with follow-up projects, as well as develop and hone a tool for collecting data among DI/HI teams in a variety of settings.

### **The Deaf Interpreter in Court Brief: An Accommodation That is More Than Reasonable**

Through an in-depth analysis of state laws, case law, court rules and evidentiary rules, compelling justification for the provision of deaf interpreters in legal settings is suggested. The legal authority in the brief may be relied upon by interpreting practitioners in making recommendations that deaf interpreters be retained in a wide variety of other settings as well. Interpreter educators and practitioners will find the comprehensive listing of state interpreting laws and the case law interpretation to be a valuable resource in making recommendations for staffing a legal matter with deaf interpreters. The brief uses certain definitions from areas of law that lawyers and judges are familiar with, for example, placing the phrase 'deaf-hearing interpreting team' into the reasonable accommodations rhetoric of the Americans with Disabilities Act. Case law provides interpreter educators and practitioners with language to discuss specific ways that the deaf person communicates which can indicate the need for a deaf interpreter. For example, cases have used terms such as a "limited fund of knowledge" or

difficulty “sequencing events ... presenting in a disjointed style” to describe deaf litigants presenting communication issues. Courts have described the benefit of deaf interpreters as “enable[ing the defendant] to understand the proceedings, consult with counsel and to assist in [the] defense....” Interpreter educators and practitioners will find useful the standard language and terminology grounded in legal precedent for the discussion of working with deaf interpreters.

The brief initially presents a series of characteristics of deaf people for whom, traditionally, deaf interpreters have been provided in the legal setting. The brief summarizes a discussion of social science literature including a report drafted by the National Association of the Deaf in conjunction with the Rehabilitation Services Administration (NAD-RSA Report) describing the characteristics of a significant group of deaf people who have difficulty functioning in the mainstream. The NAD-RSA Report is compared with the results of a survey conducted by the NCIEC Deaf Interpreters Workgroup (NCIEC Survey). The survey presents complimentary categories of characteristics of a group of deaf people who would benefit from the use of a deaf interpreter. Finally, both the NAD-RSA Report’s and the NCIEC Survey’s conclusions mirror the recommendations made by the Language Services Section of the New Jersey court administrator’s office in its series of guidelines to the judiciary advising them of the work of deaf interpreters. The conclusions presented in these three sources support the notion of broadening the core group of deaf people who could benefit from the provision of a deaf interpreter. The expanded group consists not only of those with unique linguistic needs, but also those presenting complex social and experiential combinations, regional or dialectical variation, and weak English skills. The brief provides several examples of the legal system’s insensitivity to regional and dialectical differences in ASL and the tragic consequences are discussed.

The value of the brief is being field-tested through a number of interpreter referral/coordination agencies and will be assessed and reported during the final year of the current funding cycle--2010.

### **Best Practices Document: American Sign Language and English Interpretation Within Court and Legal Settings**

*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 legal interpreting (Wikipedia - [http://en.wikipedia.org/wiki/Best\\_practice](http://en.wikipedia.org/wiki/Best_practice)).

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.

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 discussed during this presentation have been researched and found to result in the desired outcome, and are supported by scholarly work from the fields of interpreting and interpreter education.

Best Practices are addressed for the following aspects of court and legal interpreting.

- Producing Effective Interpretation in Court and Legal Setting
- Team Interpreting
- Collaboration with Deaf Interpreter Specialists
- Visually Recording a Statement or Interpretation in ASL
- Training, Experience and Credentials of a Legal Interpreter
- Staffing Legal Interpreters
- Interpreter Preparation in Court and Legal Matters
- Interpreting Depositions
- Interpreting Attorney – Client Interactions
- Effectively Interpreting Law Enforcement Interactions

As the work of the NCIEC Legal Interpreting Workgroup continues, and the practices discussed 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 and juvenile matters—will be considered, examined, and documented. Therefore, these practices are to be viewed as evolving and ones that will continue to improve over time, as more research and scholarship become available and through ongoing application, collegial review and discussion.

## **Competencies of Interpreters Working in Court and Legal Settings: Distinguishing Generalist versus Specialist Practice**

Although interpreting in the legal setting is a long-recognized area of specialization in the field of ASL-English interpreting, we seek a deeper understanding of the unique skills and knowledge sets required for successful and consistent performance in this setting. The work of interpreters in this setting is held to high standards and subjected to much scrutiny—the stakes are high for all involved. As a result, the interpreter practitioner must be well trained and mature in their practice.

In defining the competencies of interpreters working in court and legal settings, the most difficult challenge is distinguishing between those competencies all practitioners should possess—regardless of setting—and those competencies that are unique to the setting. In part, this difficulty stems from the reality that a significant number of working ASL-English practitioners experience gaps in their generalist competence. As a result, any discussion of specialization seems to include a discussion of how to reduce, minimize or eliminate the performance gaps of generalist practitioners prior to or as part of specialization.

For the purpose of this discussion, generalist competence is defined as competence which involves the application of knowledge and skill in a significant range of interpreting activities, performed in a variety of contexts. Some of these activities are complex or not routine—although most are—and there is a fairly consistent level of individual responsibility or autonomy. Collaboration with others is a requirement in some interpreting activities.

Specialty competence is defined as competence which requires specialized and expert knowledge within a specific and complex context—as is the case with court and legal interpreting. It involves the application of a range of fundamental principles (such as legal, procedural, professional) within that context and the ability to adapt to a wide and often unpredictable variety of factors. Substantial personal autonomy features in strongly, as do personal accountability for planning, analysis, decision-making, execution, and reflection. Specialization competence involves substantial skills in collaboration and consultation (Mattingly, 1991; 1994).

Generalist practitioners typically have the breadth of knowledge to be able to survey the big picture and identify critical interpretation problems, but they may not have the specialist knowledge to solve the problem or execute a plan for managing the wide range of variables that are likely to surface in a specialty context—like the complex and varied variables

associated with court and legal interpreting. This complexity and variability place both the practitioner and consumers at risk and indicates the need for a specialist practitioner.

Specialist practitioners have both breadth and depth of knowledge and skill. They have deep understanding of a specific setting which makes them particularly adept at solving interpretation problems that arise within the setting (Mattingly, 1994). As well, they possess a strong foundation in critical reasoning which enables them to consistently apply best and effective practices that foster desired outcomes of interpreted events.

The Competencies of Interpreters Working in Court and Legal Settings document is grounded in a set of generalist competencies defined by Witter-Merithew and Johnson (2005) in the text *Toward Competent Practice: Conversations with Stakeholders*. The thirty-four (34) Entry-to-Practice Competencies defined in that text have been expanded to 1) deepen the levels of mastery required for specialty practice and 2) include competencies unique to interpreting in the court and legal setting. Consensus-building around competencies for interpreters working in court and legal settings has begun through surveying expert practitioners specializing in this setting, and additional surveying will occur as part of the 2009 RID Convention. As additional insight is gained, the document will continue to be revised.

Mattingly, C. (1991). The narrative nature of clinical reasoning. *American Journal of Occupational Therapy*, 54, 998-1005.

Mattingly, C. (1994). The concept of therapeutic "emplotment." *Social Science and Medicine*, 38(6), 811-822.

Witter-Merithew, A. & Johnson, L. (2005). *Toward Competent Practice: Conversations with Stakeholders*. Alexandria, VA: RID Publications.