

# Translator & Interpreter Liability

Noteworthy Cases



## Translator & Interpreter Liability

- Translator & Interpreter Mistakes and Deliberate Misconduct can Result in Both Civil and Criminal Liability.
- However the extent of Translator & Interpreter liability **IS NOT** Just About Being Sued.
- Oftentimes the translator or interpreter's mistakes or misconduct will lead to criminal, civil and social consequences for the individuals or companies that they assist.
- In other words – Even if you don't get sued, you may never work in this town again!!



## Translator & Interpreter Liability

- Translation and Interpretation Services Are No Longer Optional.
  - 1) In 2005, the University of New Mexico Hospital got sued, by a civil rights group claiming discrimination that resulted in unequal health care to non-English-speaking people.
  - 2) In 2009, New York City's Welfare Agency got sued for violation of the Equal Access to Human Services Act, which required that all city forms be available in 6 languages: Arabic, Chinese, Haitian Kreole, Korean, Russian, and Spanish.
- Interpreters may soon be required in a variety of places, such as:
  - 1) schools and universities;
  - 2) churches and religious institutions;
  - 3) private businesses providing public services;
  - 4) doctors and hospitals;
  - 5) government and social service agencies;
  - 6) police departments.



## Translator & Interpreter Liability

- In light of the foregoing, the ethical, legal, and professional expectations for translators and interpreters will be higher than ever before.
- We need to know what these expectations are and what we can do to avoid making mistakes that may create problems for ourselves and those we assist.
- To do that, we will look at some informative cases involving translators and interpreters.



## Translator & Interpreter Liability

- We will be looking at 3 types of cases involving translators and interpreters: Criminal, Civil, and Immigration.
    - **Civil** – A party is seeking financial or injunctive relief against another party.
    - **Criminal** - Defendant faces jail or prison time
    - **Immigration** – Petitioner faces deportation from and/or is asking for asylum in the United States.
- Note:** Courts rarely make a distinction between “legal translation” and “legal interpreting”, and these terms are often used interchangeably.



## Translator & Interpreter Liability

### CIVIL CASES

#### (Misconduct By Translator/Interpreter)

- An old, interesting case regarding translator misconduct is – *Varn v. Gonzales*, 222 S.W. 543 (Tex. App. 1920).
- The Varn brothers employed some translators and agents for a land transaction. These agents provided false and fraudulent information to the various parties involved in the transaction. Accordingly, the entire land purchase agreement was invalidated by the Court.
- The Court expressly stated that the translators were under an obligation to preserve the utmost good faith towards their principals and partners. Since, they did not observe or perform this obligation, and conspired to commit fraud, such a contract could not be enforced under Texas law.
- Important to know that misconduct of translators, interpreters that we employ may effect our legal rights and remedies.

## Translator & Interpreter Liability

### CIVIL CASES (Quality of Translation)

- In *Seroff v. Simon Schuster*, 6 Misc.2d 383 (N.Y. Supr. Ct. 1952) Victor Seroff wrote a biography regarding Sergei Rachmaninoff. Made an exclusive agreement with Simon & Schuster, Inc. (S&S) to print and distribute the work.
- The rights that he signed over to S&S were as follows: “*the sole and exclusive right to publish, print, and put on the market the said work in book form in the United States of America and in Canada, during the full term of copyright and all renewals thereof*”.
- S&S also acquired additional rights, which included: “*all abridgement, translation, and other publication and editorial rights*”.
- S&S sold the exclusive right to publish the French version of the book to Editions Robert Laffont (a French publisher). Laffont hired a French translator and the French version of the book was published. S&S did not participate in the French translation, publication, or distribution.



## Translator & Interpreter Liability

### CIVIL CASES

#### (Quality of Translation)

- Seroff reviewed the French version and became furious, stating that it contained 134 alleged errors and mistranslations. He demanded that S&S contact Laffont and make them recall the book.
- S&S forwarded a letter asking Laffont asking for a recall in order to “avoid serious harm”.
- Laffont conducted an investigation and its specialists concluded that there were no errors in the book.
- S&S offered to assign its right to sue Laffont to Seroff, and offered to pay to provide a person in France to Seroff to communicate with Laffont. Instead, Seroff sued S&S for libel (a false and malicious publication printed for the purpose of defaming a living person).



## Translator & Interpreter Liability

### CIVIL CASES (Quality of Translation)

- The Court concluded that: “while most of the claimed errors are of a trivial nature and others are not too serious in themselves, there are a few errors which constitute significant deviations from the original”. The Court stated that that the translator may have “consciously sought to sensationalize and inject pungent language in order to make the book more attractive to a certain segment of the French public”.
- The Court further concluded that the translator had “allowed himself a free rein to express his own conception of what he believed were the implications of the original work”.
- Enough evidence has been presented to “establish such substantial alteration as would warrant the granting of some relief to an author who was entitled to and interested in the preservation and integrity of his work if the parties responsible for the alteration were before this court”.



## Translator & Interpreter Liability

### CIVIL CASES

#### (Quality of Translation)

- However, the Court concluded that whatever rights Seroff had, he had surrendered these rights by contract.
- The Court suggested that any cause of action should have been pursued against the French publisher and/or its translator.
- Some questions to consider:
  - 1) Why didn't Seroff sue Laffont and its translator in the first place?
  - 2) Could this lawsuit be avoided? How?

# Translator & Interpreter Liability

## CIVIL CASES

### (Civil Liability of Misinterpreting)

- An instructive case is: *Calloway v. Boro of Glasboro Dept. of Police et. al.*, 89 F. Supp.2d 543 (D. N.J. 2000).
- Cora Calloway a deaf and illiterate woman was accused of criminal sexual conduct against a minor child. At the police station, the police officers attempted to communicate these charges to Calloway's sister, who translated them into sign language for Calloway.
- After difficulties in communication arose, police invited Melanie Powell, an uncertified interpreter, who agreed to assist in the investigation and to translate for Calloway.
- Powell attempted to deliver the Miranda warnings to Calloway. However, Calloway could not understand her, and finally stated that she did not wish to continue without her attorney.
- Calloway was arrested, bail was set, and she was released the next day.



## Translator & Interpreter Liability

### CIVIL CASES

#### (Civil Liability of Misinterpreting)

- Calloway sues everyone, including Powell for negligence.
- In her lawsuit, she alleged that Powell was negligent, for the following reasons: 1) She was not qualified to serve as her interpreter, and 2) She had incorrectly interpreted to her while she was being interrogated by the police.
- The Court denied this claim, stating that there was no evidence in the record that Calloway suffered any injury as a result of Powell's alleged negligence, that Calloway failed to articulate any actual harm that she suffered as a result of the purported mistranslation, and had failed to produce any evidence of mental or physical anguish.
- Question remains, could Powell do anything to avoid being sued?

## Translator & Interpreter Liability

### CRIMINAL CASES (Right to an Interpreter)

- The U.S. Supreme Court has not ruled on the degree of interpretive assistance constitutionally required for non-English speaking Defendants. However, other courts have thoroughly addressed this issue:
  - An indigent defendant who cannot speak or understand English has a right to have his trial proceeding translated to permit him to participate effectively in his own defense. *Negron v. New York*, 434 F.2d 386 (2<sup>nd</sup> Cir. 1970).
  - Defendant whose fluency in English is so impacted that it interferes with his right to confrontation or his capacity, as a witness, to understand and respond to the questions, has a constitutional right to the interpreter. *U.S. v. Lim*, 794 F.2d 469 (9<sup>th</sup> Cir. 1986).
  - 14<sup>th</sup> Amendment of the U.S. Constitution requires that defendants who do not understand English have an interpreter at all crucial stages of the criminal process. *Ouanbengboune v. State of Nevada*, 220 P.3d 1122 (Nev. 2009).

## Translator & Interpreter Liability

### CRIMINAL CASES

#### (Mistranslation By Interpreter)

- *U.S. v. Lopez*, 35 F.3d 572 (9<sup>th</sup> Cir. 1994) -Defendant Ramon Martinez Lopez is convicted by jury for conspiracy to distribute heroin.
- On Appeal, Lopez argues that the conviction must be set aside because the court interpreter mistranslated the Spanish phrase “se dijo” in reference to a conversation that took place regarding the sale of heroin. Lopez contends that “se dijo” means “it was said”, and the interpreter had misinterpreted it as “we said”. Other relevant testimony is not contested.
- Lopez argues that this mistranslation was sufficient to warrant a mistrial.
- What SHOULD the Court do? What DID the Court do?

## Translator & Interpreter Liability

### CRIMINAL CASES

#### (Mistranslation By Interpreter)

- Court of Appeals affirms the conviction.
- “On the record it is impossible to determine whether a mistranslation occurred, or whether a mistranslation gave an erroneous impression to the jury.”
- The Court will not reverse a conviction on the basis of a court interpreter’s mistranslation absent prejudice to the defendant.
- In other words, defendant has failed to show that the interpreter’s mistake had any effect on his conviction.

## Translator & Interpreter Liability

### CRIMINAL CASES

#### (Mistranslation By Interpreter)

- *U.S. v. Urena*, 27 F.3d 1487 (10<sup>th</sup> Cir. 1994), Defendant was convicted for drug-related offenses. Moved for a new trial on the grounds of interpreter's incompetence.
- In at least one instance during the trial, defendant gave an answer which did not respond to the question that was posed by his lawyer.
  - Q: "And how long did you live in Santo Domingo before you moved to the United States?"
  - A: "I also lived there".
- It appeared that defendant had given an answer and the translation was cut off by another question; the Court took care to make sure that the full question and answer were translated.
- What SHOULD the Court do? What DID the Court do?



## Translator & Interpreter Liability

### CRIMINAL CASES

#### (Mistranslation By Interpreter)

- Defendant's convictions were sustained.
- There is no evidence that the alleged mistranslation caused any prejudice.
- Every time that a mistranslation was alleged, the Court stopped proceeding to make sure that each question and answer was translated correctly and accurately.
- Thus, despite any initial miscommunication, Court was satisfied that the proceeding was handled adequately.

## Translator & Interpreter Liability

### CRIMINAL CASES

#### (Mistranslation By Interpreter)

- *Saldana v. LeFevre*, 132 Misc. 2d 623 (N.J. 1986), Lorenzo Saldana, a prisoner fluent in Spanish who spoke very little English, appeared at an inner-prison disciplinary hearing, and was found guilty of possession of a weapon, assault, and destruction of state property.
- He challenged the disciplinary hearing proceeding stating that he received improper translation during a hearing.
- The Court concluded that an improper translation error had prevented Mr. Saldana from calling witnesses to testify on his behalf and in his defense.
- What SHOULD the Court do? What DID the Court do?



## Translator & Interpreter Liability

### CRIMINAL CASES

#### (Mistranslation By Interpreter)

- The Court held that the procedure employed by the prison disciplinary facility was improper.
- Witness at the disciplinary hearing should have been allowed to speak and present mitigating evidence.
- Mistranslation which occurred at prison disciplinary hearing, when viewed in light of error in failing to state the reason on the record why certain witness requests were denied, cumulated to demonstrate prejudice against Spanish speaking inmate.

# Translator & Interpreter Liability

## CRIMINAL CASES

### (Mistranslation By Interpreter)

- *Ouanbengboune v. State of Nevada*, 220 P.3d 1122 (Nev. 2009) – Vannansone Ouanbengboune (“Sonny”) was convicted of first degree murder after a jury trial. He argues that his constitutional rights were violated because he was convicted based upon the court-appointed interpreter’s improper translation of his testimony.
- Court-appointed interpreter’s erroneous translations of non-English-speaking defendant’s testimony, fundamentally altered defendant’s description of alleged murder weapons’ firing mechanism, and specifically what actions were necessary for defendant to cock and fire the weapon, and to fire successive shots.
- Undisputed that court-interpreter failed to provide a word-for-word translation of Sonny’s testimony.
- What SHOULD the Court do? What DID the Court do?



## Translator & Interpreter Liability

### CRIMINAL CASES

#### (Mistranslation By Interpreter)

- Sonny was not entitled to a new trial, concluding that although certain inaccuracies did fundamentally alter the context of Sonny's testimony, these inaccuracies did not prejudice Sonny such that a new trial is warranted.
- The Court held that although interpreters are not required to perform word-for-word interpretations in the context of a police interview involving a non-English-speaking defendant, errors that fundamentally alter the defendant's statements or the context of the statements render the interpretation inadequate.
- If there is doubt about the accuracy of the interpreter, the Court should appoint an independent and court-certified interpreter to review the translations and to determine whether the defendant has met his burden of demonstrating the inaccuracy of the translated testimony.
- The court must determine whether the alleged inaccuracies and omissions fundamentally altered the context of the defendant's testimony and whether the inaccuracies prejudices the defendant so that the new trial is warranted.

# Translator & Interpreter Liability

## CRIMINAL CASES

### (Criminal Liability For Translator)

- *U.S. v. Ramirez*, 2001 WL 488654 (6 Cir. Feb. 14, 2011) –Shanna Ramriez was employed by Durrett Cheese Sales, Inc. She participated in the hiring process and helped illegal aliens to fill out the I-9 Employment Eligibility Verification Form. She helped to translate the I-9 forms and other employment-related documents, and personally signed a statement on the bottom of each form which stated: “I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.”
- She was charged with knowingly assisting potential employees with providing false social security numbers and other documents to obtain employment.
- Her defenses are: 1) she did not know that these documents were false; 2) did know that that the people were illegal aliens; 3) she believed that the stipulation was limited to certifying that she had accurately interpreted the information in the forms.
- What SHOULD the Court do? What DID the Court do?



## Translator & Interpreter Liability

### CRIMINAL CASES

#### (Criminal Liability for Translator)

- Ramirez was convicted of social security fraud, perjury.
- She admitted recognizing that some of the documents provided to her by prospective employees were false yet still accepted the documents and signed the I-9 forms. In one instance, where a document looked too problematic, she even prepared a new one so that the alien would be hired.
- Jury concluded that she was guilty, and the Court of Appeals affirmed stating that a rational juror could conclude that Ramirez intended to aid in falsely representing a social security number on the I-9 forms.
- As such, the Court implicitly concludes that the interpreter is responsible not only for accurately translating the content of documents, but also for the truthfulness of the information contained within these documents.
- And speaking of illegal aliens....



## Translator & Interpreter Liability

### IMMIGRATION CASES (Right to an Interpreter)

- Deportation proceedings require Due Process under the Fifth Amendment Constitution of the U.S. Constitution, which can only be satisfied by a “full” and “fair” hearing. *Cuadras v. INS*, 910 F.2d 56 (9<sup>th</sup> Cir. 1990).
- A full and fair hearing requires that each case be evaluated on its own merits to determine whether the alien’s factual support and concrete evidence are sufficient to meet the required burden of proof. *Sarvia-Quintanilla v. INS*, 767 F.2d 1387 (9<sup>th</sup> Cir. 1985).
- During these hearings petitioner is entitled to a correct translation of both question and answer. Failure to provide an adequate translation impedes his ability to present a case, in violation of his due process rights. It also prevents the immigration judge from assessing the case correctly, and it makes meaningful appellate review impossible. *Perez-Lastor v. INS*, 208 F.3d 773 (9<sup>th</sup> Cir. 2000).



## Translator & Interpreter Liability

### IMMIGRATION CASES (Interpreter Mistakes)

- *Iwan v. USCIS*, 990 F.2d 1258 (9<sup>th</sup> Cir. 1993) – Zbigniew Iwan was trying to establish that he was entitled to asylum in United States due to fear of persecution in his native Poland. He was given a hearing in which he had an opportunity to present testimony. After denial, he claims that he did not receive due process because of mistakes made by an interpreter during his hearing.
- He asserts the following errors by the interpreter: 1) There was an instance during a hearing where the translator apologized for mistranslating the question. 2) His answers are not accurately reflected in the transcript. Yet he fails to identify any factual inaccuracies on the hearing transcript.
- What SHOULD the Court do? What DID the Court do?



## Translator & Interpreter Liability

### IMMIGRATION CASES (Interpreter Mistakes)

- Court held that Iwan was not entitled to relief.
- Iwan has not cited any specific instance in which an incorrect or incomplete translation prevented him from fairly presenting his case.
- Iwan has not shown that a better translation would have altered the outcome of the proceeding.

## Translator & Interpreter Liability

### IMMIGRATION CASES (Interpreter Mistakes)

- *Chen v. Gonzales*, 239 Fed. Appx. 201 401 (9<sup>th</sup> Cir. 2007) - Shen Kun Chen is a native and citizen of China. His application for asylum was denied by the Immigration Judge, and the Board of immigration Appeals. He appeals stating that he was denied due process as a result of faulty translation.
- The interpreter confused the countries of Mexico and Spain. He used inappropriate words and some words that do not even exist. The subpar interpreting led to discrepancies on the record about when Chen was followed by the police and about his arrest and detention.
- The Court found that these translations effected both the questioning and the responses of the parties during the immigration hearing.
- What SHOULD the Court do? What DID the Court do?

## Translator & Interpreter Liability

### IMMIGRATION CASES (Interpreter Mistakes)

- Chen was not entitled to relief and the immigration judge's denial of asylum is affirmed.
- Despite the mistakes by the translator/interpreter, the Court made special deference to a demeanor finding of the immigration judge that Chen's testimony was faltering and unsure.
- "While Chen claims that he was denied due process as a result of faulty translation, he failed to demonstrate that a better translation likely would have made a difference in the outcome".
- "In the absence of clear testimony, Chen failed to establish eligibility for either asylum or withholding of removal".

## Translator & Interpreter Liability

### IMMIGRATION CASES (Interpreter Mistakes)

- *Perez-Lastor v. INS*, 208 F.3d 773 (9<sup>th</sup> Cir. 2000) - Martin Perez-Lastor is a native of Guatemala and a Quiche Indian. In his asylum application he stated that he and his family were harassed, threatened, and persecuted in his native Guatemala on account of political views and membership in a social group.
- During the hearing, Perez-Lastor repeatedly stated that he did not understand the translator/interpreter and asked him to repeat statements and speak more slowly.
- During the hearing, the IJ questioned him about these statements, but Perez-Lastor inadvertently stated that he did not understand the statements in the application. The entire statement was excluded from the record. Due to a lack of effective communication between Perez-Lastor and the interpreter, the testimony on the record was confusing and disjointed.
- What DID the Court do? What SHOULD the Court do?

## Translator & Interpreter Liability

### IMMIGRATION CASES (Interpreter Mistakes)

- Perez-Lastor was entitled to a new hearing on the grounds of interpreter's incompetence.
- Court expressly stated that “a competent translation is fundamental to a full and fair hearing”.
- In this case: 1) IJ's actual words were not communicated to Perez-Lastor; 2) lack of understanding prevented Perez-Lastor from presenting relevant evidence; and 3) repeat questioning produced a superficially responsive answer on some occasions, making it unclear whether Perez-Lastor actually understood what was asked of him.
- Under these circumstances, the Court concluded that there is more than sufficient evidence to indicate that the translation in this case was **not competent**.

## Translator & Interpreter Liability

### IMMIGRATION CASES (SUMMARY)

- There are 3 types of evidence which may prove that a translation at an immigration hearing was incompetent:
  - 1) direct evidence of incorrectly translated words is persuasive evidence of an incompetent translation. *See e.g., Kotasz v. INS, 31 F.3d 847 n.2 (9th Cir. 1994)*.
  - 2) unresponsive answers by the witness (which provide circumstantial evidence of translation problems). *See e.g. Kovac v. INS, 407 F.2d 102 108 n.12 (9th Cir. 1969)*.
  - 3) the witness's expression of difficulty understanding what is said to him. *See e.g., Cheo v. INS, 162 F.3d 1227(9th Cir. 1998)*.
- When all three types of evidence are present, you have the strongest argument for translator/interpreter incompetence.



Translator &  
Interpreter Liability

QUESTIONS?