

COURT INTERPRETERS – PROVIDING EQUAL ACCESS TO JUSTICE

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In the United States, many joke about the “legalese” spoken by attorneys navigating the judicial system on a daily basis. For the layperson, reading court documents and participating in the judicial process can be quite intimidating. Imagine, then, being a party to an action in a foreign country, where neither the language nor the court system is familiar. Unfortunately, for many involved in both civil and criminal cases, the language barrier and the obstacles that come with it are very much a reality when seeking justice in America’s legal system.

Equal Access to Justice

An individual’s ability to both participate in the legal process and have unfettered access to justice is fundamental to jurisprudence. While the U.S. Constitution does not explicitly provide for an individual’s right to an interpreter, the Fifth, Sixth and 14th Amendments have been construed to provide for an individual’s right to an interpreter in order to effectuate due process. Steven M. Kahaner, “The administration of justice in a multilingual society,” *Judicature* (Volume 92 No. 5, March-April 2009). Historically, case law has established such a right as well. *See e.g. Negron v. New York*, 434 F.2d 386 (2d Circuit 1970).

Title VI of the Civil Rights Act of 1964, provides that:

No person in the United States shall, on the grounds 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.





In 1978, Congress passed the Court Interpreters Act (28 USC § 1827), recognizing the constitutional right to an interpreter based on due process rights to a fair trial in federal court. On August 11, 2000, then-President Bill Clinton issued Executive Order 13166, which improved access to individuals with limited English proficiency. Exec. Order No. 13,166, 65 Fed. Reg. 159 (August 16, 2000). The Federal Rules of Evidence and Civil Procedure also address matters involving court interpreters and translators. *See e.g.* FRE 604, 702 and FRCP 28 (h).

As early as 1942, state courts have addressed the need for interpreters, especially with regards to an accused's right to confront adverse witnesses. *See State v. Vasquez*, 121 P.2d 903 (Utah 1942). Fast-forward to present day and various states have implemented court interpreter programs in order to assist with, and improve upon, the process by which individuals are able to access interpreters.

Interpreters in Nevada

Here in Nevada, between 1975 and 1976, District Court Judge John Mendoza secured a grant in order to start the state's court interpreter program. Today, this program is still in existence and provides individuals with interpretation and translation services in a variety of languages, including sign language, but mainly Spanish. Since 2002, Nevada law codifies the Court Interpreter Program in Sections 1.500-560 of the Nevada Revised Statutes (NRS).

The Nevada Court Interpreter Program has its own committee comprised of leaders from the state's legal community. In 2012, each state received funding in order to send representatives to a conference on issues facing persons of limited English proficiency. Nevada is ahead of quite a few states in many respects; however, as of March 2012, the following areas were noted as ones needing immediate attention:

1. Implementing a suggestion box to improve the program;
2. Developing a translation feature for the Eighth Judicial District Court website;
3. Creating bi-lingual self-help forms; and
4. Preparing a Language Access Plan (LAP).

As of March 2013, the only pending agenda item remaining from the 2012 conference is finalization of the LAP. The purpose of the LAP "...is to make reasonable efforts to eliminate or reduce Limited English Proficiency as a barrier to accessing Department of Justice programs or activities." Department of Justice Language Access Plan. March 2012. Retrieved from <http://www.justice.gov/open/language-access-plan.pdf>. Furthermore, the LAP is required of all states receiving federal funds.

District Court Judge Valorie Vega, who wrote the state legislation for the Court Interpreter Program, was one of the Nevada representatives at the 2012 conference. Nevada's LAP will be proposed to the state's Supreme Court. Its importance is two-fold: it will enhance equal access to justice and protect Nevada from Department of Justice lawsuits stemming from claims of discrimination. States are required to have a LAP if at least 5 percent or more of its population has bi-lingual needs in any one language; at this time, Spanish is the only language that meets this threshold in Nevada. This means that legal materials must be provided in both English and Spanish.

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Utilizing an Interpreter

To be clear, interpreting and translating are not one and the same; the two terms have fundamentally different meanings. Interpreting is a verbal rendering of communication from a source language to a target language; translating is a rendering of the communication in written form.

Generally, when utilizing an interpreter, it is important to be conscious of practical matters, in order for the process to go as smoothly as possible. Preparing for trial, for example, comes with its own set of frustrations, but when a court interpreter is factored in, things can become even more complicated.

The following is a list of recommendations to be implemented when utilizing an interpreter:

“Given the large number of people in the U.S. with limited English proficiency, foreign language interpreters are essential to assuring full access by all to the justice system.”

– Steven M. Kahaner, “The administration of justice in a multilingual society,”
Judicature
(Volume 92 No. 5, March-April 2009)

Clarify the record when encountering an inaccurate interpretation.

Sometimes a multi-lingual attorney may be fluent in the language being interpreted. If such an attorney is aware that a statement has not been properly interpreted, that attorney has an affirmative obligation to clarify the record.

Speak clearly.

While this seems obvious, some attorneys speak very quickly or have a tendency to mumble. It is imperative that the interpreter be able to hear exactly what counsel is saying, in order to convey that information to the individual with limited English proficiency.

Work with the interpreter.

The interpreter should be able to ask the attorney to clarify the meaning or context of a word and/or phrase. This is necessary in order to avoid ambiguities in interpretation.

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Further, keep in mind that, depending on the language, it may take twice as many words to convey the same message. Sometimes, depending on the source and target languages, the interpreter may have to explain a concept (e.g. the concept of a Motion for Summary Judgment may not exist in a foreign country; this means that a direct translation will not be possible).

Be prepared.

It is always a good idea to communicate with the interpreter before the court date in order to establish parameters, manage expectations and arm the individual with the information necessary for mitigating potential problems. It is also helpful for the interpreter to be aware of the nationality and cultural background of the person with limited English proficiency; even when speaking the same language, dialects may vary from country to country. Finally, the interpreter should be informed in advance of any specialized areas to be encountered during a session (e.g. specialized terms associated with medicine, accounting, firearms/ballistics, DNA analysis, computer technology, etc.).

Speak in the first person.

Many attorneys try to communicate through the interpreter in the third person; always speak as though the communication is taking place directly with the limited English proficiency individual. This makes the interpreting process run more smoothly.

Be courteous to opposing counsel.

If a client requires an interpreter for an upcoming deposition, for example, let the deposing attorney know. The issue must be explicitly raised, as one cannot assume that the deposing attorney knows the client requires an interpreter. ■

For more information about court interpreters in Nevada, please visit the Nevada Supreme Court website at www.nevadajudiciary.us.

• SYLVIA TISCAREÑO'S biography is available on page 14.