

The Language Conundrum - Access to Justice
A talk with Judge Raja Rajeswari

I. Linguistic Diversity in the Courtroom and Importance of Language Access

- A. By some reports, over 350 languages are spoken in the United States.
 - 1. The linguistic diversity is partly attributed to an increase in foreign-born immigrant population.
 - 2. That means a more diverse group of people are coming into contact with the court system with varying levels of English proficiency.
- B. Access to language equals access to justice.
 - 1. When litigants are unable to adequately communicate, they are dehumanized and disempowered.
 - 2. An already seemingly complicated judicial system may be completely inaccessible to limited English proficient (LEP) persons.
 - 3. Access to language is important to maintain the legitimacy of the judicial system.
 - 4. *United States ex. Rel. Negrón v. State of New York*¹
 - a. Rogelio Negrón, a Spanish-speaking Puerto Rican man, was sentenced to twenty years to life for second-degree murder. Negrón spoke only Spanish and was not provided an interpreter during his trial. 12 of the 14 state's witnesses testified in English and 2 testified in Spanish. A court appointed interpreter was employed only when the Spanish speaking witnesses were testifying, for the benefit of the court and the jury. The interpreter did not simultaneously interpret the English-speaking witnesses for the defendant.
 - b. The court found a violation of his Sixth Amendment rights to confrontation, to cross-examine his witnesses, and effective assistance of counsel, and that he did not waive his right by failing to affirmatively assert that right.
- C. Without adequate language access, LEP persons face the following issues:
 - 1. Inability to navigate the court system;
 - 2. Inability to navigate the court house;
 - 3. Systematic delays;
 - 4. Inability to meaningfully engage in negotiations; and
 - 5. Inability to communicate with their attorneys.
- D. Systematic delays

¹ U.S. ex rel. Negrón v. New York, 434 F.2d 386 (2nd Cir. 1970).
<http://law.justia.com/cases/federal/district-courts/FSupp/310/1304/1382185/>
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1. As a result of the insufficient number of court interpreters, LEP persons are more likely to encounter delays and repeated adjournments.
 2. When there are insufficient numbers of court interpreters, court staff may encourage litigants to proceed in lieu of delaying the proceedings.
- E. Negotiations and attorney-client communications
1. When communications occur outside of the courtroom, LEP persons are disadvantaged.
 2. Lack of interpreters can be especially problematic for court appointed interpreters who may not have access to in-person interpreters.
- F. Importance of accurate and competent interpretation
1. Without accurate interpretation, even an LEP with an interpreter will not have meaningful representation.
 2. Interpreter is a high skill job. Interpreting requires a high level of proficiency in English and the second language. High level proficiency includes legal jargon, expressions, and the nuances of both languages.

II. Federal and State Requirements

- A. Federal laws
1. There is general agreement among the courts that there is a constitutional right to language access services in criminal proceedings under the Fifth, Sixth, and Fourteenth Amendments.
 2. Title VI prohibits states that receive federal assistance from discriminating on the basis of race, color, or national origin in all court services, including civil and administrative proceedings.² The Supreme Court has found that discrimination on the basis of national origin includes on the basis of language.³
 3. Title VI requires that interpreters be provided in criminal and civil matter for which LEP persons must or may be present. They shall not be charged for the services of the interpreter. The state must ensure that the interpreter is competent. Judges and court personnel must know the requirements and effectively use interpretation services.⁴
- B. State services
1. Various state courts have held that there is also a constitutional right to language access services in cases involving small claims, child welfare, domestic violence, employment, and landlord-tenant issues.
 2. Individual states create their own systems and guidelines for providing language access services.

² 42 U.S.C. § 2000d

³ *Lau v. Nichols*, 414 U.S. 563 (1974).

⁴ 67 Fed. Reg. 41461, 41462, 41471, 41472

3. States provide language access services via interpretation, translation, and bilingual services.
 4. Interpretation services may be rendered using in-person interpreters, video-remote or telephonic interpretation.
 5. Meaningful language access services generally include not only interpretation services inside the courtroom but also signs in the courtroom, websites, forms, interacting with court officials and clerks, and other administrative procedures.
- C. E.g. New York court rules
1. New York requires that interpreters be provided for limited English proficiency litigants in all cases, civil and criminal.⁵
 2. Requires that Court interpreters must be certified to provide interpretation.

III. Programs and Best Practices

- A. Credentialing and training interpreters
1. Ethical standards are important aspects of effective programs.
 - a. Interpreters must avoid providing advice.
 - b. Must remain impartial and avoid expressing bias.
 2. Cultural competence
 - a. LEP persons
- B. Federal court interpreters
1. Certified Interpreters
 - a. Passed the certification exam of the Administrative Office, which includes both written and oral examinations.
 - b. The interpreter must demonstrate that she can exercise sight translation, consecutive interpreting, and simultaneous interpreting.
 2. Professionally Qualified Interpreters
 - a. Interpreters may become professionally qualified in all languages with the exception of Spanish (a language reserved for certified interpreters).
 - b. There are three different criteria for an interpreter to become professionally qualified, and they must be eligible in at least one:
 - i. Pass the U.S Department of State conference or seminar test.
 - ii. Pass the United Nations interpreter test.
 - iii. Currently serve as a good standing member of either the Association Internationale des Interprètes de Conférence (AIIC) or the American Association of Language Specialists (TAALS).
 3. Language Skilled/*Ad Hoc* Interpreters
 - a. If an interpreter is not certified and is not professionally qualified but can demonstrate her ability to interpret court proceedings from English

⁵ Uniform Rules for N.Y.S. Trial Courts § 217.1 Obligation to appoint interpreter in court proceedings in the trial courts. § 217.2 Provision of interpreting services in clerk's office.

to a target language (and vice versa), to the court's satisfaction, she can become an *ad hoc* interpreter.

C. Qualifications requirements vary state by state.

1. E.g. In New York

- a. New York State provides interpreters in over 100 languages.
- b. When a court does not have an interpreter on staff, it is able to connect to an interpreter off the Unified Court System Registry of Per Diem Interpreters.
- c. Members of the UCS Registry of Per Diem Interpreters must undergo written and oral examinations and screening measures in both English and one of 22 accepted foreign languages.⁶
 - i. In written exams, candidates are required to demonstrate proficiency in basic legal terminology.
 - ii. During oral exams, candidates must demonstrate proficiency in sight translation, consecutive interpretation, and both one-voice and two-voice simultaneous interpretation.
- d. If a language is not one of the 22 listed, the candidate must provide evidence of proficiency through academic and professional credentials.
- e. Interpreters must be impartial and accurate. If they fail to do so, they may be removed from the UCS Registry.

D. Best practices

1. Language access plan

- a. At minimum, courts should provide appropriate language access services to LEP persons with in all court services with public contact, including court-managed offices, operations, and programs.
- b. Create a written plan that will outline available services and the procedures and processes of obtaining the services.
- c. Create measures to increase court interpreters in not only the common languages but also in other languages for which demand woefully do not meet supply (e.g. Urdu, Hindi, and Arabic).

2. Costs

- a. Providing qualified interpreter assistance at no cost to the parties serves the interests of all involved.
- b. An LEP person who must pay for an interpreter bears a greater financial burden to pursue a case than other individuals.
- c. Charging for interpreting services can also discourage its use, and LEP persons may try to forge ahead in court without being able to understand and communicate with the court.

3. Tracking and scheduling

⁶ New York State Interpreter Qualifications:
<https://www.nycourts.gov/courtinterpreter/faqs.shtml#1>

- a. Courts can track and publish the languages spoken by litigants in order to craft a system that addresses the needs of the community.
- a. Interpreter scheduling – create a centralized system where litigants or can schedule an interpreter in advance of a court appearance, both online and by telephone, to minimize undue delays.