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Ethical Use of Interpreters for Non-English-Speaking Clients in Forensic Contexts

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14–18 minutes

According to the United States Census Bureau, 60.4% of the United States population consists of White persons not of Hispanic or Latino ethnicities, and 41.8% of the population consists of racial/ethnic groups identified as Black or [African American](#), American Indian and Native Alaskan, Asian, Native Hawaiian or Other Pacific Islander, Hispanic or Latino, or those identified as being two or more races. From 2013 to 2017, 21.3% of the population, identifying as five years and older, reported speaking a language other than English in the home (United States Census Bureau, 2019), indicating there is a large amount of diversity and multiculturalism in the United States.

There is an overrepresentation of People of Color in the United States criminal justice system. Given their work within these systems, forensic psychologists must maintain

[cultural competence](#) when interacting and serving diverse populations, including non-English-speaking individuals. In both forensic assessment and treatment, the use of interpreters is growing. However, training on the [ethical](#) use of interpreters is limited. The present article will highlight important ethical, clinical, and legal considerations when working with interpreters in forensic contexts.

Ethical and Clinical Considerations

Principle E of the *Ethical Principles of Psychologists and Code of Conduct* (Code of Ethics), as well as Guideline 2.08 of the *Specialty Guidelines for Forensic Psychology*, outline the ethical responsibility of psychologists to respect the cultural, individual, and role differences of all persons, including those of racial/ethnic and linguistic diversity (American Psychological Association [APA], 2017; APA, 2013, respectively). Further, the *APA Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations* recommends clients should receive services in the language requested or be referred to a provider who can provide services in the requested language (APA, 1993). Given the limited availability of providers, it may not be feasible to locate a provider with those qualifications. In such cases, the clinician should acquire a translator with the appropriate

cultural background and who does not hold a dual role with the client (APA, 1993). In doing so, providers must be aware of areas of ethical vulnerability within both the assessment and treatment process when using interpreters.

Confidentiality

Standard 4.01 (Maintaining Confidentiality) and 4.02 (Discussing the Limits of Confidentiality) in the APA Code of Ethics requires psychologists to maintain the privacy of confidential information through reasonable action as well as review with the client the limits to which information can be kept confidential (APA, 2017). Although the evaluator or clinician is bound to psychology's ethical guidelines, interpreters may not be and cannot be assumed to operate under the same bounds of confidentiality. Additionally, Maddux (2010) mentions the possibility of a dual relationship that may be present between a client and interpreter. Non-English-speaking individuals may have small communities in which there is increased contact between people of the same cultural group, which increases the probability of the client and interpreter having previous contact or relationship with one another. This contact could create a dual relationship that the evaluator may need to consider.

Interpreting Assessment Results

Standard 9.06 (Interpreting Assessment Results) of the APA Code of Ethics and Guideline 10.03 (Appreciation of Individual Differences) of the forensic specialty guidelines note that psychologists should consider the characteristics of a person when interpreting their assessment results. Idiographic characteristics, such as linguistic and cultural differences, could influence judgments and reduce interpretive accuracy (APA, 2017). With the involvement of an interpreter during an assessment, not only is the assessor interpreting the client's responses, but they simultaneously have to interpret the responses through a language filter that contains individual differences from the interpreter. It is important to note that with an interpreter in the room, the dyadic relationship becomes triadic. Each factor that can be at play between the interpreter and the non-English speaking client can also be assumed possible between the interpreter and treatment provider. This is only exacerbated with multiple interpreters assigned to a client. Each different interpreter carries their personal combination of individual differences that, if not carried through the entirety of treatment with the same client, can affect the reliability and validity of treatment and evaluation.

The use of interpreters can also influence the reliability and

validity of a forensic assessment. First, when considering the reliability of the assessment, both intrinsic and extrinsic factors require attention. For instance, intrinsically, gender across cultures carries different reactions. The amount of engagement, response, disclosure, and the overall presentation can be differentially affected whether the client or interpreter identifies as male, female, or does not identify with the binary definition of gender (Maddux, 2010).

A female client may be less willing to share personal information with a female evaluator through the translation of a male interpreter. Similarly, social class may also function as a possible hindrance to assessment reliability.

Client-interpreter rapport by individuals of the same culture is more sensitive to the differences in class than individuals of different cultures (Maddux, 2010).

Extrinsically, the lack of vocabulary available for direct translation and the type of translation utilized can lower the level of reliability of [outcome](#) interpretation. Often, especially with justice-involved topics, there are no words that directly translate some terms. For example, “An interpreter’s anxiety in forensic evaluation involving sexual matter may result in them explicitly changing a psychologist’s questions involving sexual details or relying more heavily on nonverbal signals of affirmation to avoid awkwardness” (Maddux, 2010, p. 57). Whether the interpretation is consecutive versus simultaneous, direct

versus indirect, or presented in lay terms versus professional terms, all forms of interpretation provide unique nuances to the quality of the assessment results. Maddux (2010) explains that a level of trust mediated by the working [alliance](#) between the interpreter and the assessor must be present, or else the assessor may be at risk of losing control of the session. The speed of the session is determined by the use of consecutive or simultaneous interpretation, while direct or indirect translation determines the amount of side conversation.

The validity of assessment and treatment can be affected by the non-English speaker attempting to bypass the interpreter, dialect differences, or the ability of the interpreter. There may be instances when the client offers English responses to the assessor despite the availability of an interpreter (Maddux, 2010). In the case that the client communicates the correct English word, the validity of the assessment is saved. However, if the client offers the wrong English word for what the client meant to communicate, the evaluator may mistake the client's lack of language [competence](#) as an incorrect response, invalidating any interpretation thereafter. Differences in dialect between the client and the interpreter may also be present, known or unbeknownst to the assessor (Maddux, 2010). As a result, there may be a decrease in the accuracy or specificity of interpretation that may hinder a

client's results. The interpreter's capability for translation must also be considered (Maddux, 2010). The fluency level, certification, and cognitive abilities, such as working memory and executive functioning, are all properties of an interpreter's ability to effectively translate an assessment from one language to another. Any single factor or a combination of these factors play a significant role in the confidence that an assessment can accurately interpreted by the evaluator.

Legal Considerations

In 1975, a California law was passed requiring the use of the English language in its courtrooms, but it lacked a mandate for providing interpreters to non-English speaking clients. The rationale provided for this law was the financial and time-sensitive burden on the court to locate, assign, and proceed with the trial. The state also argued that the law provided an incentive for non-English speaking participants of the court to learn English. However, the nature of this law fosters bias and discrimination against non-English speakers (Chang & Araujo, 1975). Chang and Araujo (1975) made two main arguments to advocate for a mandate to providing interpreters in the courtroom.

Equal Protection

Under the United States Constitution, individuals have the right to equal protection of the laws against racial discrimination (U.S. Const. amend. XIV). Chang & Araujo (1975) make a compelling argument that denying the assistance of an interpreter to a non-English speaker serves as grounds for illegal discrimination based on the postulation that language is tied closely to an individual's race or national origin. Therefore, it can be argued that the court is discriminating against a person's national origin. With this in mind, should a defendant be convicted without having been appointed an interpreter, it could imply that the individual's incarceration was due to not knowing the English language to the extent that they could participate in their proceeding (Chang & Araujo, 1975).

Due Process

Due process under the 14th Amendment upholds an individual's right to fair treatment under the legal system (U.S. Const. amend. XIV). A fair trial guarantees the right to a speedy trial, confrontation with the witnesses against him, and effective counsel (U.S. Const. amend. VI). An interpreter may have to consider alternative ways of communicating with a defendant or take frequent recesses to ensure there are no misunderstandings (Chang & Araujo, 1975). Using an interpreter would inevitably

consume amounts of time and prolong the trial process, inhibiting the ability to provide a proceeding within an acceptable amount of time. Moreover, without the ability to understand witnesses, defendants are denied the right to confront witnesses brought against them. As a result, the defendant would not maintain the ability to refute arguments made against them. Lastly, a language barrier between a defendant and their attorney would inhibit effective communication to engage the defendant in the trial process (Chang & Araujo, 1975). The combined inability to confer with an attorney and confront the witnesses prevents the defendant from participating and aiding in their defense. These limitations are similar to defendants found incompetent to stand trial on the basis of mental illness (Change & Araujo, 1975).

The Court Interpreters Act (1978)

Three years after Chang and Araujo wrote their 1975 article, President Carter enacted the Court Interpreters Act of 1978, which gave individuals the right to an interpreter if language serves as a barrier to their communication or comprehension of their proceedings (Court Interpreters Act of 1978). However, ten years later, an amendment to the original Act was made that left the responsibility of providing an interpreter to the courts (Court Interpreter

Amendments Act of 1988). The courts would be required to request an interpreter on behalf of the non-English speaker instead of an interpreter automatically being appointed to them. Interpreters are not always appointed if “the speaker’s limited English ability is sufficient for conducting their case” (Maddux, 2010, p. 56). As a result, there are still limitations to the rights of those whose native language is not English and the services provided to them.

Recommendations for Professionals

The literature provides multiple recommendations on this topic. First, assessing language fluency would aid in the interpretation of assessment results for those whose first language is not English (Barber-Rioja & Rosenfeld, 2018). The assessor or clinician should be wary of miscommunication by the client attempting to bypass the interpreter. Second, to increase the reliability and validity of interpretations of assessment results, the assessor needs to record the behavioral observations of both the client and the interpreter. Assessors inconsistently report information regarding the interpreter, and interpretation services are not often documented in assessment reports (Maddux, 2010).

In response to minimizing factors that hinder reliability and validity, evaluators and clinicians are encouraged to:

- Adjust their language to avoid lengthy or complicated translation;
- Strive to seek interpreters from the same country as the client;
- Assess the client's comfort level towards the interpreter;
- Discuss topics with the interpreter that will likely be included in the session before starting the session;
- Select neutral, well-trained interpreters;
- Discuss with the interpreter the need for direct interpretation;
- Seek interpreters who can interpret in the same dialect as the client; and
- Use a single, consistent interpreter for all sessions with the same client (Barber-Rioja & Rosenfeld, 2018; Weiss & Rosenfeld, 2010).

Conclusion

With the high prevalence of diverse populations within the criminal justice system, it is increasingly important to practice ethical cultural competence when serving non-English speaking clients. Forensic psychologists are bound under the Code of Ethics, as well as the *Specialty Guidelines for Forensic Psychology*, to do no harm,

exercise justice, and respect the rights and dignity of individuals who differ in individual characteristics, and consider these factors in the interpretation of assessment results. All the while, clinicians may need to advocate for legal ethics in the form of a client's legal rights as minoritized groups in an unfamiliar environment, such as involvement in restoration for competency to proceed.



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