

Language Access and Court Interpreters

Language Barriers Can Mute Justice



National Association of Judiciary
Interpreters & Translators



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According to the ABA, around 6000 Americans are arrested in foreign countries every year

75% of Americans do not speak a second language



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Video clip. To watch full video please visit <https://www.youtube.com/watch?v=CEyYrSZx-3Q>

International Laws Warranting the Right to an Interpreter

The Vienna Convention on Consular Relations

“Foreign nationals have the right to consular notification when detained and/or arrested in a country other than their country of nationality, assuming both the arresting country and their country of nationality have ratified the Convention.”

**Consular Personnel Is Not Allowed
To Serve As An Official Interpreter Or Translator**



The International Covenant of Civil and Political Rights

The right to a fair trial and to equal access to justice is a basic principle of international law.

Art. 14 guarantees the right to be informed of the charges brought against you, in a language that you can understand.



Linguistic Minorities in the United States

20% of U.S. Residents speak a language other than English at home.

For them too it would be impossible to actively participate in their defense and have a fair trial without an interpreter.





<https://www.youtube.com/watch?v=9JjWwaJuNWM>

Due Process and the right of LEP individuals to an interpreter



Fifth Amendment

Due Process



Sixth Amendment

The right to have effective counsel

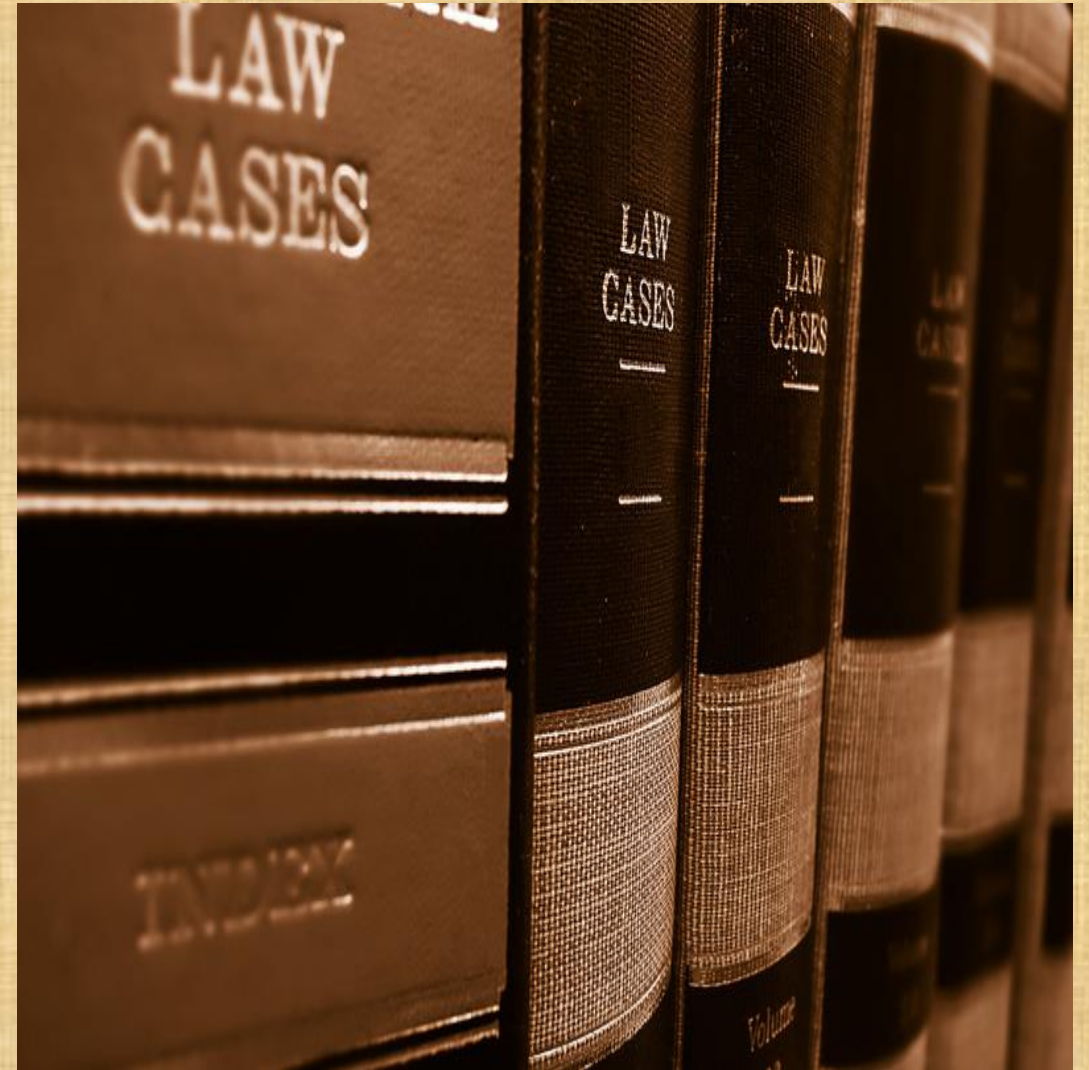


Fourteenth Amendment

Equal protection clause

Case Law

- United States Ex Rel. Negron v. State of New York, 310 F. Supp. 1304 (E.D.N.Y. 1970)
- United States v. Carrion, 488 F.2d 12, 14 (1st Cir. 1973).
- Ling v. State of Georgia, 300 Ga.App. 726, 686 S.E.2d 356 (2010)



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Video clip. To watch full video, please visit: <https://www.youtube.com/watch?v=XUbc34Gwooo>


U.S. Federal Laws Warranting the Right to an Interpreter

Title VI of the Civil Rights Act of 1964

"No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." —42 U.S.C. § 2000d.

Language barriers are a form of discrimination based on national origin.



A man with a mustache, wearing a dark suit, light blue shirt, and red tie, is shown from the chest up. He is looking slightly to the right of the camera with a neutral expression.

**1. The number
or proportion of
LEP persons in
the community**

**2. The frequency
of contact a
recipient has or
should have with
LEP persons**

The Court Interpreters Act of 1978

This initiative established the right of any individual involved in federal court proceedings to have a certified, or otherwise court interpreter, if his/her communication or comprehension capabilities are inhibited because of a language barrier or a hearing or speech impairment.

- 28 U.S. Code § 1827 - Interpreters in courts of the United States





Video clip. To watch full video please visit https://www.youtube.com/watch?time_continue=11&v=1_zDIH53HY&feature=emb_logo

Executive Order 13166

Signed on August 11, 2000. This initiative requires that federal agencies take “reasonable steps to provide meaningful access for LEP individuals to federally conducted programs and services,” recognizing the substantial link between language and national origin. This executive order imposed the **responsibility of creating language access plans** to entities that receive federal financial funding.





"No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."

Americans With Disabilities Act

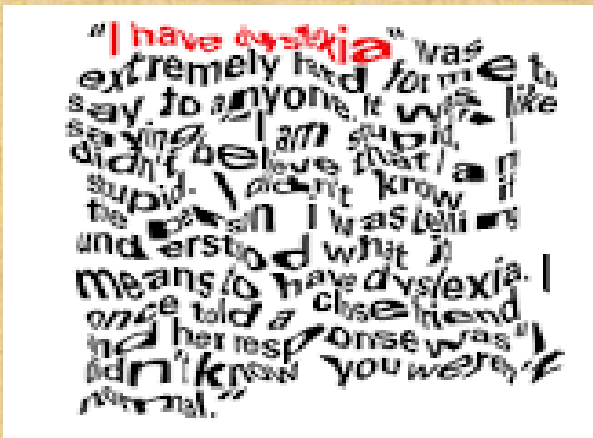


How to respond when this happens...

Video available at <https://www.youtube.com/watch?v=6cuXRgcq32g>

Discretionary reasons to assign a court interpreter

Dyslexia



Alzheimer's



Aphasia



Heavy accent



Federal Court Certified Interpreters Exam

This exam is comprised of two parts:

A written test administered in English and Spanish. The cut score is 75%.

An oral test administered in English and Spanish. The cut is 80 %.

Applicants must pass the written exam, before qualifying to take the oral exam.

Federal court certified interpreters are highly skilled professionals that undergo a testing process that only 4% of applicants pass every other year, as the two examinations are administered in alternate years.





Video clip. To watch full video please visit https://www.youtube.com/watch?time_continue=11&v=1_zDIH53HY&feature=emb_logo



Language Access in State Courts

To access language access programs by state, please visit:

- <https://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/Resources-for-Program-Managers/LAP-Map/Map.aspx>





Video clip. To watch full video please visit <https://www.youtube.com/watch?v=eNC7JGqBfdw>

State Court Certified Interpreters

For state members of the National Center for State Courts:

A written test administered in English. The cut score is 80%.

An oral test administered in twenty (20) languages. The cut score is 70 % for most states; some states have a tiered system.

Applicants must pass the written exam, before they can take the oral exam. It requires vast knowledge of court procedures, terminology in both language pairs, and highly trained professionals in the art of interpreting. The passing rate varies between 4% and 20%, depending on the state.



Video can be found at: <https://vimeo.com/170641119>

Benefits of using certified court interpreters



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- They are knowledgeable of both, the legal system of the country where the process is taking place, and the country of origin of the LEP
- They are well versed in legal terminology
- They have demonstrated mastery of the three modes of interpretation required in court settings through testing
- They are familiarized with court protocols
- They are officers of the court, and abide by a code of ethics that makes them accountable for mistakes





Video available at https://www.youtube.com/watch?v=LrnqrF_4pM4

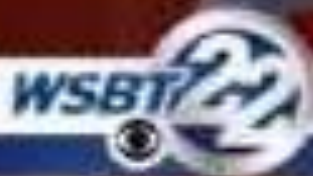
Risk of using unqualified interpreters

- They do not abide by a code of ethics, thus cannot be held accountable for errors in interpretation
- They might be bilingual individuals, but lack knowledge of court procedures and legal terminology
- They might not be familiarized with the modes of interpretation required in court settings
- They have not met the minimum standards of qualification required to interpret in court settings



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DEVELOPING STORY

CURTIS HILL

(R) ELKHART COUNTY PROSECUTOR

6:01 81°

Video available at <https://www.youtube.com/watch?v=P50gvrlLjxl>



The Right to An
Interpreter, Because
Justice is Blind, Not Mute.



Thank you

NAJIT Bench and Bar Committee 2019- 2020

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