

"The Role of Interpreters Before, During & After Court Proceedings"

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INTRODUCTION

Throughout the Northern Territory, people and cultures clash daily. A major reason is misunderstanding at a social and cultural level. A great part of this is inability to communicate effectively.

The art of communication - that moment when we touch another by successfully conveying information in some form. We achieve this through thought, speech, writing and signs. When performed well, we are able to present ideas with passion and clarity to a myriad of people - or perhaps just a single person. For us to create a link with another, there must be a means that we each comprehend and use equally well so that a meeting of minds - an understanding - occurs. This means is called 'language'.

What does the word 'language' mean for you? Perhaps English, Indonesian, Braille or Kriol, or even HTML. You may have even thought of 'bad language' or 'sign language'.

In addition, there are languages described as 'specialty' languages: Medicine; Engineering; and Law (which has its own name: "legalese"). While written in English, they have an aura about them, so much so that I may ask of you:

"You speak English. Do you understand all that is discussed in medicine; in anthropological texts; when an accountant explains a profit and loss or balance sheet? If not, why not? You speak the *same language*, don't you? Or do you?"

So what is 'language'? Language is our means of communication, discovery of each other and participation within the world around us. It is the phraseology peculiar to a profession. It is the basis of creating a link with another and understanding them and their world. Language is created by and contains within it history, social values and a contextual background upon which the world is judged. Without language, one cannot access the world we live in or the world of another fully, nor make decisions based on properly understood knowledge and any information obtained. That is, one cannot participate fully in life itself. In short, language is ... EVERYTHING.

As language is so vital, every effort must be made to ensure the correct transferal, and subsequent understanding, of information. The arena of the legal system, then - with its court structure, specialised knowledge, obscure legalese and administrative burdens - poses its own difficulties. The understandable inability of this difficult and demanding system's personnel - including court orderlies, field officers, administrative staff and associates - to speak the myriad of differing languages of ethnic and Indigenous Australia, and the difficulties of ethnic and Indigenous Australia to speak English, requires assistance of a unique kind. Such assistance is found through the interpreter.

What is an interpreter then? Simply put, an interpreter is one who turns something spoken from one language into another language, and transfers that from one party to another. They are, in effect, a conduit.

Where the legal system makes contact with ethnic and Indigenous Australia, there is a dawning sense of wanting to "do the right thing" AND "get the job done", but its personnel are often not sure HOW and are constantly pressed for TIME. The interpreter can assist by being permitted to perform their role correctly.

So, what does this role comprise?

The interpreter's role can be separated into three elements:-

- i) Before Court;
- ii) During Court; and
- iii) After Court.

I) BEFORE COURT

Before turning to the specific question of the Interpreter's role "**Before Court**", however, I would like to raise others which precede it for your consideration:

- a) Is there a necessity to use interpreters before, during & after proceedings? and
- b) How is this being decided by those working at the coalface: Police Officers, Field and Special Unit Officers (e.g. Victim Support), some Administrative Staff and Lawyers.

In discussing these issues, my experience is with Indigenous interpreting. My comments do, however, have general relevance to ethnic interpreting.

Throughout the Criminal Justice history of the Northern Territory, Police officers, field officers and lawyers have operated in circumstances where it was considered proper to proceed without an interpreter, when in fact it was not. This practice continues today. Such circumstances ensure that Indigenous language-speaking individuals are not fully appraised of significant developments with respect to their liberty.

If the individual is able to provide name and address, answer queries as to family and relations, then provide (for example) an update as to the Premiership potential of Port Power, it appears the conclusion is often drawn that they will understand legal and court complexities. Alternatively, personnel concerned perhaps consider that information gained is adequate to just 'get the job done'. In both cases, it is decided that an interpreter is not required.

How and why is it then, that personnel generally unfamiliar with Indigenous culture, unable to speak a particular language, and untrained in the area of linguistics, make such decisions and refuse to engage the services of an interpreter? This decision ensures,

particularly in a time of *declining* rather than *increasing* English ability on behalf of Indigenous persons, that the individual concerned is not permitted the opportunity to comprehend what is actually happening to them.

The default position, so it seems - perhaps due to pressures of TIME, legal system administration and lack of knowledge - is **not to use** an interpreter. If unsure, the default position must be **to use** an interpreter, and with the assistance of the interpreter establish capacity to proceed without them. The focus must rest upon the rights of the individual, not personal or organisational time constraints, nor the impositions of the legal system.

Let me provide an example: Here, in this room, I am surrounded by my peers - legal, interpreting and management professionals. You are educated and English speaking. You are powerful. As I read the following passage, lawyers and others amongst you will understand it and its background perfectly:-

"A prominent factor in determining the nature of the relationship between a person who engages another to perform work and the person so engaged is the degree of control which the former can exercise over the latter. It has been held, however, that the importance of control lies not so much in its actual exercise, although clearly that is relevant, as in the right of the employer to exercise it". (Zuijs v. Wirth Bros Pty Ltd (1955) 93 CLR 561 at 571).

Now another paragraph:-

"Walls to be painted *in tempera* should be specially plastered. Addition of a little casein to the mortar of the wall is said to increase its compactness, hasten its complete setting, and prevent efflorescence".

Did you understand it perfectly? If not, why not? All it talked about was painting, and it was predominantly in English...

Although the second paragraph was verbalised in what for the majority of you is your first-language, would you be able to explain to another person **precisely** what it meant? Are you comfortable with the **specific** meanings of these elements:-

- *in tempera* (paint made from pigment ground in water and mixed with an emulsion of egg yolk or some similar substance);
- specially plastered;
- a little casein (the major group of proteins in milk, used in the manufacture of adhesives);
- mortar of the wall;
- increase its compactness;

- complete setting; and
- prevent efflorescence (resulting powdery substance or encrustation).

Unless you are skilled in this area, or have had exposure to it in some way, I have my doubts that you understood it and have the capacity to explain to another person **precisely** what it meant. (Perhaps it is only a reflection of my faults as a lousy painter!)

The issues this example raises are central to the identification, training and consistent engagement of interpreters in the court system. Have regard also to the following:-

- Who determines and how do they determine whether or not an interpreter is needed?
- In various locations trained interpreters are available, yet not utilised. Why is this?
- Some reasons provided for such unwillingness include that personnel concerned understand their clients "well enough" to proceed; that interpreters are unavailable or unreliable; and that the interpreters lack training or are not specifically trained with respect to the nuances of the legal system. How are these factors to be addressed?

Upon an interpreter being engaged, they are bound by a Code of Ethics as enunciated by the Australian Institute of Interpreters and Translators Inc. ("AUSIT"). General Principles include:-

1. *Confidentiality* - the interpreter shall not disclose information acquired during the course of their assignments;
2. *Impartiality* - the interpreter shall observe impartiality; and
3. *Accuracy* - the interpreter shall take all reasonable care to be accurate.

Upon entering the "**Before Court**" phase, and while adhering to these principles, the interpreter may assist in these areas:

- General background - with respect to the community of origin of the person concerned (and I stress 'general', bearing in mind the element of impartiality);
- Cultural factors - advising when/why questions may/may not be appropriate;
- Times, dates and distances - identification of alternate means by which times, dates and distances may be secured e.g. timing of community sirens signalling commencement of work or a break for lunch; bush holidays; ceremonies; the location of a particular house to the road, store or school;
- Educational - Assisting personnel to utilise the services of an interpreter correctly, particularly where they have not done so previously;
- Areas of Difficulty - providing explanations regarding:-
 - i) Proper seating arrangements for optimum communication;
 - ii) Appropriate manner of speech; and
 - iii) Cultural issues such as relationships, eye-contact and time to reply.

- Establishing the mode of interpreting - Consecutive/Simultaneous;
- Explanation to and assessment of the client - the interpreter must meet & talk to client about their role as interpreter, stressing confidentiality. They need to assess the client's manner of speech, what level of sophistication their language is at and other factors which may impede communication e.g. petrol sniffing.

The interpreter will also fulfill specific roles:

- Ensuring a suspect understands the charge(s) upon which they have been arrested;
- Attending at the Hospital to assist medical staff treat the victim;
- Interpreting in a Record of Interview;
- Explaining the ramifications of Bail or being Remanded in Custody to both the suspect and the family or person secured as surety;
- Assisting family members understand the process the suspect finds themselves in;
- Interpreting at the first meeting with a lawyer so that the client understands the offence, what the process in court will be and the ramifications; and
- Dealing with Centrelink should issues arise affecting payments.

II) DURING COURT

At this time an interpreter's role will include working with the Victim Support Unit to assist victim and respective families, however they will predominantly engage in:-

- a) Interpreting for the Defendant in the Dock; or
- b) Interpreting for a Witness.

With respect to:-

- a) Interpreting for the Defendant in the Dock - the interpreter must:

- Interpret the charges clearly, ensuring the client understands what it is they are charged with and pleading to;
- Interpret the facts as read by the Prosecutor, providing the client an opportunity to confirm they are correct;
- Interpret the proceedings either in total or summary form;
- Raise any queries by the client with the client's lawyer;
- Interpret the answers of any witnesses called;
- Interpret the sentence.

When:-

- b) Interpreting for a Witness (and in all other areas) - the interpreter must:

- Be accurate;
- Impartial;

- Interpret all elements of the witness's response, whether verbal or otherwise;
- Advise when/why questions or issues may/may not be culturally appropriate;
- If unsure, stop the questioning and ask for clarification;
- If unable to comprehend what is occurring, to advise the court; and
- Ensure that the lines of communication remain open.

III) AFTER COURT

An interpreter should be utilised in the following instances:

- Clarification of sentence, including explanation of terms and conditions;
- Instructions given by police or prison officials upon entry into the prison system;
- When provided with bail notices and other documentation;
- Advising the individual's family of the outcome; and
- Organizing accommodation and/or travel arrangements for a return home.

Personnel who have utilised the services of an interpreter during court proceedings will find it of great assistance at this point to conduct a de-brief. Discuss difficulties which arose, enhancements either or both parties can make regarding carriage of their duties and any queries. In other words, a general evaluation of the working relationship between legal personnel and interpreter - by doing so, each is able to assist and educate the other as to the operation of their respective worlds.

CONCLUSION

When considering the role of an Interpreter Before, During and After Court, these aspects are crucial:-

- Put yourself in the shoes of a person whose first language is not English, then ask: "In what detail would I like to know what is going on about me?";
- Stepping inside the legal system is no easy task. The process which occurs inside the interpreter's mind involves coping with three specific languages and their precise interpretation - English, "legalese" and the ethnic or Indigenous focus language;
- Never hesitate to ask questions of interpreters - they have a wealth of knowledge to contribute that you will never hear or see unless you engage them; and **FINALLY**
- Remember compounding - each time you utilise the services of an interpreter to explain the meaning of 'bail' or the ramifications of a suspended sentence, your message filters out through a network of families and friends. As a result, you are a major contributor to ethnic and Indigenous understanding and education as to the criminal justice system in Australia. Please, don't miss the opportunity nor shirk the responsibility.

THANK YOU

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