

**60 PRELIMINARY INSTRUCTION: USE OF AN INTERPRETER FOR A WITNESS**

No matter what language people speak, they have the right to have their testimony heard and understood. You are about to hear a trial in which an interpreter will translate for one or more of the witnesses. The interpreter is required to remain neutral. The interpreter is required to translate between English and [insert appropriate other language] accurately and impartially to the best of the interpreter's skill and judgment.

The evidence you are to consider is only that provided through the official court interpreter. Although some of you may know the non-English language used, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English translation. You must disregard any different meaning of the non-English words.

You must evaluate interpreted testimony as you would any other testimony. That is, you must not give interpreted testimony any greater or lesser weight than you would if the witness had spoken English.

ADD THE FOLLOWING IF APPROPRIATE:

[Keep in mind that a person might speak some English without speaking it fluently. That person has the right to the services of an interpreter. Therefore, you shall not give greater or lesser weight to a person's translated testimony based on your conclusions, if any, regarding the extent to which that person speaks English.]

**COMMENT**

Wis JI-Criminal 60 was originally published in 1994 and revised in 1999. This revision was approved by the Committee in August 2002.

This instruction is intended for use when an interpreter is necessary for translating the testimony of a witness. Interpreters are also used in other situations: where a juror requires an interpreter (see Wis JI-Criminal 61); and, when the defendant requires the assistance of an interpreter (see Wis JI-Criminal 62). See State v. Santiago, 206 Wis.2d 3, 556 N.W.2d 687 (1996), which discusses the different functions of an interpreter.

A Code of Ethics for Court Interpreters was adopted as Chapter SCR 63, effective July 1, 2002.

This instruction is adapted from an instruction from the state of Oregon which is copyrighted by the Oregon State Bar and is reprinted with permission. See Oregon Criminal Jury Instruction Number 1001A, Uniform Criminal Jury Instructions (Oregon CLE 1994). The Oregon instruction is discussed in Vol 8, No. 15 BNA Criminal Practice Manual 331-32 (July 20, 1994).

The Committee concluded that an instruction like this may be helpful in alleviating some of the doubts a jury may have about evaluating testimony presented through an interpreter.

The second paragraph of the instruction is based on an instruction required by the Delaware Supreme Court. See Diaz v. State, 743 A.2d 1166 (Del. Supr. 1999).

The Committee also recommends asking jurors during voir dire whether any of them speak or understand the language involved in the interpretation.

Section 906.04, Wisconsin Rules of Evidence, provides: "An interpreter is subject to the provisions of chs. 901 to 911 relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true translation."