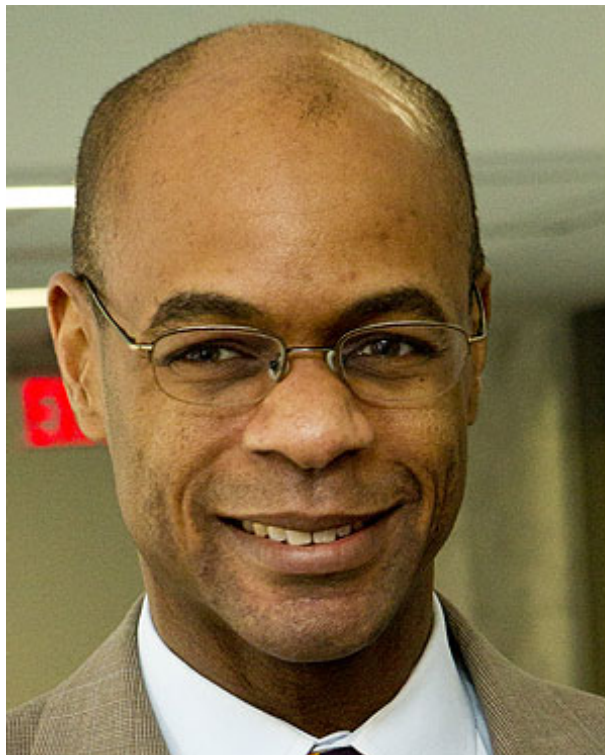


Justice Melton in Q & A on Language as A Barrier to Access



L to R: Harold D. Melton was appointed justice to the Georgia Supreme Court on July 1, 2005, by then-Gov. Sonny Perdue. He is the immediate past chairman of the court's Commission on Interpreters. Jana J. Edmondson-Cooper is a bilingual staff attorney at Georgia Legal Services Program, and represents clients in federal and state courts and administrative forums. She is a member of the National Language Access Advocates Network and the Georgia Commission on Interpreters. File photos

Can a defendant in a civil case who cannot speak English effectively participate in her court case without a trained interpreter? Are courts required to provide trained interpreters? Can a judge summon a bilingual clerk to assist?

Georgia Legal Services Program bilingual attorney Jana J. Edmondson-Cooper recently interviewed Georgia Supreme Court Justice Harold D. Melton to work through some of those questions and discuss his passion for improving access to justice among those who speak limited or no English or have other communication challenges, such as hearing impairment.

Edmondson-Cooper: Do you recall any anecdotes about cases where someone was either denied justice because of language access or in which access to an interpreter changed the outcome of the case?

Justice Melton: The primary case that comes to mind is *Ling v. State*, (288 Ga. 299, 702 S.E.2d 881 (2010)), in which our court held that when someone who does not speak English is tried in a criminal case and can't communicate and does not have an interpreter, that that is the equivalent of being incompetent to stand trial. Not having resources to communicate with the court effectively and to participate in court proceedings [is tantamount] to not being present while their case was proceeding.

That was in a criminal context. What support is there in the civil context? Does that mean that if you have a civil case you are not entitled to have an interpreter?

It's obviously more sensitive in criminal cases, but in our system of government and our Constitution, we have these high and lofty ideals that anybody can walk into court and get justice, whether they are the lowest or the highest. They can go against big corporations, and in civil cases, not only are people seeking rights of redress, but there are also defendants in civil cases where property interests are at stake. They might need an interpreter to defend themselves in a civil or government action or an action by a major corporation or somebody with resources.

And so the idea that anybody can have access to justice, regardless of their stature in our community, where they come from, who they are, is embedded. Now that means it is a great challenge to make that a reality. We do know that for somebody who has some other language [than English] as their primary language, then an interpreter is essential for them to access language in our court system.

Why is the issue of language access important to you personally?

I stumbled into it. When I came onto this court, Justice [Carol] Hunstein was the chair of the Commission on Interpreters. She asked me to sit as vice chair with her. Then when she became chief, she asked me to take on the chair position. Since that time I've learned a lot about the need and challenges that are there, the resources that are there, and the need for more resources that are critical for a growing segment of our population in Georgia.

What is the most important work that Georgia courts have to do to create access for people who have limited or no ability to communicate in English?

The first thing is to shake off the old habits. Traditionally, historically, I think there has been a great deal of comfort with just finding somebody in the courthouse who could speak the language in some form or fashion, at some basic level or proficiently.

That is fine for some functions: interacting with filing clerks or scheduling or things of that nature. But when you start getting into real hard-core litigation, where you are cross-examining witnesses, dealing with motions and objections, things of that nature, there is a skill set that needs to be there for quality interpreting to take place.

One of the biggest challenges is for judges to be sensitive to the need for qualified interpreters as opposed to just somebody who speaks the language.

When you speak of a skill set, what skills are you speaking of?

Interpreters have to speak the language, they have to interpret quickly and accurately, both written and spoken. Interpreters have to be familiar with court jargon, not only in English, but in the foreign language. And they have to be sensitive to the professional aspect of the interpreter's role in the court setting, whether they are an advocate, what kind of confidences they must maintain, the need to report back accurately what has been said, regardless of what they think should have been said or what they think was really meant—those types of rules and issues that arise in everyday court situations.

So in addition to their professional or technical skills, [interpreters] have to abide by a code of ethics, just like judges and lawyers do?

A code of ethics, exactly.

And what about when you have bilingual advocates? As a bilingual attorney, I have been in situations where I have been called upon to be both the interpreter and the attorney. That happened to me six months into practice. Something in my gut told me I needed to focus on being the attorney, not being both interpreter and attorney. But I knew that my emotions were not going to be persuasive authority for the court. So what is your opinion of situations where the court might be tempted to ask a bilingual attorney to serve as the interpreter? The judge may think, well, this will work, this is an officer of the court, we can trust them?

Attorneys often have to resist judges and impose sanity on judges where judges are determined to press in one direction more than they should be. And so in this area and in other areas, attorneys diplomatically have to preserve the record and explain what the shortcomings are and how that compromises the attorney's role in responding and hearing what else is being said while you're interpreting. That compromises your ability to be an effective advocate for your client.

Now there might be some preliminary parts of a trial where you could get away with this, but all these things become more critical when you are in full-blown trial. And criminal trials are going to be even more sensitive, although civil trials are more sensitive than we might imagine.

Especially when we think about property interests [such as a housing eviction] or domestic violence [such as obtaining a civil temporary protective order]—all these are high-stakes cases where it's important that people have access. Do you believe that language access and due process are intertwined, and if so, how?

Our court has said as much to the extent that we've said, you cannot participate meaningfully in your court proceeding if you cannot understand what is happening. It's one thing to have a process to determine your property or your liberty interest, but that process is meaningless if you can't participate in it.

Georgia is considered a leader in language access, in large part because of our Supreme Court rule governing the use of interpreters. The rule here is much more comprehensive and helpful than in some other jurisdictions. Additionally, we have language access rights codified in the Georgia Code in O.C.G.A. §§15-6-77(e)(4), in addition to provisions for the deaf and hard of hearing, in O.C.G.A. §§ 24-6-652 through 658. Given that we have that backing, what role do attorneys and judges have in making sure those rules and regulations are observed and enforced?

We have to be champions for the cause. We have to say, when the situation arises, let's see if we can do this right. There are limitations on what can be provided. There are limitations on the availability of interpreters. But let's start by looking. Let's start by asking the question: what can we do to do this the right way? Let's look for qualified interpreters. Let's look for somebody who has the language and the necessary skill set.

Now if we take those extra steps and can only do so much, that is one thing. But to stay in what might be the norm now without asking those questions, that is what we are trying to get away from.

A lot of times, we want to be mindful of the economy. A lot of times courts want to do the right thing but there are logistical challenges. For those courts that are facing fiscal restraints, what would be some first steps for them to take in making sure they are compliant with the language access laws and regulations in spite of those fiscal restraints?

One thing they might consider is calling the Commission on Interpreters, if they are having a difficult time even finding an interpreter. The commission might be able to tell you where to find someone with the right language and skill set. They can even talk the judge or attorney through how to budget and allocate the interpreter's time and resources. Whether they use some remote or telecommunications services for the preliminary hearings and save the interpreter for the more evidentiary hearings.

We even have a pilot project where we are using remote interpreting for the more exotic languages. That's where we want to expand once we get this working to fill the void with remote services. Every state struggles with finding enough interpreters in all the languages where there is need.

States have at least one or two languages that are easy, a couple of populations that are more dominant and in which it is easier to find interpreters. But every state has a handful of languages, if not more, in which it is very difficult if not impossible to find interpreters. If we can find and supply those language services by using remote interpreters, that could help fill that need. But call the Commission on Interpreters and see if there are resources that might be available.

The remote interpreters are great for those rare languages, in a preliminary hearing or for a short time frame. But as a former interpreter, I know the importance of, whenever possible, having an in-person interpreter instead of a remote interpreter. What is your suggestion for using remote interpreters for some of the more predominant languages? It may be tempting for some courts to say, "We don't need to worry about getting an in-person interpreter; we'll just use the remote Spanish interpreter because that is more appealing to our budget."

The courts that are high volume will be much better served by having someone there, and they will be able to keep (the interpreter) in good use. We don't want the remote interpreters to substitute for a live body, except where necessary.

But technology is improving. They have worked on their technology where they can duplicate a lot of the court situations and fill the holes where they exist. Still, we are not to the point where it's as good as a live body. In many instances, full blown hearings, live is always better. But in many instances, hopefully, a [remote interpreter] is becoming a next-best, second option.

Why should members of the bench and bar and other interested parties learn more about this issue?

First, because it's an important question that goes to the ideals we espouse when we go to third-grade civics class and talk about our Constitution and the meaning of our court system and the ability of anybody and everybody to have access to justice.

Secondly, it's a very difficult challenge and we need to put our heads together and figure out how to get this done.

These essays are written in collaboration with the Atlanta Bar Association, the Atlanta Volunteer Lawyers Foundation, Atlanta Legal Aid, Georgia Legal Services Program and others. To submit your own essay, contact Mary Smith Judd, special projects editor, at (404) 419-2841.