



State Court Administrative Office

# Michigan Trial Courts Virtual Courtroom Standards and Guidelines

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INDEPENDENCE · ACCESSIBILITY · ENGAGEMENT · EFFICIENCY



**The Michigan Supreme Court and the State Court Administrative Office would like to thank the Virtual Courtroom Task Force for their invaluable assistance in preparing these standards, guidelines, and best practices. They convened in record time, reviewed best practices from across the state and nation, and provided thoughtful insights based on their own experiences. With the help of this innovative guidance, Michigan trial courts will be empowered to better serve the public with accessible virtual courtrooms.**

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## Governing Authority

[Administrative Order No. 2020-6](#), [Administrative Order No. 2020-14](#), and [Administrative Order No. 2020-19](#) authorize judicial officers to conduct proceedings remotely (whether physically present in the courtroom or elsewhere). The guidance provided here is designed to ensure that courts conducting remote proceedings pursuant to [Administrative Order Nos. 2020-6, 2020-14, and 2020-19](#) do so based on standards, guidelines, and best practices.

The Virtual Courtroom Task Force has identified current best practices from your colleagues around the state. These best practices are not the only way to meet a standard, but they are examples of what is working and are offered to assist each court and judicial officer to develop their own procedures. The [Michigan Trial Court Standards for Courtroom Technology](#) provides guidance on the requirements to support audio and video recording and guidance on the types of court proceedings authorized to use videoconferencing and the authorized uses for videoconferencing. The Michigan Judicial Institute (MJI) has developed resources to assist courts with setting up and conducting a remote proceeding, including a [checklist](#) and a [bench card](#) for judges.

## A. Virtual Hearings

### 1. Standard

At the start of each hearing, the court must verify with each participant that they are able to proceed and are aware of the procedure for participation, including the time and method of participating. Criminal defendants have the right to be present for each critical stage of a criminal proceeding<sup>1</sup> and all procedures associated with remote hearings must be consistent with a party's Constitutional rights.<sup>2</sup> A defendant may waive the right to be physically present for a hearing and appear by video.<sup>3</sup> Victims have a Constitutional and statutory right to be present. See Const 1963, art 1, § 24 (crime victims have the “right to attend trial and all other court proceedings the accused has the right to attend”); see also [MCL 780.761](#); [MCL 780.765\(1\)](#).

### Guidelines

The court should address, on the record, that the parties are waiving any right they may have to be present in the courtroom for the proceeding. In addition, if there is a victim involved, the court must ensure that the victim's right to be present is addressed on the record.

### Best Practices

The [Van Buren Circuit Court \(C36\)](#) addresses parties on the record to verify that they are waiving their right to be present in the courtroom for the proceedings. If there is a victim involved, the court ensures that the victim's rights are also addressed on the record.

### 2. Standard

Proceedings conducted via videoconferencing technology must be recorded by the court, except for those hearings that are not required to be recorded, such as small claims proceedings<sup>4</sup> or informal traffic hearings.<sup>5</sup> The required recording must be sufficient to produce a verbatim written transcript as if the hearing were held in person in the courtroom.

For purposes of generating a transcript, courts may use the recording of a remote proceeding generated using Zoom or another remote meeting service provider. MCR 8.109(A) authorizes courts to use audio and video recording equipment for making a record of court proceedings; however, it must comply with the [Michigan Trial Court Standards for Courtroom Technology](#).<sup>6</sup> The audio or video recording that is created pursuant to MCR 8.109(A) is the recording from which a transcript can be produced. For those courts using Zoom to conduct and record a remote proceeding, the generated recording is an MP4 format that complies with the [Michigan Trial Court Standards for Courtroom Technology](#).

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<sup>1</sup> *People v Mallory*, 421 Mich 229 (1984)

<sup>2</sup> The Michigan Supreme Court recently affirmed that a defendant has the right to face-to-face confrontation of witnesses in [People v Jemison](#), \_\_\_ Mich \_\_; (2020) (Docket No. 157812)

<sup>3</sup> *People v Buie*, 298 Mich App 50, 57 (2012), 494 Mich 854 (2013); *People v Heller*, 316 Mich App 314 (2016); [MCR 6.006](#); [MCR 3.904](#)

<sup>4</sup> [MCL 600.8411\(2\)](#)

<sup>5</sup> [MCL 600.8719\(1\)](#); [MCL 600.8819\(1\)](#); [MCR 2.407\(D\)](#)

<sup>6</sup> See sections D. Storage and E. Playback and Transcription.

## **Guidelines**

When using videoconferencing technology or telephonic equipment, best practice is for the system to feed directly into the court's recording system. When the court calls into the Zoom virtual courtroom using Polycom, the courtroom's recording system will record the proceeding in the same way that it would for making a point-to-point Polycom call. Where a direct feed into the recording system is not possible due to equipment limitations, a microphone should be placed near the speaker.

Alternatively, courts that use Justice AV Solutions (JAVS) may purchase Notewise software to record computer-based conference calls. Notewise is a digital recording application that allows direct recording of any conference calls through Zoom, GoToMeeting, and other similar software. It allows operators to listen to monitoring streams and make time-stamped notes, either manually or through quick keys.<sup>7</sup> Courts using other digital recording systems are encouraged to explore similar options for those programs.

### **Best Practice**

The [Macomb County Circuit Court \(C16\)](#) is using the recording feature in Zoom to create a record of their proceedings. They are utilizing the audio transcript feature in Zoom to create a log for future transcribing.

### **3. Standard**

When using Zoom, participants should not have their phone number displayed on the screen, yet this is the default setting in Zoom. The court should change the phone number to the participant's name. Directions for doing this are found [here](#).

### **Best Practice**

The [Oakland County Circuit Court \(C06\)](#) changes a participant's phone number to their name after they sign in and are in the waiting room.

### **4. Standard**

When hosting hearings, the court should enable the "Waiting Room" function in Zoom. Using the waiting room allows the host to control who is admitted to the hearing and prevent participation by individuals who are not litigants in that case. This allows the court to keep the courtroom secure while still allowing the public to view proceedings via YouTube.

### **Best Practice**

The [41B District Court in Clinton Township \(Macomb County\)](#) is using Zoom's "Waiting Room" function.

### **5. Standard**

Courts should post their daily dockets (on the court's website, if available) and indicate on the docket which hearings are being held virtually.<sup>8</sup> Instructions on how to access virtual hearings should also be provided. To avoid disruption and keep the virtual courtroom secure, Zoom meeting ID(s) should not be provided to the public or press; nonlitigants should only have access to the YouTube channel where the proceeding is livestreamed.

### **Best Practice**

The [Van Buren Circuit Court \(C36\)](#) and [the Alpena and Montmorency County Courts](#) display their daily dockets/court calendars on their websites and livestream their hearings.

The [Oakland County Probate Court](#) shares its docket in Google Docs. The court and the parties can update the document as the court calls and completes cases. Parties know their case is going to be called soon, and all participants know what cases are complete. The docket sheet also advises parties if a document, such as a proof of service, is needed.

The [54B District Court](#) has included a link to its dockets in the [Virtual Courtroom Directory](#).

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<sup>7</sup> [Notewise can record your computer-based video conference calls.](#)

<sup>8</sup> [Michigan Trial Court Records Management Standards, 3.4.1.2.](#)

## B. Attorney/Client Communication

### 1. Standard

The court must provide a method to enable confidential communication between a party and their counsel.

#### Guidelines

In Zoom, courts can allow an attorney to meet with their client in a breakout room. Breakout rooms will not be audio or video recorded under certain circumstances. If the meeting is being Cloud recorded (recommended), it will only record the main room, regardless of what room the meeting host is in. If local recording is being used (not recommended), it will record the room the participant who is recording is in. The host can set a predetermined amount of time and bring them back into the meeting. If the host does not want to put a time constraint on the breakout room, the host can send a time warning to the breakout room participants to notify them that they should wrap up. If selected as a breakout room option, participants in the breakout room can rejoin the hearing when they are done meeting.

#### Best Practices

The [Oakland County Circuit Court \(C06\)](#) has successfully used the breakout room to accommodate attorneys who need to confidentially meet with a client.

## C. Public and Press Access

### 1. Standard

Access to proceedings must be provided to the public either during the proceeding or immediately after via video recording of the proceeding, unless the proceeding is closed or access would otherwise be limited by statute or rule.<sup>9</sup>

#### Guidelines

The court should create a YouTube account (livestreaming channel) and work with its local court website administrator to post a link to the YouTube channel. Information about public availability of court proceedings via livestreaming must be accessible to the public and press. This can be accomplished by posting the information on the court's website. If the court does not have a website, it is the court's responsibility to develop another method to effectively communicate the availability of court proceedings. Further information about setting up and enabling a YouTube account can be found [here](#).

YouTube automatically records and stores content that is streamed on a channel per its licensing agreements. A YouTube recording is not the official record of the court and need not be maintained on the court's YouTube Channel. Each court is urged to review YouTube's Terms of Service [here](#), especially the possible uses of content recorded to YouTube, to decide whether recordings should be maintained there.

A court may also provide access to the public by encouraging members of the press and public to contact the court to receive the Zoom meeting information to watch proceedings. Courts that elect this method of access must take precautions to avoid malicious interruption of proceedings, such as Zoombombing.

#### Best Practice

The [41B District Court in Clinton Township \(Macomb County\)](#) is using YouTube to live stream court proceedings. Their livestream website can be found [here](#).

Many courts are livestreaming their proceedings on YouTube. A directory may be found [here](#).

## D. Making a Clear Record

### 1. Standard

Courts shall make a verbatim record of each proceeding.<sup>10</sup>

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<sup>9</sup> [MCL 600.1420](#); [MCR 8.116](#); see also [Limiting Access to Criminal Proceedings Benchcard](#) and [Limited Access to Family Division Proceedings Benchcard](#).

<sup>10</sup> [MCR 8.108](#), [MCL 600.8635](#)

## Guidelines

These guidelines are intended to provide instruction on how to ensure that the recording is clear and can be used to accurately develop a transcript. Also see [section A2](#) for standards and guidelines on using Zoom to record proceedings.

### Use Gallery View

When multiple people talk at once, the Zoom system may have difficulty determining which participant is speaking. This is because the default function is to shift the screen to the person speaking. Using the “gallery view” will allow the court to see all of the participants and the court reporter/recorder to know who was speaking. Click [here](#) to learn more about the gallery view.

### Advise Parties to Speak Slowly and to Wait Until Prompted

Judges and court staff must be vigilant in ensuring quality recording so an accurate transcript can be prepared. Because of a few second time delay when participating via telephone or video conferencing, parties may be more likely to overlap when talking, so judges or court staff should frequently remind parties to speak slowly and to not interrupt. If overlap occurs, courts should ask parties to repeat what they said and encourage parties to only speak when they have been prompted to do so, unless there is an objection or some other reason to speak out of turn. **At a minimum, parties appearing telephonically should be instructed to identify themselves each time they speak.**

### Courts Must Act as Zoom Host to Control Meetings

Zoom has a number of features to control who may enter a virtual hearing and who may speak during it. The host of the proceeding has the ability to mute and unmute all participants in the virtual courtroom, but the host be logged into Zoom to create that control. Zoom also allows the designation of a co-host; judges can be the host and a staff member, either a clerk or recorder/operator, can be the co-host and manage participants. The host can also engage a feature that mutes participants upon entry into the virtual courtroom. Judges should advise participants that they are using that feature. Participants who want to speak may “raise their hand;” the host can then unmute them so they can speak. The judge is responsible for maintaining order and decorum just as they do in the physical courtroom. For more information on hosting a meeting, click [here](#).

### Allow or Limit Chat Functionality

The court, through the host (or co-host), can allow the host and participants to “chat” with everyone, with only the host, with everyone publicly or privately, or with no one. The chat function allows participants to type text (comments) during the proceeding. It is up to the court to allow or limit the function. For example, a private chat between an attorney and client may be desirable; however, a chat between the court and one attorney could allow for ex parte communication or comments to be made that are not included in the official record. If a court elects to enable the chat feature, public chats (not private chats) may be saved. When saving the chat, the court can save any chat messages that the host received privately or those chat messages that were sent to “everyone.” Messages sent privately between participants, not including the host, cannot be saved by the host. For more information on the chat functionality, click [here](#).

Judges should use caution when using the chat feature to ensure there is no ex parte communication between the judge and one party.

### Remove Disruptive Participants

Zoom allows a host to remove a participant, if needed. If the court is using the waiting room feature, a participant can be returned to the waiting room. That participant cannot rejoin the meeting on their own and can only be readmitted by the host. To learn more about the waiting room functionality, click [here](#). See [section A4](#) for further information regarding utilizing this function.

### Put a Participant on Hold

A host can temporarily remove a participant from the virtual courtroom, while the rest of the participants continue the meeting. When one or more participants are put on hold, their video and audio connections will be disabled. This might be used when the judge wants to speak to the attorneys (without a witness hearing) or address an issue with only court personnel. For more information on putting participants on hold, click [here](#).

### Play Sound when a Participant Enters or Leaves a Meeting

A host can configure settings to play a sound when someone enters or leaves a proceeding. This may help the court

and the recorders and operators track the participants in the hearing. Information about these settings can be located [here](#).

### Troubleshoot an Audio Echo in a Meeting

There are three causes of an audio echo, or feedback, during a Zoom meeting:

- 1) The participant called in by phone and is using his or her computer's audio at the same time;
- 2) There are participants with computer or telephone speakers that are too close together; or
- 3) There are multiple computers with active audio in the same conference room.

In each instance, the feedback can be eliminated if there is only one audio source. Zoom has [step-by-step instructions](#) to address this issue.

### **Best Practice**

The [Oakland County Circuit Court \(C06\)](#) downloads the Zoom recording into their own digital recorder (FTR) to assist them in making a verbatim record of the proceedings.

## **2. Standard**

Numerous security incidents have occurred nationwide involving the use of video and teleconferencing platforms. The following steps will help mitigate such hijacking:

- Do not make Zoom meetings open to the public. In Zoom, use the waiting room feature and control the admittance of guests.
- For a separate private meeting, use the scheduling options in Zoom to create a meeting for a specific time, and with a unique meeting ID that is shared only with the invited participants.
- Do not share any meeting ID on an unrestricted, publicly-available social media post. Only provide the meeting ID and password(s) directly to specific litigants.
- Manage screen sharing options by limiting screen sharing to “Host Only.”<sup>11</sup>

### **Best Practices**

The [41B District Court in Clinton Township \(Macomb County\)](#) is using Zoom's waiting room function to ensure that the correct participants are in the hearing.

## **E. Logging Requirements**

### **1. Standard**

Videoconferencing a proceeding must allow for the person conducting or administering the proceeding to create a recording sufficient to enable a transcript to be produced subsequent to the hearing. Comply with current logging standards<sup>12</sup> to facilitate accurate transcript preparation.

### **Guidelines**

To assist in complying with logging standards, the judge or hearing officer should establish and adhere to certain verbal practices, including:

- Stating the case number and title;
- Indicating the start and end time of the hearing;
- Requiring each participant to state and spell their name;
- Reminding all participants to speak slowly, clearly, and one at a time.

Zoom has a private messaging “chat” feature that may be used to create the log. Any content created using the “chat feature” is saved along with the audio/video when it is being recorded. The chat file in Zoom provides a time-stamped log of the chat messages, showing who the message was from and the time it was sent. The person in

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<sup>11</sup> [Federal, State, and Local Law Enforcement Warn Against Teleconferencing Hacking During Coronavirus Pandemic](#)

<sup>12</sup> See the [Manual for Court Reporters and Recorders](#) and [Michigan Trial Court Standards for Courtroom Technology](#); see also [MCR 8.109](#)

charge of recording may create the log by typing notes into the “chat” feature, including the name of the court, name of the judge, case number, case name, parties present, witnesses called, and any other essential notations during the hearing. When a transcriber is producing a transcript from one of these recordings, looking at the play timeline at the bottom of the screen will allow him or her to obtain the time of any witnesses speaking and assist in the production of an accurate transcript.

Courts may also contract with freelance CSRs, CERs, and CEOs for recording purposes. If the court uses a CSR to stenographically record the hearing as a Zoom participant, there is no need to log the proceeding or record the proceeding separately because the stenographer’s recording and notes are the official recording from which the transcript is prepared. It is recommended that the court maintain a backup recording of a CSR’s record of the proceeding. The SCAO maintains a list of currently certified [reporters and recorders](#) and a list of [registered reporting firms](#). The CSR stenographically recording a proceeding has the same responsibility to interrupt and clarify as if all participants were physically present in a courtroom.

The host of the meeting should monitor the hearing to ensure that the sound is functioning, speaking is clearly heard, and the video is recording. This will ensure that the record is captured appropriately and thoroughly for future transcription. Judges should consider allowing staff to host or co-host each hearing to facilitate this responsibility.

### **Best Practice**

The [Oakland County Circuit Court \(C06\)](#) uses Zoom to create their record.

## **F. Exhibits**

### **1. Standard**

Materials that are intended to be used as evidence at or during a trial shall not be filed with the clerk of the court, but shall be submitted to the judge for introduction into evidence as exhibits.<sup>13</sup>

### **Guidelines**

Courts may allow exhibits to be submitted to the court via e-mail prior to the proceeding so they can be marked and logged before the hearing. Courts may also consider other available technologies, such as document-sharing software, to accomplish this. The court and parties should determine in advance how proposed exhibits will be displayed to witnesses. During remote proceedings, the court may allow parties to share their screen to display an exhibit. Files may also be shared through Zoom’s chat feature.

If the evidence is a physical object and is not transferrable by file transfer, such as a weapon, and the parties do not agree that a photograph of the evidence suffices, then, pursuant to [MRE 612](#), the court may order it made available for inspection at a designated location, day, and time.<sup>14</sup>

## **G. Witnesses**

### **1. Standard**

Trial courts may conduct certain proceedings through the use of two-way interactive video technology, including hearings where a witness may testify.<sup>15</sup> The use of videoconferencing technology must be consistent with a party’s Constitutional rights.<sup>16, 17</sup>

### **Guidelines**

The task force has issued a companion document titled “Remote Witness Instructions.” Courts may provide the document to witnesses ahead of time so they will be prepared to testify.

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<sup>13</sup> [MCR 2.518](#)

<sup>14</sup> For the use of exhibits during jury trials, please refer to the *Standards and Recommendations for Remote Jury Trials*.

<sup>15</sup> [MCR 2.407](#) (general civil); [MCR 3.904](#) (delinquency and child protective); [MCR 5.140](#) (probate); [MCR 6.006](#) (criminal).

<sup>16</sup> The Michigan Supreme Court recently affirmed that a defendant has the right to face-to-face confrontation of witnesses in [People v Jemison](#), \_\_\_ Mich \_\_; (2020) (Docket No. 157812).

<sup>17</sup> [Administrative Order No. 2020-6](#) reiterates that the use of videoconferencing technology must be consistent with a party’s Constitutional rights.



If a court sequesters a witness, the court could consider not livestreaming a relevant proceeding, but posting the video of the proceeding after it happens. Alternatively, the court could instruct the witness not to watch the livestream or they will be found in contempt of court.

If it appears that a witness is being coached by someone off-camera, the court may order them *sua sponte* to change the camera to show any other person who may be in the room with them. The court may take necessary and appropriate steps to assure witness testimony is without influence or distraction.

Witnesses may experience technology issues similar to parties, attorneys, and the court. If there are technology issues while a witness is testifying and those issues cannot be resolved, the court should adjourn the hearing and reschedule for in-person testimony.

## H. Providing Zoom Meeting Information to Parties

### 1. Standard

The court shall provide adequate notice to the parties and ensure that they are able to participate remotely.

#### Guidelines

The court can provide the Zoom hearing information to parties in the following ways:

- a. Court staff may phone the parties in advance and obtain the e-mail address to which the meeting code/invitation and any password can be sent;
- b. If the party does not have e-mail or the ability to join by video, the court should provide the telephone number to join the meeting and the meeting code so that the party can participate via phone; or
- c. The court may design a new document that lists the court proceeding, court date, time of hearing, and the Zoom meeting ID.

#### Best Practice

The [41B District Court in Clinton Township \(Macomb County\)](#) e-mails specific instructions to participants about how to access Zoom, along with the meeting ID. The court also sends a text message to parties with their Zoom meeting information a set number of days before the proceeding. The text message includes a link to the Zoom information so the party can connect through the text message.

The [Kent County Probate Court \(P41\)](#) modifies the SCAO notice of hearing form to add the Zoom meeting ID generated when scheduling the proceeding, including a password if applicable, and information about accessing Zoom.

## I. Business Processes in Support of Virtual Courtroom

### 1. Standard

Courts must be able to support their fundamental business processes when establishing a virtual courtroom. This includes the ability to operate as if the court was using its traditional brick and mortar courthouse. The court needs to account for electronically filing documents, electronically signing orders to document the court's hearings, and maintaining the decorum of the court. Each court will have slightly different business processes to account for local differences.

#### Guidelines

##### Electronic Filing

If in-person filing of court pleadings is limited due to the state of emergency, [Administrative Order No. 2020-19](#) allows for court pleadings to be accepted for filing by other means, such as U.S. mail, e-Filing, e-mail, or facsimile, until further order of the Court.

#### Best Practice

The [Livingston County Circuit Court \(C44\)](#) is allowing PPO documents to be filed via e-mail from a local domestic violence shelter.

## Electronic Signatures

[MCR 1.109\(E\)](#) permits electronic signatures on documents. While it may seem more efficient to allow staff to stamp the judge's signature on orders that were entered on the record or could be approved in the judge's absence, it is prohibited and only the judge should be affixing his or her signature to documents. [MCL 8.3q](#) requires a signature to be the proper handwriting of the person signing or, if the person is unable to write, the person's proper mark. Clerks are prohibited from affixing a judge's signature to a document unless the judge signed the original document and the clerk is affixing the signature to a duplicate copy.

### **Best Practice**

The [Oakland County Circuit Court \(C06\)](#) is using Adobe to sign and exchange documents.

## Maintaining the Decorum of the Court

Despite not being physically in the courtroom, the court should continue to remind participants of the following:

- a. The proceeding is live. Anything said during the proceeding may be overheard by all of those observing.
- b. The proceedings are being recorded. Everything said will be captured and made part of the record, just as in a physical courtroom.
- c. Courtroom decorum rules still apply. Those participating should continue to operate as if they were inside the courthouse. Standards, including decorum, demeanor, and dress code, still apply.
- d. Staff participating in virtual proceedings should have a professional background. Courts are encouraged to use pictures of their courtroom as the background. If the court does not have one available, SCAO can provide one. Information on how to set up a virtual background for the court can be found [here](#).

### **Best Practice**

The [Van Buren Circuit Court \(C36\)](#) provides participants with instructions on how to join a virtual court proceeding. The instructions remind participants that the "call is a court proceeding and an extension of the court."

The [Alpena and Montmorency County Probate Courts](#) conduct [weekly Zoom training sessions](#) for any member of the public who wishes to participate. This training educates the participant on how to use Zoom functions and what to expect in the remote proceeding.

## Interpreters

There are remote proceedings where ASL interpreters and foreign language interpreters will be necessary to ensure full participation and access by one or more parties in a case.

Interpreters will appear as a participant in a remote hearing, just like a party to the case. In Zoom, the interpreter's name should include "Interpreter" so that he or she may be easily identified.

A participant may "pin" the interpreter's video feed in their view to be able to view him or her easily. If the party and their attorney are moved into a breakout room, the interpreter will need to be assigned to the breakout room and brought back to the hearing at the same time as the parties.

The use of video remote interpreting (VRI) often requires the use of the consecutive interpreting mode.<sup>18</sup> Simultaneous mode interpreting functionality<sup>19</sup> is available on some VRI platforms (e.g. Zoom). It is likely, depending on what platform is being used, that foreign language interpreters will be using the consecutive mode of interpretation.

The task force issued a companion document titled "Remote Proceedings and Accommodations under the ADA," which provides an overview of different types of accommodations that may be requested by individuals and how courts provide those accommodations.

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<sup>18</sup> Consecutive interpretation is where a person speaks and the interpreter says what the person said when they stop speaking.

<sup>19</sup> Simultaneous interpretation is where the interpreter provides the interpretation as the person is speaking.