



Language Access Issue

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ATTORNEYS NEED TRAINED PROFESSIONALS

Gail D. Patrick

I have worked as a legal services attorney for low-income individuals in the state of Ohio and the city of Columbus for 28 years, in both rural and urban programs. I have been involved with every substantive specialty and have held various administrative titles. My work with interpreters has encompassed representing clients in individual cases and outreach to client communities for presentations and workshops on various legal issues. I first worked with interpreters in 1983, in a series of presentations directed at the Asian community regarding the legal system in Ohio and individual client rights in specific areas, such as consumer law. As a result of that interaction, I attended an interpreter training course about ten years ago that was very helpful in giving me insight into appropriate expectations when working with an interpreter. Since I still do some community outreach, I continue to work with interpreters whenever necessary.

If I have learned one thing over the years, it is that working with a good interpreter is worth its weight in gold. Interpreters are the means through which one individual expresses himself or herself and is understood by another individual. These two individuals could not understand each other except through the nuanced linguistic ability of the interpreter. Thus the interpreter bears a heavy burden in accessing not only the words, but the meaning, of what the individuals are saying to one another.

I have had experience with bad interpreters and with good ones. A bad interpreter can leave a client homeless, without needed public benefits, or in crushing debt. In one case, an interpreter had asked an unrepresented client in a motion for default judgment hearing (the client just showed up at court) simply whether he understood, instead of whether he understood the document he had signed. The client answered "of course," assuming that the interpreter was referring to the need to sign the document, not to its actual content. The plaintiff admitted that he was

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LANGUAGE ACCESS IN CIVIL STATE COURT PROCEEDINGS:

A PRELIMINARY REPORT

Laura K. Abel and Alice Ho

Introduction

Without court interpreters, individuals unable to speak English cannot advance or defend claims, even when they are seeking protection from an abusive spouse, being denied essential wages, facing unfair debt collections, fighting for custody of their children, disputing the cut-off of critically important welfare payments, or facing eviction from their homes. The direct results are that the courts cannot engage in accurate fact-finding, robbing them of their ability to render justice, and that the lives of these individuals and their families are turned upside down. As a study of court interpreting in the California courts concluded, "Allowing proceedings to continue when one party is incapable of participating fully significantly impairs the quality of the process and its results."¹ A more profound consequence is a justifiable loss of faith in the fairness of our justice system, and in the rule of law.

The Brennan Center for Justice at NYU School of Law, with the assistance of several private law firms, is conducting a 50-state study of state court interpreter programs. We are conducting this study because interpreters are essential to ensuring that our nation's courts adequately perform their core function of delivering justice and upholding the rule of law. Our methodology is simple, but sufficient to illuminate both best practices and problems. For each state, we are compiling the relevant laws and court rules, examining the state court's website, and talking with at least one court administrator and one civil legal aid attorney who works in the civil courts and who represents people with limited proficiency in English. Our goal is to educate policymakers and advocates about: 1) best practices being used by state court systems to provide interpreters in civil proceedings; and 2) how those practices could be used to remedy existing problems with access to court interpreters in their

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own jurisdictions. We will complete this research and publish the final results of the study in the fall of 2008.

In this document, we provide preliminary findings for four states — Arizona, South Carolina, Texas and Utah — to help inform the Congress as it considers the State Court Interpreter Grant Program Act, S. 702. Under the Act, Congress would allocate \$15 million, for each of four years, to improve state court interpreter programs. The bulk of the funding would go directly to state courts to meet a variety of needs such as: i) assessing the language needs in their geographic area, ii) developing a court interpreter program, iii) running a court interpreter certification program, and iv) recruiting and training qualified interpreters. The Justice Department, which would administer the funding, would also administer a \$500,000 technical assistance program to help the state courts receiving grants under the program. We selected these states for discussion, below, because we already have some information about them, and because each is represented by a Senator on the Senate Judiciary Committee who has not yet taken a position on the Act.

The Act has the potential to dramatically improve court interpretation in the four states. For example, the Act could enable:

- Arizona and Utah to provide court interpreters in all civil cases, instead of only providing court interpreters in certain limited types of civil cases;
- Arizona to create a statewide court interpreter program to reduce the inefficiencies and inequities of its present county-by-county system;
- South Carolina, Texas and Utah to dramatically expand the number of qualified interpreters; and
- South Carolina to provide training to judges and court staff on when and how to use interpreters.

These findings, and others, are set forth in greater detail, below.

Findings

I. Arizona

In Arizona, where more than ten percent of the residents have limited proficiency in English,² some counties provide interpretation in only a few types of civil proceedings, and each county is forced to spend the resources to set up its own court interpreter program. For this reason, the State Court Interpreter Grant Program Act could help the state improve the availability of court interpreter services in at least two ways.

First, it could help expand the availability of interpreters in civil proceedings. Currently, there is no statutory mandate requiring the appointment of interpreters. Instead, the Arizona Code provides judges with complete discretion to appoint interpreters “when necessary.”³ Accordingly, the types of cases in which interpreters are available vary from county to county.⁴ In at least some counties, the types of cases in which interpreters are provided are extremely limited. In Pima County, for example, the only civil proceedings in which court interpreters are provided are probate, domestic relations, and forcible detainer hearings.⁵ In other proceedings, litigants who are not proficient in English, and who cannot afford to pay a professional interpreter, must either use

an interpreter whose proficiency in court interpreting has not been demonstrated (often, this is a relative or friend), or struggle along without an interpreter.

When cases involving a litigant with limited proficiency in English are forced to proceed without an interpreter, or with an unqualified interpreter, the justice system is unable to render justice. A report by the California Access to Justice Commission found that a lack of an interpreter, or the use of an unqualified interpreter “may result in genuine injustice where—through no fault of the court, the litigants or the translator—critical information is distorted or not imparted at all.”⁶ Similarly, a study of the court interpreter system in Pennsylvania, which at the time also used interpreters whose proficiency had not been demonstrated, concluded, “The practice of using unskilled, poorly qualified, and uncompensated interpreters can easily lead to misinformed juries and judges when the interpreter misstates or misrepresents what the litigant has stated. Such misrepresentations can significantly affect the outcome of a trial.”⁷ For this reason, a number of other states provide interpreters in all civil proceedings. For example, Idaho mandates that its courts appoint a qualified interpreter in any civil proceeding in which any party or witness does not understand or speak English.⁸

The State Court Interpreter Grant Program Act also could help create a statewide court interpreter program. Currently, the procedures for appointment and quality control vary from county to county.⁹ The result is a system with the following inefficiencies and inequities: 1) each county has to spend time and resources determining which interpreters are qualified; 2) some interpreters are certified to interpret in one county but not in another; and 3) some litigants are able to obtain an interpreter in one county but not in another.¹⁰ In order to avoid such problems, many other states have a statewide court interpreter program. For example, Nevada maintains a court interpreter program housed in the Administrative Office of the Courts.¹¹ This program implements a set of uniform guidelines for the state regarding certification, appointment, costs, and professional responsibility of court interpreters.¹²

II. South Carolina

South Carolina, with one of the fastest-growing Hispanic populations in the country,¹³ has an enormous and growing need for trained, competent court interpreters. Currently, of the approximately 200 interpreters working in the court system,¹⁴ only 22 have demonstrated that they can accurately interpret court proceedings by successfully completing the interpreter certification process.¹⁵ The state court system is now trying to expand the pool of qualified interpreters by conducting its own trainings for people wanting to become certified court interpreters in Spanish, but it is just beginning the process.¹⁶

As the California and Pennsylvania reports discussed above in section I make clear, South Carolina’s use of court interpreters who have not demonstrated proficiency as court interpreters threatens the integrity of the court system. For this reason, the State Court Interpreter Grant Program Act is vitally important for South Carolina. Increased funding could allow the state to expand its nascent interpreter training program to languages other than

Spanish, and to put resources into recruiting potential interpreters. Eventually, this would allow the state to bring the quality of their interpreters up to the level of states which require that all of their interpreters obtain certification to demonstrate proficiency in legal interpretation.¹⁷

Increased funding would also enable South Carolina to implement ongoing training for interpreters and training for judges and court staff on when and how best to use interpreters.¹⁸ The California Access to Justice Commission study concluded that judges and court staff require training “to enable them to determine what level of language assistance is needed or to deal with situations where no certified interpreter is available.”¹⁹ Without such training, judges may not even know that a litigant lacks the ability to understand the proceedings, or to communicate adequately, making it impossible for the judge to engage in accurate fact-finding.

III. Texas

In Texas, almost fifteen percent of the residents have limited proficiency in English.²⁰ The State Court Interpreter Grant Program Act would increase the ability of Texas to ensure that these residents are able to access state court system. First, it could help the state ensure the quality of interpreters in civil proceedings for smaller counties and for languages other than Spanish. In Texas, larger counties are required to use certified interpreters for languages other than Spanish only when one is available within 75 miles.²¹ When a party lives in a smaller county (i.e., one with a population of less than 50,000), there is no requirement that a certified interpreter be used in any language.²² Legal services attorneys have reported that, in at least some cases, the interpretation that results when uncertified interpreters are used is unsatisfactory.²³ In one case, the interpreter rushed the petitioner, refused to perform a simultaneous translation, and instead provided only a summary.²⁴ As discussed above in section I, the use of interpreters whose proficiency is unknown can lead to distortions or complete loss of information, creating injustice and making it impossible for the court to render an accurate decision. For this reason, a number of other states provide certified court interpreters for a wide variety of languages, and without any official limitations regarding county size. For example, New Mexico provides certified court interpreters in Arabic, Chinese, German, Korean, Navajo, Russian, and Vietnamese.²⁵ Similarly, Colorado provides certified court interpreters in Spanish, Cantonese, Korean, Mandarin, Russian, and Vietnamese.²⁶ Idaho courts provide certified interpreters in Spanish, Mandarin, and Vietnamese.²⁷ Through the State Court Interpreter Certification Consortium, Idaho also makes available qualifying examinations in Arabic, Cantonese, Haitian Creole, Hmong, Korean, Laotian, Polish, and Russian.²⁸

IV. Utah

In Utah, approximately six percent of the population has limited proficiency in English.²⁹ On average, those residents face more than one legal problem each year.³⁰ Family, employment, and housing are the most common legal problems.³¹ The State Court

Interpreter Grant Program Act could benefit the Utah state court system by helping expand the availability of interpreters in the resulting legal proceedings. Currently, the only civil cases in which court interpreters are provided are those involving cohabitant abuse and stalking injunctions.³² In these cases, interpreters may be provided for both parties and witnesses.³³ In most other types of civil cases, when a litigant needing an interpreter cannot afford one, the proceeding typically must go forward without one, unless the litigant is one of the fortunate few able to get help from a legal aid organization with funding available to pay the costs of contracting a court interpreter.³⁴ As discussed above in section I, a number of other states provide interpreters in all civil proceedings, because otherwise injustice results and the integrity of the court is compromised when it cannot render accurate decisions.

The State Court Interpreter Grant Program Act could also help Utah ensure the quality of interpreters for languages other than Spanish. Currently, Utah has an interpreter certification process only for Spanish.³⁵ However, 15% of Utah courts’ interpreting needs involve languages other than Spanish.³⁶ In those cases, the courts generally use interpreters who, although they have gone through an “approval” process, have not actually been required to demonstrate that they can provide accurate interpretation.³⁷ Like Utah’s failure to provide interpreters in many types of civil proceedings, the use of interpreters whose proficiency has not been demonstrated may also make it impossible for courts to engage in accurate fact-finding. For this reason, as discussed above in section III, several states provide certified court interpreters in languages other than Spanish. ▲

[Reprinted with permission. This study, originally titled “Selected Early Findings From a 50-State Study of Language Access in Civil State Court Proceedings,” was carried out under the auspices of the Brennan Center for Justice at NYU. The final report on this subject, which will cover 36 states, is currently being prepared. NAJIT members interested in providing feedback on the authors’ findings regarding language access in civil state court proceedings in their state may send an e-mail to laura.abel@nyu.edu.]

ENDNOTES:

1 California Commission on Access to Justice, LANGUAGE BARRIERS TO JUSTICE IN CALIFORNIA 32 (2005), available at http://www.calbar.ca.gov/calbar/pdfs/reports/2005_Language-Barriers_Report.pdf.

2 U.S. Census Bureau, 2005 American Community Survey, R1603: Percent of People 5 Years and Over Who Speak English Less Than “Very Well.”

3 ARIZ. REV. STAT. §12-241.

4 Interview with Arizona legal services attorney, November 20, 2007.

5 Arizona Superior Court in Pima County, Court Interpreter: Interpretation, available at <http://www.sc.pima.gov/?tabid=152>.

6 California Commission on Access to Justice, LANGUAGE BARRIERS TO JUSTICE IN CALIFORNIA 25 (2005), available at http://www.calbar.ca.gov/calbar/pdfs/reports/2005_Language-Barriers_Report.pdf.

7 FINAL REPORT OF THE PENNSYLVANIA SUPREME COURT COMMITTEE ON RACIAL AND GENDER BIAS IN THE JUSTICE SYSTEM 32 (2003), available at <http://www.courts.state.pa.us/Index/Supreme/BiasCmte/FinalReport.pdf>.

8 IDAHO CODE §9-205.

9 Interview with Arizona legal services attorney, November 20, 2007.

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- 10 *Id.*
- 11 The Supreme Court of Nevada, Court Interpreters Program, Frequently Asked Questions and Answers, available at <http://www.nvsupremecourt.us/ccp/interpreters/faq.php>.
- 12 The Supreme Court of Nevada, State Court Administrator Guidelines for the Nevada Certified Court Interpreter Program, available at http://www.nvsupremecourt.us/documents/misc/ci_state_court_guidelines.pdf.
- 13 Noelle Phillips, *Classes Aim to Certify Legal Interpreters for S.C. Courts*, THE STATE (Oct. 16, 2007).
- 14 *Id.*
- 15 Interview with Interpreter Manager, S.C. Division of Court Administration, December 15, 2007.
- 16 Noelle Phillips, *Classes Aim to Certify Legal Interpreters for S.C. Courts*, THE STATE (Oct. 16, 2007).
- 17 Georgia interpreters have until January 2009 to comply with the current rule requiring certification. GA Commission on Interpreters Administrative Policies, available at http://www.georgiacourts.org/agencies/Interpreters/admin_policies.html.
- 18 Interview with Interpreter Manager, S.C. Division of Court Administration, December 15, 2007.
- 19 California Commission on Access to Justice, LANGUAGE BARRIERS TO JUSTICE IN CALIFORNIA 28 (2005), available at http://www.calbar.ca.gov/calbar/pdfs/reports/2005_Language-Barriers_Report.pdf.
- 20 U.S. Census Bureau, 2005 American Community Survey, R1603: Percent of People 5 Years and Over Who Speak English Less Than "Very Well."
- 21 TEXAS GOVERNMENT CODE §57.002(d). For a spoken language interpreter whose ability to provide accurate interpretation has been tested, Texas uses the term "licensed" court interpreter. *Id.* §57.001(5). We use the term "certified" in lieu of "licensed" here for consistency purposes.
- 22 *Id.* §57.002(c).
- 23 Interview with Texas legal services attorney, February 28, 2008.
- 24 *Id.*
- 25 New Mexico Administrative Office of the Courts, Certified Court Interpreters Directory, available at <http://www.nmcourts.com/newface/court-interp/index.html>.
- 26 Colorado Judicial Branch, Language Interpreter Directories, available at <http://www.courts.state.co.us/chs/hr/interpreters/InterpreterDirectories.htm>.
- 27 The Supreme Court of Nevada, Court Interpreters Program, Certified Court Interpreter List, available at <http://www.nvsupremecourt.us/ccp/interpreters/>.
- 28 The Supreme Court of Nevada, Court Interpreters Program, Frequently Asked Questions and Answers, available at <http://www.nvsupremecourt.us/ccp/interpreters/faq.php>.
- 29 U.S. Census Bureau, 2005 American Community Survey, R1603: Percent of People 5 Years and Over Who Speak English Less Than "Very Well."
- 30 D. Michael Dale, The Justice Gap: The Unmet Legal Needs of Low-Income Utahns (2007), pp. 6, 25, available at <http://www.andjusticeforall.org/The%20Justice%20Gap%20-%20Needs%20Assessment.pdf>
- 31 *Id.*
- 32 Information from Utah Administrative Office of the Courts, Program Manager, Public Access to the Courts, February 26, 2008.
- 33 Utah Code Jud. Admin. Rule 3-306(6)(A), available at <http://www.utcourts.gov/resources/rules/ucja/ch03/3-306.htm>.
- 34 Interview with Utah legal services attorney, February 27, 2008.
- 35 Utah State Courts, Frequently Asked Questions About Court Interpreting, available at <http://www.utcourts.gov/resources/interp/faq.htm>.
- 36 *Id.*
- 37 *Id.*

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not sure my client had understood the documents. Judgment was unfortunately rendered against the client, holding him liable for failing to pay the specified amount based on the legal presumption that he had understood his obligation to pay for the service because he had failed to cancel after the trial period expired. When the client's wages were garnished, he lost his job and came to Legal Aid for assistance. The interpreter later said that he had not understood the question himself, and apologized, but that did not get my client's job back or overturn the judgment against him.

Another example: at an initial interview in a domestic violence case where the possession of a public housing voucher was at issue, I asked the client her name. After about fifty words spoken by the interpreter, the client burst into tears, muttered (in English) that she was wrong to have come, and abruptly departed. This client did not return to the shelter where she had been staying, so I couldn't locate her to try again with a different interpreter. And since she did not attend her hearing, she lost her public housing voucher. I have always wondered what the interpreter said to cause such a reaction.

When I interview a client, I am counting on the interpreter to convey my questions professionally and accurately to my client and to convey the client's answer back to me. If, for example, I ask if the client has "escrowed his rent," I assume that the interpreter knows what escrow is. If the interpreter does not know what escrow is and guesses, I may reject that client's case when I should not have done so. And I might also decide to file an inappropriate defense to the lawsuit. In Ohio, a client with a housing condition problem is expected to escrow his rent with the court instead of withholding it from the landlord.

Once, in a custody hearing, a client said, through an interpreter, that the marks on the children were caused by "coining." "What is that?" the judge asked the interpreter. The interpreter answered in a way that made it sound like extreme abuse of the children. A different choice of just a few words would have conveyed coining in a very different light. I say that because prior to the hearing, when I interviewed the client with a different interpreter, coining had been explained to me as a common healing practice in Southeast Asia involving warm oil and a coin rubbed across the skin to release "bad wind" and restore the ill to health. In her testimony, my client had simply said that she practiced coining, without describing what it entailed. Although I argued with the interpreter's characterization of coining, I believe the judge accepted the interpreter's version rather than mine. Of course, the judge should have asked the client, not the interpreter what coining was. This is an example of the danger of not knowing how to work with an interpreter. The question should have been directed to the witness.

Even as I write this, I am aware of the idioms I have used. Americanisms such as "worth its weight in gold" or "he didn't look me in the eye" may not be susceptible to a strict word-for-word translation. I must admit that I was not aware of how many Americanisms I used until I was asked to translate our pamphlet about landlord tenant law into Spanish. There were some phrases that I could not readily express which started me thinking. Holding an ordinary conversation is different from actually

interpreting. When I speak Spanish I am not trying to think in two different languages. I cannot, for example, speak Spanish and write case notes in English. (When I review case files of our multilingual staff, original notes are taken in the same language we use to talk to the client; an English set of notes is prepared afterward.) As I thought about it, I began to understand how much we expect an interpreter to do simultaneously. But until I personally experienced the difficulty of rendering a common American legal saying into Spanish, I, too, had failed to understand the position in which we place an interpreter. If not for my attempts at rendering the phrase "get the landlord's promises in black and white" into Spanish, I, too, would have missed out on an essential understanding of the interpreter's task.

I believe many attorneys share my blindness. Many of us are also impatient and demanding. It is impatience added to blindness that makes attorneys want to push interpreters to work when fatigue sets in and the ability to focus wanes. It also makes attorneys expect the interpreter to provide services that go beyond interpreting tasks, such as providing psychological insight into an individual. We forget that individuals vary, no matter what background or culture they are from. Sometimes an attorney will ask a family member or friend to interpret a "quick telephone call." If we let impatience get the better of us, we fail to appreciate the crucial nature of the interpretation process, the need for a professional interpreter, and the need of both parties to understand each other accurately.

In a perfect world, every attorney would be trained in how to work with interpreters. A class or workshop would test attorneys' "interpretive abilities" by asking them to repeat an ongoing speech or a text that is read aloud. In another exercise, an attorney might play a game in which points are granted for conveying legal concepts into the special English vocabulary used by "Voice of America." (Voice of America has developed a specialized version of English that limited-English-proficient individuals can understand.) My final fantasy exercise would be for each attorney to be the only English speaker when an incident occurs. The attorney must rely on a Chinese interpreter to figure out what is happening and what to do. If the attorney is incorrect in assessing the situation, he or she will lose something of "value" at the end. This exercise hopefully would sensitize the attorney to both the client's and interpreter's position.

Thus, I challenge interpreters to help attorneys understand your profession. Help us understand the training needed, the intensity of the activity, and the application of skills used in providing us with an accurate rendition of what *is* being said. And I challenge attorneys to listen and to think about the stakes for you and your client; to appreciate the skills being used for your benefit; and to recognize the accommodations that must be made so that the process is beneficial for all. From my perspective, if we do these things, our legal system can meet the lofty goal of justice for all. ▲

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