ALASKA JUSTICE FORUM

A Publication of the Justice Center

Alaska Justice Statistical Analysis Unit

Winter 1994 | UNIVERSITY OF ALASKA ANCHORAGE | Vol. 10, No. 4

Legal Interpreting in Alaska

Phyllis Morrow

Since the enactment in 1978 of the federal Court Interpreters Act (Public Law No. 95-539), there has been an increasing reliance on interpreters in bilingual settings throughout the United States. Although the act applied only to federal courts, it has also stimulated a greater use of interpreters in state and municipal courts. In Alaska, with its diverse population, the need for court interpreters arises in both urban and rural areas.

The use of competent court-appointed interpreters can be critical to the conduct of fair legal proceedings. When to use interpreters and how to ensure their competency and availability, however, are problematic questions. Because legal communications are so inherently complex, the need for interpreters in bilingual settings is obvious; by the same token, the task of interpreting well is enormously difficult. Interpretation is not the relatively straightforward process—in which a virtually invisible person acts as a simple conduit—that it is often assumed to be. Numerous difficulties are involved, only two of which are generally recognized by participants (i.e., interpreters and those for whom they interpret) . The first of these is the delay in proceedings necessitated by the use of two languages, and the second is the difficulty of finding lexical equivalents for complex terminology. The former is seen as an essentially social problem (proceedings become too lengthy), resolvable only by limiting the use of interpreters and expediting the process. The latter problem is seen as a linguistic issue, resolvable by the preparation and use of technical wordlists and dictionaries. Both of these problems are real enough, and probably account for the court's use of interpreters only in clearly necessary cases. In reality, however, they are only two of many sociolinguistic complications inherent in the interpretation process.

The other complications are less obvious, but worth far more attention than they tend to receive. In this brief article, some of the salient issues surrounding language, interaction, and legal interpretation will be discussed in relation to Alaska situations.

This discussion is based on published reports of research on legal interpreting conducted in bilingual courtrooms outside of Alaska, and on my own and others' research dealing with general sociolinguistic dimensions of courtroom discourse.

Languages in the Court

The emphasis on terminological equivalencies can distract attention from several larger and more diffuse dimensions of courtroom communications: the challenges inherent in the varieties of language used by legal personnel themselves; the other kinds of alterations in meaning, beyond word error, that interpreters routinely make; and various cultural differences that pose interpretation problems.

In terms of the "Englishes" spoken, the courtroom is perhaps one of the most complex communicative settings a lay person is likely to encounter. In the courtroom, an unusual alternation of linguistic registers, ranging from highly formal to highly informal, are all employed within a single proceeding. To participate easily in legal proceedings, one must ideally be able to "codeswitch" among these. Attorneys and judges routinely do so, constantly gauging the impact (in terms of intelligibility and/or persuasiveness) of their speech on various listeners.

At the most informal levels, for example, attorneys work to create solidarity with jurors by frequent use of colloquial English; they also have recourse to a standard English register that is somewhat more formal than their own everyday speech. Depending on their own verbal repertoires, and on their judgement of the seriousness of the situation, jurors, witnesses, defendants and other lay participants, too, may formalize their speech to sound more impressive and/or credible. They may also use subcultural varieties of English (such as one of the local Englishes spoken in rural Alaska). A judge may signal a less solemn moment with a joke, intended to put nervous participants more at ease, and simultaneously reinforce his/her own prerogative to set the communicative tone of the court from moment to moment.

Legally educated speakers alternate all of these "ordinary" Englishes with the most formal register of legal English, which is characterized by jargon, complicated syntax, and various features otherwise found only in written discourse. Formal legal language, in fact, frequently consists of written texts rendered orally (such as routine jury instructions, which judges have memorized verbatim). Formal legal English differs from other (written and spoken) varieties of English lexically, syntactically, and at the level of discourse.

As Brenda Danet noted in an article published in *Law and Society Review*, "Language in the Legal Process," formal legal English is characterized by technical terms (e.g. "distraint"); common terms with uncommon meanings ("assignment"); words with Latin, French, or Old English origins ("voir dire"); a high percentage of polysyllabic words ("collateral"); unusual prepositional phrases ("in the event of default"); paired, redundant phrases ("will and testament", "freely and voluntarily"); formality ("shall" instead of "will"); vagueness ("all the rights and remedies available"); and overprecision (frequent use of "all" and "none").

*Please see **Legal Interpreting**, page 3*

HIGHLIGHTS INSIDE THIS ISSUE

A BJS Report

Violence Against Women

The National Crime Victimization Survey (NCVS) is the single most comprehensive source for information on the experience and consequences of violent crimes against women. This report, based upon a nationally representative sample survey of women and entailing about 400,000 individual interviews, provides us with many important insights about violence suffered by women:

• More than 2.5 million women in the country experience violence annually.

• Although women were significantly less likely to become victims of violent crime, they were more vulnerable to particular types of perpetrators. Whereas men were more likely to be victimized by acquaintances or strangers than intimates, women were just as likely to be victimized by intimates, such as husbands or boyfriends, as they were to be victimized by acquaintances or strangers. The rate of violence committed by intimates was nearly ten times greater for females than males.

Table 1. Personal Crime Victimizations, by Sex of Victim, 1987-1991

	Average annual rate of crime victimizations per 1,000 persons		Average annual number of victimizations	
Type of victims	Male	Female	Male	Female
Crimes of violence	**40.5**	**24.8**	**3,926,415**	**2,600,607**
Rape	**0.2**	**1.3**	**17,859**	**132,172**
Completed	0.1	0.6	7,268	58,614
Attempted	0.1	0.7	10,590	73,558
Robbery	**7.4**	**4.0**	**719,865**	**426,975**
Completed	4.6	3.0	449,302	316,187
Attempted	2.7	1.0	270,562	106,788
Assault				
Aggravated	12.4	5.1	1,207,673	543,153
Simple	20.4	14.3	1,981,016	1,498,305
Crimes of theft	**71.6**	**64.2**	**6,943,990**	**6,712,738**
Personal larceny				
With contact	2.3	3.1	222,104	314,882
Without contact	69.3	61.1	6,721,886	6,397,855

Note: Detail may not add to totals shown because of rounding.

Source: *Bureau of Justice Statistics*

• The violent crime rate for males has decreased since 1973; however, the rate of violent crime for females has not. Rates of violent victimization against females remained relatively consistent from 1973 to 1991. The 1991 female rate of 22.9 translates as approximately 2,500,000 women in the United States experiencing a violent crime in that year.

• Over two-thirds of violent victimizations against women were committed by someone known to them: 31 per cent of female victims reported that the offender was a stranger. Of those known to offenders, approximately 28 per cent were intimates such as husbands or boyfriends, 35 per cent were acquaintances, and the remaining five per cent were other relatives. In contrast, victimizations by intimates and other relatives accounted for only five per cent of all violent victimizations against men. Men were significantly more likely to have been victimized by acquaintances (50%) or strangers (44%) than by intimates or other relatives.

• Women who were black, Hispanic, in younger age groups, never married, with lower family and lower education levels, and in central cities were the most vulnerable to becoming the victims of violent crime.

• White and black women experienced equivalent rates of violence committed by intimates and other relatives. However, black women were significantly more likely than white women to experience incidents of violence by acquaintances or strangers.

• Among women who experienced a violent victimization, injuries occurred almost twice as frequently when the offender was an intimate (59%) than when a stranger (27%). Injured women were also more likely to require medical care if the attacker was an intimate (27%) rather than a stranger (14%).

For rape victims, however, the outcome was different: women who were raped by a stranger sustained more serious injuries than women raped by someone they knew.

• Almost six times as many women victimized by intimates (18%) as those victimized by strangers (3%) did not report their violent victimization to the police because they feared reprisal from the offender.

• Rape was more likely to be committed against women by someone known to them (55%) than by a stranger (44%).

• Rape victimizations involving known offenders were almost twice as likely to occur at or near the victim's home (52%) compared to rape by strangers, which were more likely to occur in an open area or public place (43%). Almost a quarter of rapes by strangers did occur at or near the victim's home.

This article is based on the Bureau of Justice Statistics report "Violence Against Women," NCJ-145325. Copies of the entire report are available through the Alaska Justice Statistical Analysis Unit, Justice Center.

Recent BJS Reports

In addition to the report summarized in the accompanying article, the following recent studies and reports from the Bureau of Justice Statistics are available from the Alaska Justice Statistical Analysis Unit:

"Pretrial Release of Federal Felony Defendants," an examination of the pretrial release process under federal courts, NCJ-145322.

"Crime and the Nation's Households, 1992," a report based on results of the National Crime Victimization Survey, NCJ-143288.

"Highlights from 20 Years of Surveying Crime Victims," a summary of the data assembled under the National Crime Victimization Survey since 1972, NCJ-144525.

"Prosecutors in State Courts, 1992," the results of the second national survey of local prosecutors' offices, NCJ-145319.

"Capital Punishment 1992," national statistical information on the death penalty, NCJ-145031.

"Federal Criminal Case Processing, 1982-91," data on prosecution, disposition and sentencing in federal courts, NCJ-144526.

Legal Interpreting
(continued from page 1)

Syntactically, one encounters noun phrases where verbs would more commonly be used ("make assignment" instead of "assign"); passive constructions ("remedies may be provided by law"); unusual conditionals ("in the event of default"); frequent repetitions of the same noun instead of an initial use of a noun followed by pronoun references ("the party of the first part" never becomes "he"); absence of forms like "who is" or "which are," resulting in phrases like "all the rights and remedies available to a secured party;" long sentences; odd determiners ("such" and "said" instead of "this" and "that"); numerous negations ("never", "unless") and parallel structures linked with "and" or "or" ("now or hereafter").

At the discourse level, one finds lists of sentences strung together less cohesively than in standard English speech or writing and overly compact phrasing which includes a lot of information in one sentence with little or no rephrasing. These features make formal legal English dense and difficult to comprehend.

Speakers employ all of these (formal legal English, standard English, colloquial English, and various subcultural varieties of English) in a subtle interplay dictated by necessity and strategy. As with all communications, speech in the courtroom is a complex social dance. Here, however, it is unusually varied, and constrained by procedural rules that are largely unknown to laypersons. For example, the law necessitates that specific forms which cannot be easily paraphrased be used "for the record" in certain contexts. Lay participants hear but are effectively excluded from conversations between judge and attorneys, who share not only a common idiom but also a common legal "culture" that makes their interchanges more efficient by allowing much to be left implicit.

The adversarial nature of the system also dictates that attorneys will use language strategically to control testimony and to convince judge and/or jury. Individual styles, class, age, ethnicity and gender add yet more overlays. Educated speakers of standard English find this a challenging situation; it is much more so for speakers of subcultural varieties of English and/or those with little formal education.

Because formal legal English is so different from ordinary spoken English, the difficulties of interpreting it receive the most attention. What is probably most difficult about the interpreter's task is, however, managing the constant interplay of all these linguistic registers and varieties in a single event.

The presence of non-English speakers and speakers of English as a second language simply complicates this situation. While cultural and linguistic differences exist even among English speakers, the use of languages other than English greatly increases the potential for communicative difficulties. These potentials are greatest when the languages in question (such as Alaska Native languages and many immigrant languages) are linguistically unrelated to English. In such cases, the semantic domains (ranges of meaning) of words and expressions and the sociolinguistic conventions employed by speakers are rarely congruent between languages.

Interpreters—no matter how bilingual and bicultural—must constantly weigh choices in search of the best ways to convey shades of meaning and speaker intent. They must also deal with cultural differences that are embedded in, for example, the way that locations are specified, the use of kinship terms carrying meanings and social connotations different from those of EuroAmericans, and many other specifics.

When interpreters enter the legal arena, too, they become one more element affecting the mutual evaluation of speakers. This evaluative process is, after all, the foundation of legal proceedings: everyone present decides from moment to moment the degree to which other speakers are accurately, intelligently, and credibly representing their actions, observations, understandings and experiences. The evidence on which participants base their evaluations is thus overwhelmingly sociolinguistic—they judge what people say and how well they say it.

An interpreter is not merely an intermediary in this process, but rather an active participant. In *The Bilingual Courtroom: Court Interpreters in the Judicial Process*, a study of Spanish/English interpreters, Susan Berk-Seligson documented a variety of ways in which interpreters subtly influenced perceptions of the speakers for whom they interpreted. Berk-Seligson was less concerned with vocabulary choice (although

Please see ***Legal Interpreting****, page 4*

Interpreters in Alaska Courts

The *federal* court system has a national program for certification of court interpreters, established under the Court Interpreter's Act of 1978 and the Court Interpreter Amendment Act of 1988. The program is administered by the Director of Administration, Office of U.S. Courts. The federal statute requires qualified interpreters in the simultaneous mode for any party to judicial proceedings in U.S. courts and in the consecutive mode for witnesses. The statute permits electronic sound recordings in proceedings where interpretation is used, upon the determination of the presiding judicial officer.

Each U.S. district court maintains a list of all who have been officially certified as interpreters. Some districts, notably California, maintain interpreters on staff.

The Alaska Federal Clerk of Courts office reports that if qualified interpreters are not available locally, they are brought in from outside the state when needed. Some pretrial proceedings have been held telephonically, using a Spanish-certified court interpreter in New Mexico.

Within the federal court system in Alaska, Spanish is the language for which interpreters are most commonly required. From 1991 through 1993 the federal courts here required interpreters in the following languages: Spanish, Korean, Chinese, Japanese, Serbian, Tagalog and Mandingo.

Although interpreters are used at least periodically in all locations, the Alaska *state* court system has no official statewide system of certification for court interpreters. Individual judges may request the presence of an interpreter if deemed necessary in court proceedings; otherwise, it is the responsibility of the attorney to handle questions of language interpretation.

Rule 604 of the Alaska Rules of Evidence states:

> In determining whether an interpreter is qualified and impartial, the court shall inquire into and consider the interpreter's education, certification and experience in interpreting relevant languages; the interpreter's understanding of and experience in the proceedings in which the interpreter is to participate; and the interpreter's impartiality.

Rule 6 of the Alaska Administrative Rules of Court establishes provisions for payment of interpreters and translators.

Legal Interpreting
(continued from page 3)

this tends to be, again, the focus of concern for everyone involved in proceedings, including the interpreters themselves) than with changes that would not be tagged as "errors" since they form part of grammatical and meaningful sentences. Such subtle alterations included shifting of registers (to more or less formal levels); adding/omitting information, politeness forms, etc.; making statements more or less implicit than they were in the source language; and interpolating cultural information and assumptions. Berk-Seligson also documented instances where interpreters interrupted examining attorneys and testifying witnesses, or prompted witnesses' responses. These are all areas which have been shown to affect the evaluation of a speaker's credibility, knowledge, status, etc., in controlled experiments. Such elements function in addition to more obvious types of miscommunication, which interpreters attempt to repair by stopping to explain cross-cultural differences, or by asking for clarifications.

The Use of Interpreters in Alaska

Because Spanish-speakers form such a large non-English speaking minority in the United States, good studies of Spanish/English court interpretation exist. However, I know of no systematic studies of legal interpretation involving Native American languages. In fact, the subject of interpretation between English and all non-Indo-European languages tends to be understudied.

The overall situation in Alaska can be discussed, however. To begin with, situations requiring interpretation of legal concepts frequently occur outside of the courtroom itself. From routine permitting procedures and public inquiries to arrests, bilingual employees of various law-related agencies commonly act as interpreters. Sometimes they actively interpret between English and non-English speakers. In other cases, they "interpret" in the broad sense by serving as sources of information in the Native language. In Bethel, such individuals (primarily clerks and secretaries) reported that they spoke Yup'ik frequently with clients, both on the phone and in person. This interface with the public is critical, as an individual's subsequent actions and understandings often depend on what they learn in such clerical settings. Clerical employees do not have formal training in interpretation; at best, they gain on-the-job experience and seek advice from others in similar positions. (Another type of untrained interpreter is the bilingual relative who comes to a legal setting to interpret for a Native language-speaking elder.)

Interpretation, then, is casually understood to be a function easily undertaken by bilinguals. However, this is tantamount to claiming that anyone can run a marathon. Interpreters know otherwise. The misunderstanding is common in many other local courts in the United States as well, although interpreting is now recognized in some parts of the country as requiring very technical skills. California has the longest history of such recognition, having established training and certification procedures for court interpreters since 1978. Several other states also offer intensive programs and accreditation for court interpreters: New Jersey, for example, has concentrated its efforts since the New Jersey Supreme Court Task Force on Interpreting and Translation Services (1986) completed its report. Other countries also have more experience in the difficult task of training and certifying court interpreters—most notably Canada, which parallels Alaska in many Native language issues.

Despite Alaska's multilingual population, however, the state has no interpreter/translator certification requirements or training schools. In fact, almost none of the individuals who act as interpreters in Alaska have received formal training. A few have benefited from workshops and from formal and informal word equivalency lists which have been developed to assist them. The Yup'ik Language Center's brief interpreter's dictionary is one of the more formal aids available. Otherwise, legal interpreters are very much on their own, and the interpreting portions of their jobs are not recognized as requiring professional training or time release from other duties.

The question of adequate interpretations, then, is an urgent one, and judging from developments in other parts of the country, where the demand for standards and monitoring continues to increase, Alaskans can expect it to become more acute. Legal challenges relating to interpretation in the United States seem to be increasing. (They are occurring with great frequency in the officially multilingual country of Canada.)

Interviews conducted during 1991 research in Bethel indicated that there were varying degrees of uncertainty about the

Errors in Translating

The following examples of errors in courtroom translating are drawn from the experiences of interpreters at the Yup'ik Language Center. Italics indicate the meaning conveyed in Yup'ik; Roman text, the meaning conveyed in English.

A Yup'ik woman was on the stand as a victim of a serious crime. She was using an interpreter. At one point it became evident that some time had elapsed between the crime and her reporting of it. When questioned, the woman explained that she was frail and elderly and was unable to move or get around easily. She said, in part: *"You can see what my condition is. . . ."* This was interpreted in English as: "She couldn't do it—especially because of her disease." Confusion resulted about the nature of this "disease" and whether or not it affected the woman's ability to testify.

★ ★ ★

Attorney: Why did you leave home?
Intepreter: He asked why you left your village?

★ ★ ★

Witness: I never told anyone that the person was doing anything to me.
Interpreter: She never told anyone what he was doing to her.

★ ★ ★

Witness: I can't answer that question. [It's too difficult.]
Interpeter: She won't answer that question.

★ ★ ★

Attorney: In what condition was your mother in?
Interpreter: Your mother wasn't there. Where was she?

★ ★ ★

Attorney: Did he use anything else to touch you—other than his hand?
Interpreter: Did he touch you only there or did he touch you somewhere else, too?

The preceding examples were contributed through the courtesy of G. Domnick, S. Barnes, and O. Alexie of the Yup'ik Language Center.

adequacy of interpretation. Some attorneys and interpreters felt that critical information was usually communicated eventually, although sometimes with difficulty; others described less success. In all instances, the hopes seemed to focus on overall understanding. Given the pressured circumstances of legal encounters, the great cross-cultural differences that exist, and the lack of specialized interpreters, full comprehension of details often seemed an unrealistic goal. Interpreting services are not routinely available; they must be requested by an attorney or by the person needing the service. Interpreters are also appointed when the need becomes obvious to a presiding judge.

Interestingly, the need for court interpreters was perceived to be much smaller by legal personnel in Bethel, who estimated that about 10 per cent of those appearing in court needed interpreters, than by laypersons, about 85 per cent of whom said that they would have had a better comprehension of proceedings conducted bilingually, even though most did speak English. Hence, not just monolingual speakers of languages other than English, but also bilinguals, believe that communications would be facilitated through the regular use of interpreters. It would be useful to determine if this sentiment is shared by other bilingual populations in Alaska, especially those with a relatively large number of Native language speakers, as in the case of St. Lawrence Island Yup'ik, some Athabascan languages, and some Inupiaq dialects. The extent of interpretation needs and the possibility of meeting those needs may vary with each language spoken in Alaska. In the case of recent immigrant populations, for example, the availability of qualified interpreters seems even more problematic, since there are many unrelated languages represented in the state (e.g., Korean, Vietnamese, Slavic languages, etc.), but few speakers of each.

What occurs if communications are questioned on the basis of lack of interpretation or interpreter error? In Bethel, overt interpretation problems were apparently handled informally. There were anecdotal reports of jurors correcting court interpreters and consideration of these objections by the judge. However, no reports of challenges to legal outcomes on the basis of interpretation emerged. Appeals on this basis elsewhere in the United States have occasionally been successful, although usually when made in conjunction with other grounds for reversal and only when official court audiotapes are available for reexamination. Cultural and linguistic differences, evidence of actual and potential misunderstandings, the de facto use of untrained interpreters, and the possibility of legal challenges on the basis of inadequate interpretation all point to the need to improve the situation of translation and interpretation services in Alaska.

Translation in the Court

The following excerpt is from a U.S. Department of the Interior hearing. The appeal under consideration concerned the relinquishment of a Native allotment claim. The excerpt is presented solely to illustrate the complexity of language issues in legal situations. During the hearing both the appellant and several witnesses testified in Yup'ik through an interpreter.

Attorney for the Appellee: Now here finally is my question. Did you consider it fair for you to claim 160 acres in a village where other families who were also living in that village had no land claims?
[Pause]
Attorney for the Appellee: Is there a word for fair in Yup'ik?
Translator: That's what I'm groping for.
Attorney for the Appellant: Well, may I suggest that—
Court: Well, just a minute let's—let's try and deal with this and—
Attorney for the Appellant: Okay, he can go.
Court: —then if we can't it—can it—is it untranslatable?
Translator: It's—I—I don't know if it's untranslatable. Perhaps someone else may be able to translate it although I'm—
Attorney for the Appellee: Is there no concept—
Translator: —although I'm fluent Yup'ik speaking Native I have never encountered such a word in—
Attorney for the Appellee: Do the Natives not have a concept of fairness?
Translator: Are you asking me or him?
Attorney for the Appellee: I'm asking you.
Court: How about—
Translator: Well, I'd have to give you a—a history and the cultural value system we have—
Attorney for the Appellee: Let me ask you this.
Translator: —in our—
Attorney for the Appellee: Do you consider that to be an unfair question?
Translator: I don't—
Attorney for the Appellee: You don't know what fair means?
Translator: Consider that to be an unfair question. It's just that I'm unable to come up with a word to translate the word fair.
Court: Well, if you know the concept of fair and I take it that you do understand the English concept of fair?
Translator: Yes.
Court: How would that concept—what type of word would you use in Yup'ik to convey that concept?
Translator: I'd have to make an analogy and use the word fair to—to make that distinction.
Attorney for the Appellee: Can I ask this question? Can we ask Mr. A if he understands the word, fair, in English?
Translator: Can we ask this question?
Court: Do you have the—the witness has asked for a translator. Unless Counsel for Mr. A agrees I'm not going to require him to answer in English.

Andrews v. BLM, IBLA 83-870 (1985) (TR 271-273)

Meeting the Need for Interpretation in Alaska

Definitive steps could be taken to improve legal interpretation services in Alaska. First, such efforts would need to be initiated, coordinated and maintained with consistent organizational and financial support. The impetus to improve services would be strongest coming from the legal system itself, as well as from concerned public groups (which might include, for example, Native corporations, the new Alaska Native Justice Center, and agencies dependent upon interpreters). A statewide task force, similar to New Jersey's, could be constituted in order to determine needs, investigate training models, and offer policy recommendations. Existing expertise and individual knowledge would be essential in the formation of the task force and in the

*Please see **Legal Interpreting**, page 6*

Legal Interpreting
(continued from page 5)

subsequent development of informational networks and infrastructure. Some initial recommendations are suggested here:

1. High-quality, accurate video and audio tapes in relevant Alaska languages could be developed and used consistently. This would improve communications in a number of recurring situations in which the presence of an interactive interpreter is not needed. For example, since prospective jurors may be primary speakers of other languages, even though they do speak English, they can benefit from instructional videotapes in Native languages. English language tapes currently used in some Alaska courts might be dubbed for this purpose. Supplementary information about cross-cultural issues, however, should be added. Audio tapes explaining commonly-used legal forms, rights, and procedures can also be made and kept conspicuously available to those seeking legal services. The translations used for such materials should reflect the careful collaboration of language specialists, experienced interpreters, and legal professionals.

2. In the case of Alaska Native languages, the emphasis should be primarily on oral interpretation of materials and information, and only secondarily on written translations. Elderly monolingual speakers of Native languages are less likely to be literate, or may be literate in an orthography other than a standardized one (i.e., one taught in schools and officialized in general literature). Younger people literate in Native languages are usually at least equally literate in English. Given the proliferation of legal forms and documents, it is tempting to have these simply translated and reproduced in written form. This, however, would be ineffective for the majority of the people for whom the translations are intended.

3. Work should continue on the development and constant updating of word equivalency lists and interpreter's dictionaries. A regular mechanism for circulating these materials and ensuring their effectiveness is necessary. Too often, useful work ends up on inaccessible shelves, and interpreters unaware of existing resources continually reduplicate others' efforts. In addition, interpreters need release time from other duties to attend word conferences within their language group and to improve networking within and across language groups on a regular basis.

4. The most important recommendation is the development of state certification requirements and training programs and the recruitment and mentoring of career legal interpreters. The following conditions are important:

a) A funding source would be necessary to start a training program. Granting agencies might be approached for a pilot project. Bilingual employees of the legal system could be subsidized by their employers to obtain training and certification. Eventually, an infrastructure which included training facilities could be developed. This could be accomplished with the cooperation of existing legal and educational institutions.

b) Models of training programs in other states and countries should be closely studied. At the same time, it should be kept in mind that any program developed for other languages and sociolinguistic settings would need to be extensively modified to meet Alaska's particular situation.

c) The level of certification desired and other training goals would need to be clearly established. For example, whispered simultaneous interpretation, which is the most difficult interpreter skill, might only be considered as a long-term goal. Adept consecutive interpretation is a more immediate possibility. General legal understanding and vocabulary development are obvious training needs; other goals might be to focus training on pragmatics (those factors which influence evaluation of speakers but are not inherent in grammar and word equivalency) and cultural differences in communication.

d) Certification testing procedures would need to replicate actual courtroom situations as well as test vocabulary knowledge and conceptual skills. Tests would have to be carefully designed and rated by qualified individuals.

e) Certification would have to be required for all court-appointed interpreters. As interpretation becomes recognized as a profession, certified legal interpreters would undoubtedly find employment in a variety of justice-related agencies. Interpretation should not be treated as an implicit additional duty for employees who have other full-time obligations.

f) Workshops and written guidelines to facilitate clear communication through interpreters should be made available to legal professionals.

g) A mechanism for ensuring continued quality of training programs and continuing education for interpreters should be developed.

5. Finally, specific problems concerning interpretation need to be continuously monitored. Interpretation raises many issues that are not always easily anticipated or quickly resolved. For example, in one case where interpretation was provided for a Spanish-speaking witness, a judge disqualified jurors who were Spanish/English bilinguals, arguing that decisions had to be based entirely on the English record, and that these jurors could not refrain from listening to the testimony in Spanish, as well as the English interpretation. This case is very problematic, not only because of the question of possible discrimination against Hispanic jurors, but also because of the court's ambiguous stand on translation equivalency. In effect, this court simultaneously accepted the adequacy of interpretation by using an interpreter in the first place and denied it by assuming that the English translation would not be equivalent to the Spanish.

In summary, legal interpretation in Alaska deserves a commitment of resources from the legal system and the state. It is hoped that this article serves to draw attention to the current state of interpretation here and elsewhere and to suggest some directions for the immediate future.

Phyllis Morrow is associate professor of anthropology at the University of Alaska Fairbanks.

Alaska Justice Forum

Editor: Antonia Moras
Editorial Board: John Angell, Allan Barnes, Cliff Bryant, Robert Congdon, Richard Curtis, Roger Miller, Lisa Rieger, Nancy E. Schafer, Lawrence Trostle
Typesetting and Layout: Melissa S. Green

Justice Center, John Angell, Director

Alaska Justice Statistical Analysis Unit, Allan Barnes, Director

Published quarterly by the Justice Center and the Alaska Justice Statistical Analysis Unit at the University of Alaska Anchorage, 3211 Providence Drive, Anchorage, AK 99508; (907) 786-1810; fax 786-7777.

© 1994 Justice Center,
University of Alaska Anchorage
ISSN 0893-8903

The Bureau of Justice Statistics, U.S. Department of Justice, provides approximately thirty-five per cent of the funding for this publication.

The opinions expressed are those of individual authors and may not be those of the Justice Center or the Bureau of Justice Statistics.

The University of Alaska provides equal education and employment opportunities for all, regardless of race, color, religion, national origin, sex, age, disability, or status as a Vietnam-era or disabled veteran.

Alternative Punishments: A Judicial Council Seminar

Teri Carns

More frequently than in the past, an observer of sentencings in Alaska courtrooms hears a judge impose a combination of penalties, rather than a simple sentence to "Three months, two suspended, on probation for two years." The reasons for choosing alternative punishments vary, ranging from an effort to rehabilitate the offender to a decision to hold the offender accountable, recompense the victim, or respond to overcrowding in the local jail.

Although many of the alternative punishments available have existed for years and have been used by judges in a variety of situations, a new urgency pervades the criminal justice system. The increasing number of incarcerated offenders has provided pressures from a pretrial perspective. Several times in the last months, crisis calls have gone from the Department of Corrections to prosecutors, courts and law enforcement around the state. Not only have the jail populations exceeded the *Cleary* caps, they have expanded beyond the emergency capacities of the facilities. DOC personnel have turned away police officers with arrested persons sitting in the police vehicles, refusing to book in any more inmates. The department convened a series of lengthy meetings in December and January, inviting representatives of all criminal justice agencies to assist in pinpointing sources of prison population growth and proposing solutions.

In its final report to the legislature and the governor, the Sentencing Commission recommended more extensive use of alternative punishments, defined target groups and types of alternatives appropriate for each group, and urged agencies to train their personnel in the use of alternatives. Responding to the Sentencing Commission recommendations for more training, the Judicial Council assisted prosecutors, Public Defender and Office of Public Advocacy staff, judges and Department of Corrections personnel from southcentral Alaska in organizing a half-day seminar about alternative punishments in early February 1994. These professionals met to review existing programs and look at new policies. Representative Fran Ulmer, who chaired the Sentencing Commission's Alternative Punishments Task Force, moderated the seminar.

Chief among the new initiatives was the announcement of the policy on the use of alternative punishments by prosecutors. In a memo dated February 3, 1994, the Alaska Attorney General encouraged prosecutors to consider *voluntary agreements offered by defendants* in *nonviolent cases* to accept alternative punishments *instead of some or all prison time*. Listed alternatives to incarceration included:

- agreements to increased forfeitures;
- agreements to increased restitution (to individuals or organizations);
- agreements to increases in length of probation;
- agreements to conditions such as area restrictions, curfews, waivers permitting searches and/or warrantless arrests if violations are found;
- agreements to increased hours of community service;
- agreements to increased fines;
- agreements to increased treatment programs, including those paid for by the defendant.

(The list of proposed alternatives does not include relatively new approaches such as electronic monitoring, house arrest, or programs available only through assignment by the Department of Corrections such as Intensive Supervised Probation Program or Day Reporting Centers.) The new policy focuses on encouraging prosecutors to respond positively to proposals that they might have rejected in the past as failing to meet the sentencing goals of protecting the public or reaffirming community norms. The policy also notes that probation revocation, particularly for technical violations, is one area for which alternatives to prison are appropriate.

Panelists at the February seminar emphasized the need to use alternatives for both felons and misdemeanants. Frank Prewitt, Commissioner of the Department of Corrections, compared the 1980 DOC population of 771 to the 1994 population of 3,200, adding that the department's budget had increased from $21.5 million to $121.5 million in the same period. Much of the most recent growth has come from increasing numbers of incarcerated misdemeanants. Bonnie Lembo, head of the District Attorney's misdemeanor prosecutions, attributed some of the increase to recent legislative changes such as a 72-hour mandatory minimum sentence for joyriding. Steve Branchflower, head of felony intake in the Anchorage District Attorney's office, noted the felony intake process uses a variety of alternative dispositions. He said that the office had declined 14.6 per cent of the charges referred to it (down from about 25 per cent screening rate in 1987), and had resolved most cases short of trial (77 felony trials, out of 1,346 cases accepted for prosecution, or a trial rate of 5.7 per cent, as compared to 8 per cent in 1987).

Panelists also identified barriers to using alternatives. Primary among the difficulties cited was the lack of sufficient state-paid treatment beds for offenders suffering substance abuse problems. The Department of Corrections has had funding for only thirty-seven beds in treatment programs across the state. Since the majority of crimes in urban areas (and almost all of the crimes in rural areas) are associated with substance abuse problems, the lack of treatment possibilities limits sentencing. Other barriers include the need to use state-approved facilities; difficulties in completing the forms necessary to assign Permanent Fund Dividends from offenders to the state; difficulties in obtaining credit for time served in some programs; and possible income or geographical disparities in the availability of programs. Barriers cited as important in felony cases were court rules requiring presentation of the case to the grand jury within ten or twenty days and "Catch-22" situations posed by the requirements for entering treatment programs.

Participants varied in their assessments of the changes likely as a result of the new prosecutorial policies, and the information provided by the seminar. Some believed that

*Please see **Alternative Sanctions**, page 8*

Video Receives Recognition

"Domestic Violence and Law Enforcement," an educational video program produced through the Justice Center, has received a certificate of recognition as a finalist in the New York Film Festivals 1993 International Non-Broadcast Media Competition. The competition included over thirteen hundred entries from thirty-four countries.

The video was produced and written by Antonia Moras. Funding for production of the videotape was provided through grants from the Anchorage Domestic Violence Committee and the Council on Domestic Violence and Sexual Assault.

Alternative Sanctions
(continued from page 7)

without more treatment programs, the new emphasis on alternatives to jail lacks meaning. However, less than two weeks after the seminar, the Department of Corrections announced it will be moving ahead with a plan to convert thirty-four halfway house beds at Cordova Center to treatment beds, nearly doubling the treatment slots available in the state. The department also said that it has asked the legislature to fund other substance abuse programs in the coming year.

Other participants believed that relying on alternative punishments could lead to "net-widening," meaning that offenders who would otherwise have been sentenced to probation will now be required to participate in treatment, electronic monitoring, or other sanctions that would not have been required under old policies. McNally noted that the Attorney General's memo addresses those concerns by directing that the alternatives be used "[t]o help conserve limited prosecution resources, and to ensure that prison bedspace is available for violent and sexual offenders," and by encouraging alternatives "in return for a decreased period of incarceration … (or, in appropriate cases, in lieu of incarceration altogether)." Deputy Commissioner of the Department of Corrections, Larry McKinstry, noted that at present felony offenders are being furloughed to halfway houses, resulting in hard bed space that is then filled by misdemeanants. He suggested that using alternative punishments at sentencing for some felons and misdemeanants could provide less costly housing for misdemeanants, as well as giving judges and attorneys more control over the actual disposition for the offender.

Teri Carns is senior staff associate with the Alaska Judicial Council.

Index Available

A title, author, and subject index of volumes 1 through 10 of the *Alaska Justice Forum* will be available to the public beginning in April. The *Alaska Justice Forum* was originally published from May 1977 to June 1979 (Volumes 1-3). It resumed publication with Volume 4, Number 1 in Spring 1987 under a different format. Please mail requests for the index to:

Publication Specialist
Justice Center
University of Alaska Anchorage
3211 Providence Drive
Anchorage, AK 99508

Alaska Justice Forum
Justice Center
University of Alaska Anchorage
3211 Providence Drive
Anchorage, AK 99508

Non-Profit Organization
U.S. Postage
PAID
Anchorage, Alaska
Permit No. 107

Address correction requested.