

USE OF INTERPRETERS
(Just Before Witness Testifies)

The law requires that the court appoint a qualified interpreter to assist a witness who [does not readily speak or understand the English language] [has an impairment of hearing or speech] in testifying. *The interpreter does not work for either side in this case. He(she) is completely neutral in the matter and is here solely to assist us in communicating with the witness. He(she) will repeat only what is said and will not add, omit, or summarize anything.* The interpreter in this case is _____. ~~I will now administer the oath to the interpreter.~~ *The oath will now be administered to the interpreter.*

(Oath to Interpreter): Do you solemnly swear or affirm that you will make a true interpretation to the witness of all questions or statements made to him/her in a language which that person understands, and interpret the witness's statements into the English language, to the best of your ~~abilities skill and judgment~~, So Help You God.

~~I will now administer the oath to the witness through the interpreter.~~
The oath will now be administered to the witness through the interpreter.

[After oath has been given]

You are about to hear testimony of a witness who will be speaking in [language used]. The witness will testify through the official court interpreter, who will interpret the testimony into English. *Only the English interpretation of the testimony may be considered by you in deciding your verdict.* Some of you may understand _____ [language of witness] *and may have a question as to the accuracy of that interpretation. It is important, however, that all of the jurors consider the same evidence. Therefore, you must rely only upon the official English interpretation as evidence in this case and disregard any other contrary interpretation that might be given to the testimony.* ~~If at any time there is a question in your mind as to the accuracy of the English interpretation by the official court interpreter, then you should raise your hand or otherwise bring this matter to the court's attention. The court will then attempt to resolve the discrepancy.* It is important, however, that all jurors consider the same evidence. Therefore, if there remains a disagreement as to the interpretation of the witness's testimony, you must disregard any interpretation other than that of the official court interpreter.~~

**[To be given if jurors are to be allowed to question the accuracy of the English interpretation.] If, however, during the testimony there is a question as to the accuracy of the English interpretation, you may bring this matter to my attention by raising your hand. You should not ask your question or make any comment about the interpretation in the presence of the other jurors, or otherwise share your question or concern with any of them. I will take steps to see if your question can be answered and any discrepancy resolved. If, however, after such efforts a discrepancy remains, I emphasize that you must rely only upon the official English interpretation as provided by the court interpreter and disregard any other contrary interpretation.*

**Note on use. Concern over the ability of a bi-lingual juror to set aside his or her own understanding of what a non English speaking witness has said, in favor of the official English*

interpretation, can perhaps be eliminated, or minimized, by full inquiry into the issue during jury selection. In the interest of accurate and fair proceedings, however, and as an additional safeguard, the court may wish to have a procedure by which the concerns of bi-lingual jurors over the accuracy of the official English interpretation might be resolved.

There are several procedures or methods which may be employed for this purpose. (e.g. written questions by jurors reviewed by the court, attorneys and interpreter outside the presence of the jurors, conference at side bar or in chambers with the juror, attorneys and court interpreter, or some combination thereof). The committee has not set forth any specific procedure so as to allow proper flexibility in this regard. The important thing is that the method be sufficiently discreet so as to insure that the juror does not share his or her concerns with the other jurors. The court should also assure itself that the juror has the ability and commitment to base his or her decision only upon the official English interpretation, even if there remains a question or disagreement as to its accuracy.

~~*Note on use. There are several different procedures which might be employed by the court for this purpose and the committee has not set forth any specific one so as to allow proper flexibility in this regard.~~

USE OF INTERPRETERS (Preliminary Instruction)

Languages other than English may be used during this trial. The evidence you are to consider is only that provided through the official court [interpreters] [translators]. Although some of you may know the non-English language used, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English [interpretation] [translation]. You must disregard any contrary meaning of the non-English words.

USE OF INTERPRETERS (Final Instruction)

[A] language[s] other than English [has] [have] been used during this trial. The evidence you are to consider is only that provided through the official court [interpreter] [translator]. Although some of you may know the non-English language used, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English [interpretation] [translation]. You must disregard any contrary meaning.

108. Duty to Abide by Translation Provided in Court
Some testimony will be given in [*insert language other than English*]. An interpreter will provide a translation for you at the time that the testimony is given. You must rely solely on the translation provided by the interpreter, even if you understand the language spoken by the witness. Do not retranslate any testimony for other jurors. If you believe the court interpreter translated testimony incorrectly, let me know immediately by writing a note and giving it to the [clerk/bailiff].

Sources and Authority

c It is misconduct for a juror to retranslate for other jurors testimony that has been translated by the court-appointed interpreter. (*People v. Cabrera* (1991) 230 Cal.App.3d 300, 303 [281 Cal.Rptr. 238].)

c "It is well-settled a juror may not conduct an independent investigation into the facts of the case or gather evidence from outside sources and bring it into the jury room. It is also misconduct for a juror to inject his or her own expertise into the jury's deliberation." (*People v. Cabrera, supra*, 230 Cal.App.3d at p. 303.)

c "If [the juror] believed the court interpreter was translating incorrectly, the proper action would have been to call the matter to the trial court's attention, not take it upon herself to provide her fellow jurors with the 'correct' translation." (*People v. Cabrera, supra*, 230 Cal.App.3d at p. 304.)

Secondary Sources

1 California Trial Guide, Unit 3, Other Non-Evidentiary Motions, § 3.32 (Matthew Bender)

1A California Trial Guide, Unit 20, Procedural Rules for Presentation of Evidence, § 20.13 (Matthew Bender)

4 California Trial Guide, Unit 91, Jury Deliberations and Rendition of Verdict, §§ 91.10, 91.12 (Matthew Bender)

(Revised April 2004)

5008. Duty to Abide by Translation Provided in Court

Some testimony was given in [*insert language other than English*]. An interpreter provided translation for you at the time that the testimony was given. You must rely solely on the translation provided by the interpreter, even if you understood the language spoken by the witness. Do not retranslate any testimony for other jurors.

Directions for Use

If this instruction is used, the Advisory Committee recommends that it be read to the jury before reading instructions on the substantive law.

Sources and Authority

c It is misconduct for a juror to retranslate for other jurors testimony that has been translated by the court-appointed interpreter. (*People v. Cabrera* (1991) 230 Cal.App.3d 300, 303 [281 Cal.Rptr. 238].)

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