

Bilingual Trials

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With the growth in international commerce and diversity of the United States population, general counsel are increasingly finding themselves dealing with bilingual trials. Perhaps the company 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.

In these situations, it is critical that general counsel work with outside attorneys experienced with conducting bilingual trials, along with all the difficulties and challenges these types of trials present. Here's some advice for general counsel who are working with outside counsel to win a bilingual trial.

1. Never underestimate the importance of having an attorney on your trial team who speaks the language. There is no substitute for having an attorney on your trial team who speaks the language. That attorney must have full command of the syntax 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 and at trial. Many attorneys might overlook the importance of a relationship with your interpreter for trial. Tone, cadence, and accuracy are critical and can determine the outcome.

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- 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 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 your company 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 on your team that speak the language, the more efficient and cost-effective your team will be.

2. Ensure that you're comfortable with the interpreter who will be used at trial. 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 your outside counsel knows 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. Your outside counsel should object, then go to sidebar and explain the issue to the court. He or she should ask the court to instruct the interpreter to stick to the witness's testimony and demeanor. This is an appealable issue, so your attorneys will make sure to preserve it for the record.

5. Use the interpreter you hire for your direct 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. It also will not be the first time you work with that interpreter. It is important that you feel comfortable with the interpreter because examinations at trial with an interpreter are slower and take away from the momentum.

6. Be mindful of pretrial document translation. What do you do if 90% 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 on your team who speaks the language. That attorney can review documents and decide which documents should be translated.

Let's say you and your outside legal team identify 50 documents in another language to be used at a deposition. This can be very expensive, so instead of having an interpreter officially translate them all to English, consider bringing an interpreter to the deposition, which will be conducted in English, solely for the purpose of translating documents on the record. You can direct the interpreter to the specific portions of the document you want translated. The interpreter will then read the translated portions in English on the record.

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

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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 to his or her opinion. For example, it is customary to seal a deal on a handshake in certain cultures.

CONCLUSION

To summarize, ensure you work through all of these issues with your outside legal team before the

bilingual trial begins, since the language issues can easily double the amount of work and expenses. You can control these issues if you work with experienced outside counsel to manage them correctly from the beginning.

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