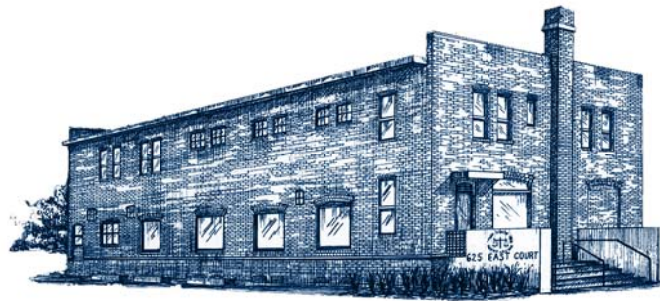


# 2016 Bench-Bar Conference



May 4-6, 2016



## Caveat

The printed materials contained in this book and the oral presentations of the speakers are not intended to be a definitive analysis of the subjects discussed. The reader is cautioned that neither the program participants nor The Iowa State Bar Association intends that reliance be placed upon these materials in advising your clients without confirming independent research.

# 2016 Bench-Bar Conference

May 4-6, 2016

Activity ID 220838

## **SCHEDULE - WEDNESDAY, MAY 4**

**2:30 - 3:30 - Registration**

**3:30 - 3:45 - Warm-Up by Conference Co-Chairs** - Speakers: Hon. Tom Waterman, Justice, Iowa Supreme Court and Matt Novak, Lawyer

**3:45 - 4:15 - Welcome by Conference Co-Sponsors** - Speakers: Bruce Walker, President, The Iowa State Bar Association and Hon. Jeff Neary, President, Iowa Judges Association

**Greetings from Academia** - Speakers: Ben Ullem, Dean, Drake University Law School and Gail Agrawal, Dean, University of Iowa College of Law

**4:15 - 4:30 - Keynote Remarks: Iowa's Edge - a Culture of Excellence** - Speakers: Hon. Mark Cady, Chief Justice, Iowa Supreme Court

**4:30 - 5:30 - The Role of Leadership in Professional Ethics** - Speaker: Nick Critelli, Lawyer

**6:00 - 8:00 - Iowa Court of Appeals Reception** ([Figge Art Museum](#), 225 W. 2nd St, Davenport, IA 52801)

## **SCHEDULE - THURSDAY, MAY 5**

**7:00 - Fun Run and Walk** (meet in Hotel Blackhawk lobby)

**8:30 - 10:00 - The Art of Today's Trial -- Techniques to Switch Up Your Game**

Moderator: Hon. John Wright, Trial Judge

Panelists: Michael Bush, Lawyer; Hon. Marlita Greve, Chief Judge; Martha Shaff, Lawyer; Kent Simmons, Lawyer; and Robert Waterman, Lawyer

**10:00 - 10:15 - Break**

**10:15 - 11:45 - Strengthening Iowa's Trial Courts** (Small Groups)

**12:00 - 1:00 - Luncheon (provided with registration)** - Excellence Through Teamwork (Chief Judges)

**1:30 - Sports, Touring and Arts** (see details below)

**6:30 - Iowa Supreme Court Reception** (Hotel Blackhawk)

**7:30 - Iowa Supreme Court Banquet** (Hotel Blackhawk)

**8:30 - A Career Retrospective on Iowa's Edge** - Speaker: Hon. Mark Bennett, Federal Trial Judge

**Bench-Bar Awards** - Presenters: Conference Co-Chairs

## **SCHEDULE - FRIDAY, MAY 6**

**7:00 - Fun Run and Walk** (meet in Hotel Blackhawk lobby)

**8:30 - 10:00 - Access to Justice: an Iowa Edge - Diagnosing and Dealing with Barriers**

Moderator: Anjela Shutts, Lawyer

Hon. Brent Appel, Justice, Iowa Supreme Court; Matthew Brandes, Lawyer; Brian Farrell, Lecturer, University of Iowa College of Law; John Goerdts, Assistant State Court Administrator; Chris Luzzie, Lawyer, Iowa Legal Aid; Brett Toresdahl, Director, ISBA Public Service Project; and Hon. Cheryl Traum, Associate Court Judge

**10:00 - 10:15 - Break**

**10:15 - 11:15 - Taking Home the Message About Access** (Small Groups)

**11:15 - 12:00 - What's Happened Here?** (Small Group Reports) - Presenters: Conference Co-Chairs

**Bench-Bar Drawings (must be present to win)**

**Adjourn After Bench-Bar Drawings**

# 2016 Bench-Bar Conference

May 4-6, 2016

Activity ID 220838

The Art of Today's Trial—Techniquet to Switch Up Your Game



Moderator: Hon. John Wright  
District Court Judge  
District 8B

Panel:

Michael Bush  
Bush Motto Creen Koury &  
Halligan PLC  
5505 Victoria Ave. Ste 100  
Davenport, IA 52807

Kent Simmons  
318 East Rusholm Street  
Davenport, IA 52803

Robert Waterman  
Lane & Waterman LLP  
220 N. Main St. Ste. 600  
Davenport, IA 52801

Hon. Marlita Greve  
Chief Judge  
Scott County Courthouse  
400 West 4th Street  
Davenport, IA 52801

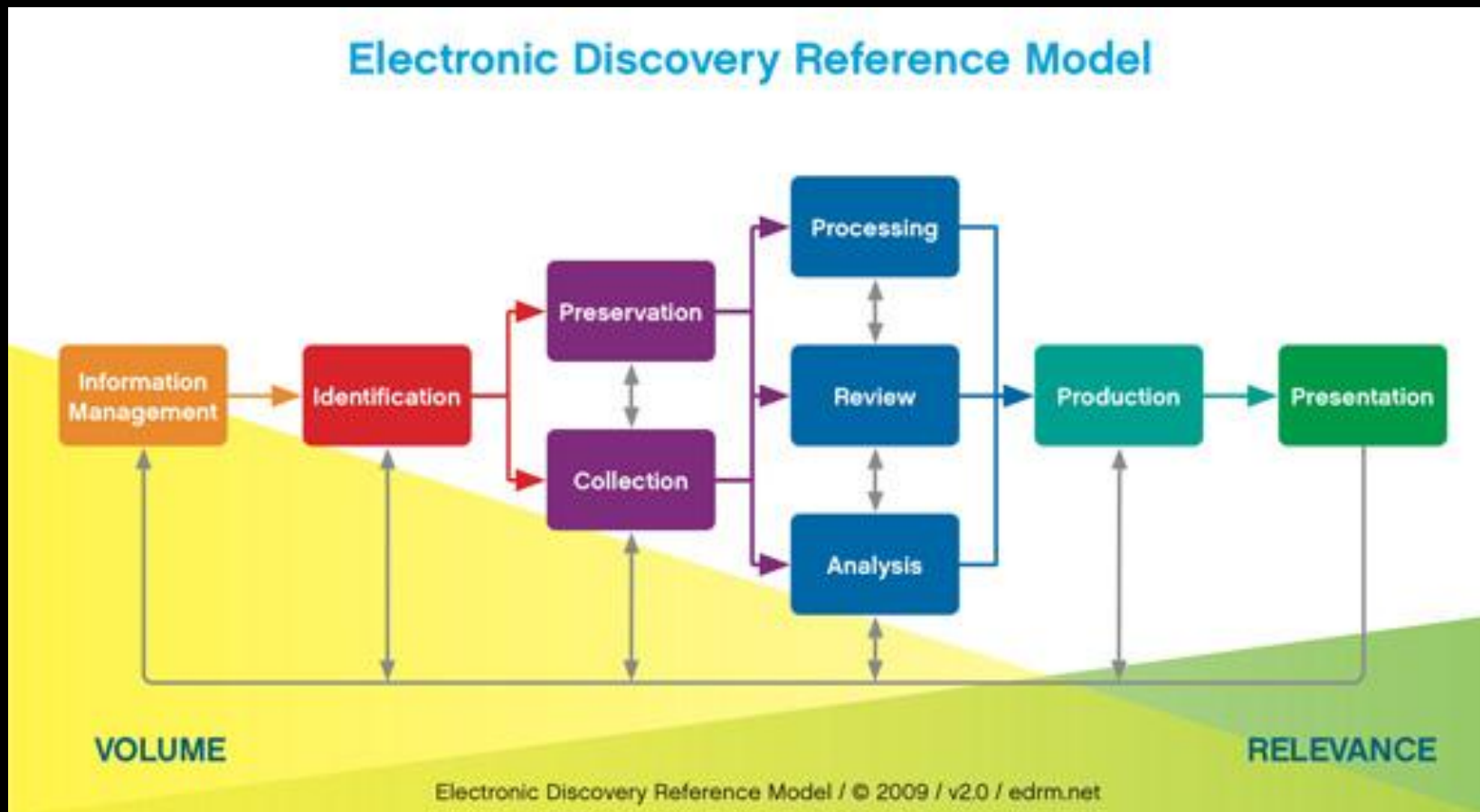
Martha Shaff  
Betty Neuman &  
McMahon P. L. C.  
1900 E 54th Street  
Davenport, IA 52807



# Using Trial Technology in the Courtroom

**Connie Martin**  
**May 15, 2012**

# Even Trial Presentation Technology falls into the EDRM



Our Goal:



# Education

Taught by a seasoned pro and professional trial consultant, Connie Martin, this two-part, live, interactive webcast provides basic tips for using presentation technology in the courtroom. Discussion includes recommendations on the software, hardware, and people necessary to create an effective, flawless presentation.

**OBJECTIVES:**



- Create a flawless presentation
- Consideration for presentation of native files
- Video depositions
- Real world examples
- Tips and techniques for creating witness and trial books
- "Tear out" a section of a document to focus the jury's attention
- Present exhibits in a side-by-side comparison
- Play a witness's video deposition with or without scrolling transcript text
- Display a section of the transcript, to emphasize contradictory deposition testimony
- Overlay exhibits - great for comparing authenticity of a signature

***Glitzy***

**EXPERIENCED**



**TRENDY**

**RELIABLE**





A scene from the TV show CSI: Crime Scene Investigation. In the foreground, a dark-colored car is overturned on its side on a dirt road. Several investigators are present. On the left, a man in a yellow shirt and blue jeans stands with his back to the camera. In the center, a man in a grey shirt and black vest with a badge on his chest stands looking towards the right. On the right, a man with white hair and sunglasses, wearing a black jacket, stands looking towards the center. In the background, other investigators in orange and white gear are visible, along with a white van with flashing lights. The setting is a dry, hilly landscape under a clear sky.

THE CSI EFFECT



# Why Use Trial Technology?

- ▶ **Expectations**
- ▶ **Psychological Impact and Data Retention**
- ▶ **Generational Acceptance**
- ▶ **Persuasiveness of Multi-Modal Information Presentation**



# Why Use Trial Consultants?

- ▶ **Experts are hired for their professional testimony**
- ▶ **Co-chairs are hired for their experience in a specific field**
- ▶ **Trial consultants are hired for their expertise in trial presentation and technology support**
- ▶ **Let the lawyers work on the case while we work on the technology**

# Admissibility

- ▶ Electronic discovery introduces complexities into the process of trial many are unfamiliar and uncomfortable with;
- ▶ Criticality of the details...
  - Chain of Custody;
  - Forensic Validation;
  - Forensic Analysis;
- ▶ Anticipation

# Defensibility

- ▶ For the process to be done properly, one must show:
  - Reasonableness of actions;
  - Proper procedures followed;
  - Statistics and sampling methodologies;
  - Validation mechanisms.

# Benefits of Technology at Trial

## ▶ **Efficiency**

- Using a paperless approach shortens trial time

## ▶ **Cost Effectiveness**

- Fewer hard copies
- Fewer expensive blow ups

## ▶ **Simplification of complex issues**

- Allows complex concepts to evolve in front of the jury
- A picture IS worth a thousand words

## ▶ **Respectful use of jurors' time**

- One of the constant complaints by juries and judges is amount of wasted time in the courtroom

# Benefits of Technology at Trial

- ▶ **Control the flow of your case**
  - Have the ability to take charge of what information is shown to the jury – AND WHEN!
- ▶ **Access to admissions, interrogatories**
  - Can instantly display pleadings, deposition testimony and exhibits
- ▶ **Flexible**
  - Have access to every page of every document in your entire case if you need to display it
  - Follow the testimony, not the script



# *The Times, They are a Changin'*

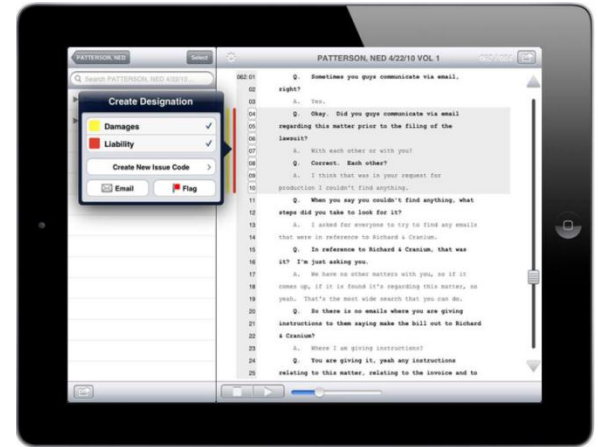
- ▶ Is it any wonder that a lawyer standing in front of a jury talking at them (because that's what is happening – it's not a conversation, it's a lecture) without assistance from any technology stands little to no chance of persuading anybody of anything?
- ▶ Are we stuck in the 80's with our style of communicating – but attempting to communicate with what is the “new age juror?” I submit the answer is yes. It's time to rethink how we look at technology. It's time to re-evaluate our communication strategies.



# iPad Technology for Trial



TranscriptPad™  
for iPad



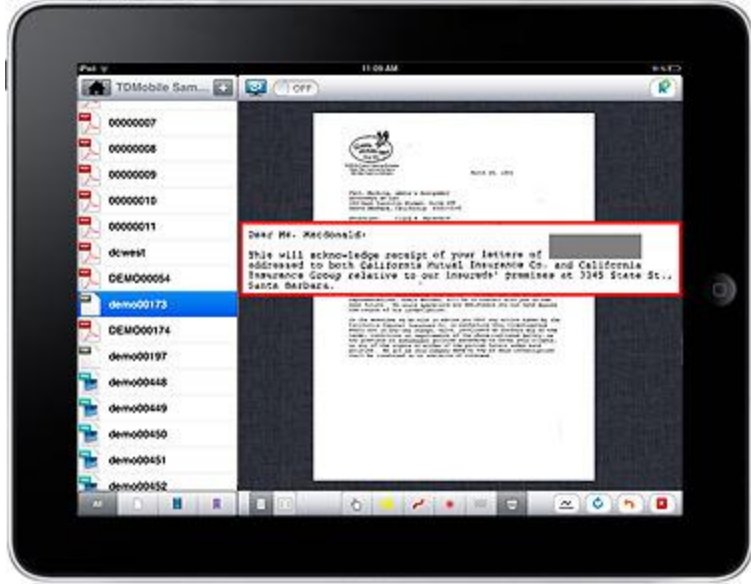
iJury



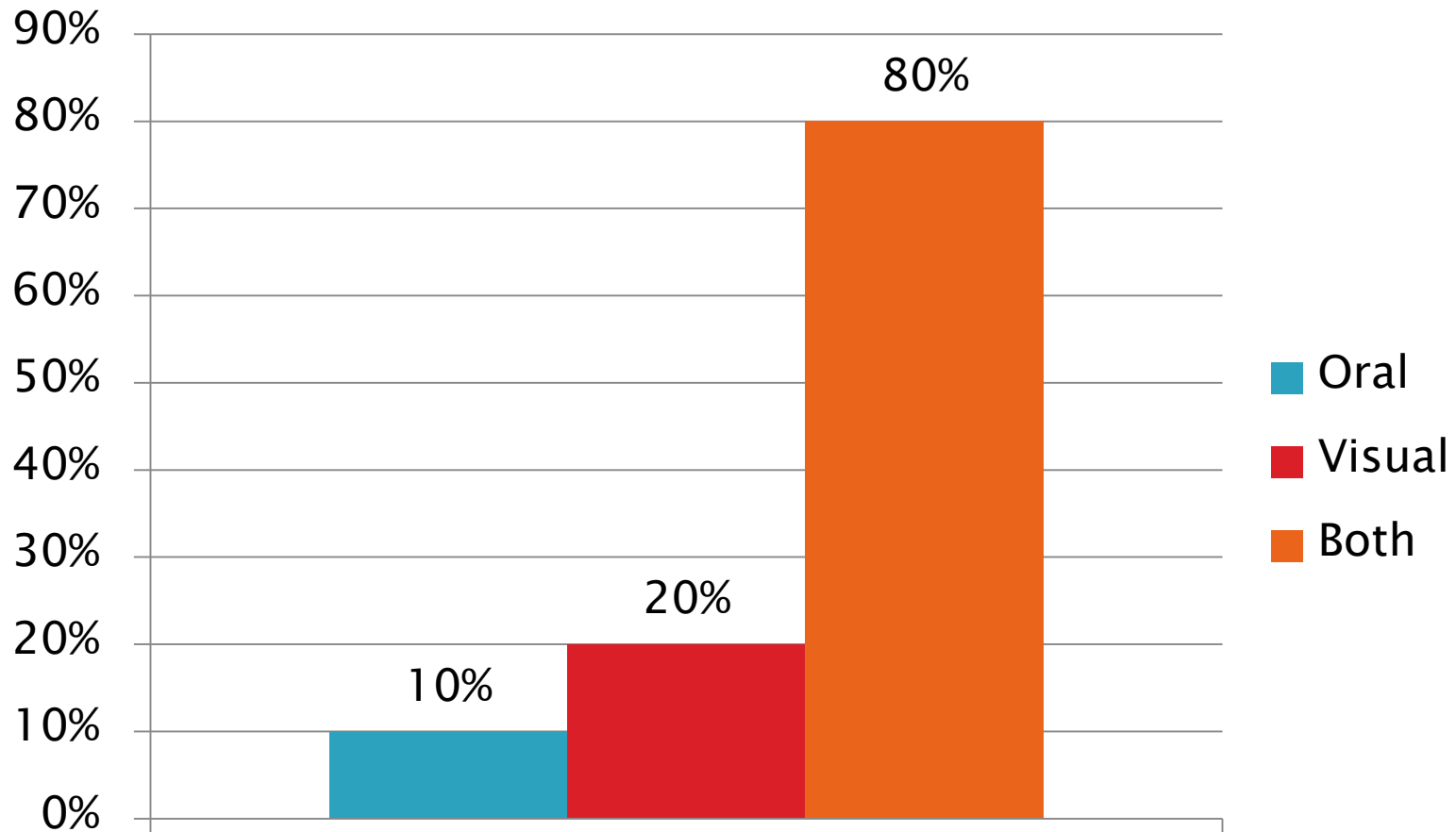
# TDMobile™

COMING SOON!

Available on the App Store

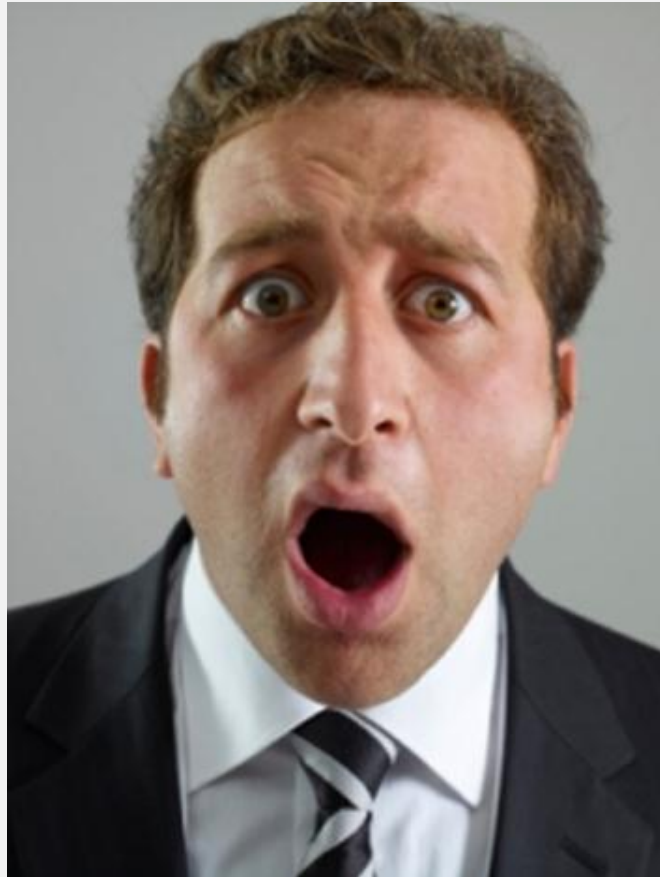


# Information Retained by Jurors



## Juror Information Recall After 3 Days

Source: "Electronic Evidence and Discovery: What Every Lawyer Should Know Now" By Michelle Lange and Kristin Nimsger



What? The jurors won't remember more than 10% of what I say?

A picture is worth a  
thousand words



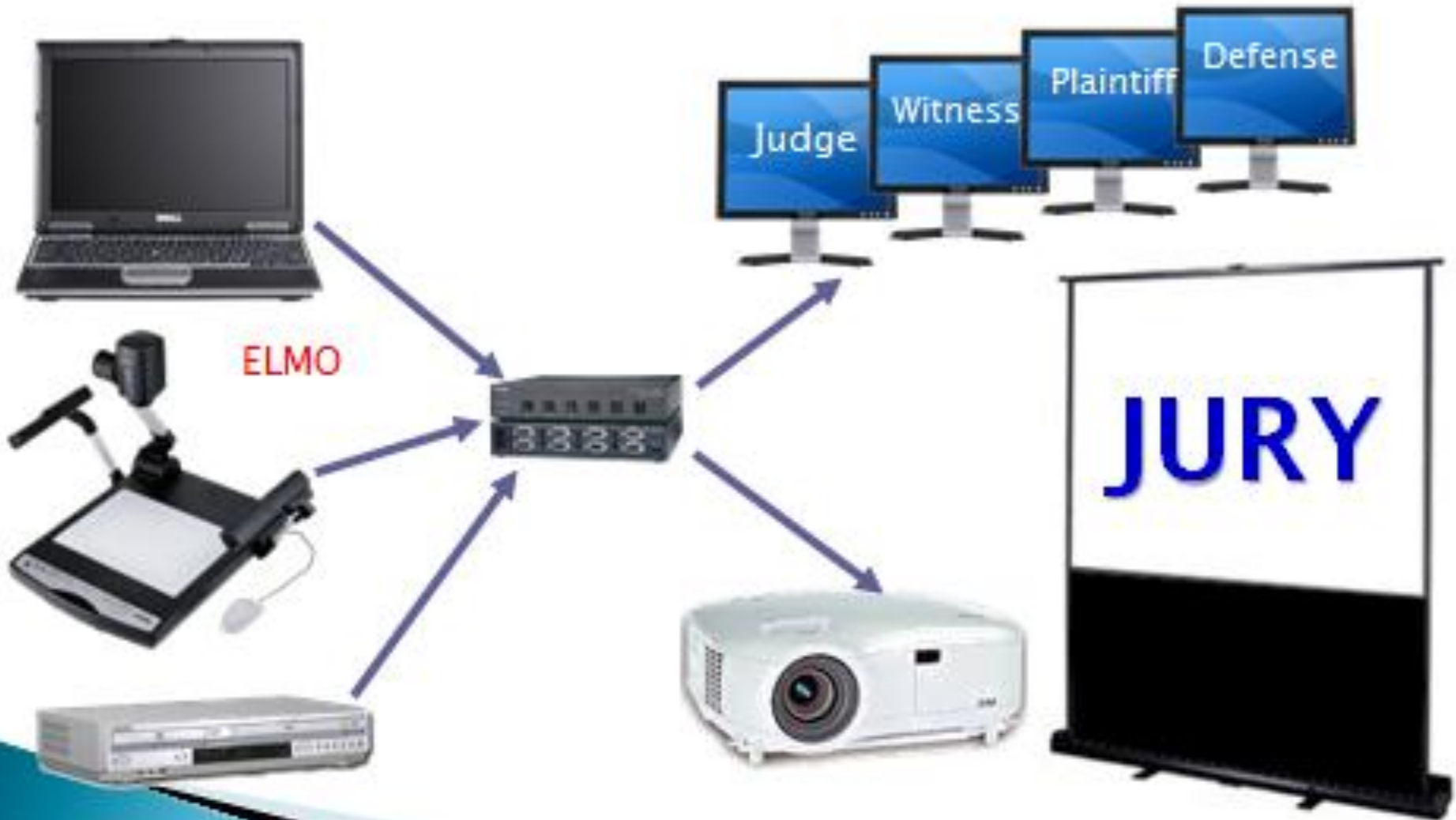
- ▶ Try and explain an accident in an intersection without a picture and see how well you do!

# The last thing you need after two weeks in trial!

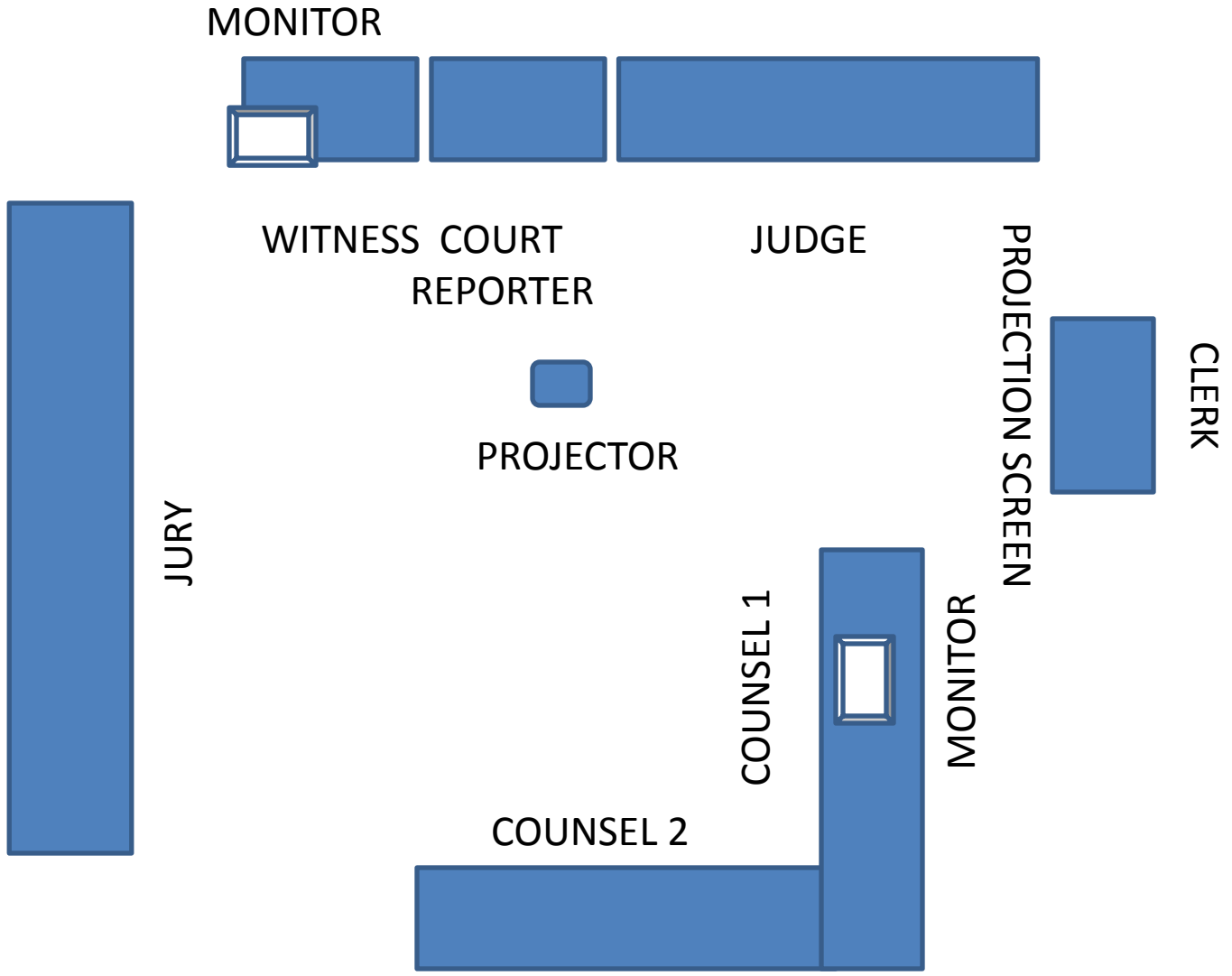


Now what was that again?

# Courtroom Technology









# From Technology to Communication – Utilize Your Courtroom Advantage

- Timelines
- Animations
- Complex Graphics
- Opening Statement
- Closing Argument
- War Room Equipment
- Courtroom Equipment
- Full Video Services
- Trial Logistics
- Exhibit Books
- Trial Director
  - Training
  - Reseller
  - Support

## Mr. Jones's Wrongful Termination

**12/15/97**  
**Christmas Party**  
Mr. Jones is awarded a top bonus and given high marks and praise by David Staleman.

**12/30/97**  
**Performance Evaluation**

- ✓ Base salary increased by 30%.
- ✓ "Produces from the starting gate."
- ✓ "Demonstrates an aptitude for technical presentations and instructions."
- ✓ "Keep up your bright and people-orientated approach to your work – it is contagious."
- ✓ "...continued good performance and professional achievement will carry you to a successful career with Naalis International."

**December 1997**

14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

**January 1998**

				1	2	3
4	5	6	7	COMP. DAY	COMP. DAY	10
BUSINESS TRIP						
11	12	13	14	15	16	17
BUSINESS TRIP						
18	19	20	21	22	23	24
25	26	27	28	29	30	31

**12/15/97**  
**Christmas Party**  
A comment is made regarding Mr. Jones not having a date; a question is then raised about his sexual orientation.

**1/10/98**  
George Kaplan, the boss's son, objects to sharing a hotel room with Mr. Jones.

**1/27/98**  
**TERMINATION**

Q. Well, again the question is whether you personally believe that homosexuality is morally wrong?

A. No more than any other sin.

Q. Can you explain your answer, please?

A. It's no more wrong than someone going out and shooting someone on the street.

Q. You do believe that homosexuality is a sin?

A. I do.

Recreation of 14 Kaplan, Pg. 201, Ex. 4-16, 29-32, 8-27-99

# Professional Trial Consultants in the Courtroom – Your Advantage

Even in a courtroom not designed for technology –



# Technology in the Courtroom – Make it Your Advantage

You can make it happen!





- ▶ Today's juries are technologically aware;
- ▶ They expect excellence in the courtroom;
- ▶ Be the one to give them what they want.



**Thank you!**

**Connie Martin  
May 15, 2012**



# 2016 Bench-Bar Conference

May 4-6, 2016

Activity ID 220838

## Access to Justice: an Iowa Edge— Diagnosing and Dealing with Barriers



Moderator: Anjela Shutts  
Whitfield & Eddy PLC  
699 Walnut St., Ste. 2000  
Des Moines, IA 50309

Justice Brent Appel  
Iowa Supreme Court  
Judicial Branch Building  
1111 E. Court Avenue  
Des Moines, IA 50319

Hon. Cheryl Traum  
District Associate Judge  
District 7  
Davenport, IA

Matthew Brandes  
Simmons Perrine  
Moyer Bergman PLC  
115 Third St SE Ste. 1200  
Cedar Rapids, IA 52401

Brian Farrell  
University of Iowa College of Law  
189 Boyd Law Building  
Iowa City, IA 52242

John Goerd  
Assistant State Court Administrator  
Iowa Judicial Branch  
1111 E. Court Ave

Chris Luzzie  
Iowa Legal Aid  
1700 S. 1st Ave Ste 10  
Iowa City, IA 52240

Brett Toresdahl  
ISBA Public Service Project  
625 E. Court Ave  
Des Moines, IA 50309

# **Bench/Bar Session on Access to Justice**

May 6, 2016

## ***Court Interpreters: The Bridge Over Language Barriers to Justice***



**John Goerdt, JD**

**Deputy State Court Administrator**

**[john.goerdt@iowacourts.gov](mailto:john.goerdt@iowacourts.gov)**

# Mission of the Iowa Courts:

“...to provide independent and accessible forums for the **fair** and prompt resolution of disputes, *administering justice under law equally to all persons.*”



– *Official Mission Statement for the Iowa Judicial Branch adopted by the Iowa Supreme Court in 1999.*

**“All persons” include those with limited English proficiency (LEP persons).**

## Background on the Rights of LEP Persons

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. §2000d *et seq.*). This landmark legislation prohibits discrimination based on race, ethnicity, or *national origin*.
- **U.S. DOJ** interprets the prohibition against “**national origin**” discrimination to mean courts ***cannot discriminate against persons because they do not speak English -- i.e., they have limited English proficiency (LEP).***



# Title VI of the Civil Rights Act of 1964

- **Courts:**

- ❌ **Cannot** deny LEP persons any rights (e.g., child custody, parental rights, property rights, etc.) because of their limited English proficiency
  - **Also see, Iowa Court of Appeals, 1999, W Law 711080 (In Re V.T.):** Juvenile court had considered a father's "nominal command of the English language" as a factor justifying termination of his parental rights. **COA rejected a limited ability to speak English as a factor in determining parental rights.**
- ❌ **Cannot** deny LEPs access to interpreters – regardless of case type or economic status.
- ❌ **Cannot** impose barriers on LEP persons' access to justice (e.g., the costs for interpreters) that are not also imposed on English-speaking persons

# What are the actual qualifications of a competent court interpreter?

- ✓ **College-level vocabularies** in two languages
- ✓ Knowledge of **legal terms** and **slang**
- ✓ Exceptional **memory skills!**
  - Able to recall 30 – 40 words of testimony and interpret them **completely** and **accurately** **without summarizing, adding, or omitting** words or phrases!
- ✓ Knowledge of **court interpreter ethics**.
  - **Completeness & accuracy** (see above).
  - **No legal advice, no explanations.**
  - **Confidentiality!**
- ❖ **Interpreting errors can lead to wrong decisions – e.g., on guilt/innocence!**



# Rules on Appointing Court Interpreters

## Rule 47.3(4) – Priorities for selecting an oral language interpreter:

1

- ❑ **Class A – certified:** *passed national court interp. exam*
  - ➔ *28 certified Spanish interpreters on IA's roster*
- ❑ **Class B – noncertified –** *Avg score of 65% on certific. exam – or – degree in court interpreting (DMACC or NW Univ.)*
- ❑ **Class C – noncertified –** *meets basic Roster reqs.*
  - ➔ *Includes noncertified oral language interpreter on a list of interpreters **approved by another state court system.***
- ❑ **Unclassified** interpreters – Not on any state's list of approved interpreters (Judge **must ask questions** about their qualifications; *use only for uncommon languages*).



## 20 Oral Languages for which the NCSC Provides Court Interp. Certification Exams

Arabic	Khmer	Russian
Bosnian /Serbian/ Croatian *	Korean	Somali
Cantonese	Laotian	Spanish
French	Mandarin	Tagalog
Haitian Creole	Marshallese*	Turkish*
Hmong	Polish	Vietnamese
Ilocano	Portuguese	

\***Abbreviated Exam:** Versant Oral Proficiency Interview in English, plus the simultaneous interpretation section of the regular certification exam.

**Full Exam:** (1) Sight interpretation of English document, (2) sight interpretation of document in other language, (3) consecutive interpretation exam, (4) simultaneous interpretation exam.



# Rules on Appointing Court Interpreters

## • Rule 47.3(5) – Priorities for selecting a sign language interpreter (*no change*):

### ❑ Class A – certified



- Obtained a “Specialist Certificate: Legal” (SC:L)
- Only **2** on Iowa’s Roster of Court Interpreters.

### ❑ Class B – noncertified

- Passed a generalist sign interpreter exam, but not SCL

- ❖ Note: All sign language interpreters must be licensed by the Iowa Board of Sign Language Interpreters and Transliterators – or by a state with similar licensing requirements.



# How to Find a Qualified Court Interpreter

The screenshot shows the Iowa Judicial Branch website in a Windows Internet Explorer browser window. The address bar contains <http://www.iowacourts.gov/>, which is highlighted with a black box and an arrow pointing to it from the left. The website header includes the logo "IOWA JUDICIAL BRANCH" with the tagline "Administering justice under the law equally to all persons." and a search bar. A navigation menu lists: Home, About the Courts, Administration, For Attorneys, Court Rules & Forms, For the Public, For the Media, and eFiling. Below the menu is a banner image of a courtroom with the text: "Each year, thousands of Iowans perform a valuable public service as jurors. This section provides basic information about jury service. [More](#)".

The "Most Popular Pages" section is divided into four columns:

- ONLINE SERVICES**
  - [eFile \(EDMS\) Login](#)
  - [Docket Record Search](#)
  - [Pay Fines Online](#)
  - [eJuror](#)
  - [Email notification](#)
  - [Search for Iowa Attorneys](#)
- GENERAL INFORMATION**
  - [Representing Yourself in Court](#)
  - [Offices and Directories](#)
  - [News Releases](#)
  - [Supreme Court Opinions](#)
  - [Court of Appeals Opinions](#)
  - [Career Opportunities](#)
- PROFESSIONAL REGULATION**
  - [Online Access](#)
  - [Attorney Standards & Discipline](#)
  - [Continuing Legal Education](#)
  - [Bar Information & Admissions](#)
  - [Court Interpreters](#)
  - [Certified Shorthand Reporters](#)
- STUDENTS & TEACHERS**
  - [Visit a Courthouse](#)
  - [Ask a Judge to Visit Your Classroom](#)
  - [Guide to Iowa's Court System](#)
  - [Teaching Aids](#)
  - [Common Legal Terms](#)

The "Court Interpreters" link in the Professional Regulation column is highlighted with a black box and an arrow pointing to it from the right. Below this box is the text "Click 'Court Interpreters'".

At the bottom of the page, there is a "Follow" button with a Twitter icon, and two sections labeled "NEWS" and "FEATURES". The status bar at the very bottom shows "Internet | Protected Mode: On" and a zoom level of "125%".

# How to Find a Qualified Court Interpreter

**Administration**

- DIRECTORIES
- CLERK OF COURT OFFICE HOURS
- CAREER OPPORTUNITIES
- CHILDREN'S JUSTICE
- COURT INTERPRETERS**
  - Interpreters' Guide
  - Court Rules
  - Code of Ethics
  - Training Programs
  - Tests
  - Interpreter Search Resources
  - Forms
  - Roster
  - Compensation
- CERTIFIED SHORTHAND REPORTERS
- PERSONNEL
- JUDICIAL BRANCH BUDGET
- JUDICIAL BRANCH BUILDING POLICIES

**Administration**

You are here: [Home](#) » [Administration](#) » [Court Interpreters](#) [Printable Version](#)

## Introduction to Court Interpreting in Iowa

### "Court Interpreters" page

#### A. Overview

Knowledgeable and skilled court interpreters are an essential part of the Iowa Judicial Branch's mission to provide high quality justice and services to all people. However, being bilingual is not sufficient to be a competent court interpreter. Court interpreters must be able to completely and accurately interpret everything that is said in court, without adding or omitting anything. To achieve this level of expertise, an interpreter should have:

- 1) Native-like mastery of both English and a second language
- 2) Wide general knowledge -- characteristic of a person with at least two years of college
- 3) Extensive vocabularies - including legal terms and slang -- in two languages
- 4) Excellent memory skills, plus mental and verbal agility
- 5) At least some training and experience

**Click "Interpreter Search Resources"**

To help ensure high quality interpretation services in Iowa's courts, the Iowa Supreme Court adopted Chapters 47 and 48 in the Iowa Court Rules to govern the qualifications and appointment of court interpreters. The "Rules" and "Code of Ethics" tabs above provide links to those rules.

Almost everything an interpreter needs to know about interpreter qualifications, appointments, training, testing, certification, and compensation in Iowa can be found on the pages and links above. If you have questions after reading all these materials, you may contact:

Dave Ewert  
Office of Professional Regulation Court Interpreter Program  
1111 East Court Avenue  
Des Moines, IA 50319

Email: [court.interpreter@iowacourts.gov](mailto:court.interpreter@iowacourts.gov)  
Phone: 515.725.8029

#### B. Basic qualifications to be a court interpreter in Iowa

# Application for Appointment of an Interpreter

**Rule 47.3(2)** -- Requires an **attorney** for an LEP client to file an **Application for Appointment of an Interpreter**.

- ❑ **Exception: Not required** for an initial appearance in a criminal case.
- ❑ A standard application **form** for **attorneys** & parties is available on the Iowa courts' website (**[iowacourts.gov](http://iowacourts.gov)**):
  - ⇒ Click “**Administration**” (top left of page)
  - ⇒ Click “**Court Interpreters**” (on the menu)
  - ⇒ Click “**Forms**” (left side of page)
    - ▶ See “Forms for Attorneys and Parties
    - ▶ (See screen shots at end of slides.)

# Attorneys' Code of Professional Conduct

## • Rule 32:1.4: Communication

### (a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the **client's informed consent**, as defined in rule 32:1.0(e), is required by these rules;
- (2) **reasonably consult** with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client **reasonably informed** about the status of the matter;

(b) A lawyer shall **explain a matter** to the extent reasonably necessary to permit the client to make **informed decisions** regarding the representation.

# Attorneys' Code of Professional Conduct

- **Rule 32:1.4: Communication**

- ▶ **Can you meet these ethical obligations when using an unqualified interpreter who does not know legal / technical terms?**
- ▶ Being “bilingual” does not qualify a person to be a court / legal interpreter!
- ▶ Legal/Court interpreters should have:
  - ❑ College-level vocabularies in both languages
  - ❑ Knowledge of **legal**, technical, and **slang** terms
  - ❑ Excellent verbal and memory skills

# Attorneys' Code of Professional Conduct

- ▶ Case in rural Iowa 2 years ago
- ▶ Spanish speaking defendant entered written guilty plea to “indecent contact with a minor” (aggravated misdemeanor) – a deportable offense!
- ▶ Attorney had his bilingual secretary interpret the guilty plea document for the defendant.
- ▶ Defendant later learned he could be deported! Said he did not understand that from what he was told by the attorney or in the written guilty plea.
- ▶ In the subsequent PCR case, the secretary acknowledged in court that she did not understand some of the legal terms in the written guilty plea, so she skipped them!
- ▶ District Judge ruled the attorney provided incompetent legal assistance to his client because he used an incompetent interpreter and quashed the guilty plea.



# Questions?

