

7 Do's and Don'ts for Litigators in Bilingual Trials

Commentary by
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After prevailing on a \$15 million jury trial where none of the clients spoke English, the vast majority of the documents were in Spanish, and half of the jury was non-Spanish speaking, we learned that with bilingual trials, there are some special considerations to keep in mind.



Lopez

This is a scenario we are seeing happen more everyday as the business world shrinks. With the growth in international commerce and diversity of the United States population, attorneys are finding themselves more and more in bilingual cases and trials. Perhaps their witnesses speak only English, while the opponent witnesses speak only Spanish; it's likely that a significant percentage of the documents produced are in another language; and the case is litigated in the United States, so depositions and trials must be conducted in English.



Aron

In these situations, it's critical to be aware of various difficulties and challenges these types of trials present. Here are some tips for attorneys seeking to win a bilingual trial:

1. *Never underestimate the importance of having an attorney in your trial*



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team who speaks the language. There is no substitute for having an attorney in your trial team who speaks the language. That attorney must have full command of the language and must be able to communicate with the clients directly — both before and during trial. Just as important is for that attorney to understand the opposing party's cultural and linguistic idiosyncrasies. This attorney can also help to:

- Check whether the interpreter is translating correctly — both documents and at depositions before trial and at trial. Tone, cadence, and accuracy are critical and can determine the outcome of a trial.

- Translate documents. Having a certified interpreter translate documents is an expensive endeavor. You may want to consider working out an arrangement with opposing counsel where attorneys for each side will translate documents, turn them to the other side for review, and attempt to negotiate translation disagreements. If disagreements persist, then an interpreter can translate the documents. This arrangement can save thousands of dollars.

- Review documents in the foreign language: the attorney can review all documents and decide which documents to translate for use at depositions and trial.

The more attorneys in your team that speak the language, the more efficient and cost-effective your team will be.

2. *Ensure you're comfortable with the interpreter that will be used at trial.* A good working relationship with your interpreter is critical. Consider working with the same interpreter you worked with at depositions for the case that is going to trial. That way, the interpreter will be familiar with the names and subject matter of the case. You also need to be comfortable with the interpreter's skills. Different interpreters have different skills. Get to know your interpreter before trial.

3. *Make sure the interpreter has the tools necessary to translate a document at trial.* If documents were not translated for trial for whatever reason (this situation should be the exception), make sure the interpreter has access to a laptop and a printer. The interpreter can translate the documents for you, print them, and certify them on the spot.

4. *Make sure you know what to do at trial when the interpreter hired by your opposing counsel is interpreting unfairly.* The interpreter hired by your opposing counsel can use wrong words in his or her translation, or change the tone of the testimony by overdramatizing or

underdramatizing the testimony. You should object, go to sidebar and explain the issue to the court; then ask the court to instruct the interpreter to stick to the witness's testimony and demeanor. This is an appealable issue, so make sure to preserve it for the record.

5. *Use the interpreter you hire for your direct examinations and cross examinations.* Your opposing counsel may hire their own interpreter for trial. You and your outside legal team should hire your own interpreter, as well. You will feel more comfortable working with the interpreter you hire.

6. *Be mindful of translation of documents pretrial.* What do you do if 90 percent of the documents in your case are in another language?

Getting your entire document production translated by an interpreter is cost-prohibitive. It is essential that you have an attorney in your team who speaks the language. That attorney can review documents and decide which documents should be translated well before that jury is chosen.

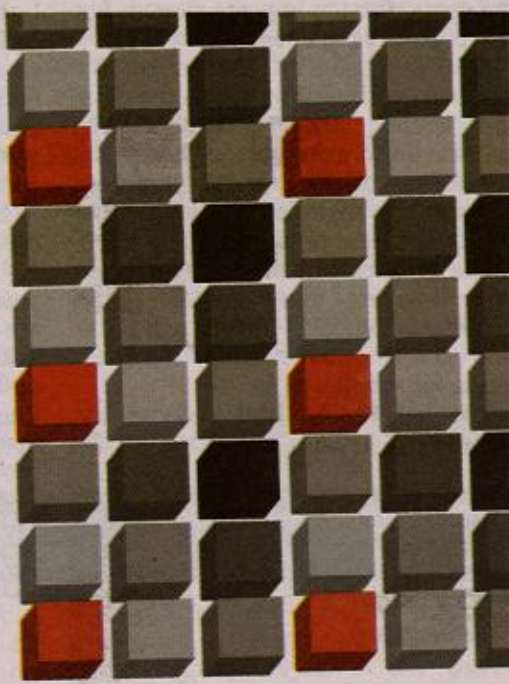
7. *Know that your expert witnesses should speak the language.* The best practice in bilingual trials is to retain an expert who speaks the foreign language. That way, the expert can review documents in the foreign language and you will save translation costs. The expert should also understand the idiosyncrasies and culture involved in the case and factor them in his or her opinion.

There are many "unknowns" that will certainly pop up during trial and a case. It is our job to try and limit those surprises as much as we can. Ensure you work through all of these issues before the bilingual trial begins, since the language issues can easily double the amount of work and expenses. It is your job to control these issues correctly from the beginning to achieve the best result for your client — a win.

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