



A Question of Ethics

BY FRANK MAIOCCO

Crossing the Language Line??

As the American-born son of an Italian immigrant, I have often watched my father struggle with the English language and American culture. I have watched him walk into wrong movie theaters after reading and misunderstanding posted signs; done my best to more clearly restate medical diagnoses and treatment alternatives; and assisted, where appropriate, when his life circumstances have required the need for government services. Some situations have been the source of considerable humor — and I have regaled colleagues with the handful of funny stories where my father's language challenges, misunderstandings, and unexpected, albeit hysterical, reactions have collided. At other times, the lack of clear communication or cultural clarity has placed my father in situations that might have caused greater financial, legal, or social jeopardy but for the constant vigilance and intervention of family and friends.

In this context, over the last year I have watched, with considerable interest, the murder trial of Amanda Knox and often wondered about her experiences in the Italian court system under a foreign set of laws and with a foreign language. Given my background, would I feel comfortable walking into an Italian courthouse with a sufficient understanding of my legal rights? Absolutely not. Would I be comfortable — or effective — articulating my legal position or protecting my personal liberty through the voice of another? Probably not.

This issue's ethics column focuses on interpreter ethics and the extent to which our own obligations overlap those whom we hire to "open" our courts to limited-English proficiency (LEP) people. Fundamentally, I challenge you to consider how much of your own personal and professional ethics you invest in the provision of services to those who do not readily understand the nature of our business, the complexities of our systems, or the language we speak. My hope, at the end of the day, is that our attention to interpreter services and associated ethics

is not solely motivated by compliance with Department of Justice guidelines — to preserve continuing federal grant funding.

Respondents

I am pleased that Richard A. Krause, director of judicial operations from the 19th Judicial District in Waukegan, Illinois; Katrin Johnson, court interpreter program coordinator for the Washington Administrative Office of the Courts in Olympia, Washington; and Eric Silverberg, deputy court administrator for the Pima County Superior Court in Tucson, Arizona, accepted my invitation to offer their perspectives on the issue of interpreter ethics.

The Scenario

Court Administrator Bob enlists the services of Sarah, a contractual Korean interpreter, to assist Tim, a self-represented, limited-English Proficiency (LEP) party in a family law hearing, finalize his divorce. Sarah is "certified" under the state's prevailing definition, and she is highly regarded by the judges for her interpreting skills, professionalism, and punctuality. Sarah has been essential in Tim's case and has already interpreted for him at a previously scheduled settlement conference and a couple of courthouse facilitator appointments. Sarah is one of only three certified Korean interpreters in the state and the only certified Korean interpreter within a 300-mile radius of the courthouse. Sarah has been hired and compensated by the court for a minimum two-hour time period in keeping with the court's contract.

At the conclusion of Tim's dissolution hearing, he and Sarah leave the courtroom and part company. Mike, a local law enforcement officer who has observed the dissolution proceedings, follows Tim outside and, on the courthouse steps, begins aggressively questioning him regarding his knowledge of, and alleged participation in, a string of recent

robberies. Sarah overhears some of the conversation as she passes — particularly as their voices escalate and emotions run high — and she steps between Mike and Tim. Without knowing whether Mike has already advised Tim of his rights, she quickly advises Tim, in his native language, that he does not have to answer any questions without either an interpreter or an attorney present.

Mike is immediately incensed at Sarah's intrusion and threatens to arrest her for obstructing his investigation. Sarah discloses, in English, what she has advised Tim, tells Mike "he should know better," and quickly leaves the scene. Tim refuses to answer any further questions.

Mike ultimately lodges a written complaint with Bob alleging that Sarah has (1) provided legal advice, contrary to state law, and (2) demonstrated her clear bias and/or partiality against law enforcement in violation of the court's adopted interpreter ethical canons. The court's relevant canon reads:

Impartiality and Conflicts of Interest

Court interpreters are to remain impartial and neutral in proceedings where they serve, and must maintain the appearance of impartiality and neutrality, avoiding unnecessary contact with parties. Court interpreters shall abstain from comment on matters in which they serve. Any real or potential conflict of interest shall be immediately disclosed to the Court and all parties as soon as the interpreter becomes aware of such conflict of interest.

Mike demands Sarah's immediate removal from the court's contracted interpreter list.

The Questions

1) Has Sarah, in her capacity as a certified interpreter, violated the court's adopted ethical standards? To what extent is Sarah's contractual relationship with the court relevant in the context of her conduct on the courthouse steps?

Neither Eric nor Richard thought Sarah's conduct on the courthouse steps violated the court's adopted canon. Eric noted that the conduct occurred on the interpreter's own time and not during a scheduled proceeding. He also pointed out that the conduct, arguably, did not occur on court property.

Richard agreed and reiterated that the court's ethical standard imposes the interpreter's need to remain and appear impartial and neutral in proceedings in which they serve. Sarah's

conversation in front of the courthouse is a conversation that is unrelated to the court proceeding for which she was initially hired. Like Eric, Richard indicated that the location of the incident has no more relevance than if the conversation took place "at a local shopping mall five miles away."

Richard noted, however, that Sarah's contractual relationship with the court is relevant, depending on how she is paid for her services. If she is paid a flat rate for her services and the encounter on the courthouse steps takes place while she is still "on the clock," then it could be construed that her conversation is still a part of the proceeding in which she served.

Katrin disagreed and opined "An interpreter's ethical obligation doesn't necessarily start and end at the courtroom door." She referenced Washington's code of ethics for interpreters, which states that interpreters "shall maintain high standards of personal and professional conduct that promote public confidence in the administration of justice." Katrin concluded that interpreters are "...to be neutral, unobtrusive, and not give legal advice, and Sarah's actions violated these terms."

2) What, if any, ethical obligations does Bob face regarding Sarah's conduct? Is her conduct sanctionable? Why or why not?

Katrin felt Bob had an ethical obligation to report the conduct to the state interpreter program manager, interpreter commission, or designated certification authority. Katrin said that Sarah has an opportunity to interpret in multiple courts in the state, and a finding of unethical conduct needs to be reported broadly. "The duty to report arises from being part of the larger court community."

Katrin also said that most states have certification programs, and some of those have disciplinary procedures. While this likely does not rise to the level of suspension or decertification, Katrin was certain this conduct would merit some form of discipline.

Eric did not feel that Bob, or the court, had any specific ethical obligation in this matter, and Sarah's conduct was not sanctionable since she was not a court employee. However, based on this incident, Eric suggested that the court may not want to hire Sarah for future interpreter needs and emphasized that "it would be a poor idea to use the interpreter in any case involving" Mike in the future. Eric also felt Sarah should have an obligation to disclose the complaint made by Mike and excuse herself should she be called in any of his cases.

“An interpreter’s ethical obligation doesn’t necessarily start and end at the courtroom door.”

Richard was not convinced that Bob had any ethical obligations as the court administrator, but he did think Bob had a responsibility to follow up and investigate the complaint to determine if an ethical violation occurred, since an ethical violation by Sarah could affect the integrity of the court.

Moreover, Richard did not find Sarah’s conduct sanctionable because he did not believe she had acted unethically. He noted, however, that the prosecuting authority would have the opportunity to consider her behavior in the context of the law to determine whether she had, in fact, obstructed justice with her behavior. Apart from a criminal prosecution or Bob’s decision not to hire her in the future, Richard was unclear what other sanction might be available.¹

3) If Sarah is retained on the list, should Bob automatically halt Sarah’s assignment in any further civil, family, or criminal cases in which Tim is a party? Why or why not?

None of the respondents felt Sarah’s conduct warranted Bob’s decision to automatically halt her future assignment to Tim’s potential civil or family law cases. Eric noted that Sarah’s interpreting skills had not been called into question, and she had not demonstrated any bias.

Richard and Katrin referenced the lack of Korean interpreters in the area and suggested that Bob might have no other alternative except to hire Sarah for any of Tim’s future cases. Rich thought it would be prudent to find and assign another interpreter to those cases in order to avoid any possible appearance of impartiality. However, since it does not appear that there was another interpreter for 300 miles, the likelihood of success does seem limited, but that should not preclude Bob from researching that option.

Richard was also quick to note that Sarah should not be the interpreter in any criminal case that might arise as a result of Mike’s questioning on the courthouse steps. He argued that Sarah could be called as a potential witness in the case if Tim questions the absence of Miranda warnings in the context of this incident. “It would be a clear conflict of interest for her to serve as an interpreter in a case in which she was a witness.”

Katrin, similarly, thought that Bob would not have much choice in whether to hire Sarah again, but she urged the court

to reset appropriate interpreter boundaries with Tim by clearly explaining the role of the interpreter so that he and everyone else in the courtroom understands that the interpreter should not give advice, will not advocate for him, and will only interpret what is stated during the hearing.

4) To preserve the integrity of the court’s certified interpreter program, what can or should Bob do to prevent such occurrences from happening again in the future?

Richard urged Bob to review the court’s policies and modify them if necessary. Bob should also carefully, accurately, and thoroughly communicate the policies to existing and future employees and contractors who work for the court. It is especially important that he be vigilant about emphasizing any changes to existing employees and contractors.

Similarly, Katrin noted that most state court interpreter programs have some form of new interpreter training, which includes ethics and courtroom protocol. She encouraged Bob to record and report interpreter ethics issues and scenarios to his interpreter program manager so that (1) clarification of policy may be developed and shared statewide, and (2) so future trainings for both court leaders and court interpreters may be better tailored to avoid such situations.

Again, I wish to extend my appreciation to Eric, Katrin, and Rich for their insights on the topic of interpreter ethics. Their varying opinions are reflective of the different perspectives and the differing levels of understanding that court leaders have when faced with potential interpreter ethics questions. Change any facet of the scenario — certified vs. non-certified interpreter; contract vs. staff interpreters; implications of varying compensation policies; etc. — and the questions may be addressed differently.

As always, I am curious to hear what you think about this issue. Please forward your thoughts regarding this scenario, or ideas for future columns, to me at fmaiocco@co.kitsap.wa.us.

ABOUT THE AUTHOR

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