

# **Response of the United States**

## **To the 2021 Third Study Commission Questionnaire**

**By Judge Charles R. Simpson III**

**United States District Court**

**Louisville Kentucky USA**

### **A. Interpretation in criminal courts**

1. What criteria must be met for an interpreter to be appointed? Does this differ if it is for a party to the case, or a witness?

A judge must appoint interpreters in criminal prosecutions if the judge determines that a party or a witness speaks only or primarily a language other than English or has a hearing impairment (whether or not suffering also from a speech impairment), so as to inhibit that person's comprehension or communication in the proceeding. A judge may also appoint interpreters for defense witnesses. The government pays for such interpreters if the accused is indigent. Private attorneys representing Criminal parties may hire interpreters, but not at government expense.

2. Is the interpretation limited to certain languages?

No. My court has access to interpreters in Armenian, Spanish, Arabic, Somali, Swahili, Kurdish, Assyrian, Chaldean, Korean, Vietnamese, Bosnian, French, Fulani, Pulaar, Wolof, Sign Language, Farsi, and Persian.

3. Who appoints the interpreter?

The Judge

4. Are there standard requirements for the quality of the interpretation or qualifications of the interpreter?

If so, how does the judge ensure compliance?

In any event, how does the judge ensure that the interpretation is accurate and meets good standards?

The use of Certified Interpreters is preferred, although if none are available then non-certified interpreters can be appointed. There are certification programs for Spanish, Navajo, and Haitian Creole. To become certified, the interpreter must take an oral and written exam to prove competence. The certification process takes about two years.

5. Are there legal obligations for court interpreters?

To be accurate and impartial.

6. For the main hearing of the case is the translation for the whole hearing or only part of the hearing? If it is only part, which parts, and why is the whole hearing not translated?

The entire hearing would be translated if the need for interpretation is by a party. If the need is only for a witness, then just the witness's testimony would be interpreted.

**B. The importance of good interpretation and good communication for the verdict?**

7. Assuming that the quality of interpretation could affect the outcome of a case:

- 7.1 Do you consider this applies more in certain types of cases than others and, if so, what types of cases?

The need for quality interpretation applies to all cases, but it is most important in criminal prosecutions.

- 7.2 Is it a problem that can be remedied, or a problem that the judiciary must live with? And if yes, how do we secure that no one is wrongfully convicted?

This is generally not a problem in our courts. If there is a claim on appeal that the interpretation was erroneous, the error would have to be preserved in the record or transcript. And the claim of error would have to be raised immediately during the hearing, not later. This is so the error could be remedied quickly.

8. Is there a risk that people who have difficulty explaining themselves, possibly due to low intelligence or poor education, suffer disadvantages at the court? If yes, what remedies exist?

Some persons cannot easily explain themselves. This is true even for educated people. This is where the lawyers must work to clarify the testimony for the judge and the jury. They do this through the questions they ask the witness during the hearing.

9. Is intercultural communication a subject of training for judges or part of the instruction of juries?

No. The lawyers must use their skills to make the testimony of the parties and witnesses understandable.

### **C. Nonverbal communication in the courtroom**

10. Can the body language of accused persons, victims or witnesses influence the outcome of a case?

Yes, of course. The judge and the jury must consider not only what a party or a witness says, but how they say it. Body language is very important in evaluating the truthfulness of their testimony. The jury knows that witnesses are often nervous, so they take that into account. Sometimes, a witness who is too smooth and loquacious may not be believed because the testimony looks rehearsed or contrived.

11. Is nonverbal communication a subject of training for judges or part of the instruction of juries?

No. The jurors are told to use common sense in evaluating testimony in court. This is rather intuitive.

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