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THE USE OF INTERPRETERS IN COURT

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THE USE OF foreign languages in judicial proceedings divides itself logically into two parts: the translation of written documents for courtroom use, and the use of interpreters in examining witnesses who do not speak the English language. Translation is a feat of a lower linguistic order than acting as interpreter, and this article will confine itself largely to the practical problems faced by the trial lawyer in the use of interpreters in the examining of witnesses.

America is a melting pot and unless we happen to be American Indians, we are all immigrants or the descendants thereof. In some jurisdictions in this country, interpreters are used and needed for nearly every spoken language of the world. In North Dakota, our ethnic composition is such that the principal language for which interpreters are needed is German; with a lesser use, especially in the past, for the Scandinavian languages.¹

The fact that the foreign languages spoken in this state are closely related to English would appear advantageous at first thought. Actually, the presence of many common words and similarities has pitfalls, and the same rules governing the use of interpreters are valid whether the foreign language in question is Norwegian or Chinese.

Assuming that the attorney has any choice, then selection of an interpreter is important. Bias or friendship towards a party in the action or assumed knowledge of the facts are factors which can cause coloration of the interpretation or cause the interpreter to get beyond the bounds of his duties.

There are two extremes in any interpretation or translation. One is complete literal, word-for-word translation. The other is substantial or "free" translation. If counsel demands, as sometimes he will, that each word be translated to the English equivalent as given, the result may be grotesque. The inversion of word order used in the German language and to a lesser extent in the Scandinavian languages, will cause the resulting English sentence to sound often peculiar or even incomprehensible. "Free translation" if carried to an extreme is inconsistent with the oath taken by the

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1. An interesting case involving the construction of an allegedly libelous writing in a Scandinavian language is *Martinson v. Freeberg*, 47 N.D. 389, 182 N.W. 461 (1921).

interpreter when he commences his duties in court.² Accurate translation will also take account of the use of idiomatic phrases, which if literally reproduced come out as nonsense, but which should be replaced by a phrase containing different component words, but meaning the equivalent sense to the listener.³

Ideally, and this is an ideal seldom reached, the interpreter is simply a vehicle or machine, translating the question and in turn translating the answer. He is not supposed to frame questions of his own, to become involved in lengthy untranslated colloquies and discussions with the witness, or to volunteer information and suggestions. It is always stressed in instruction on the use of interpreters that the questioner must keep control of the situation. This sounds like a platitude, but in the practical use of interpreters in courts, it is all too easy for the interpreter and witness to settle down to questions and answers, with the examining counsel dropping into the background — meanwhile the purpose of his examination which he, not the interpreter, has in mind, is not being realized. In this connection, a general briefing of the interpreter in advance as to the facts and purpose is indicated, but it must be coupled with precautionary remarks designed to keep the interpreter from "taking over."

Control, once lost, is difficult to regain. Meanwhile, the jury, court, and counsel are impatient and perhaps irritated. This is the result of allowing the witness and interpreter to wander off into a jungle of side-conversation and remarks outside of the question and answers required.

Keeping questions straightforward and simple is especially important when the question is to be translated into a foreign language. To complicate matters, the witness may very well be an elderly person, with all that entails. It is better to break up a lengthy sentence, dangling with clauses and assumptions, into several short, to-the-point questions.

On this subject of simplicity of questions, a good author on the subject of trial practice has said in his chapter dealing with the use of interpreters:

"Lawyers, generally speaking, have better than average command of the English language and are naturally inclined, when questioning witnesses, to use the type and form of questions which they would use if putting the question to a brother

2. See N.D. Rev. Code § 31-0111 (1943).

3. An example is "to catch a cold," which if literally translated into a foreign language is meaningless.

lawyer, often forgetting that the witness may not fully and fairly grasp the meaning and import of such a question. This is bad enough when the witness speaks English, but the situation is obviously far worse if the question has to be relayed and the answer of a witness relayed by an interpreter."

Certain disadvantages are always present in using an interpreter. The witness, if he is evasive or untruthful, has the language barrier and intermediary third person, to help shield him. The psychological effect of many common forms of cornering cross-examination is often completely unattainable. Often the witness understands English, or thinks he does, and will commence answers in his native tongue, before the foreign-language question has been put to him. This is unacceptable and results in a sort of "linguistic chop-suey" confusing to the jury and certainly confusing as it may later appear in the record.

Questions to a witness through an interpreter should be put in the second person, exactly as if there were no interpreter. Thus it should be: "What did you and Joe do right after the accident," and never, "Ask him what he and Joe did right after the accident." This is a common error, and results in a misleading record, besides psychologically tending to give the interpreter a role as questioner instead of transmitter of the exact question as given.

Summing up then, it will be seen that the common-sense rules followed in questioning without an interpreter are usable here. The questions should be kept fairly simple and straightforward. There will be limitations and handicaps inherently present when an interpreter is used, which are best recognized and cannot be avoided. Control should be maintained by the questioner and not allowed to slip over into the hands of the interpreter. A general briefing of the interpreter is helpful, if he is retained by the questioner. Questions should be phrased in the second person "you" form and the "ask him" or third-person form is not desirable. The attorney should recognize the linguistic facts and understand that true literal, word-for-word interpretation is often not attainable and inaccurate. The balance has to be struck, in other words, to effect a happy medium. Side-conversation and extraneous dialogue between the interpreter and witness lead to lack of control and unsatisfactory results.

Interpreters and the need for their use will be with us for some time to come, if not indefinitely. It is hoped that the foregoing comments will be helpful when it necessary to use an interpreter in court.