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Exploring Spanish to English Communication in Domestic Court Mediation:
Preferred Methods of Utilizing the Interpreter

Executive Summary

The primary research problem of this study is determining effective ways to facilitate communication in family court mediation where at least one party is of Hispanic descent and has limited English proficiency. The need for bilingual mediations resulting from domestic court disputes is on the rise. Professional mediators need to have a better understanding of the dynamics involved when working with parties who have limited English proficiency.

Very few studies have been carried out in the area of interpreted mediation in domestic court but there has been research in the areas of culture, communication, and interpreted mediation. The literature review explored individual and collective cultures, high and low context communication, and the ability of bilinguals to interpret in a dispute resolution setting; all of which have bearing on this research study.

Data was collected from the responses of mediators and interpreters to determine effective ways to facilitate clear communication in bilingual mediations. The survey respondents were a group of educated and experienced interpretation and mediation practitioners. Results indicate a preference for the consecutive mode of interpretation using verbatim translation. Respondents also reported a preference for a

professional interpreter to facilitate communication in family court mediation where at least one party is of Hispanic descent and has limited English proficiency.

This study concludes a professional interpreter is the preferred method to facilitate communication in a bilingual mediation but mediators will utilize any method available. Verbatim interpretation is preferred by interpreters and mediators but the ability of the interpreter and the dynamics of the mediation determine if interpretation is done in the consecutive or simultaneous mode. Funding for interpretation is an area warranting further exploration.

Introduction and Research Question

The goal of this research paper is to explore effective ways to facilitate communication in domestic court mediation where at least one party is of Hispanic descent and has limited English proficiency. This research assumes if the mediator speaks English and one or both parties are not proficient in the English language, the use of an interpreter will improve communication. The specific research question this paper will explore is if mediation leads to better communication, satisfaction, and understanding when the mediator is the interpreter, or when the interpreter is a professional brought in to interpret the parties mediating.

The presenting problem in interpreted mediation is determining the most effective role for the interpreter. The three primary questions this research will address are whether it is effective for the mediator to also act as interpreter, whether the use of one professional interpreter for the mediation is effective, or whether each party should have their own interpreter during the mediation. This paper will also explore different modes and methods of interpretation utilized in an interpreted mediation.

This research study investigates effective ways to conduct a bilingual mediation to guide domestic court mediators coordinating interpretation of a mediation session when one or both parties have limited English proficiency. Interpreter qualifications and certifications will also be explored to determine the benefits and challenges of interpreter ability in domestic court mediations.

Domestic court is a specialized court convened to determine matters relating to family law, such as custody of minor children. The court hears cases involving children and families and has the authority to make legal decisions in these cases. The cases in domestic court can be private cases where the applicant and respondent are the child's parents, or they can be public cases where the applicant is a local authority, such as Social and Rehabilitation Services, and the parents are the respondents.

Domestic court mediation is a process in which the applicant and respondent in a pending domestic court case agree to enter into mediation in an attempt to find a mutually satisfying resolution to their dispute outside of the court system. Mediation may be ordered by the court or the parties may elect to attempt mediation prior to going through with litigation. The goal of mediation is for the disputing parties to find a resolution that will benefit each of them and preferably preserve the relationship. A successful mediation is one in which the parties are given the chance to understand one other's perspective and interests more clearly, seek common ground, understand areas of disagreement, resolve at least part of their issues, and improve relationships and future interactions.

A domestic court mediator is a neutral party contracted by the courts or the disputing parties to help the parties express their underlying interests, have a better

understanding of the other party's interests, and explore ways to resolve the dispute in a way that satisfies some or most of the interests of each party. A professional mediator is generally required by the court to be certified and have mediation training and experience. The role of the mediator is not to decide the outcome of the mediation nor impose an agreement upon the parties, but strictly to facilitate communication between the disputing parties.

A domestic court interpreter is a neutral party contracted by the courts, the mediator, or the disputing parties to verbally translate one language into another to facilitate communication in a bilingual mediation. A domestic court interpreter may be certified, professionally qualified, or language skilled/ad hoc. The role of the interpreter is not to offer advice to nor engage in conversation with the party with limited English proficiency, but strictly to act as a tool to facilitate communication between the disputing parties and the mediator.

The parties in domestic court mediation may be parents attempting to resolve disputes involving custody or visitation for their minor children. Domestic court dockets also include paternity establishment for unwed parents, child protective proceedings, reunification plans for children in foster care, adoption, and modifications of child support plans. The role of the mediator in any of these scenarios is to facilitate the discussion and help the parties seek mutually satisfying resolution of the dispute. In order to effectively communicate throughout the mediation session or sessions, the mediator and each party must be able to understand what is being discussed and their positions and interests must also be understood. When one or both of the disputing

parties speak Spanish and the mediator speaks English, effective communication is a challenge.

There has been a nation-wide increase in the Hispanic/Latino population and the increased proportion of Spanish-speaking parties in domestic court mirrors this change in population. According to the U.S. Census Bureau, more than one out of every two individuals added to the United States population between July 1, 2008, and July 1, 2009 was Hispanic. To effectively manage this growth in the domestic court system and to facilitate clear communication, the use of an interpreter in bilingual Spanish/English mediations is essential.

There are three available options the mediator can choose to facilitate this clear communication. Each option will be explored and analyzed in this research paper in an effort to determine how each of these alternatives may affect the mediation. The three options to be explored are whether a mediator with fluency in English and Spanish should serve as both mediator and interpreter during the mediation, or whether a court interpreter should interpret for all parties during the mediation, or whether each party should have their own interpreter during the mediation.

Before beginning the research on this topic the following hypothesis was made: The use of an interpreter is essential to facilitate clear communication in mediations and using bilingual mediators or professional interpreters are effective ways to conduct a bilingual mediation. In order to explore the truth of this statement it was necessary to conduct a thorough literature review, collect data from practitioners of both mediation and interpretation, and analyze the data collected to compare the effective ways to conduct mediation where at least one party has limited English proficiency. The

literature review and methodology sections to follow contain in-depth information on this study.

Operational Definitions

A mediator is defined, for the purposes of this study, as a professional, licensed mediator approved by the court to facilitate domestic mediations. A mediator assists the parties in identifying their interests, exploring possible solutions, and finding a solution that benefits each party. Mediators must remain neutral and maintain confidentiality in the mediation proceedings. Mediation is defined as a process wherein the disputing parties can attempt to find a resolution that will benefit each of them while still preserving the relationship.

A court interpreter is defined as a professional, licensed interpreter approved by the court to interpret for those with limited English proficiency in court proceedings. Court interpreters do not merely translate words; they must communicate concepts and ideas from one language to another. They must possess excellent listening skills to enable them to capture everything being said in each language, and then translate it completely and clearly to the other parties. For this reason it is important that the interpreter is fluent in both Spanish and English so they can convey not only the words spoken, but also the meaning behind those words.

A language skilled interpreter or ad hoc interpreter is defined as a person who is not certified or licensed as a professional interpreter, but has the language ability to interpret mediation proceedings from English into Spanish and from Spanish into English. An ad hoc interpreter may be a friend or family member of the party with limited English proficiency and for this reason may not be considered a neutral party.

Literature Review

Very few studies have been carried out in the area of interpreted mediation in domestic court. The exploration was expanded to include other areas and issues related to interpretation in bilingual domestic court mediation and the role of the interpreter.

An extensive search of academic research studies was done on the topics of culture, communication, interpreted mediations, Hispanic/Latino population, best interest of children, and the elements of mediation. Each one of these issues has a direct impact on or can be directly applied to interpretation in bilingual domestic court mediation.

Culture

Several of the research studies stress the importance of recognizing the distinctions between individualism and collectivism in culture (Barkai; Kucinski; Lee). The American culture is individualistic, with a focus on the aspirations of the individual. The Hispanic culture is more collective, with a focus on group identify such as that of the family unit. This distinction can make a huge difference in the way parties respond to mediation. Mediators “must be able to strike the proper balance between people whose culture separates people from their problems and a culture that must give equal attention to both the person and the problem” (Kucinski 13).

Coming from the individualistic perspective, American parties are more likely to have initial resistance to the mediation process. They may see it as a vehicle to remove their independence and force them to make concessions to the other party. On the other hand, Hispanics may respond better to mediation but only if they are comfortable

with the process and understand what is taking place (Lee). The tendencies of their cultural collectivism draw them to the idea of reaching agreement and preserving relationships.

One study focused specifically on family dispute resolution for Latinos and how mediation could better reflect their cultural needs and expectations. The study found the needs of Latino families differ from those of most Anglo-American families. Most mediation models used in family court disputes are traditional Anglo models with formal processes unfamiliar to Latino people. People from Mexico do engage in mediation; however the mediator role is usually filled by a known and trusted person, such as a family member or community member (Weller, Martin, and Lederach). These cultural differences have a direct effect on the mediation process and are exacerbated even further when combined with a Spanish-English language barrier.

Culture, language, and gender were found by another researcher to potentially cause more prejudice than race or ethnicity (Rendon). A majority of mediators in this study felt the race or nationality of a party could affect the outcome of mediation. Even more so than race or nationality, a number of the respondents believed language and cultural differences were really the issue, not discrimination. One respondent alerted the researcher to the hidden problem of interpretation and language translation. Another reported a positive mediation outcome when a language barrier that had hindered a party in the past was recognized and addressed. One of Rendon's conclusions was that many mediators are not as sensitive and educated about cultural issues as they believe they are.

These inherent cultural differences can create challenges for mediation, which become more pronounced when combined with a Spanish-English language barrier. For this reason, it is of utmost importance to engage the services of a language interpreter to diminish at least one of the barriers to communication. The preference for ad hoc or professional interpreters will be discussed later in the paper.

Communication

Two research studies identify high-context and low-context communication styles as a barrier to communication between Hispanics and Americans (Barkai; Kucinski). Hispanics tend to be high-context and Americans tend to be low-context. In addition to the language barrier that exists with Spanish and English, the different contexts of communication present further difficulty in communication and understanding. High context communicators have a tendency to talk around the point and often times the message is never explicitly stated. Meaning is expected to be understood by putting together all of the information from the personalities and the situation. Low context communicators have a tendency to say exactly what they mean.

Another potential difficulty to bilingual mediation was identified in a study on Bilingual Couples (Piller). The researcher defines a bilingual couple “as one in which the spouses have different first languages” (Piller 230). Cross-cultural communication already presents difficulties for men and women, as the two genders could be considered different cultures. Adding a difference in language to these already disparate parties creates another level of difficulty to effective communication. Through ethnographic observations, the researcher found bilingual couples will use one common language, but the spouse with a different first language will still use their native tongue

with friends, family, and children. This can cause feelings of alienation by the other spouse, who does not understand everything being said, which could be exacerbated in time of conflict. In a dispute resolution setting, Interpretation can help reduce this barrier to communication.

Interpreted Mediations

Bilingual mediations can be interpreted in a number of ways. The sub-questions of this paper specifically address the role of the interpreter: Should the mediator be bilingual or should a professional interpreter interpret the mediation? One researcher found most bilingual individuals are not qualified to interpret in a dispute resolution setting (Dominguez-Urban). To illustrate this point she said: "It should be clear that bilingualism does not qualify a person to interpret any more than the ability to type qualifies a person to be a stenographer" (Dominguez-Urban 8). For this reason, she discourages dual roles for mediators.

Two modes of interpretation were explored in the literature review: simultaneous and consecutive modes (Dominguez-Urban; Romberger). In simultaneous mode the interpreter interprets while the party is speaking. In consecutive mode the interpreter interprets when the party is done speaking. One researcher found the extent to which the interpreter needs to relay the speaker's demeanor will dictate the mode of interpretation used. She observed the consecutive mode is often preferred when accuracy is important (Dominguez-Urban). The consecutive mode lets the other party focus on the body language and demeanor of the speaker, while the simultaneous mode tends to draw attention away from the speaker towards the interpreter. Another study found simultaneous interpreting to be more difficult than consecutive, and

therefore suggests simultaneous examination as a good screening tool for qualified interpreters (Romberger).

Several studies have identified an increasing need for interpreters in all types of court proceedings, but have found there to be a scarcity of available qualified court interpreters (Dominguez-Urban, Romberger, Schaefer, Wood). One study specifically identified a need for interpreters in family and domestic violence proceedings. This study found agreement among judicial officers indicating the need for interpretation in family proceedings was “a fundamental factor contributing to the quality of justice in their courts” (Family Law Interpreter Pilot Program Report to the Legislature).

This same study found there to be an increase in appearance and compliance by the party with limited English proficiency when interpretation needs were recognized and services made available (Family Law Interpreter Pilot Program Report to the Legislature). The majority of judicial officers thought non-English parties were more likely to appear in subsequent proceedings if they were provided with interpretation services from the court.

Another benefit uncovered by the study was a reduction in delays and backlogs when interpretation services were made available. Half of the judicial officers polled felt “the availability of interpreters substantially reduced the number of delays in custody hearings when one or both parties did not speak English” (Family Law Interpreter Pilot Program Report to the Legislature). Another forty three percent felt the delays were at least moderately reduced and seventy five percent felt funding for interpreting services was helpful in reducing backlogs of cases.

The literature review suggests the court systems are beginning to recognize the value of interpretation in all court proceedings, including mediation. Judges, attorneys, mediators, interpreters, and other related court personnel are supportive of the use of interpreters. However, a shortage of qualified interpreters, combined with rising costs of service and a steadily growing Hispanic/Latino population make further recruitment and funding for qualified court interpreters a pressing and timely issue.

Methodology

A combination of both qualitative and quantitative methodologies was chosen to gather the research data to answer the research questions posed in this study. A qualitative approach was found to be more appropriate for the initial data gathering. Qualitative research allows a focus on all of the complexities of the research topic in a real world setting. A bilingual family court mediation where at least one party has limited English proficiency is the real world setting in this case. A qualitative approach also allows an exploration of relationships using data gathered in the setting where the relationships occur. The relationships to be explored are between the mediator, the interpreter, and the disputing parties, which occur in the interpreted mediation session.

There are also drawbacks to the qualitative method of gathering data. Steps were taken in the research process to avoid these pitfalls as much as possible. One of the drawbacks of qualitative research is the possible bias of the researcher and of the population being studied. Different researchers may perceive the data differently depending on their temperament, personality and the biases they carry with them. The sample population may respond and react in different ways at different times depending upon their temperament, personality, biases, and their mood at the time of the study.

The surveys were constructed to send to numerous subjects in both the mediation and interpretation fields to minimize the possible effect of bias. The variety of subjects taking the surveys helped to broaden the sample population in order to receive enough responses to garner a representative opinion of each population. The surveys for both the mediators and the interpreters are similar enough to allow for objective comparison by the researcher to minimize the chance of subjective deductions, another drawback of the qualitative methodology.

A phenomenological study is a type of qualitative research where the researcher studies the perceptions, perspectives and understandings of a particular situation. In this study the situation is a bilingual domestic court mediation where one or both parties have limited English proficiency and the mediator is fluent only in English. Information was gathered on the perceptions, perspectives, and understandings of mediators and interpreters involved in this type of situation to determine the best way to facilitate communication. Numerous telephone calls with both mediation and interpretation practitioners were conducted in addition to the creation of the surveys. The combination of surveys and telephone interviews gave a comprehensive, in-depth look into an interpreted mediation from the viewpoint of professional mediators and interpreters.

Quantitative methods were utilized to analyze the results once the data was gathered. Quantitative methods allow the researcher to explore relationships using statistical analysis of the data collected. The use of quantitative analysis can further reduce the subjectivity of the researcher and provide statistical power to the results. The survey results from the mediator survey and from the interpreter survey were

analyzed using the collection and analysis tools available on the Survey Monkey website and the data analysis add-in on Microsoft Excel.

The collection and analysis tools on Survey Monkey were used to analyze the responses to each question. Results were listed in percents and graphical representations could be made for each question. Many questions allowed more than one option to be selected by the respondent. The analysis tool calculated the response percent based on a scale of one hundred percent agreement with each question.

The data analysis tools in Microsoft Excel were used to further analyze the responses to the survey. Responses were analyzed using descriptive statistics which provided the mean, standard error, median, mode, standard deviation, sample variance, kurtosis, skewness, range, minimum, maximum, sum, count, and confidence level of each set of data analyzed. This tool allowed calculation of the response percent based on a ratio of rate of agreement per question to total survey respondents and gave a better representation of sample population responses.

The quantitative methodology has some drawbacks as well. Two drawbacks that may be experienced in quantitative analysis are a limitation in results due to numerical descriptions as opposed to elaborate accounts of human perception, and the possibility that preset answers will not allow the subjects to express how they really feel about the subject. The surveys were designed to allow for detailed narrative responses in addition to the preset answer selections to overcome these potential pitfalls.

The Surveys

The use of a mediator survey was going to be the primary source of information to collect the data for analysis in this research paper. Feedback and guidance were

sought from two professional mediators prior to and throughout the creation of the first survey. The survey took on better direction based on the mediators' comments and advice and it became clear an additional survey would be needed for interpreters. Both surveys were made virtually identical for analysis and comparison purposes, but data was polled and collected from each population separately.

The primary question about the best way to facilitate communication in family court mediation where at least one party is of Hispanic descent and has limited English proficiency was broken down early in the research process into three primary parts: mediator as interpreter, use of one professional interpreter, and a professional interpreter for each party.

In creating the survey, each question was designed to answer or lead to an answer of one of the three sub-part questions. The responses to each question on the survey were intended to provide further understanding of the optimal method of communication in an interpreted mediation.

The design of the surveys begins with an introductory section explaining the details to protect the rights of the research subjects. The first page informs subjects of the purpose of the research, lets them know how long they can expect to spend on the survey process, discloses the research is being performed under the authority of Baker University, explains the benefit expected from the research, lists who to contact with questions, describes what criteria was used for subject selection, gives notice that the results may be published, tells how to see results of the project, offers an assurance of confidentiality, and makes clear the use of personal identifying information.

After the explanatory introduction page, the survey begins by giving the subject the option of entering demographic information for future analysis of the data. The questions requiring a response begin with a qualifying question regarding the participant's experience with interpreted mediation. If the respondents have not had interpreted mediation experience, they are directed to the opinion section of the survey. If the respondents have had interpreted mediation experience, they are directed to questions about this experience, then on to the opinion section of the survey. The final question on the survey asks all participants if they have any further thoughts on insights they would like to share on bilingual mediation.

The survey was created using Survey Monkey (<http://www.surveymonkey.com>) and a link to each survey was sent to the corresponding group: mediators or interpreters. The Heartland Mediators Association distributed the mediator survey link to its membership and the National Association of Judiciary Interpreters and Translators distributed the interpreter survey link to its membership. In addition to the organizational emails, the links were emailed to individual practitioners and posted on other appropriate web sites requesting mediator and interpreter participation. The surveys were only available for four weeks due to the short amount of time allowed for this research project.

Data Analysis

Data was collected from the responses of mediators and interpreters to two surveys created on SurveyMonkey.com; one targeted at mediators and one targeted at interpreters. A blank copy of the mediator survey and the compilation of responses to

the mediator survey are included in Appendix A. A blank copy of the interpreter survey and the compilation of responses to the interpreter survey are included in Appendix B.

Some respondents completed the demographic section of the survey and expressed an interest in receiving the survey results, but did not proceed to answer the survey questions. The participants counted as completing the survey were those who met the qualifying question and were therefore able to advance through every question in the survey. Respondents skipping any question on the survey are not counted as completing the survey. Below is a diagram showing completion statistics from both the interpreter and mediator surveys:

	Interpreters	Mediators	Total
Started Survey	27	67	94
Completed Survey	18	58	76
Answered Qualifying Question	21	62	83
Answered Opinion Question	21	60	81
Offered Further Insights	11	27	38

The questions on each survey were designed to help answer the primary research problem of determining effective ways to facilitate communication in family court mediation where at least one party is of Hispanic descent and has limited English proficiency. The responses to the surveys identify the professional background of the participants, determine the extent of their experience with interpreted mediation, and collect their opinions and insights on effective ways to facilitate bilingual mediation. The respondents all have some level of training and experience with mediation or interpretation. This expertise places them in a unique position to share valuable insights to help other mediators and interpreters work in the growing field of interpreted domestic court mediation.

The invitations to respond to the mediator survey were sent out to mediation associations in Kansas and Missouri and emailed to professional mediators by referral. The invitations to respond to the interpreter survey were sent out to national and international interpretation associations as well as groups in Kansas and Missouri, and emailed to professional court interpreters by referral. All respondents were in some way involved in a professional network of other practitioners.

The sample population consists of professional mediators primarily located in the Midwest region of the United States and professional interpreters from across the globe. Sampling bias may exist due to the geographic location of the mediator subjects. This study does not explore the experiences and opinions of mediators from other regions of the United States. The professional background of the subjects could be an additional bias as all are highly trained, educated, and experienced. This study does not examine the background or experience of interpreters and mediators not affiliated with either a professional association or the court system.

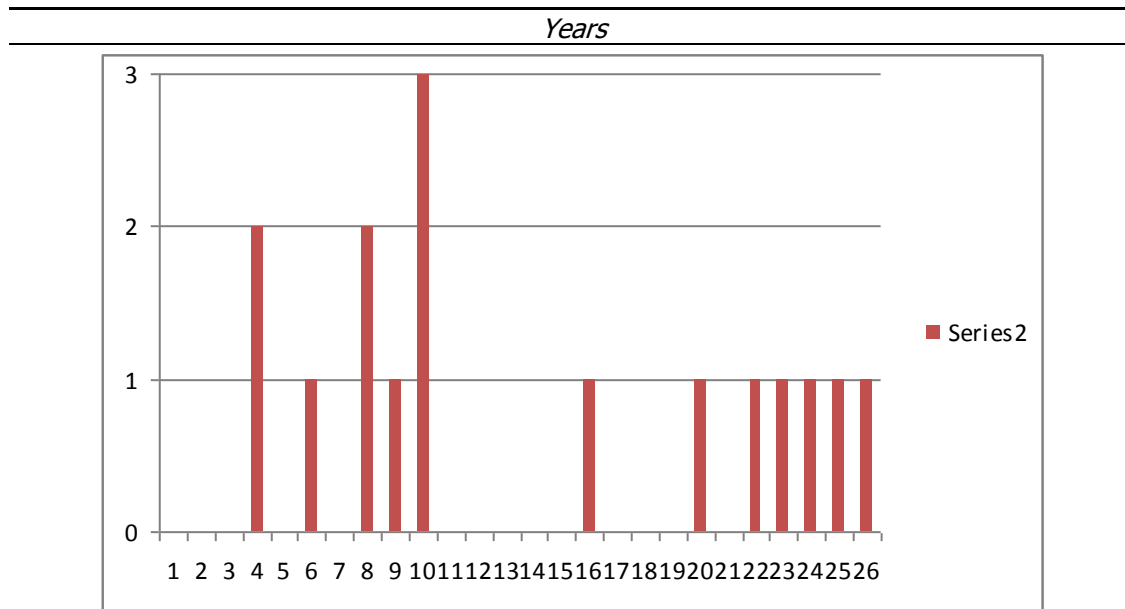
Professional Background and Experience

The background block of questions on each survey consists of four questions to identify the professional background and experience of each participant. The respondents were asked how long they have been practicing, what qualifications they have in their field, what types of mediations and interpretations they usually work with, and in what languages they have fluency. The responses to these questions show the extent of experience respondents have and the degree of relevance of their involvement in previous mediations and interpretations to the research question posed in this study.

The information given by respondents allowed for grouping of answers based on different criteria, such as the level of experience, to examine the consistency and validity of the opinions across the sample population. This cross-referencing of responses helped to determine if conclusions drawn from the data analysis were representative of the entire population or if they varied based on experience of respondents. A comparison of responses from mediators with four to six years experience to those with twenty-two or more years of experience yielded similar results indicating the responses were consistent across the sample population.

Sixteen interpreters responded with their qualifications as an interpreter. Each one included some degree of post secondary education and most had some type of certification. Respondents had degrees including Master's and Doctorates of Philosophy, training from the Higher Institution of Translators in Iraq, and a degree in Translation and Interpretation from University of Mainz, Gernersheim in Germany. Certifications included State Court Interpreter from several different states, Federal Court Interpreter, Medical and Social Service Interpreter.

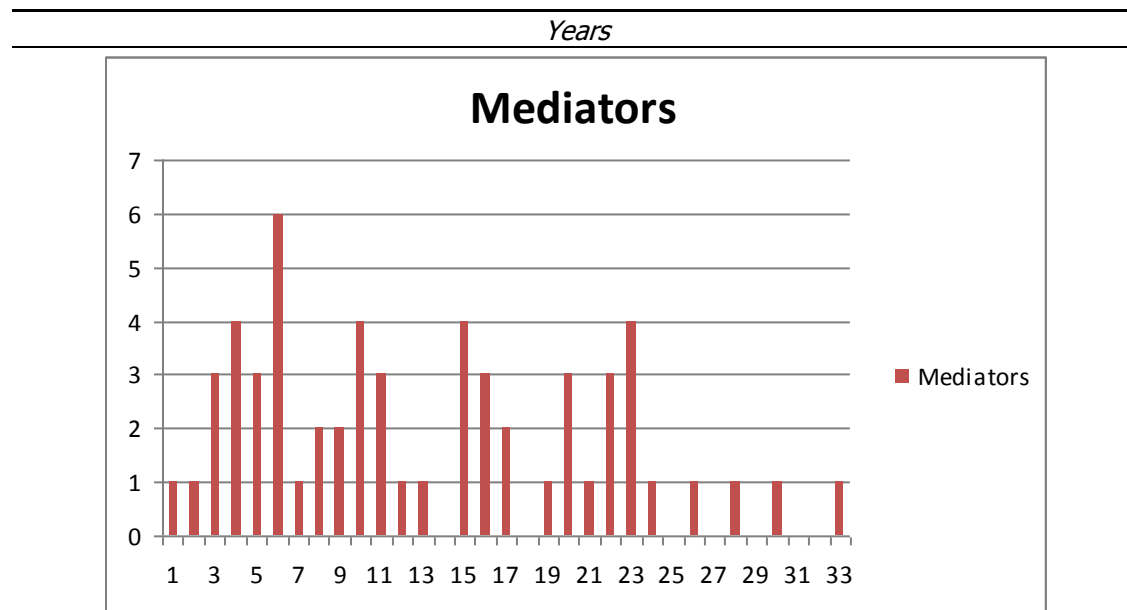
The data analysis tools in Microsoft Excel were employed to analyze the years of experience reported by the interpreters, which ranged from four to fifty-five years. The median and mode were calculated at ten years, indicating most respondents had this amount of experience with professional interpretation. On the next page is a chart with the descriptive analysis of the range of interpreter experience in years:



Mean	16.25
Standard Error	3.272996
Median	10
Mode	10
Standard Deviation	13.09198
Sample Variance	171.4
Skewness	1.867968
Range	51
Minimum	4
Maximum	55
Sum	260
Count	16
Confidence Level(95.0%)	6.976225

Fifty-eight mediators responded with their qualifications as a mediator. Most respondents listed hours of specialized training, court approval, graduate level education, and experience. At least one judge and eight attorneys were among the mediator respondents. The data analysis tools in Microsoft Excel were employed to analyze the years of experience reported by the mediators, which ranged from one to thirty-three years. The median years reported was eleven but the mode was calculated at six years, indicating most respondents had six years of experience with professional

mediation. Below is a chart with the descriptive analysis of the range of mediator experience in years:



Mean	13.08621
Standard Error	1.059422
Median	11
Mode	6
Standard Deviation	8.068315
Sample Variance	65.0977
Skewness	0.475523
Range	32
Minimum	1
Maximum	33
Sum	759
Count	58
Confidence Level(95.0%)	2.121455

The central tendencies of the two reporting groups were examined and the characteristics of the norm were found to be certified professionals with post graduate degrees and six to ten years of experience in their field. The collection of both interpreter and mediator responses to the background block of questions shows the caliber of respondents to the surveys. The input, accounts, and opinions from this

group of educated and experienced practitioners add validity to the results and conclusions of this study.

Experience with Interpreted Mediation

The experience block of questions on each survey was designed to gauge the respondents' level of experience with interpreted mediation. The interpreters and mediators with experience in interpreted mediation were directed to answer further questions about this experience. The respondents were asked if interpreted mediations they had been involved with utilized an ad hoc interpreter, a professional interpreter, a bilingual mediator, or some other means of interpretation. The subsequent questions asked respondents to indicate their preference between consecutive and simultaneous modes of interpretation, and the use of verbatim or diplomatic interpretation. The final question asked about the outcomes of interpreted mediations in which the respondent had been involved.

Type of Interpreter

Mediator respondents to the survey indicated they have had experience with ad hoc interpreters, professional interpreters, bilingual mediators, and respected members from the Hispanic community. Of the thirty-eight responding to this question, twenty eight have used professional or court-accepted interpreters. One mentioned the interpreter was trained in the mediation process but was not a mediator. All fourteen of the interpreter respondents to the survey indicated they have had experience as professional interpreters. One indicated experience as a bilingual mediator.

Consecutive v. Simultaneous Interpretation

Mediator respondents were split on their preference for consecutive or simultaneous interpretation with twenty two of the thirty eight respondents selecting consecutive and twenty selecting simultaneous. Comments indicated a belief that the simultaneous goes much faster but only a few interpreters are able to do that. Some mediators felt consecutive was easier to follow, more conversation like, and that it allows listeners to focus on the nonverbal information provided by the speaker. Those with a preference for the simultaneous mode felt it was more spontaneous and most appropriate for use in sign language interpretation or language interpretation with the use of headphones. Many indicated they did not have a preference and the choice would depend on the style and skill of the interpreter.

Interpreter respondents had a stronger preference for consecutive interpretation with nine of the fourteen respondents indicating consecutive as their preference and seven selecting simultaneous. Comments were similar to those left by mediators, indicating simultaneous is a faster method but is not always possible. Some interpreters felt consecutive allows them time to deliver the whole message and allows for more of a dialogue. Several indicated the mode of interpretation used would depend on the situation and the needs of the parties involved.

Verbatim v. Diplomatic Interpretation

Eighty four percent of mediator respondents and ninety three percent of interpreter respondents indicated a preference for verbatim interpretations over diplomatic interpretations. Verbatim interpretations occur when the interpreter translates exactly what the parties say in a word-for-word fashion. Diplomatic

interpretations occur when the interpreter paraphrases what the parties say, either to clarify the meanings behind the spoken words or to diffuse inflammatory language.

Mediators explained they need to understand exactly what the parties say so they can gauge the level of emotion in the room to help them as they proceed through the mediation. Comments indicated a feeling that all sides need to hear what each is saying and it is important for all participants to receive the same information. Some respondents indicated a preference for diplomatic interpretation to diffuse angry atmospheres and equalize power. Another pointed out some words do not translate correctly so the gist of the words is acceptable.

Interpreter comments expressed a general consensus that their role should be that of a communication tool and they are there to relay exactly what the parties say. Respondents indicated a belief that the only instance where verbatim interpretation is not advisable is when the phrases to be translated are figures of speech. Several interpreters referred to the Interpreters' Code of Ethics which calls for accuracy even if the words spoken are vulgar, inflammatory, or non-sensical.

Outcomes

Interpreter respondents indicated the outcomes in the mediations where they served as an interpreter resulted in all of the options provided on the survey: mediation resulted in an agreement, both parties satisfied with mediation, one party satisfied with mediation, both parties complied with mediation agreement, one party complied with mediation, one party felt mediation was biased, and further sessions needed.

Interpreter comments pointed out interpreters usually do not know the outcome of the mediation and suggested this was a question better suited for the mediators.

Mediator respondents also indicated the outcomes in the mediations where an interpreter was used resulted in all of the options provided on the survey. Mediator comments pointed out there are various outcomes in interpreted mediation, just as there are in any other mediation. The outcome of any mediation depends on many factors such as personal values, personality, and the good faith efforts of the parties involved. Having an interpreter is just one of those factors.

Professional Opinion

The final block of questions on each survey was designed to collect opinions on bilingual mediation from all practitioners, whether the respondents have had experience with interpreted mediation or not. All respondents were directed to the opinion section of the survey, which asked both the mediators and the interpreters what they think is the ideal way to facilitate communication in a bilingual mediation: bilingual mediator acting as interpreter, professional interpreter for the group, each party have their own professional interpreter, or other, with space for comment. Responses to this question provided direct insight into how experienced practitioners feel about the structure of a bilingual mediation.

Twenty one interpreters and sixty mediators responded to the opinion question and their answers are charted on the following page. Respondents were allowed to make multiple selections in their answer to this question therefore the percentages shown reflect a possible one hundred percent rate of agreement for each particular factor.

	Interpreters	Mediators	Total	Percent
Bilingual Mediator	7	17	24	30%
Professional Interpreter for Group	13	27	40	49%
Professional Interpreter per Party	2	15	17	21%
Other	5	6	11	14%

Percent of total completing opinion question

More interpreter and mediator respondents think the use of a professional interpreter for the group is the ideal way to facilitate communication in a bilingual mediation. The choice with the next highest number of responses in both groups was to have a bilingual mediator. The comments left by respondents in the 'Other' section offer further insights into practitioners' opinions on how to facilitate communication in interpreted mediation.

One interpreter indicated video interpreting as their preference for communication in an interpreted mediation setting. Two respondents focused their comments on the qualifications and responsibilities of the interpreter: "Interpreter must be neutral party and NOT NOT become involved in the mediation process" and "But strict measures should be applied to the qualification of someone as 'bilingual'; professional exams should be implemented to exclude semi or conversation-level bilinguals". One interpreter shared "In my city, there are trained bilingual volunteer mediators who work for the city". Another made it clear no one should assume the role of an interpreter unless they are an interpreter. This respondent went on to suggest: "Bilingual mediators can mediate in the language they speak with the parties, but it is then not called interpreting. 2 interpreters for one mediator is a waste of resources. So

one choice here should be: Bilingual mediator mediating for the parties in their native language”.

Mediator comments differed from those left by the interpreters. Five of the six mediator comments were focused on what works for the parties. Comments included “all these will work, depending on the trust level of the parties”, “whatever method is most comfortable for the parties”, “what the client is comfortable with”, “by agreement of parties”, and “whatever works, cost is the primary factor”. The sixth comment was for bilingual mediators to conduct the mediation, similar to one of the interpreter comments.

The survey concluded with questions about potential avoidance of bilingual mediation, issues of cost for interpretation services, and a place to share further thoughts and insights. Responses to these questions allowed the practitioners to share valuable observations and lessons learned from their experiences, and the results provided a further understanding into bilingual mediation.

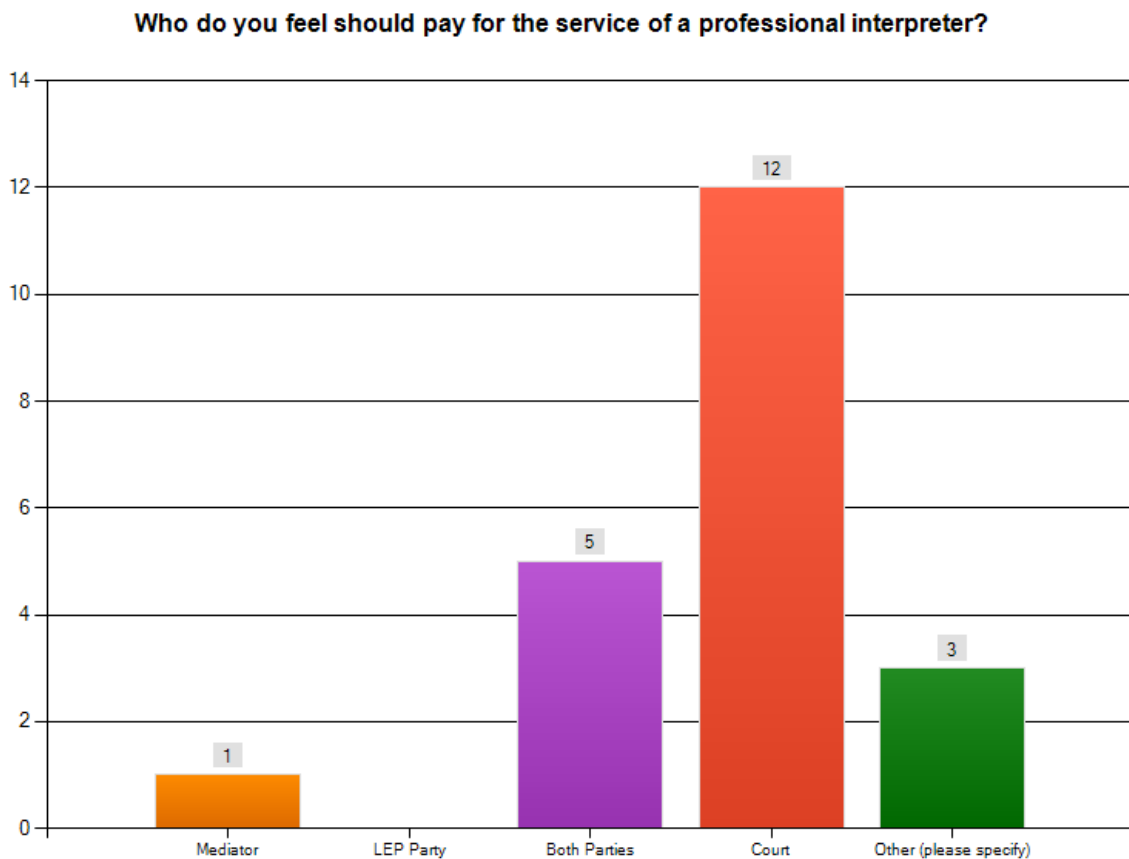
Cost of Interpreted Mediation

The literature review and the survey responses indicate the cost of a professional interpreter for interpreted mediation can be prohibitive. Who bears the cost of the interpreter can have direct bearing on who is chosen to be the mediator, who is selected to be the interpreter, where the mediation is conducted, and what issues are addressed in the mediation session. If the court funds the interpreted mediation, for example, there may be a list of mediators and interpreters approved by the court and only these practitioners will be considered. The court may only approve interpreted mediation held in the courthouse and involving custody orders, but not matters of child support or

visitation. Alternatively, if the mediator or the parties are responsible for the costs of interpretation a wider range of disputes can be addressed.

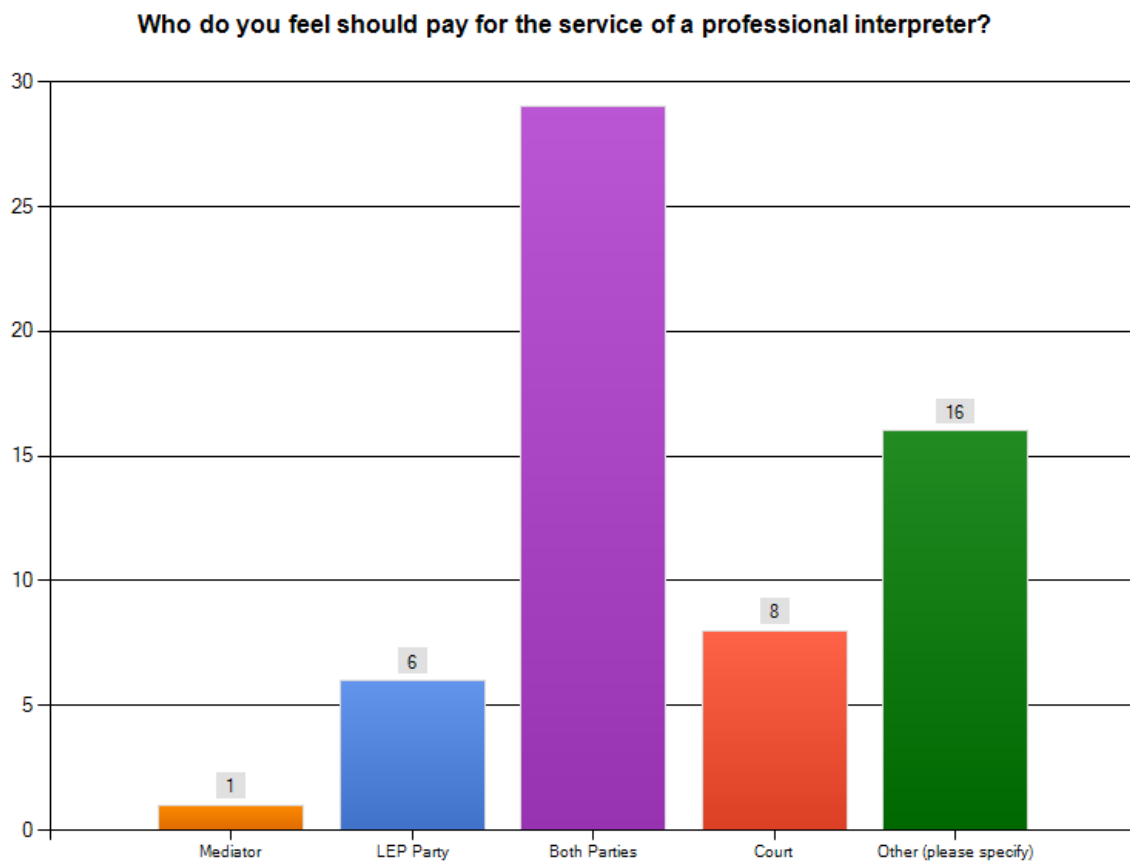
As illustrated in the following two charts, interpreters and mediators have different thoughts on who should bear the cost of interpreted mediations. Sixty-seven percent of responding interpreters felt the court should pay for the service of a professional interpreter and fifty percent of responding mediators felt the parties should share the expense of the interpretation. Charts of interpreter and mediator responses are below:

Interpreter responses:



Two of the responses under 'Other' suggest whoever requests the mediation should pay the cost. If the court orders the mediation, the court should pay for it. Otherwise either the party requesting mediation should pay or both parties should share the cost. The third respondent felt the responsibility of payment depends on the situation.

Mediator responses:



Ten of the responses under 'Other' suggested the payment arrangements should be dependent upon the circumstances surrounding the mediation and recommended alternatives best suited for the variables in each case. Two suggestions involved the mediator paying for the professional interpreter then passing the costs along to clients in

their fees. One respondent reported use of volunteer mediators and interpreters but wished there was funding available for both.

The contrast between interpreter and mediator responses could be due to the nature of each group's experience with interpreted mediation. Many of the interpreter respondents are court certified and have experience with courtroom interpretation in which the court generally pays for their service. On the other hand, many of the mediator respondents have experience with civil mediation in which the parties generally pay for their service. The responses to this question of payment appear to mirror what has occurred in past experiences. What is clear is very few interpreters or mediators feel the mediator should bear the cost of professional interpretation.

Additional Insights

Twenty seven mediators shared their thoughts and insights on bilingual mediation at the end of the survey. Some comments pointed out that language difference is like any other cultural, gender, or other barrier between parties and can be overcome by a mediator willing to take the time to work through it. Other comments expressed a need to educate the party with limited English proficiency on the processes of our legal system and mediation. All parties, whether English-speaking or not, may need an explanation of legal phrases pertaining to their case. Funding for interpretation was mentioned by four respondents and a centralized statewide process was a suggested solution along with a payment structure for the parties.

Some final thoughts and insights on interpreted mediation shared by the interpreter respondents included advice and suggestions for mediators. Several comments stressed that mediators need to stay away from American cultural

expressions and idioms that do not translate, and need to spend some time explaining the meaning of phrases used in the American court system. An example given was “must give 30 days notice”. This phrase may not be understood by the party with limited English proficiency and could be integral to compliance with an agreement. Another comment pointed out the importance of the cultural and religious background of the non-English speaking party. One interpreter shared an admiration for the work mediators do and is glad to help with a process that seems to be the best solution for all parties.

Limitations of Study

The survey invitations and links were distributed to professional mediators and interpreters via email and these emails were also forwarded to the members of professional mediation and interpretations associations. The respondents are therefore primarily associated with regional membership groups which may not be representative of the entire mediation and interpretation populations.

All of the data collected for this study came from the recollections and opinions of professional mediators and interpreters. The parties to mediation were not included as participants in the study, and the researcher was not able to observe any actual mediations. Future studies to include input from the disputing parties could be valuable in determining effective ways to facilitate interpreted mediation.

A ranking of how successful mediation was when an interpreter was used would have been helpful for analysis. As would gauging time spent in mediation when an interpreter was involved and time spent when no interpreter was involved. Neither of these were possible to observe in this study.

Conclusion

The results from the literature review and data analysis provide further understanding of optimal methods and help establish effective ways to facilitate communication in an interpreted mediation from the perspective of experienced, professional practitioners. There are several conclusions that can be drawn from the data in this research study. First the primary research question is addressed: the compilation of the literature review and the responses to the surveys indicate the preferred method to facilitate communication in domestic court mediation is when the services of a professional interpreter are utilized.

This research has affirmed the assumption that if a mediator speaks English and one or both parties are not proficient in the English language, the use of an interpreter is needed for effective communication. In a bilingual mediation many cultural obstacles inherently exist in addition to the language barrier. The research shows that using an interpreter reduces the language barrier, eliminating at least one obstacle to communication. If a professional interpreter is not available or there is no funding for an interpreter, mediators must use whatever means are available to facilitate communication. This includes the use of an ad hoc interpreter, the bilingual skills of the mediator, or interpretation by another bilingual party. Bringing in friends or family of the party with limited English proficiency to interpret can be problematic but is better than no interpretation at all.

There are several ways to interpret language in mediation and the research points to the most effective methods. The mediator can be fluent in both English and Spanish, and interpret for the parties mediating. Interpreters can be licensed,

professional, or language skilled. The interpretations can be conducted simultaneously or consecutively. The spoken words can be interpreted verbatim or in a diplomatic fashion. The research explored the benefits and weaknesses involved with each option and the results will help mediators select the alternative best suited for their mediation needs.

The results from the two surveys brought to light current practices and preferences of both professional mediators and professional interpreters. These results further clarified what is being done in the interpreted mediation field today and allowed practitioners to share their experiences and opinions. The interpreter survey responses were compared with those of the mediators and a pattern emerged to help expose what practices are most effective in a bilingual mediation.

The data indicates there are interpretation options the mediator must decide upon after the interpreter has been selected. Mediators need to sit down with the interpreter prior to the mediation to discuss the interpreter's role and what they should and should not do. For example the interpreter should not talk to the party with limited English proficiency nor offer advice or commentary, and the mediator needs to stay away from colloquialisms as these are difficult for the interpreter to translate. The mediator and interpreter can decide together how to manage the interpretation based upon the skill of the interpreter and the needs of the parties. They can determine if the session should be interpreted in simultaneous or consecutive mode and if the interpreter will utilize verbatim or diplomatic translation.

The research shows that consecutive and simultaneous modes of interpretation are both effective. Selection of the mode depends on the situation, the preference of

the mediator, and the ability of the interpreter. The research also shows verbatim interpretation is preferable to both interpreters and mediators over diplomatic interpretation, however some words and phrases do not translate well and need to be avoided by the mediator and the parties. These include figures of speech, slang, and regional terms. The mediator can explain the mode and style of interpretation to the parties in the introduction to the mediation.

Finally the research reveals there is limited funding available for interpretation services which is problematic and needs further investigation. Payment for interpretation is outside the scope of this study but is an issue brought to light by the data collected. Practitioners and court administrators can use this research to further explore ways to fund interpreted mediation as this is an important component affecting the quality of the interpreted mediation.

The significance of this research to CMDR is that the Spanish-speaking population in the United States is growing and the increase in parties with limited English proficiency in the courts mirrors this growth. The use of domestic court mediation to settle disputes out of court is becoming more widespread. This increase in Spanish-speaking parties in the courts combined with the increasing use of mediation also causes an increase in the need for interpreted mediation. Domestic court mediators need to prepare themselves to be able to conduct bilingual mediations.

In addition to answering the research problem put forth in this study, the survey responses also illuminated other available options to facilitate interpreted mediations and brought forth additional questions. Areas warranting further exploration were uncovered for future research study efforts. Some of these include methods to increase

the available pool of licensed interpreters, programs to fund the use of interpreters in court mediations, and the use of technology such as video interpretation to expand availability to parties with limited English proficiency.

So What Now?

Information for Mediators

This body of research can be used to guide domestic court mediators as they work to facilitate communication with parties who have limited English proficiency. As the research has shown, the Hispanic/Latino population of the United States is growing and the number of domestic disputes with Spanish-speaking parties presenting in the American domestic court systems is increasing as well. This research brings forth methods and tools mediators can utilize to facilitate communication in the interpreted mediation setting.

One of the decisions mediators must make when preparing for an interpreted mediation is what type of interpreter to use. This study explored the existing literature and preferences of experienced mediators and interpreters, concluding professional licensed interpreters are the preferred type of interpreter. Mediators can use the results of this research to help them decide who to choose when setting up the mediation.

Mediators must also decide the best way to have the interpreter interpret the parties: consecutive or simultaneous, and diplomatic or verbatim. The results of this study indicate a preference for consecutive and verbatim interpretations. Mediators can use the result of this research to help them decide with mode of interpretation will work best for their particular mediation situation.

Information for Court Administrators

Domestic court mediation was shown to reduce back logs in the court and to help clear the dockets for other domestic cases not suitable for mediation. The results of this study can be used to help court administrators understand the value of not only providing interpretation services in the courtroom, but also providing interpretation services for mediation. The research shows if one party has limited English proficiency that party needs to have an interpreter to enhance communication and understanding, and ultimately resolve the case.

The court should find a way to make interpretation available to all parties with limited English proficiency regardless of financial means. This may be accomplished by subsidized services for low income litigants. Having interpretation services available to all parties would help judicial administration fulfill the court's mission of providing equal access to services for all.

One future use of this study could be to help the court system administrators understand the value interpretation adds to court mediation, and encourage them to find ways to fund more mediation and court interpreter programs.

Availability of Interpreters

The research shows growing recognition of the need for interpreted mediation in the court system; however the research also shows a shortage of available, qualified court interpreters. Professional mediators and court administrators can look into different ways of encouraging more interpreters to register with the courts. There may be ways to share interpretation services across counties or states, and there may be other more cost-effective ways to get the benefits of interpretation such as telephone or

video interpretation. Mediators, court administrators, and professional interpreters could work together on ways to expand the pie. They could create a forum of professionals to brainstorm ways to increase the availability of interpreted mediation, create a campaign to educate the major stakeholders on the benefits and availability of interpreted mediation, and finally work together to design a plan for implementation in the domestic court system.

Cultural Training for Mediators

The growing Hispanic/Latino population in the United States creates the necessity for courts and mediators to become more culturally intelligent. Mediators will need to be familiar with the cultural preferences of their Hispanic/Latino clients and how their heritage can affect the mediation session. One component to this process is overcoming the English-Spanish language barrier, but there is more to the Hispanic/Latino culture than just the language difference. Another use of the findings from this study can be the design of an educational program for domestic court mediators to fine tune their skills in working with clients of Hispanic/Latino culture.

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"Family Law Interpreter Pilot Program Report to the Legislature". *Judicial Council of California Administrative Office of the Courts*. San Francisco: , 2001. Web. 19 Jan 2011. <<http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/FLIPP.PDF>> This document summarizes the results from a pilot program (FLIPP) instituted in

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Romberger, Wanda. "Skills Training for Foreign Language Court Interpreters: Does it increase the number of qualified interpreters?." *Institute for Court Management Court Executive Development Program*. (May 2007): Print. This researcher sets out to determine how the training of court interpreters can increase the number of qualified interpreters available for work in court systems. Three modes of interpreting are examined: simultaneous, consecutive, and sight translation. The study suggests simultaneous testing is a valuable screening method.

Schaefer, Deborah M. "ASSESSMENT OF SPANISH COURT INTERPRETER SERVICE DELIVERY METHODS FOR THE SUPERIOR COURT IN YAVAPAI COUNTY, ARIZONA." *Institute for Court Management Court Executive Development Program*. (May 2004): Print. This research examines how Spanish interpreter services are provided by the Supreme Court in Yavapai County, Arizona, and what possible alternatives exist to reduce costs and improve service. The researcher examines caseload growth, population growth, cost and

usage growth, and governmental requirements; and interviewed court professionals who utilize interpretation services to reach her conclusions.

Weller, Steven, John A. Martin, and John Paul Lederach. "Fostering Culturally Responsive Courts: The Case of Family Dispute Resolution for Latinos." *Family Court Review*. 39.185 (2001): Print. This research was designed to explore the interaction between culture and mediation in one U.S. community with a large Latino presence, and to examine how to provide mediation approaches that might better meet local needs. The researchers compared the typical Anglo-American mediation model to the needs and culture of Latino families.