

# STATEMENT TO THE PROFESSION

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Federally certified interpreter Erik Camayd-Freixas wrote an essay on his personal perspective after an interpreting assignment in May during an Immigration and Customs Enforcement raid which took place over a two-week period at a meat processing plant in Iowa. Reference to this essay was made in a front-page story by Julia Preston in the *New York Times* on July 11, under the title “An Interpreter Speaking Up for Migrants.” On July 24, the House Committee on the Judiciary held a hearing on the immigration raids. Written statements from witnesses may be viewed at: [www.judiciary.house.gov/hearings/hear\\_072408.html](http://www.judiciary.house.gov/hearings/hear_072408.html). (News articles and the original essay can be found in the members’ section of the NAJIT website. Go to the Members’ log in on the front page, then to documents, and scroll down to “Other Documents.”) The following article, written especially for judiciary interpreting and translating professionals, recounts the history of the essay and the reasoning behind it.

On June 13, 2008 I finished an essay, *Interpreting After the Largest ICE Raid in U.S. History*, and circulated it among my fellow interpreters who worked on the court cases in Waterloo, Iowa from May 12–22, 2008.

Immediately I began receiving heartfelt letters of support from colleagues and numerous requests for permission to forward the essay to friends and family, which I eventually granted. In the following days, I received copious e-mails from people in all walks of life, of all ethnic backgrounds, including citizens of Postville, as well as many interpreters, with expressions of gratitude, admiration, and support, many of whom shared moving testimonies of their own.

Within two weeks, through the online grapevine, the essay, which was no longer mine if it ever was, had reached Congress and the media.

Aside from my Waterloo colleagues, I initially sent the essay to the American Translators Association to be considered for publication by its trade journal, *The ATA Chronicle*. I did not foresee that the essay would spread like wildfire over the internet. Numerous friends and colleagues, as well perfect strangers, urged me to permit its distribution far and wide. That is when I decided to send the essay to *The New York Times*.

My intention, when I sent it to my colleagues and the *Chronicle*, was only to debrief emotionally with those who were there, after the trauma of Postville, and to publish in a trade journal. It was an educational case study in interpreter ethics for my fellow linguists, nothing more. Hence the title and focus of the essay, addressed to the professional readership of the ATA.

When I sent the essay to the *Times*, my intention was for them to conduct an investigative report on some of the problems mentioned therein. Instead, the *Times* journalist decided — which is her prerogative — to write an article about my speaking out, more than about the contents of my message. As such, the *Times* article raised a question that needed to be asked and answered before one could discuss the real issues documented in the essay. That ques-

tion regarded the propriety of my decision to speak out despite the confidentiality clause in the interpreters’ code of ethics.

By so doing, the *Times* article adopted a polemical strategy designed to spark a general readership’s interest, but not specifically addressed to the professional. As a result, it answered only partially the question it raised, and the article lacked the rigor that an interpreter readership would require.

No article, in any case, can release me from owing a direct explanation to my colleagues and students about a decision which reflects on the entire profession and its public image. Therefore, once the *Times* of July 11 elevated the matter from private e-mails to a very public focus on the interpreter’s role in the judiciary, I did not want to delay this explanation. My intention now, in writing this ethical analysis of my decision, is to call on NAJIT to review the case. My justifications follow.

I have been a court interpreter since 1981, was federally certified in 1985, and have practiced in eight states and hundreds of cases. Never before have I made any public comment about a case. The Postville case was an extreme situation, with exceptional attendant circumstances of force majeure.

I do not advocate any intervention by interpreters in a case, except as a last resort in extremely extenuating circumstances — and then, only if no one else can assume that burden. Moreover, before intervening, the interpreter must know exactly in what manner and how far to intervene, and must previously discharge the obligation of consulting with colleagues.

My decision met all of these requirements and more.

In this case, as I explain in my essay, only an interpreter was in the unique position both to be impartial and to participate in all aspects of the proceedings. There was no one else. I could not look for any other interpreters to assume this burden, which evidently would entail a significant professional risk. I, on the other hand, was in a better position than most to do so.

Being a professor of interpreter ethics, director of a major T&I university program, and an internationally recognized authority in the field, I knew exactly what I was doing, as well as how and why. I could not expect others to take the lead, nor was I about to let diffusion of responsibility result in no action being taken where action was due. It was clear to me that this was my unavoidable responsibility, and that my colleagues would unequivocally support me.

Still, the first thing I did was extensive research on the legal issues and problems at the core of what appeared to be an inescapable ethical conflict. The second thing I did after writing the essay was to share it privately with a U.S. District Court judge and with my Waterloo interpreter colleagues before releasing it to any non-court personnel.

Only when I saw that the judge did not admonish me, and that I had strong consensus and support from my colleagues, did

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I approve distribution and eventual publication of my personal account to the general public.

However, the *Times* article's suggestion that I "broke" the confidentiality code in order to speak up for migrants is both technically and factually inaccurate. First, I did not speak for the migrants. I spoke for democracy, due process, constitutional rights, and the dignity of the federal court, as is my obligation to do. Everything else in my essay is qualitative and quantitative documentation, description, and analysis in support of my expert testimony.

The interpreter code of ethics, in particular the clause of confidentiality, has as its meaning and rationale that the interpreter must *not influence the outcome of the case*. The Postville case had been closed, and its 10-day deadline for appeal had expired before I even began the essay. I do not mention any names and aside from anecdotal information of a general nature, all the facts mentioned are either in the public record or freely available on the internet. So I was careful not to break the code of confidentiality.

Moreover, confidentiality is not absolute. There are other ethical requirements which override confidentiality. For example, a medical interpreter, in whom a patient confides that he has a contagious disease, has the obligation to report it because it is in the public interest to do so. Similarly, in the Postville case, there were higher imperatives arising not only out of public interest but also out of the legal role of the court interpreter.

The court interpreter is defined in the federal rules of procedure as both the court's expert witness as well as an officer of the court. Rule 604 of the *Federal Criminal Code and Rules* (1989) states: "An interpreter is subject to the provisions of these rules relating to qualifications as an expert." Rule 702 states that an expert witness "may testify thereto in the form of an opinion or otherwise." In regard to the role of officer of the court, the interpreter is bound by the same duties as other such officers: "One responsibility officers have is that they must reveal anything that could affect their fairness and impartiality. Above all, the court officer is sworn to uphold the truth and never to perpetrate a fraud upon the court. Officers must also be candid with the court at all times" (Dueñas, Vásquez, and Mikkelson, 1991, p. 160).

Dueñas et al. (1991) state that "Rule 604 is not clear as to whether the interpreter is an expert witness at the start of proceedings, or only if there is a challenge to an interpretation." However, this is not actually the case. In the absence of specifically limiting language, the interpreter is always both an officer of the court *and* an expert witness (e.g., the interpretation can be impeached at *any* time). I believe the Postville case sheds clear light on this issue. As an expert officer of the court, the interpreter has a constant obligation to bring to the attention of the court any source of miscommunication, error, or misunderstanding, which may compromise the integrity of the record or the administration of justice, regardless of whether an interpretation is challenged. That is, the interpreter never ceases to be the court's expert witness, and never ceases to be an officer of the court.

Further, the rule of impartiality dictates that the interpreter may never be an expert witness for either the defense or the prosecution, but only for the judge.

In the case at hand, magistrates, judges, and other officers of the court participated in only one aspect of the judicial process and were unaware of the unfolding consequences. For instance, the magistrates never knew that the denial of bail would contribute down the line to a coerced guilty plea. Only the interpreter was present throughout the entire process, from beginning to end, to be able to follow the chain of cause and effect.

Both as an officer of the court and as the court's expert, I had the obligation to be candid with and inform the court of my expert observations and opinions. That is exactly what I did, acting in the best interest of the court. I talked to a judge then and there, but at that point I was only able to give sketchy information, and I understood that the judge had no discretion to stop the judicial freight train that had been set in motion. There were many complicated issues. So I had to wait until the case was closed, conduct extensive research, and finally write a fuller account of my expert observations and opinions. Then I sent it to the judge and to the other interpreters who could corroborate the different aspects of my observations and personal account. At that point the case was closed and there was nothing that the court could do, so my account became a matter for public and, ultimately, congressional inquiry.

As the Clerk of Court would often say, "This is a learning experience for all of us." For ICE and the DOJ, of course, it was a resounding success. But this was not the court's crusade. For the court, all that mattered is that we get the job done in a fair manner and with due process of law. It was indeed a learning experience for all of us, but the judges were unable to judge the results of that experience, because they were not there at every step of the way. That is why, as a court expert with specific relevant knowledge of the case, I had an obligation to inform the court so that it could evaluate the outcome of this new and ambitious "fast-tracking" enterprise.

My expert opinion, however, was that, as it turned out, this was an experiment gone awry. What was most peculiar about the Postville case is that, on paper, everything seemed to be following the law, but in actual practice there were shortcomings in due process at every step of the way (see my *Statement to Congress* of July 24, 2008). Each shortcoming, taken by itself (which was how other officers of the court would see it) did not appear so monumental, but all together (as the interpreters saw it), led to the most unjust results. If following the law step by step leads to such absurd consequences, then the scope of the law needs to be changed, making this a matter for Congress.

But whatever my duties as an interpreter, I had an overriding responsibility as a citizen. Having served in federal and state courts as an expert witness in forensic linguistics, my essay presents authoritative evidence regarding grave matters of public policy in areas that are currently of vital national interest: namely, immigration enforcement and immigration reform. The public good outweighed any personal or professional consideration.

Respectfully submitted,  
Dr. Erik Camayd-Freixas  
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