



**National Center for State Courts  
September 14-16, 1999**

**Session 301:  
Telephone Interpretation: Options in Accessing Justice**

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**Faculty Article**

**Securing Language Interpreting Over the Telephone  
What Are the Options?**

*William E. Hewitt*

**Background**

The United States is becoming increasingly diverse and multicultural. Immigration reached an all-time high in this last decade of the century. People who do not speak English are more often becoming central figures in court cases as litigants or witnesses, and problems associated with the need to locate and use interpreters in these cases is a recurring contemporary court management issue. Courts have an obligation to provide equal access to justice for everyone who comes before them, but barriers erected by language differences and cultural misunderstanding make it increasingly difficult for courts to meet constitutional requirements of fundamental fairness, equal protection and the right to confront and cross examine witnesses.

Problems and needs related to the increase in linguistic diversity that trial courts have in common at both state and federal levels fall into three broad groupings:

- Determining the qualifications of interpreter candidates;
- Expanding the pool of qualified interpreters; and
- Improving the distribution of qualified interpreters, making them available to courts where and when they are needed, at an affordable cost.

The development of sophisticated telecommunications technology provides new ways for courts to reduce problems associated with the scarcity of qualified interpreters and their uneven distribution. This paper discusses some available options and experiences, as a supplement to the CTC6 demonstration of the use of telephone interpreting in simulated courthouse and courtroom settings.

**Why is it important to explore the potential benefits of over-the-phone interpreting in state**

### **courts?**

A very high level of skill and unique talents are required for competent interpreting in court and other legal settings.<sup>1</sup> Simply being bilingual is not enough. Unusual aptitude and substantial training and practice are required to achieve the necessary skill level to be a qualified court interpreter. Very few individuals in the United States are capable of interpreting at the very high level of skill required to faithfully preserve meaning and ensure accurate communication in the legal setting. Moreover, the few individuals who are qualified cannot be physically present at all of the places where they are needed and when they are needed. Scarcity of qualified interpreters is most problematic in languages other than Spanish. Even for Spanish, the task of finding a qualified interpreter is not simple in many parts of the country.

An inevitable consequence of the scarcity of qualified interpreters is the commonplace practice of using unqualified individuals -- anyone who appears bilingual. Modern telecommunication technology offers an obvious possible way to reduce or even eliminate this undesirable practice. Courts can reach by telephone interpreters who otherwise would be *unavailable* because of distance, time, cost, and scheduling conflicts. Over the telephone, qualified court interpreters become accessible in geographically remote areas, and the number of languages for which qualified interpreters are available to all courts dramatically increases.

In addition, telephone interpreting offers the possibility of increasing the frequency of work opportunities for interpreters when there is a limited demand for their services in their hometown area. This is an important consideration for encouraging individuals who have an interest and some potential ability in interpreting to develop their skills and become truly qualified to do this demanding work. If a reasonable living or meaningful income supplement is not available, there is no incentive for would-be interpreters to develop, or invest the time and money required to develop, their skills. But potentially qualified interpreters who can look forward to working more regularly have an incentive to become professionally qualified, and over-the-phone interpreting is one way for interpreters to work more regularly.

The following are descriptions of various ways in which telephone interpreting has been used and/or studied in the courts, and the conclusions drawn from those experiences.

### **Commercial Telephone Interpreting Services**

In state courts, experience with telephone interpretation (with an important exception in New Jersey), has been limited to the use of commercially available phone services. By far, commercial services to courts have been dominated by Language Line, LLC (Language Line Services).<sup>2</sup> Because of its widespread use familiarity, it is the only specific commercial service this paper will describe.

The hallmark of Language Line Services is that it provides unscheduled rapid access by customers to interpreting services in more than 140 languages. The service operates 24 hours a day, 365 days per year. To access the service, calls are placed on an 800 number to the services operations center in Monterey, California. From there an operator establishes a connection between the client and an interpreter who may be located anywhere in the United States or Canada. In 98% of the cases, the connection is established within a minute of receiving the service request.

### *Equipment Requirements/Options*

The equipment requirements to use the Language Line Services service are modest - a single telephone line and either a handset, speakerphone or conference phone equipment. But, naturally, the quality of the interaction with the interpreter and the efficiency of the proceeding are directly dependent on the

quality of the equipment used and the acoustical characteristics of the courtroom. The following are typical equipment configurations and the characteristics of each for two different kinds of settings:

- Interview settings and counter services
- In-court proceedings.

#### *Consecutive Interpreting Limitation*

Over the phone interpreting using standard telephone lines and equipment restricts the interpreter and the court to the *consecutive* mode of interpreting. In this mode of interpreting, one speaker utters a relatively short statement, ideally less than 50 words. The statement is then interpreted. It is followed by a response or another short statement, and so on. This is time consuming and inefficient in settings in which the dominant activity is monologue speech by the judge directed at first appearances, arraignments, and pleas, which are also the types of hearings where over the phone interpreting is most often used.

#### *Interview Settings and Counter Services*

In interview settings the best alternative is to avoid interpretation altogether, and for the communication to take place in the non-English language. Naturally this requires bilingual court officials who are employed in locations where services to a non-English speaking public frequently are frequently required. But this is often not possible and would be fairly rare, except in highly bilingual communities.

#### *Interpretation with one telephone handset*

Language Line Services have been used with this basic equipment at clerk's office counters for providing basic customer information. The counter clerk calls the interpreter and explains the situation. Then the handset is simply handed back and forth.

#### *Two handsets on a single line*

This option is obviously preferable to using one handset. It is also very useful for any type of interview, for example attorney/client, bail/jail release screening, probation intake or supervision meetings.

#### *Conventional speakerphone*

This equipment, placed on the judge's bench or a similarly central position, makes it possible to simulate having an interpreter present in court. This equipment has very limited acoustical fidelity, however, and may require severe restrictions on movement within the courtroom. It also requires individuals to take great care to speak into the microphone from a relatively close range.

#### *Conference phone equipment*

This option, like the previous scenario, offers much better acoustical properties. It allows much more flexibility of movement and distance, but still requires monitoring and some behavioral controls.

#### *Speakerphone or conference equipment with extrahandset(s)*

This option allows for private as well as public conversations when the speakerphone is disabled.

#### *Interpreter qualifications*

Language Line Services endeavors to recruit and hire skilled interpreters and provide them with training to improve their performance. In practice, the skill level of their interpreters varies with the relative scarcity of individuals qualified to interpret in a particular language and the influence of market competition in a commercial setting. The majority of other work performed by Language Line Services

interpreters does not require the skill levels or knowledge needed for court interpreting. The most highly qualified interpreters therefore are not needed to meet the demands of the commercial service marketplace, and the compensation levels for interpreters are set accordingly. The most highly qualified interpreters are able to work for better pay than the rates paid by commercial interpreting service vendors. (It is important to note that this marketplace factor is not really related to whether interpreting service is over-the-phone or in person. Commercial agencies that provide in-person interpreting have the same limitations, whether they specialize in "in-person" interpreting (e.g., Berlitz) or over the telephone, like Language Line Services.) Moreover, Language Line Services and other commercial services are as restricted as are the courts in finding qualified individuals in lesser-used languages -- sometimes there is no one with the appropriate qualifications.

In summary, while Language Line Services strives to recruit the most qualified interpreters and provide appropriate levels of training, including industry-specific training, commercial market forces ultimately determine the qualifications of the interpreters provided by commercial agencies. These market forces do not require the same competency standards that are demanded by equal access to justice and due process of law for cases involving people who do not speak English.

### *Cost*

The unit cost of Language Line Services is relatively high on an elapsed time basis. It ranges from about \$2.20 to \$3.10 per minute, depending on language and time of day. Because there is no extraneous time to be paid for (travel, waiting, minimum service fees, etc.), these high per minute costs are generally affordable. For example, a 10-minute session at \$2.50 per minute will cost the court about \$25.00. A typical minimum cost for a freelance or agency interpreter is about \$50.00. So, which approach is less costly depends on how efficiently the interpreter is used in that hour. If there is only one 10-minute hearing to work, Language Line Services is less expensive. But if the in-person interpreter is used for several cases during one paid appearance and interprets for a total of about 30 minutes, the fee for the in-person interpreter would cost less (about \$50.00, compared to \$75.00 for Language Line Services).

### *Problems with the use of commercial, over-the-phone service*

Most of the substantive problems associated with interpreting services provided through the telephone medium *are the same ones that characterize the use of in-person interpreters in courts settings*. This important conclusion is easy to overlook when the results of research and experience with the use of Language Line Services are summarized. Unless we step back and compare typical results of observations of all interpreting services provided in courts, where the use of the telephone is just one of several "input" variables, there is a tendency to inappropriately condemn the technology for problems not related to it. The following list of problems with telephone interpreting observed during formal studies, or reported less formally by service users or observers, includes only a few that are unique to the technology itself.

### *Problems that do not relate to technology*

1. Poor interpreting skills. This means that the interpreters do not understand the vocabulary that is used; even if they understand, lack the ability to render in the target language what they heard in the source language; or simply lack the well-developed, short-term memory required to accurately and completely remember what has been said. This problem occurs because of the scarcity of qualified interpreters, and it is just as prevalent when interpreters appear in-person as when they work over the telephone. With few exceptions, and usually those are limited to specific languages (e.g., Spanish), courts impose no more rigorous standards for qualifications, and their

assessment, than does Language Line Services or other commercial vendors of interpreting services.

2. Unprofessional conduct by the interpreter. Problems like this include interpreters offering advice, editing statements, answering for the defendant instead of interpreting, summarizing what is said, etc. Some individuals serving as interpreters engage in these behaviors because they lack education about the proper role of the interpreter or because they lack the skill to do otherwise, that is, they summarize because they are not capable of remembering or accurately interpreting everything that they hear. Sometimes interpreters engage in inappropriate behavior because they are asked to do so by the judge or lawyer, and they do not know how to manage the situation (see below for examples).
3. Inappropriate conduct by other courtroom participants, including the judge. Often problems with interpreting arise because courtroom participants do not follow some basic behavioral guidelines that are necessary for accurate and efficient interpreting. Examples include:
  - Use of the third person by judges and lawyers when they want to communicate with the non-English speaking person (e.g., "Tell him so and so..."; "Explain to him that ...");
  - Speaking too fast for reasonable opportunity to comprehend what is being said;
  - Speaking for too long between breaks for the interpreter, so that it is impossible for the interpreter to remember everything that was said;
  - Using vocabulary or speech styles that are very difficult to understand or interpret (double negatives, highly complex sentence structure, unusual technical terms or professional jargon, with no explanation);
  - Allowing two people to speak at one time; and
  - Mumbling or very soft-spoken speech.

#### *Problems that relate to the technology*

Standard commercial over-the-phone interpreting services such as those offered by Language Line Services have the following characteristic limitations in practice. Some are not inherent in the technology and could be addressed easily by changes in standard practice.

- Visual aids to communication that help the interpreter understand what is happening and being said in court are absent. Remedy: None. This is an inherent problem that is more or less significant depending on the interpreter, the kind of proceeding, and many subtle and unpredictable factors. In effect, this requires extra effort on the part of all court participants to maximize the audibility and intelligibility of the spoken communications. Unfortunately, many judges pay no particular attention to special management of interpreted proceedings, and this extends to telephone interpreting. So, interpreters working without visual cues are at a greater disadvantage than in-person interpreters in challenging situations.
- The consecutive interpreting mode restriction is inherently inefficient for most court proceedings. Remedy: None with standard equipment. Requires special technology described below.
- Use of a speakerphone prohibits private communications between lawyer and client. Remedy: Provide two handset extensions on the telephone line.
- Standard speakerphone equipment has limited flexibility and range within which there is adequate acoustical fidelity Remedy #1: Replace the standard speakerphone with a higher-cost, full-duplex "conference phone" unit. Remedy #2: The judge must require the participants to

"gather" near the speakerphone and adjust their behavior so that they speak into or toward the microphone pick-up in the equipment.

Despite these drawbacks, the use of commercial over-the-phone interpreting services such as those offered by Language Line Services is a reasonable choice for judges in many jurisdictions who infrequently use interpreters and do not have access to qualified interpreters in any case. If faced with the choice between using Language Line Services or a person who is a friend, relative, police officer, or even a jail inmate, the Language Line Services interpreter is probably the better choice. Judges who must choose between the Language Line Services service and an in-person interpreter whose skills have not been evaluated by anyone simply will have to be guided by local circumstances and their own experience. If there is no formal screening process for in-person interpreters overseen by a qualified court professional, then who knows which service - Language Line Services or the court's own staff - will do a better job recruiting, screening and training interpreters?

### **State Court Operated Over-the-Phone Services: New Jersey's Pilot Project**

From mid-1995 to January 1997, the New Jersey Administrative Office of the Courts conducted a pilot telephone-interpreting project in four jurisdictions to determine the feasibility of using these services in its courts. In New Jersey's experiment, the court's own, full-time professional Spanish court interpreters from two of New Jersey's metropolitan counties delivered telephone interpreting services to the Superior Courts in less populous counties. In New Jersey, staff interpreters who are court employees are tested for performance competency and have proven abilities to handle court interpreting.

The procedure for securing service was for court staff in the requesting court to call the interpreters' office in the service court, and ask for an interpreter. Callbacks were required if no interpreter was immediately available. Usually, service was provided within a few minutes, with the longest wait for service being one hour. During the experiment, judges, interpreters, and support staff filled out evaluation forms and most events were tape-recorded for further study.<sup>3</sup> A total of 95 interpreted cases were included in the study during an 18-month period.

Duplex conference telephones, located on the judges' benches, were used in the pilot program. The project focused on five criteria for evaluating the service:

- Legal sufficiency;
- Quality of the permanent record produced;
- Quality of the interpretation;
- Efficiency; and
- Cost effectiveness.

The conclusion reached by project staff was that court telephone interpreting services can be efficient and effective as long as:

1. The equipment at both ends of the link-up is adequate.
2. The process is explained to the parties, and to the interpreter.
3. The proceedings are relatively short.
4. The service is made available for confidential communications, such as those between attorney and client.

There was some concern expressed regarding the quality of the interpretation when poor or malfunctioning equipment was used or when the interpreter had difficulty hearing the parties for any

reason. Overall, while judges reported that telephone interpreting posed no special problems and that audibility and comprehension were good, the *interpreters* reported experiencing greater problems with audibility and generally greater stress and worry about the quality of the service they were providing.

### **NCSC Telephone Interpreting Pilot Project**

The National Center for State Courts (NCSC) recently concluded a pilot program on court telephone interpretation through a project funded by the State Justice Institute. With the cooperation of Language Line Services, the Court Telephone Interpretation Service (CTIS) Pilot Program explored the feasibility of delivering the services of *court certified* interpreters on short notice over the telephone. The idea was to achieve the unlimited and rapid access to service that Language Line Services provides while providing a higher level of assurance that the interpreters would be appropriately qualified, as in the case of New Jersey. Any trial court was eligible to participate under the conditions established for the project. Conditions for participation were fourfold:

1. Courts would pay the ordinary Language Line Services rate, but without being charged the ordinary annual minimum fee.
2. Courts would make their customer usage data available to NCSC for project research purposes.
3. Courts would participate in telephone interviews to evaluate their experience and satisfaction with the service.
4. Courts would allow random audio taping of the court proceedings when the service was used, under conditions of anonymity for both the court and the participants.

The pilot project lasted for six months and included approximately 1,100 calls. The key observations drawn from the project are listed below.

1. Regular use of telephone interpreting by courts would need to increase very greatly before commercial services can afford to provide court certified interpreters.
2. Regular users of the service are satisfied with the service they currently get, but courts that have not previously used telephone interpreting are reluctant to experiment with it.
3. New Jersey's conclusions with respect to the potential utility and cost-effectiveness of over-the-phone interpreting, and the requirements for maintaining quality of interpreting, are confirmed by NCSC's study.
4. Audited recordings of a sample of interpreted hearings included some major distortions of meaning by the interpreter, which were unnoticed or uncorrected.
5. The most frequent problems with the interpreting setting noted by interpreters were problems arising from malfunctioning equipment or the failure of the parties to speak so that they were heard clearly through the equipment.
6. The second most frequent problem noted by the interpreters was behavior of judges that interfered with the quality of interpreting (use of third person, very long utterances, failure to keep parties within the audibility range of the equipment).

### **Federal Court Use of Telephone Interpreting - Best Practice**

The idea of using telephone interpretation in U.S. District courts began in 1989 with a goal of increasing the availability of certified or otherwise qualified interpreters through the use of telephone equipment. The pilot phase the project, conceived and delivered by Chandler Thompson, a federally certified interpreter in Las Cruces, New Mexico, successfully provided Spanish/English telephone interpreting services by prior scheduled appointment to courts and probation officers in several states.

A unique feature of the federal court telephone interpreting system is the capacity for interpreting in the

simultaneous mode, which cannot effectively be done over an ordinary, single-line telephone. The federal court approach requires two telephone lines in the courtroom and specialized equipment in the office of the interpreter, which the interpreter operates. The first telephone line is attached to a conference or speakerphone in the court. The second telephone line is attached to a handset or headset provided to the defendant. The interpreter listens to the signal coming in on the line from the conference equipment and directs interpreted output to the second line, which normally only the defendant can hear. Extensions on the line would allow more than one defendant to listen to the interpreter. By placing a handset extension of the speakerphone line on counsel table, this system also permits the defendant and counsel to conduct private conversations. When this is needed, the courtroom clerk temporarily turns off the speakerphone. Counsel, defendant and interpreter are then the only parties to the conversation.

The program -- originally run exclusively out of Las Cruces -- has now expanded to include interpreting sites in other locations. It also has evolved from its original equipment into a second-generation technology. During 1997 and 1998, the Administrative Office of the US Courts (AO) invested in the development and testing of new prototype models of simultaneous interpreting equipment. These prototype equipment models were installed and tested in Houston, Miami, Los Angeles, Washington DC, New Mexico, and Puerto Rico. Court personnel were trained by Chandler Thompson in the operation of the equipment and the techniques for using it effectively. The equipment proved to be reliable, effective and easy to understand and the expanded program has now been institutionalized in those courts.

As a consequence of the federal court pilot and investment in the second-generation prototype models, a vendor now has emerged that makes the equipment and its technical support commercially available to anyone. The vendor, Rauch Companies, LLC, offers the equipment to courts and their interpreter service providers through lease and purchase arrangements. This commercial availability will greatly expand the potential for state courts to secure access to qualified interpreters over the telephone and to conduct telephone-interpreted proceedings much more efficiently than is possible using single-line telephones and being restricted to consecutive interpreting.

Both the Language Line Services and the Rauch Companies services will be used in demonstrations of telephone interpreting for the workshop to be offered on this subject at CTC6 in September 1999.

### **Additional Reading on Objections to Telephone Interpreting**

Telephone interpreting has inherent technological limitations and is vulnerable to mismanagement and misuse. Two contemporary accounts of the concerns that many professional interpreters have about the introduction and use of over-the-phone interpreting in court settings have been written and published in *Proteus*, a quarterly publication of the National Association of Judiciary Interpreters and Translators.

"Hold the Phone: Telephone Interpreting Scrutinized," by David Mintz (Vol. VII, No. 1, Winter 1998) is a concrete account by an interpreting professional. Mintz "felt duty bound to learn more about the federal telephone interpreting project, see it in operation, and try it for myself so I could develop an informed opinion." Mr. Mintz's account is useful to court managers and policy makers who may be contemplating embarking on the use of telephone interpreting and want to do it right.

"Telephone Interpreting: Technological Advance or Due Process Impediment?" (Vol. VII, No. 3, Summer 1998) explicitly seeks to lay out the arguments for opposing telephone interpreting in "formal court contexts." The author believes that those who acknowledge an appropriate use for telephone interpreting in court do not use the technology to increase access to qualified interpreters, but use it

only because it is "expedient and cheap." Court managers may want to inform themselves about this viewpoint.

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<sup>1</sup> One of the central problems for court managers is the difficulty of assessing the qualifications of court interpreters. That problem is being effectively addressed by the State Court Interpreter Certification Consortium and the Federal Court Interpreter Certification Examination. For more information about these programs, see William Hewitt et al., *Court Interpreting Services in State and Federal Courts: Reasons and Options for Inter-Court Coordination* (Williamsburg, Va.: National Center for State Courts, 1998).

<sup>2</sup> Formerly, AT&T Language Line Services (AT&T).

<sup>3</sup> Robert Joe Lee and Jeffrey A. Newman, *Pilot Test of Telephone Court Interpreting in Atlantic/Cape May-Essex-Hudson: Final Report (Draft)* (Trenton, NJ: Administrative Office of the Courts, 1997), p. ix.