

Interpreting Resource Center for the Justice System and Other Public Agencies

A Concept Paper

by

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I Problem overview

Demographic trends suggest that the American justice system and other public service agencies face mounting difficulties in meeting the challenges of growing ethnic and linguistic diversity. The 2000 Census reported that 47 million people – 18 percent of the population older than 5 - spoke a language other than English at home, an increase of 15 million since 1990. This 32 percent increase between 1990 and 2000 was preceded by a 45 percent increase between 1980 and 1990.¹ These trends undoubtedly will continue well into the 21st Century.

The United States Census Bureau prints its census forms in five languages in addition to English (Spanish, Korean, Chinese, Vietnamese, Tagalog), and well over 150 languages are spoken in the U. S.² Many of these languages are little studied or taught in this country, and are represented by small and/or geographically limited populations of speakers. As a result, recent years have seen both a dramatic increase in the incidence of problems related to language access in the justice system and other public service contexts, as well as enhanced awareness to the rights of individuals to whom language access is curtailed or denied. Numerous state commissions, research studies and media investigations have concluded that the plight of non-English speakers in the state courts is compelling and requires immediate attention.³ Today government agencies receiving federal funds are also responsible under both Title VI of the Civil Rights Act and Executive Order 13166 to take reasonable steps to provide meaningful access to important services and information for LEP individuals. Specifically, they are required to assess the extent of their limited English proficient populations (LEP), develop plans for providing services to LEPs, and deliver those services at levels consistent with available resources.

¹ U.S. Bureau of the Census, Language Use and English Ability, Persons 5 Years and Over, by State: 2000 Census of Population, at C2KBR-29 (2000), *available at* <http://www.census.gov/prod/2003pubs/c2kbr-29.pdf> (last visited Dec. 31, 2003).

² The Administrative Office of the United States Courts reported 77 different named languages used in the federal courts in FY 2003, plus 375 events in “other” languages.

³ Among the most recent and thorough news articles is Peter Aronson’s feature article, “Subject to Interpretation in the March 22, 2004 edition of the *National Law Journal*

II. Impact of the problem

The increasing LEP population impacts the justice system and other public services agencies' in

two key areas:

1. Operational functioning and,
2. Access of the non-English-speaking individuals to justice and equal treatment.

The phrase "justice system and other public service agencies" is used to include every area of responsibility of all agencies, state and federal:

- the "third branch" courts: federal district, state general and limited jurisdiction courts
- law enforcement: local and state police, FBI, DEA, Secret Service, INS, etc.;
- the community of federal and state prosecutors and defense attorneys;
- state and federal executive branch administrative law courts, e.g. Executive Office of Immigration Review (EOIR); Social Security Administration; workman's compensation, state child support hearing officers, etc.

While the emphasis above is on the justice system, policy should not overlook the executive branch social service and health service agencies, hospitals and health care generally.

Operational functioning

In terms of effective use of resources in the justice system, case development and prosecution often is hampered by the scarcity of competent interpreters at every stage: crime scene interviews, investigation, filing of initial motions, deposing of witnesses, plea-bargaining, conduct of court and jury trials. At virtually any point in the legal process, the system can be brought to a standstill, at a high cost in wasted time of officers of the court, witnesses, and others, especially when many areas of the justice system are already overwhelmed by a volume of matters. Worse, investigations may go astray or court judgments be invalidated because interpreters are not competent or not used when they should be.⁴

Access to justice

Millions of non-English-speaking American citizens and residents are unable to comprehend and fully participate in court proceedings and other public services. Numerous state commissions, research studies and media investigations have concluded that the plight of non-English speakers

⁴ For a very recent review of cases, see: Judge Lynn W. Davis, et. al., "The Changing Face of Justice in America: A Survey of Recent Cases Involving Courtroom Interpretation", *Harvard Latino Law Review* (in press, 2004).

in the state courts is compelling and requires immediate attention. "Improve interpreter services" has been a central recurring theme in published studies of commissions and task forces across the country charged with evaluating the extent of racial and ethnic bias in our courts. *The National Law Journal* (March 22, 2004) reports on several cases where well-intentioned but untrained volunteers "unknowingly become part of a nationwide problem: a shortage of qualified interpreters ... nationwide, the impact ranges from delays to grave injustices."⁵ The problem is so acute, and misunderstandings about competency so grave, that in some locations jail inmates are used to interpret for other inmates, and battered women in cases of domestic abuse.

III. Scarcity of interpreters: extraordinary skills are required!

Interpreting in any setting is difficult and demands specialized cognitive and motor skills in addition to an extraordinary command of two languages, one that goes beyond that which most people acquire in one native language. In particular, court interpretation is a highly specialized form of interpreting that cannot be effectively performed without commensurate specialized training and skills. Court interpreters must be able to translate with exactitude while accurately reflecting a speaker's nuances and level of formality. The interpretation cannot be a summary or merely convey the gist of the original source's message. Moreover, they must be able to do this in each of three modalities: simultaneous interpreting, consecutive interpreting, or sight translating documents.

In addition to highly specialized and demanding interpretation skills, interpreters must adhere to strict codes of appropriate behavior and at times face unusual problems of law and ethics. For example, interpreters are often asked for legal or behavioral advice, which they must decline to give, or they may overhear private conversations between foreign language speaking defendants during private moments, that contain evidence, which they are required to ignore.

Thus the extraordinary knowledge, judgment and skills required for interpreting are naturally rare. Like any hard-to-acquire commodity (in this case, language proficiency and

⁵Aronson, P. (2004) Subject to Interpretation: Many state courts face a shortage of interpreters, *National Law Journal* Vol. 26 (no29).

special cognitive abilities required for interpreting), market factors strongly influence the availability of this resource:

- Recognition of the need for and value of the interpreters has been absent; thus there has been no market demand and no policy associated with resource development. This has resulted in a shortage or complete absence of qualified interpreters and little incentive for potentially qualified people to become qualified.

- The market for interpreters is not focused: each agency has its own home-grown system and “list” of (unqualified) people it calls upon. And, public agencies do not have enough demand in different languages to offer regular or even significant irregular employment to qualified people. When public service agencies *do* need an interpreter in a particular language, the need is acute. When an acute situation develops the agency may be forced to go to private, for-profit firms to provide interpreters, many of whom are unqualified. At this stage it is a “take it or leave it” seller’s market; the public agency is forced to accept unqualified individuals (often unknowingly) or does not provide the service at all, both of which result in unfairness or miscarriages of justice.

- Because each justice system agency or other public service creates its “list” and work assignments independently, there is no coherent sense of how often interpreters in specific languages are needed in a given geographic area, how much work there is altogether, and how many different people are doing it. While it is conceivable that there might be a collective demand for *one* full-time *qualified* interpreter among all of the public service agencies in a geographic area, current practice instead encourages use of many *unqualified* bilingual people, none of whom can make a living at the work
- Most rational individuals will not commit the time (and expense) required for education and practice to be a qualified interpreter who can pass a performance-based certification test. But with a reasonable assurance of well-compensated employment (interpreters should make *at least* as much money as court reporters), it would be worth their while to do so.
- At some level of scale (the size will vary with the language and the location), there is enough work for one or more skilled individuals to make a living providing interpreting for public service agencies, provided that the agencies know how to get the service and all or most of them use a central referral source.

IV. The Solution: Resource and Service Sharing

In the publication *Court Interpretation: Model Guides for Policy and Practice in the State Courts* (National Center for State Courts, 1995), William Hewitt examined language interpretation problems and responses at several levels -- courtroom, local, state, and national. Hewitt identified strategies for transforming a bewildering array of problems into an action agenda of manageable proportion, where the cost to improve quality of interpreter services is an overarching concern. The central theme of *Model Guides* is the need to achieve economies of scale in program responses through coordinated efforts of multiple agencies, where no single agency has enough regular demand for services to solve the problems on its own. Interpreting services lend themselves especially well to resource and service sharing locally, among different agencies, regionally, statewide, interstate, and, where appropriate, across courts and other government agencies of state and federal jurisdiction.

Resource sharing among the state courts has been achieved through the Consortium for State Court Interpreter Certification (Consortium), an innovative program with 30 member states that achieved finalist status in 2003 in the Harvard Kennedy School of Government *Innovations in American Government Award Program*. The Consortium provides an affordable way for state court systems to introduce testing and standards into the process of qualifying interpreters through performance testing. The logic behind and lessons learned from the Consortium can be replicated at the next important level: encouraging expansion of the pool of interpreters who can meet those standards of competency. The vehicle through which to accomplish this is creation of Public Service Interpreting Centers (PSIRC) in local and regional service areas, each of which can be linked to others to maximize demand for work and access to service.

The objective of and rationale for the proposed program is to pool the *demand* for interpreters into a single coherent system that can improve the quality of service, increase the availability of interpreters in more languages, and increase the efficiency of locating and scheduling interpreters. The system will be supported by the combined resources of many organizations under standardized cost and fee structures.

V. Integration with telephone interpreting

There is synergy between the goal of increasing work for qualified interpreters and the goal of making qualified interpreters conveniently available in as many languages as possible. Given the necessity to overcome constraints related to resource distribution that relate to availability (qualified interpreters will reside where demands are greatest), the PSIRC program must establish an over-the-phone interpreting capacity in a later stage of development.⁶ Depending on the need and the resources of the users, over-the-phone interpreting can be provided in the consecutive mode of interpreting (less efficient) or in the simultaneous (more efficient). To supply simultaneous interpreting service enhanced training and equipment must be provided to both the interpreters and the users.

VI. Building a network of PSIRCS

A network of regional PSIRCS linked together through shared databases (and possibly scheduling software) will quickly compound the numbers of qualified interpreters in the resource pool. Depending on the nature of the service required, interpreters that are not available in one region can be quickly located in another region and scheduled for over-the-phone service or in-person service following travel, depending on the nature of the case and the resources available.

VII. Action plan outline

Following is a summary of ingredients likely to be required to create a local PSIRC.

- Identify a leader: A respected individual with sufficiently high-ranking status is required to bring together decision makers among the stake holding justice system and other publics service agencies.
- Convene a stakeholders group: An orientation meeting should be held to clarify the nature of the problem, assess the need for the service and explore feasibility issues. The latter include the interest and will of decision makers among the stakeholders. Facilitation for such a meeting should include an expert in language interpreting needs and programs in the justice system. Agenda segments or topics should include:

- Consciousness raising/ education about the issue
- Reports/discussion among stakeholders regarding:

⁶ While there are commercial telephone interpreting services available, they are generally not appropriate for court and justice system interpreting. Full discussion of the subject is beyond the scope of this paper.

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- Overview of each agency's use/need for language resources
- Sketch of available data
- Information about the existing resources and the recruitment/scheduling process of each agency
- Financial issues, including degree of flexibility to engage in innovative arrangements
- Consideration of "downsides" of central services, if any (e.g., need to accept cooperative principles for scheduling/sharing interpreters)

Meeting Objective: identify organizations that wish to continue participation

- Secure start up funding
- Identify pilot project participants
- Determine facility requirements and equipment needs (space requirements should be minimal)
- Hire project manager and determine required consulting assistance, if any
 - At least one highly-trained interpreter will be needed initially to conduct applicant screening and evaluation
- Reconvene stakeholders and calculate/negotiate principles regarding service fees and scheduling: draft agreement key points
- Write draft agreements, review, and finalize
- Secure agreement ratification from each participant
- Establish start-date goal
- Build interpreter resource list and standard for evaluation of qualifications (possibly affiliate with Consortium for State Court Interpreter Certification)
- Create on-line scheduling system
- Begin service phase
- Expand resource list and expand service
- Establish telephone interpreting capacity (identify sources and agreements with interpreters)

Guiding principles:

Initial implementation: start small, expand incrementally, don't burn bridges, and allow program to grow based on successful service.

Recruiting qualified interpreters: link education/training opportunities and certification testing to specific job opportunities – network outward until threshold for substantial employment/career opportunity can be achieved

Financial goal: create a service that will be maintained through the fees charged for service, and keep administrative overhead to a minimum