



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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MESSAGE FROM THE CHAIR

Dear colleagues:

NAJIT is committed to reaching out to students who are the future of our profession, and some years ago we implemented a conference scholarship program. This year the judges awarded scholarships to five students, whose names and affiliations are on page 11. Congratulations! We are proud of the scholars and hope they benefit from our annual conference. Awards will be presented during the annual luncheon on Saturday, May 17, 2008. Scholars will be attending the educational sessions and assisting with handouts, so if you attend the conference, please make sure to give our scholars a warm welcome and to talk with them about our profession. I know they would greatly appreciate and benefit from our members' hospitality, fellowship, and expertise.

Membership continues to increase steadily, and we are close to 1,300 members, up from 1,000 members just two years ago. Our membership recruitment drive continues, with an ambitious goal of reaching 2,000 members. We need all of your help as we continue to brainstorm to find ways to attract new members. On the same subject, through our membership committee, we conducted a recent survey about member benefits that will be made available in the members section of our website shortly after the annual conference.

The NAJIT listserve is now a members-only benefit. When previously open to the public, only 104 members participated. Today, 271 members participate in lively discussions on a full range of professional issues. Some of you may not be aware that the listserve is a member benefit open to all NAJIT member categories. It has been an invaluable tool for me to see how freely members share professional experiences and knowledge. To subscribe, log into the members section on the far left of the webpage, and click on "Listserve," located at the top of the blue bar. I hope you use this

resource to its full advantage when you have questions, concerns, advice, information, or resources to share. It's where to go for the latest buzz in the field of court interpreting.

I am a firm believer in transparency, so let me share some administrative news. Andy Ozols, the executive director who came on board a year ago, worked for NAJIT part-time, as did our previous directors. Recently, however, he was offered a full-time position with another association, and the board felt that he was no longer able to give NAJIT the day-to-day service we needed. The board was satisfied with the services that Robin Lanier and her staff at Alliance Management Group have been providing, and we recently contracted them for full association service (combined executive director and administration management). Running a national organization like NAJIT is not an easy task, and many efforts need to be coordinated. Please welcome Robin and her staff when you see them in Pittsburgh. We appreciate your patience as we organize the many strands of our association business in order to attend to members' needs.

NAJIT's advocacy committee and our newly-formed community liaison committee have been collaborating on responding to recent legislation. Please visit our website to view some of the recent letters and requests for action. (On the far right of the home page, www.najit.org, under "New Developments," follow the link to NAJIT Advocacy.) The Coordination and Review Section of the U.S. Department of Justice, Civil Rights Division, entered into a memorandum of agreement with a Washington State-based police department regarding interpreting and translating policies for services to the LEP community. In addition, COR issued a technical support response letter to the NCSC Consortium for State Court Interpreter Certification. (The text is reproduced on page 15.) The significance of COR's letter is that it clearly indicates that it is the court's responsibility

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NAJIT occasionally makes its member information available to organizations or persons offering information, products, or services of potential interest to members. Each decision is carefully reviewed and authorization is given with discretion. If you do not wish to have your contact information given out for this purpose, please let headquarters know and we will adjust our records accordingly.

COURT INTERPRETER TRENDS

INTERPRETERS IN CIVIL CASES

Wanda Romberger

"Laws and institutions are constantly tending to gravitate. Like clocks, they must be occasionally cleansed, and wound up, and set to true time."

[Henry Ward Beecher, Final Report of the West Virginia Judiciary, December 1998]

State courts are extending the provision of foreign-language interpreter services beyond the customary criminal cases. More states are adopting court rules and passing legislation that provides interpreting services during critical civil and family proceedings.

For individuals who are not proficient in English, navigating the legal system is particularly challenging and, in many cases, impossible. Even when a limited-English-proficient (LEP) individual can speak English in conversational settings, purchase groceries, communicate to a taxi cab driver where he or she wishes to go, or linguistically survive in other social settings, the LEP individual may be unable to understand what is happening in a courtroom. Legal terminology is dense and sometimes archaic. Most state courts now provide qualified foreign-language interpreters for defendants in criminal cases as a matter of procedure, but until recently most did not provide that service for parties in civil or family cases.

Consequently, a growing number of parties in family court and other case types have had virtually no access to the courts. Too often, they are unable to understand the court proceedings, read forms or other legal documents, or communicate with the judges, employees in the clerk's office, or other court staff without the services of a qualified court interpreter.

Executive Order 13166

On August 11, 2000, President William Clinton signed Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency. The executive order affirmed the administration's commitment to make federally funded and conducted activities meaningfully accessible to individuals with limited proficiency in English. Federal agencies that dispense federal funds were to publish guidance documents for their recipients,

and on June 18, 2002, the Department of Justice published its guidance document, *Enforcement of Title VI of the Civil Rights Act of 1964, National Origin Discrimination Against Persons with Limited English Proficiency* for its recipients, including the courts.¹ The guidance document provides information to help recipients determine the extent of their obligation to provide LEP access. For the courts, the guidance centers on providing interpretation and translation services, and no distinction is made between access for a criminal defendant and access for parties in civil and family court.

Civil and Family Court Cases

The right to an interpreter in criminal cases is established through case law. Constitutional guarantees, such as the right of a criminal defendant to confront witnesses, participate in his or her

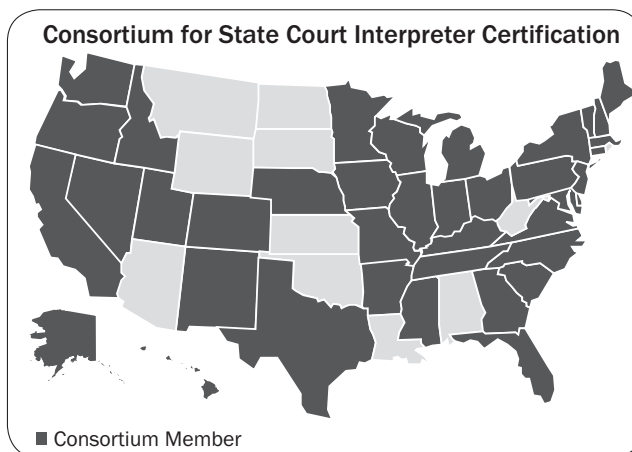
own defense, and be present during court proceedings, have been interpreted via case law to require the services of a foreign-language court interpreter when the judge determines that the defendant cannot speak or understand English well enough to take advantage of those constitutional guarantees.²

In recent years, and possibly as a result of Executive Order 13166, more state court systems are considering whether a defendant in a criminal case faces more important consequences (loss of liberty,

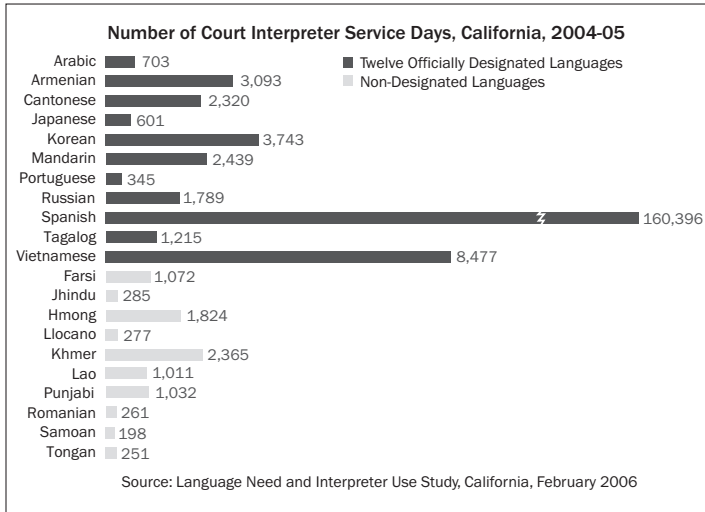
fines, deportation, and other consequences) than does a plaintiff or defendant in many types of civil cases. In some civil cases, important and fundamental issues are at stake for the parties, including child custody, parental rights, and protection from abuse, to name just a few. These states have begun the trend of providing the services of qualified court interpreters beyond the criminal docket.

Several states are lengthening the list of case types for which the services of an interpreter are appropriate and provided at the court's expense. In Florida, for example, the report and recommendations of the Court Interpreting Subcommittee acknowledge that: *provisions of the constitution establish rights for persons whose fundamental interests may be adjudicated in civil proceedings, and when such persons have limited ability to speak or understand English and are indigent, their rights cannot be protected without the provision of language interpretation services at public expense.*³

Florida's Rules of Judicial Administration indicate that "interpreters are appointed in civil proceedings . . . if the litigant's inability



[> continues on page 4](#)



ity to comprehend English deprives them of an understanding of the court proceedings, if a *fundamental interest* is at stake, and no alternative to the appointment of an interpreter exists.”⁴ The costs are recovered when users possess the ability to pay.

New Jersey’s Supreme Court adopted the principle of “equal access to courts for linguistic minorities” in 1985. In 1993 it reiterated its support of that principle when it developed an Action Plan on Minority Concerns and stated, “the courts and their support services shall be equally accessible for all persons regardless of the degree to which they are able to communicate effectively in the English language.”⁵ Standards for delivering interpreter services were promulgated in 2004 that include this directive:

The judiciary should generally assign interpreters to interpret all phases of court connected proceedings for any person with limited proficiency in English who is a named party in the proceeding or who, in Family Part [sic], is a parent or guardian of a juvenile who is a named party, as well as for witnesses during their testimony. Such phases include, most critically, those proceedings for which a transcript may be made, but also, when necessary, court-ordered arbitration and mediation and delivery of services involving court personnel, particularly in criminal and quasi-criminal cases. Interpreters should be provided whenever a failure of communication may have significant negative repercussions. This directive applies to all cases, criminal, civil, and family court, when a failure to communicate has *significant negative repercussions*.⁶

Other states, such as Delaware, provide for state-paid interpreter costs in certain civil cases, including proceedings involving termination of parental rights and protection from abuse. The District of Columbia appoints interpreters for any party or witness at any stage of a judicial or quasi-judicial proceeding, including civil proceedings, and pays them from Office of Interpreter Services funds.⁷ Idaho’s Code §9-205 indicates that the court appoints an interpreter in any civil or criminal proceeding in which a witness or party does not understand or speak English, and the interpreters are paid out of court funds.

On February 26, 2007, Chief Justice Ronald M. George delivered an annual “State of the Judiciary” speech to a joint session of the

California legislature.⁸ In that speech, he promised that California will make progress in answering the urgent need for qualified interpreter services in critical civil proceedings.

Increasing numbers of states are including references in their rules to the use of interpreters in civil and family court cases and providing that the interpreter’s fee for services may be paid out of state funds or by one or more of the parties as the court directs, based on the circumstances. At this time, some states will pay for the services of an interpreter in a family or civil case, but only if the party can establish indigency. In other states, it is left to the judge’s discretion whether to assess the expense of an interpreter as a cost in the case to be repaid, or to consider it a cost of conducting the court’s business.

Challenges

It is evident that many court systems are embracing the responsibility of providing qualified interpreters in case types other than criminal, particularly when the case involves important and fundamental issues, such as protection from domestic violence. However, a study conducted by the National Center for State Courts, *Improving the Courts’ Capacity to Serve Limited English Proficient Persons Seeking Protection Orders*, found that many courts still do not have the capacity to provide the needed level of language services for persons with limited English proficiency who are seeking protection from abuse.⁹ The courts face challenges, including:

- The growing number of LEP persons within jurisdictions
- The diversity of languages spoken by the population
- Public pressure for accountability and increased services from the courts

Qualified court interpreters are a scarce and valuable commodity, and it is difficult for courts to identify enough interpreters in enough languages to meet the needs of the court’s community. The challenges are many, and the costs are high.

Despite these challenges, many of the nation’s courts are systematically establishing procedures whereby highly bilingual individuals are recruited, trained, and, whenever possible, tested for the knowledge, skills, and abilities to serve as qualified court interpreters. Once those qualified individuals are identified, courts are seeking ways to keep them employed and able to make a living.¹⁰

Conclusion

The trend of increasing the use of qualified court interpreters to include civil and family proceedings is a positive one on several levels.

- It illustrates that the court managers are better understanding the importance of making court proceedings intelligible to the court’s constituency and that when a party to a case cannot understand English well enough to understand what is going on in the courtroom, an interpreter should be provided, regardless of case type.
- In addition, courts have begun to grasp the scarcity and value of qualified court interpreters. By using those resources in

more ways and providing more work, the courts are helping to ensure that qualified interpreters will stay in the business of interpreting.

- The trend also suggests that courts are aware that the public's trust and confidence is an important perception; the court must not just dispense justice, but the public must perceive that it dispenses justice, regardless of case type.

Determining under what conditions a court interpreter will be provided and in what kinds of cases is a difficult task. Ideally, a court interpreter should be provided when needed in any court proceeding, regardless of the case type. It is difficult to maintain that being evicted as a result of a landlord/tenant action is less fundamental to a party than the outcome of a child custody case or a protection-from-abuse order. But interpreting services are expensive, and the major challenge to the courts is a financial one. For now, courts are trying to balance the provision and cost of interpreting services.

The fact that state courts are providing interpreter services in other than criminal cases is promising. It suggests that courts are embracing the concept of accessibility for LEP persons more broadly and in new ways. ▲

[The author is manager of court interpreting services with the National Center for State Courts.]

This article was reprinted with permission from the author and the National Center for State Courts. It originally appeared in *Future Trends in State Courts 2007*, edited by C. Flango, C. Campbell and N. Kauder.

ENDNOTES

1 67 Fed. Reg. 41455.

2 For example, *United States ex rel Negron v. State of New York*, 434 F.2d 386 (2d Cir. 1970), found that the absence of a court interpreter violated the defendant's right to confront adverse witnesses and rendered the defendant incapable of being present at his own trial.

3 A subcommittee of that state's Article V Indigent Services Advisory Board. The full report of the Advisory Board is available on-line at www.justiceadmin.org/art_V/1-62005%20Final%20Report.pdf.

4 Rule 2.560.

5 The full statement of Ensuring Equal Access for Linguistic Minorities can be found on-line at www.judiciary.State.nj.us/interpreters/background.htm.

6 Standards for Delivering Interpreter Services in the New Jersey Judiciary, Section 1, Standard 1.1 Interpreting for Persons with Limited Proficiency in English Other than Those Who Are Deaf or Hard of Hearing, Directive #3-04, promulgated March 23, 2004.

7 D.C. Code_2-1901; §2-1912.

8 The full address is available on-line at www.courtinfo.ca.gov/reference/soj022607.htm.

9 A project supported by State Justice Institute (SJI), Grant No. 2003-WG-BX-1009, and concluded June 30, 2006. The full report of the study is available on-line at www.ncsconline.org/D_Research/Documents/LEP_NIJFinalReport.pdf.

10 For more information, see Romberger, W. and Hewitt, W.E. "Wanted: Career Paths for Court Interpreters," in C. R. Flango, C. Campbell, and N. Kauder (eds.), *Future Trends in State Courts 2006* (Williamsburg, VA: National Center for State Courts, 2006).

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LANGUAGE ACCESS IN CIVIL PROCEEDINGS *continued from pg 1*

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.

> continues on page 8

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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.*

Wireless Audio Communications Equipment for Interpreters

Basic set of wireless transmitter and receiver including microphone and earphone, still available for under \$100.

Transmitters and receivers have a 1-year warranty.



Tie-clip microphone and earphones are included with each set. Optional headset microphones and headphones are available.



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For more information, contact us at info@tncommunications.com or call 1-888-371-9005

TRAINED PROFESSIONALS *continued from page 1*

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. ▲

[The author is administrative services director of the Legal Aid Society of Columbus.]

RESOLUTION SUPPORTING FEDERAL LEGISLATION PROVIDING FUNDING FOR STATE COURT INTERPRETERS

WHEREAS, on June 27, 1994, the Board of Governors of the Philadelphia Bar Association adopted a resolution calling for the testing and certification of foreign-language interpreters in Pennsylvania courts and which also addressed the need for electronic recording of non-English and sign language testimony;

WHEREAS, in March 2003 the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Judicial System made extensive findings and recommendations, after exhaustive study, as to changes needed to make the state judicial system accessible to persons with limited English proficiency, stating, "Upgrading the capacity of the Pennsylvania judicial system to provide justice for all, regardless of English language ability, should be a priority for the Commonwealth";

WHEREAS, according to the Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias, Pennsylvania courts in recent years have requested oral language interpretation services in more than 50 different languages and dialects;

WHEREAS, the federal government interprets Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, *et seq.*, as mandating that recipients of federal financial assistance (including the Court of Common Pleas and Pennsylvania state agencies and those programs receiving funds from those agencies) must ensure that their programs and activities normally provided in English are accessible to persons with limited English proficiency;

WHEREAS, the number of persons in Pennsylvania who have limited English proficiency continues to increase;

WHEREAS, on September 25, 2003, the Board of Governors of the Philadelphia Bar Association adopted a resolution "Concerning Equal Access to Courts and Administrative Agencies by Limited-English Proficient Persons and Persons with Disabilities," establishing participation by the Association in the Campaign for Litigants' Equal Participation;

WHEREAS, the Mayor of the City of Philadelphia on September 29, 2001, issued an Executive Order, directing all City of Philadelphia agencies to develop compliance programs for providing meaningful access to their federally funded programs and activities for persons with limited English proficiency;

WHEREAS, the City of Philadelphia has a diverse cultural and ethnic population;

WHEREAS, in recent years, the Association has increased its work with immigrant and non-English speaking communities;

WHEREAS, the City of Philadelphia and Commonwealth of Pennsylvania have attempted to promote economic development through attracting international businesses to the region;

WHEREAS, in 2006 Act 172 was signed into law in Pennsylvania mandating the provision of interpreters for both court proceedings and administrative agency proceedings;

WHEREAS, U.S. Senate Bill 702, the State Court Interpreter Grant Program Act, authorizes the Attorney General to award grants to state courts to develop and implement state courts' interpreter programs;

WHEREAS, U.S. Senate Bill 702 would assist in the implementation of Pennsylvania Act 172 and would help to ensure the rights of all Pennsylvanians, regardless of English proficiency;

WHEREAS, U.S. Senate Bill 702 has the support of the Conference of Chief Justices, the Conference of State Court Administrators, the National Association of Judiciary Interpreters and Translators, and the National Center for State Courts, among others;

NOW, THEREFORE, BE IT RESOLVED that the Philadelphia Bar Association Board of Governors supports passage of U.S. Senate Bill 702 or similar legislation.

AND BE IT FURTHER RESOLVED that the Chancellor or his/her designee is authorized to communicate the support of the Philadelphia Bar Association for U.S. Senate Bill 702 or similar legislation to the appropriate legislators, and to otherwise effectuate this resolution.

PHILADELPHIA BAR ASSOCIATION
BOARD OF GOVERNORS
ADOPTED: March 27, 2008

UPDATE:

On April 24, 2008 the Senate Judiciary Committee, on which Senator Herb Kohl (D-WI) serves, overwhelmingly voted to approve Kohl's legislation to create a federal grant program to ensure that state court interpreter services are made available to individuals testifying in court.

"The shortage of qualified interpreters has become a national

problem, and it has serious consequences that can unfairly alter legal decisions and affect lives," Kohl said. "My legislation would help to ensure fair trials for individuals with limited English proficiency by creating a modest grant program for state courts to hire certified court interpreters. I am pleased my colleagues on the committee joined me in recognizing the seriousness of this issue by approving this overdue, common sense measure."

NAJIT FACTS

The National Association of Judiciary Interpreters and Translators is a professional association that was first chartered as a non-profit organization under New York State laws, and incorporated as the Court Interpreters and Translators Association, Inc. (CITA) in 1978. Its headquarters moved to Washington, D.C. in 2007. NAJIT's mission is to promote quality interpretation and translation services in the judicial system.

Quarterly Newsletter:

Proteus (since 1992)

Website:

www.najit.org (since 1996)

Current membership:

1,294 interpreters and translators who work in state and federal courts, government, the private sector, academia, and other venues.

International members: 15

Annual Meeting and Educational Conference:

In mid-May, venues vary

Reciprocal relations with:

- American Translators Association (ATA)
- Registry of Interpreters for the Deaf (RID)
- Translators Association of China (TAC)
- National Council on Interpreting in Health Care (NCIHC)

Partners:

American Red Cross National Headquarters; National Asian Pacific American Bar Association (NAPABA); Sakhi for South Asian Women; Department of Homeland Security, Civil Rights and Civil Liberties; U.S. Department of Justice, Civil Rights Division

Associates:

National Virtual Translation Center, Washington, D.C.

Major successes:

- Monograph series
- Educational publications
- Website with on-line membership directory and articles of interest, including training links and other resources
- Quarterly newsletter
- NAJIT certification exam process begun in 2000
- Position Papers to describe best practices
- Advocacy Committee to monitor legislation and advocate for professional working conditions
- Active listserve (with 271 members subscribed)
- Scholars' Program to invite students to annual conferences
- Professional liability insurance (errors and omissions) available at member rates

Ongoing Projects:

- Position Papers on professional goals and practices
- Tape transcription manual in preparation
- Mentorship Program

Membership Privileges:

- Members are listed in an on-line directory.
- Members receive an automatic subscription to *Proteus*.
- Members can purchase professional liability insurance at special rates.
- Members receive regular e-mail announcements through *Cybernews*.
- Members have electronic access to all publications.
- Members can use NAJIT's logo on their business cards.
- Members receive discounted rates at workshops and conferences.
- Members have the right to vote and run for office.
- Members are eligible to participate in special projects.
- Members can subscribe to NAJIT's listserve.
- Members can be a conference presenter or organizer.
- Members network with colleagues, researchers, and policy-makers.
- Members are eligible to participate in NAJIT's mentorship program.
- Members have electronic access to job announcements.
- Members have access to a meeting room in NAJIT's Washington, D.C. headquarters.
- Members can represent NAJIT at international conferences.

Congratulations To NAJIT Scholars

NAJIT members warmly welcome the scholars chosen to attend the 2008 Annual Conference in Pittsburgh, PA:

- 🐾 **Cristina Garzón**, Rutgers University
- 🐾 **Luis Hernandez**, California State University at Long Beach
- 🐾 **Liliana Popp**, Hunter College
- 🐾 **Thayse Rosa**, Cross Cultural Communication Institute
- 🐾 **Laura Ceron**, University of Nebraska, Kearny (A 2007 scholarship recipient.)

NAJIT PUBLICATIONS

TERMS OF THE PROFESSION

U.S. governmental entities recently reached out to NAJIT to request any documentation in which the terms of the profession are listed and defined. The NAJIT board in conjunction with the advocacy and community liaison committees moved quickly to prepare such a collection of terms, which we now publish and share with the membership.

Direct Speech is the most important standard technique an interpreter uses. While interpreting, the interpreter assumes the same grammatical voice as the original speaker and never interjects himself into the communication by using the third person (*"He says that..."*). The use of direct speech lessens confusion, keeps the written record clear by making it plain who is speaking, and enables the parties to communicate directly with each other as though no language barrier were present. (See the NAJIT position paper on the subject, at www.najit.org.)



Interpretation refers to the process of orally rendering communication from one language into another language. Interpretation deals with oral or signed speech.

[Note: In its *Standard Guide for Language Interpretation Services*, the American Society for Testing and Materials (ASTM) defines interpretation as "the process of understanding and analyzing a spoken or signed message and re-expressing that message faithfully, accurately, and objectively in another language, taking the cultural and social context into account."]

Modes of Interpretation are the different techniques that can be used to convey oral messages. There are only three permissible modes of interpretation in legal, quasi-legal, or medical settings:

Simultaneous: The message is heard and conveyed virtually at the same time, with only the shortest time lag. The interpreter renders a second language version while listening to the original. Simultaneous can be provided in whisper format (*chucotage*) for one listener; or more commonly, for many listeners at once, with the assistance of electronic equipment (an interpreter microphone and listener headsets). Simultaneous interpretation is used during all court proceedings, for international conferences, at the United Nations, in press conferences, television news broadcasts, or in other venues where the message needs to be conveyed immediately.

Consecutive: The message is conveyed after a pause. The interpreter waits for the original speaker to complete an entire question or statement, and then interprets this utterance into the second language. This mode is used generally

for Q and A scenarios, attorney-client interviews, interrogations, or witness testimony. Consecutive interpretation is considered more accurate than simultaneous because the whole context is clear before the language conversion process begins.

Sight Translation is the oral rendition of a written text from one language into

another.

Summary Interpretation is also known as "occasional" interpretation, where the interpreter listens and later decides what and how to summarize. In legal, quasi-legal, and medical settings, professional standards do not permit summary interpretation, which may exclude crucial information. (The interpreter should not be given the authority to decide what is or is not important.) Untrained interpreters resort to this mode because they lack the skills for simultaneous or consecutive, lack memory skills, are unfamiliar with terms, or cannot accurately reproduce the rate of speech and density of information. (See the NAJIT position paper on the subject, at www.najit.org.)

Translation takes a written text from one language and renders it into an equivalent written text in another language, conserving style, tone and content. Translation deals with written texts.

NOTE: Interpretation and translation, while both language-related, are not identical disciplines. Each area requires knowledge, training and practice. Credentialing is different for each. Some practitioners are equally adept at both; others specialize in one discipline or the other. Although the public and media often use the terms interchangeably, we use *interpretation* when referring to oral speech and *translation* when referring to written texts.

Transliteration is communication between spoken English and a sign language, using English grammar and structure.

Linguist, strictly speaking, refers to someone who engages in the study of the nature, structure, and variation of language, including phonetics, phonology, morphology, syntax, semantics, sociolinguistics, and pragmatics. A scientific linguist can be monolingual and restrict his or her field of study to one aspect of one language.

Broadly speaking, however, in popular jargon, government and the media, people refer to those who are adept at foreign languages as "linguists."

ABBREVIATIONS

- AOC:** **Administrative Office of the Court**
Administrative staff of a given court system, whether state or federal. (Note: In some states it is called Office of Court Administration.)
- AOUSC:** **Administrative Office of the United States Courts**
As the administrative arm of the federal courts, the AOUSC provides information and guidelines to the 94 U.S. District Courts. The AOUSC certifies interpreters for federal courts via written and oral examinations and maintains a database of all certified and otherwise qualified interpreters. (The interpreter database is posted on the J-Net, an intranet shared by all the federal courts. The public site for the AOUSC is www.uscourts.gov.adminoff.html)
- ASL:** **American Sign Language**
The language most commonly used by deaf Americans, although not all deaf Americans communicate in this language. (Note: Deaf persons from outside the U.S. do not communicate in ASL, but in other sign languages particular to individual countries.)
- ATA:** **American Translators Association**
ATA is a national association in the U.S. comprising over 9,000 members. Their main expertise is in translation, but they also have an interpreters division. Many NAJIT members are also members of ATA and some are certified as translators by ATA. (www.atanet.org)
- LEP:** **Limited-English-Proficient**
The term LEP refers to those individuals who can speak some English, but with limited proficiency.
- NAJIT:** **The National Association of Judiciary Interpreters and Translators**
NAJIT is a national association in the U.S. with approximately 1,300 members who interpret in legal and quasi-legal settings. Among its members are interpreters and translators with extensive experience in federal and state courts. Many members are also researchers or experts in tape transcription and translation, legal document translation, interpreter ethics, interpreter protocol, and legal issues related to interpreting. (To view published articles, position papers, and other resources available to the public, go to www.najit.org and click on "Publications.")
- RID:** **Registry of Interpreters for the Deaf**
RID is a national interpreter association in the U.S. for the deaf and hard of hearing. RID's association protocol conforms to the Americans with Disabilities Act (ADA). Rules pertaining to interpreters for the deaf and hard of hearing are available through RID. (www.rid.org)

SL: **Source Language**
Commonly used to refer to the language of the *original* speech or text that is to be interpreted or translated.

TL: **Target Language**
Refers to the language *into which* the original speech or text must be interpreted or translated.

Note: Source language and target language change with each circumstance, depending on the language of the original and the language into which it needs to be converted. For example, if a police officer is giving instructions in English, English is the source language. If those instructions are meant to be conveyed to a Russian speaker, Russian becomes in that instance the target language.

T&T: **Transcription and Translation**
Refers to the process of preserving audio or video-taped sound files in written form, whereby a complete transcript of the original, together with its translation into the target language, is created. For evidentiary purposes, transcripts should be produced in dual-language format, with the original and the translation side by side. Specialized skill, training, and experience are required to produce complete and accurate transcripts. While there have been articles written on this subject in professional journals, there are no instruction manuals on this process. NAJIT is in the process of producing a position paper and a manual on this topic.

USCCI: **United States Certified Court Interpreter**
These initials are often used to refer to interpreters who are certified by the federal court administration (AOUSC) and identified by a federal certification number. (Alternatively, sometimes the initials FCCI are used, which stand for "federally certified court interpreter.") The federal examination for interpreters is only available for interpreters of three languages: Spanish, Navajo, and Haitian Creole.

Note: As of February 2008, there are 952 federally certified Spanish interpreters, 11 federally certified Haitian Creole interpreters, and 6 federally certified Navajo interpreters.

INTERPRETER CREDENTIALING

ATA Certification: The American Translators Association administers a certification test for translators in many language combinations. ATA certification *does not cover* interpreters. The ATA has instituted continuing education requirements for translators to maintain certification.

Certified Interpreter: Interpreter certification is offered by a number of different entities, e.g., the National Center for State Courts (NCSC) Consortium for State Court Interpreter Certification; the Administrative Office of the U.S. Courts; and the National

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TERMS OF THE PROFESSION *continued from page 13*

Association of Judiciary Interpreters and Translators. Interpreter certification tests are available in a limited number of languages. Because each of these entities has differing criteria for its certification program, certifications are not necessarily equivalent. Many entities have continuing education requirements to maintain certification.

NCSC Consortium for State Court Interpreter Certification:

Standardized testing program for minimum competency to work as an interpreter in state courts. Members of the Consortium (approximately 40 states belong) have access to multiple versions of various oral performance examinations as the central pre-requisite for their state certification credential. Many states have added written components to the testing process. Administrative support is provided by National Center for State Courts. Full tests are available in approximately 13 languages; abbreviated tests are available in a number of other languages.

Federal Court Certification: Certification through written and oral examinations administered by the Administrative Office of the U.S. Courts. Tests minimum competency required to work as an interpreter in federal court. Examinations are available in Spanish, Navajo, and Haitian Creole only.

NAJIT/SSTI Exam: Credentialing for judiciary interpreters and translators via written and oral examination administered by The National Association of Judiciary Interpreter and Translators. Currently available only in Spanish.

Other State Court Certification: Some states that are not members of the Consortium (above) have their own interpreter testing and qualification procedures.

Otherwise Qualified Interpreter: Persons who have met certain requirements established by each individual state or the federal government. Definitions vary from state to state. The AOUSC defines "otherwise qualified interpreter" at www.uscourts.gov/interpretprog/categories.html.

Skilled Interpreter: Persons who do not meet the requirements for certification, but who have demonstrated to the satisfaction of the court the ability to interpret from English into a designated language and from that language into English. Definitions for "language skilled" vary from state to state and do not follow a universal standard. For the federal courts, 28 USC Section 1827 mandates that the Director of the AO provide guidelines to the courts for the selection of otherwise qualified interpreters. (See also: NAJIT's position paper on Preparing Interpreters in Rare Languages under "Publications" at www.najit.org)

Remote Interpreter: An interpreter who is not physically present, but is interpreting from a remote location via special telephone or videoconferencing equipment. Qualifications of remote interpreters should be established following the same protocol as for 'live' interpreters. It is generally agreed that remote interpreters should only be used for short (under 30 minutes) interpreted sessions, and

before the session need to be provided with any written material to be referred to. Remote interpreters generally have to be specially trained in protocols for remote interpreting and in the types of events they will be asked to interpret, i.e. emergency room, police jargon, legal language, etc.

RID Certification: Certification testing administered by Registry of Interpreters for the Deaf (RID). There are different levels of certification. Only those outlined below are acceptable credentialing for interpreters serving in a legal or quasi-legal setting.

Certified ASL Interpreter: Interpreters who hold a *Specialist Certificate: Legal* from RID, specifically geared to testing courtroom skills.

Qualified ASL Interpreter: Interpreters holding a *Comprehensive Skills Certificate (CSC)*, *Certificate of Interpretation (CI)*, *Certificate of Transliteration (CT)* (both CI and CT are required), or *Certificate of Deaf Interpreting*. For additional requirements and definitions, please contact RID.

ASL Skilled Interpreter: An American Sign Language skilled interpreter is someone who lacks training to be considered qualified, but who can demonstrate to the satisfaction of the court the ability to interpret sign language. For additional requirements and definitions, please contact RID. ▲

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NAJIT ADVOCACY



U.S. Department of Justice Civil Rights Division

Coordination and Review Section – NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530
February 21, 2008

Ms. Wanda Romberger
Manager, Court Interpreting Services
National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185

Dear Ms. Romberger:

Some time ago, you provided the Department of Justice's Civil Rights Division a copy of the National Center for State Courts' "Model Judges Bench Book on Court Interpreting" and asked for our comments. This book is an impressive compilation of information regarding state courts' provision of interpreter services for limited English proficient ("LEP") people and individuals with hearing disabilities. As you know, the Coordination and Review Section (COR) has focused a great deal of effort over the past several years to improving access for LEP persons to a wide array of programs and activities of recipients of federal financial assistance, including courts. The following comments focus exclusively on access to interpretation and translation for LEP persons. We are sorry for the delay in our response.

Interpreters for LEP Individuals

The bench book includes helpful information on interpreters' obligations and ethical responsibilities and is a guide to many best practices for judges to follow when working with interpreters.

As you are aware, the Department of Justice has published guidance concerning compliance with Title VI of the Civil Rights Act of 1964, issued pursuant to Executive Order 13166. In part, the guidance states:

... At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. (67 FR 41455, 41471)

We suggest that the authors review and modify the bench book with this in mind, as there are places throughout the bench book that appear to limit the situations in which interpreters are needed, or which appear to encourage or allow courts to charge LEP persons for interpretation costs.

As you know, many state court systems receive direct or indirect financial assistance from the Department of Justice or another federal agency. Recipients of such federal financial assistance must comply with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000, *et seq.*, and its implementing regulations, which prohibit discrimination on the basis of race, color, and national origin in programs that receive federal financial assistance. Under Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), each federal agency that extends federal financial assistance is required to issue guidance explaining the obligations of their recipients to ensure meaningful access by LEP persons to their federally assisted programs and activities. On June 18, 2002, the Department of Justice issued its final guidance to its recipients regarding the requirement to take reasonable steps to provide meaningful access to LEP individuals. (67 FR 41455). The DOJ Guidance outlines four factors that should be considered to determine when language assistance might be required to ensure such meaningful access, and identifies cost-effective measures to address those language needs.

Those factors are:

1. The number or proportion of LEP persons in the eligible service population;
2. The frequency with which LEP individuals come into contact with the program;
3. The importance of the program or activity to the LEP person (including the consequences of lack of language services or inadequate interpretation/translation); and
4. The resources available to the recipient and the costs.

Clearly, court interactions are amongst the most important interactions an LEP person may have. While we recognize that resources are a concern across every court system, and that increasing access can be a process that takes some time, we note that the first LEP guidance was issued in early 2001. Our outreach to the courts, in concert with the Center's, should have put all court systems on notice of the Title VI obligations years ago. With the passing of time, the need to show progress in providing all LEP persons with meaningful access is amplified.

In addition, the DOJ Guidance discusses the value and possible format of written language assistance plans, options for identifying language services and ensuring competency of interpretation and translation services, and also includes DOJ's insights on when translations of certain vital documents should be considered. The DOJ Guidance also includes an Appendix that contains examples of how courts can provide appropriate services to LEP individuals.

The DOJ Guidance further provides specific information regarding when courts should utilize interpreters for LEP individuals:

Application of the four-factor analysis requires recipient courts to ensure that LEP parties and witnesses receive competent language services, consistent with the four-factor analysis. At a minimum, every effort should

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DEPARTMENT OF JUSTICE LETTER *continued from page 15*

be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present.

When a recipient court appoints an attorney to represent an LEP defendant, the court should ensure that either the attorney is proficient in the LEP person's language or that a competent interpreter is provided during consultations between the attorney and the LEP person ... (67 FR 41455, 41471)

COR has noted a disturbing number of courts and court systems engaging in a practice of charging LEP persons for interpretation costs — a practice which implicates national origin discrimination concerns. DOJ's Guidance focuses on a huge range of types of recipients. The consequences of lack of access to some of these programs is much greater than others. The guidance was written for, and intended to apply flexibly to, everything from bicycle safety courses to criminal trials, and even to serve as a model for the enormous variety of recipients of funds from other federal agencies. In this context, nearly every encounter an LEP person has with a court is of great importance or consequence to the LEP person. Thus, the guidance emphasizes the need for courts to provide language services free of cost to LEP persons:

...When oral language services are necessary, recipients [of any federal funds] should generally offer competent interpreter services free of cost to the LEP person. For DOJ recipient programs and activities, this is particularly true in a courtroom, administrative hearing, pre- and post-trial proceedings, situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services. (67 FR 41455, 41462)

We therefore think that the legally sound approach to providing access to LEP persons can be found in states in which courts are providing interpretation free of cost to all LEP persons encountering the system (including parents of non-LEP minors), whether it be in a criminal or civil setting. In addition, courts should be providing translation of vital documents and signage. Many states are moving in this direction, and we are pleased to continue to work independently and with the Center to send the message of compli-

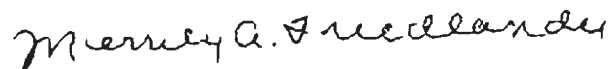
ance and best practices to all state courts, and to provide technical assistance wherever we are able. As you are aware, we also conduct investigations into allegations of national origin discrimination in courts, and are working with some states in that capacity, as well.

For your convenience, we have enclosed DOJ's "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" and DOJ's "Executive Order 13166-Limited English Proficiency Resource Document: Tips and Tools from the Field" for you to review and share with your colleagues. The Appendix to the guidance includes a section, at page 41471, on the application of Title VI to federally assisted courts. The Tips and Tools document similarly includes a section, Chapter 5, that is specific to federally assisted state courts. Please feel free to include a reference or relevant portions of these documents in the Appendix portion of the bench book.

We share your commitment to ensuring that state courts provide fully trained, bilingual interpreters for LEP individuals with business before these courts and assuring that vital documents are provided in relevant languages. Giving LEP persons the opportunity to have meaningful, equal access to the state judicial system is one of the core values and requirements of Title VI.

The Civil Rights Division welcomes the opportunity to collaborate with the Center and the Consortium to ensure that state courts provide LEP people with the assistance they need to communicate effectively with state courts across the United States. By working together to provide state courts the information they need to comply with Title VI, we safeguard the rights of LEP individuals, save courts the time and expense of responding to federal funding agency investigations, and advance the letter and spirit of the law. We look forward to continue working with you in encouraging state court systems to voluntarily meet their Title VI obligations. Should you have any questions about our comments on LEP access, please feel free to contact me at (202) 307-2222.

Sincerely,



Merrily A. Friedlander
Chief
Coordination and Review Section

MESSAGE FROM THE CHAIR *continued from page 2*

to provide competent interpreters in both civil and criminal cases if the court receives federal financial assistance. We commend the Coordination and Review Section for taking a position on this critical issue, which has not often been discussed between the Department of Justice and the courts. Their position certainly helps improve the justice system; and this response will provide many interpreters, translators, educators, and those who serve in an advisory capacity with stronger arguments to support requests

for qualified interpretation and translation services in both civil and criminal cases for LEP defendants and litigants at court expense.

I look forward to seeing you all in Pittsburgh. Please remember to e-mail me your curriculum vitae and statement of interest should you wish to serve on one of NAJIT's committees or the SSTI Board.

Isabel Frammer, Chair
NAJIT Board of Directors

REPORT FROM THE FIELD: RECRUITMENT DRIVE

Marty Anderson

New York's Unified Court System has more than 300 interpreters on staff, in more than 20 languages, yet very few of these interpreters are NAJIT members. On January 25, more than twenty-five staff interpreters gathered at a lunchtime meeting at New York Civil Court in Manhattan to listen to one NAJIT veteran, *Proteus* editor Nancy Festinger, talk about the organization, its history, achievements, and goals for the future. More than half of the interpreters assembled came from other courts in the city's multifarious system, with several boroughs represented. Much NAJIT material was distributed, including issues of *Proteus*, conference announcements, and membership forms.

Festinger looked back to 1982, when she began her interpreting career in the New York state courts in the Bronx. She outlined NAJIT's history, from a handful of lonely interpreters in 1979 to the influential and bigger organization that it is today. She reviewed NAJIT's original goals of promoting proper working conditions, training, and the rights of interpreters, as well as promulgating a code of ethics. NAJIT now is associated with other professional organizations and sister groups in other countries, and has an increasing influence in the setting of language policy and in advocating for new legislation. The advocacy committee is normally able to respond to issues of concern to interpreters within a week, something our founders would have found astonishing. It was pointed out that NAJIT's committee structure

has really only become active in the past five years. Of particular importance is the production of position papers, which express our collective point of view on a growing number of issues and help establish an "industry standard" for our profession and for the legal community.

The SSTI (Society for Study of Translation and Interpreting) and NAJIT's national conferences were also discussed, as was NAJIT's relationship to unions and the distinction between them. All NY state interpreters belong to AFSCME, but membership in professional associations have different benefits. Festinger enumerated those benefits, the most important of which, in her view, were the collegiality and networking relationships that members forge, and she underscored NAJIT's continuing need to grow. "The bigger we are, the stronger we are. With more members, we gain more credibility." A recruitment drive offered a 20% discount for new members who joined before January 31. A lively discussion period followed the presentation. Several interpreters expressed an interest in holding similar meetings in their courthouses.

Unsolicited, the court administration was kind enough to provide coffee and pastry for the staff interpreters who gathered to discuss professional issues.

[The author, who organized the recruitment drive in his court, is a Spanish staff interpreter.]

CALENDAR OF EVENTS

June 21, 2008. Reno, Nevada. Translators and Interpreters Conference. Further your career as a translator, medical interpreter, or court interpreter. Earn 5 CEUs by the Nevada Supreme Court or 5 CIMCE credits by the Judicial Council of California Administrative Office of the Courts. For information: www.tmcce.edu/wdce/downloads/forms/conferences/translators/WDCETranslatorsConference.pdf

June 6 and August 8, 2008. Ohio Training Available. The Interpreter Services Program of the Ohio Supreme Court is offering introductory training. Space is still available on the following dates: Toledo (June 6, 2008) – 23 slots available. Dayton (August 8, 2008) – 10 slots available. Contact: Quincella Maeder, Program Assistant, 614-387-9404, maederq@sconet.state.oh.us

September 12-14, 2008. Nashville, TN. Sixth Annual Conference of the Tennessee Association of Professional Interpreters and Translators (TAPIT). Venue: Belmont University. For information: www.tapit.org

WEBSITES OF INTEREST

www.sharpbrains.com/

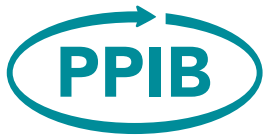
This site by a research and advisory firm whose mission is "to provide individuals, companies, and institutions with high-quality, research-based, information and guidance to navigate the cognitive and brain fitness market," includes links to products and services, but also to articles on cognitive science, brain exercises, stress management, resources, and a newsletter.

<http://www.lmp.ucla.edu/>

The UCLA Language Materials Project (LMP) is an on-line bibliographic database of teaching and learning materials for over 100 less-commonly taught languages, funded by the U.S. Department of Education. Of particular interest to language professionals are the featured language portals, which contain information specific to a language, including links to the LMP citations for the language, links to relevant external websites, and a language profile. The profile provides a map, a description of key dialects, grammatical features, and a brief linguistic history.

www.CourtEthics.org

This website compiled by a South Dakota court administrator on court ethics contains a link to interpreter codes of ethics.



THE NAJIT PROFESSIONAL LIABILITY INSURANCE PROGRAM

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NAJIT is excited to now offer comprehensive professional liability coverage designed for the interpreter, translator and transcription community, with special discounts for our members who spend most of their time providing services in legal and quasi-legal settings.

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*Perhaps of all the creations of man,
language is the most
astonishing.*

— Lytton Strachey



Federal Defenders of San Diego, Inc. Full-time Interpreter Position

Salary Range: \$83,723. – \$108,845.

Full benefits package, description upon request.

Administrative Office of the United States Courts Certification for Spanish/English proceedings required.

Duties include:

- Interpreting at all stages of a criminal defense case for clients, witnesses & attorneys
- Translating legal, governmental, colloquial, and professional documents
- Transcribing evidentiary recordings
- Testifying in court

Applicants should submit a cover letter with résumé including three references who may be contacted, by e-mail to Yolanda_France@fd.org, or by mail to:

Federal Defenders of San Diego, Inc.
Attn: Yolanda France, Chief Interpreter
225 Broadway, Ste. 900
San Diego, CA 92101

No telephone calls, please. Closing date: June 30, 2008

FEDERAL DEFENDERS OF SAN DIEGO, INC. IS AN EQUAL OPPORTUNITY EMPLOYER

MEMBERSHIP BENEFITS



NAJIT's activities are supported by membership dues and member donations. While there are no formal requirements for joining other than an interest in legal interpretation and/or translation, most of our members hold professional credentials such as federal and/or state court interpreter certification, national judiciary interpreter and translator certification by NAJIT, interpreter certification by RID (Registry of Interpreters for the Deaf), translator certification by ATA (American Translators Association), approval by the U.S. Department of State (for escort, seminar, or conference interpreting), and/or other credentialing by government agencies or international organizations.

Anyone who shares NAJIT's interests and objectives is welcome to join. Our membership categories are: Active, Associate, Corporate, Corporate Sponsor, Organizational, and Student. Please refer to our website for a full description of the membership categories and fees, www.najit.org.

The benefits of membership are many. When you join, you will enjoy, among other things:

- Full listing in NAJIT's *On-line Membership Directory*
- Subscription to *Proteus*, NAJIT's quarterly newsletter dedicated to court interpretation and legal translation
- Subscription to CyberNews, NAJIT's automatic e-mail updates on training opportunities, meetings, and other matters of professional interest
- NAJIT position papers on topics of critical interest to the profession
- Electronic access to NAJIT publications, including archived materials available at the Members' Portal
- Right to use the NAJIT logo on your business card
- Reduced-rates for language-specific interpreting and translation skills-building workshops, including preparation courses for certification tests
- Access to required continuing education sessions at reduced rates
- Membership registration rates for NAJIT conferences and for regional and local workshops
- Right to vote and hold office (active members only)



- Opportunities for committee membership and participation in NAJIT special projects
- Opportunity to chair committees and to be actively involved in NAJIT decision-making and long-term planning
- Participation in NAJIT's lively and informative members' listserve, where members share expertise, information, and resources. Through this e-mail discussion list, members exchange terminology, discuss transcription and translation standards, and confer on ethical and professional dilemmas and association matters.
- Active involvement in state and national legislative matters and issues affecting the community of interpreters and translators
- Opportunity to present at NAJIT conferences, workshops and training events
- Networking and collegial relationships
- Participation in a national and international network of professionals
- Access to employment opportunities posted on the website and in special bulletins

Dues may be deductible as an ordinary and necessary business expense to the extent permitted under the IRS Code.



PROTEUS

THE NEWSLETTER OF THE NATIONAL ASSOCIATION OF JUDICIARY INTERPRETERS AND TRANSLATORS

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APPLICATION FOR MEMBERSHIP

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Home tel: _____ Office tel: _____ Fax: _____
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Languages (if passive, prefix with P-) _____
Credentials: ☐ NJITCE: Spanish ☐ Federal Court certification: ☐ Haitian Creole ☐ Navajo ☐ Spanish
☐ State court certification: From which state(s)? _____
☐ ATA: What language combinations? _____
☐ U.S. Department of State: ☐ Consecutive ☐ Seminar ☐ Conference

Academic Credentials: Instructor at _____

I am an ☐ interpreter ☐ translator ☐ freelance instructor
I am applying for the following class of membership: ☐ Active ☐ Associate ☐ Student (NAJIT may validate applications for student membership)
☐ Corporate Sponsor ☐ Corporate ☐ Organizational (nonprofit)

(Corporate sponsors receive a longer descriptive listing on the website about their organization, one free quarter-page print ad in Proteus per year, and the grateful thanks of fellow members for their support of NAJIT and our profession.)

☐ Check here if you have ever been a NAJIT member. ☐ Check here if you do NOT wish to receive e-mails from NAJIT.
☐ Check here if you do NOT wish to be listed in the NAJIT on-line directory. (Student and associate members are not listed in the NAJIT on-line directory.)
☐ Check here if you do NOT wish to have your contact information made available to those offering information, products or services of potential interest to members.

I certify that the above information is correct and accurate to the best of my knowledge and belief. I agree to abide by the NAJIT Code of Ethics and Professional Responsibilities.

Applicant's signature _____ Date _____

PAYMENT SCHEDULE

	Active	Associate	Student	Corporate Sponsor	Corporate	Organizational (nonprofit)
Dues	\$105	\$85	\$40	\$300	\$160	\$115
Suggested voluntary contribution to SSTI	\$35	\$25	\$10	\$100	\$100	\$65
TOTAL	\$140	\$110	\$50	\$400	\$260	\$180

PAYMENT METHOD

☐ Check or Money Order (payable to NAJIT) ☐ MC ☐ VISA ☐ Amex

Card number

Credit card verification value _____ Expiration date ____ / ____

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Contributions or gifts to NAJIT are not deductible as charitable contributions for federal income tax purposes. However, dues payments may be deductible by members as ordinary and necessary business expenses to the extent permitted under IRS Code. Contributions to the Society for the Study of Translation and Interpretation (SSTI), a 501(c)3 educational organization, are fully tax-deductible to the extent allowed by law.

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Fax: 202-293-0495
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