

Working Effectively with Limited English Proficient Clients: How Good Interpreter and Translation Services Can Improve Our Advocacy for Clients

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Recently our office received a call from a couple who were sheltering a young Muslim girl. She had been sold into marriage at the age of 14 in her home country, then brought to the U.S. and forced to live with an abusive husband who beat and raped her repeatedly. While she had tried to escape this situation a number of times in the past two years, on each occasion her reports of abuse were denied by the abuser's family members, who inserted themselves into the investigation by police and child protective services and acted as "interpreters," providing false information about the girl and the abuse. So effective was their control that the information they provided had led to the case being closed until she was able to contact our office for legal services.

At the Northwest Justice Project, from her very first interview, she has been provided with a neutral, professional, qualified interpreter. Unraveling the misunderstanding caused by lack of interpreters has taken days, and reveals the vulnerability of Limited-English Proficient (LEP)¹ individuals, especially those who are children, when careful procedures to provide interpreters are not in place. While this case is a poignant reminder of how much remains to be done, it is also a testament to the role that lawyers can play in representing individuals and advocating for improved services to LEP clients in a systemic way. As part of this advocacy, law offices must themselves establish good procedures for LEP services. This article will provide an overview of how the Northwest Justice Project, a legal services provider in Washington State, created its LEP policy. Next it will discuss some practical tips to consider in developing a system to provide interpreters and translators, and finally it will discuss how work on language access can be a part of a larger advocacy effort to improve services throughout the legal system.

Legal Service Providers and LEP Clients in Washington State

The Northwest Justice Project (NJP) is a not-for-profit statewide organization that provides free civil legal services to low-income people from thirteen offices and three satellite locations throughout the state of Washington.² Each year, NJP assists more than 18,000 people in need of legal assistance. Principally funded through the national Legal Services Corporation (LSC) and the Washington State Office of Civil Legal Aid, NJP works in partnership with the Washington State Alliance for Equal Justice to serve its diverse client community. The organization is committed to ensuring that its services are fully accessible to persons with limited-English proficiency and provides interpreters and translators

when needed. Many NJP staff attorneys and legal secretaries are bilingual, particularly in Eastern Washington where the majority of the LEP population speaks Spanish.

While all of the attorneys in the offices of the Northwest Justice Project serve LEP clients, there are several special projects dedicated to improving access for this population. The NJP Seattle office includes one project coordinator, thirteen attorneys and six support staff who are divided into units which focus on the following legal areas: family law; public assistance; housing; consumer law; education; and immigration. The office includes three special projects dedicated to serving immigrants. One of these is the Refugee and Immigrant Assistance Project (RIAP), a University of Washington Law School clinic, which was started in 1994 as a collaboration between Evergreen Legal Services (NJP's predecessor) and the law school to increase services and outreach to the LEP population. The clinic provides law students with experience working with interpreters to represent immigrant clients on public benefits and immigration issues. In addition to RIAP, two of the family law attorneys employed in the Seattle office, funded by the Office of Violence Against Women, work closely with two community agencies serving immigrants—the Refugee Women's Alliance and Consejo Counseling and Referral Services. The third project is the Cross Cultural Family Law Clinic, a collaboration with the King County Bar Association, which works with pro bono attorneys to provide emergency legal assistance in family law cases.

The rationale for having special programs to serve LEP clients is well supported by local and state demographics. According to the 2006 census data, 18.4% of the residents of King County speak a language other than English at home.³ While the majority of LEP clients in King County speak Spanish, Chinese, Vietnamese, Tagalog, Korean, Japanese, German and Russian,⁴ King County Superior Court most recently reports that the number of languages represented in their courts has surpassed 120. While King County's LEP population is varied, elsewhere in the state, particularly on the east side, Spanish predominates, with some towns having more than 70% of the population who speak Spanish. As a whole, approximately 16% of Washington's population primarily speaks a language other than English.⁵

Washington Advocates Developed Expertise in Language Access by Advocating for LEP Clients

Development of a good policy to serve LEP clients in our law offices came as a result of advocacy on their behalf. Lawyers in Washington State were some of the first to take advantage of the fact that Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of national origin and requires those receiving funding from the federal government to take reasonable steps to ensure meaningful access to their programs, services, and information.⁶ In defining the scope of Title VI, the U.S. Supreme Court held that one type of

national origin discrimination is discrimination based on a person's inability to speak, read, write, or understand English.⁷ Although this prohibition did not extend to federal agencies at the time, on August 11, 2000, President Clinton signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." The order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them⁸.

As a result of active legal and political advocacy over the last 30 years, several state agencies and non-profits in Washington have developed comparatively advanced internal policies to improve service to LEP communities. The description below is drawn from NJP's LEP policy but also includes several additions that are currently under discussion. Whether you are a lawyer working at a private firm, a solo practitioner, or a public interest attorney working in civil legal aid or criminal defense, the knowledge of how to work effectively with LEP clients is essential for good practice.⁹

The Basic Elements of an LEP Policy for Lawyers.

To be effective, a law firm and its staff must identify barriers to representation of individual clients on the basis of language and affirmatively take steps to overcome them. In order to do this the organization must implement five basic processes: identify clients; hire bilingual staff; contract with competent interpreters; contract with competent translators; and train and monitor all staff on policy implementation.

- 1. Identification of LEP clients.** Limited-English proficient clients must be adequately identified and be able to obtain and receive legal representation through their native language. An LEP client is someone who is not sufficiently able to speak and/or read English such that he or she cannot receive effective legal representation through communication only in English. When it is apparent a client's first language is other than English, the client should be asked if he or she speaks another language at home, and if so, the client should be asked to identify the language. The client should also be asked how well they speak or understand English. The non-English language identified must be recorded in the case management system. The client should be offered the opportunity to communicate through the language in which they are most proficient. It is helpful to post in your office waiting room a sign that interpreters are available. Such signs are available in English, American Sign Language (pictures of hands making the sign), and the most common languages in your area. Similar information should be included in all brochures describing your office services and in recorded phone messages.
- 2. Hiring of Bilingual Staff.** Where possible, law offices need to hire local office staff able to communicate in the predominant non-English languages of

the LEP populations in the community served. It is important to recognize the high level of skill needed for interpreting; staff members who are asked to provide interpretation and language translation services should be given opportunities to be trained in interpreting, improve techniques, obtain or maintain training and certification, or otherwise refresh language skills that may be in need of improvement.

- 3. Contracting with Competent Interpreters.** Where multi-lingual staff resources are not available, the lawyers should communicate with LEP clients through the use of interpreters. To do this, the lawyers must rely on professional interpreters. As an example, the Northwest Justice Project relies on the fact that interpreters and translators must abide by the Washington State Rules of Professional Conduct for Interpreters.¹⁰ To maintain the integrity of the organization, any interpreter or translator hired by NJP must either enter into a Professional Conduct Agreement which is part of the NJP LEP Handbook or have signed a similar agreement to which they are bound as a condition of their employment by the interpretation service with which NJP contracts for language assistance services.

The Organization Must Ensure that the Interpreter is Competent. Because most interviews for legal assistance require exact and careful communication and the preservation of client confidences, lawyers should not use family members and friends as interpreters in working with clients. Such individuals are not trained as interpreters and their presence also compromises attorney client privilege. It is often best to explain to family or friends that you are happy to hear what information they have to give, but must dismiss them for part of the interview to insure attorney client privilege is maintained. If the client then wants you to tell family members what steps you are advising, you can do so at the end of the interview.

Since interpreting is a skill requiring fluency in at least two languages and an ability to remember what is being said, an interpreter's qualifications are important.¹¹ It is best for the lawyer or other staff to make adequate inquiry as to the interpreter's qualifications prior to an initial use of an interpreter in client matters. In addition, staff should inquire whether the interpreter knows the client and whether the interpreter lives in the client's community. If the interpreter or the client indicates they know the other person, the client must affirmatively consent to the use of the particular interpreter. The client's consent should be reflected in the case record. Most importantly, if the staff member does not believe the interpreter is competent, or if the client seems uncomfortable with the interpreter, the lawyer should determine if the problem is correctable or identify another interpreter for future interactions.

Staff Must Ensure that Information is Kept Confidential. It is crucial to inform clients that interpreters are strictly bound by the rules of confidentiality. Absent this assurance your client may fail to disclose important information in

his or her case, and the consequences of this can be disastrous.¹² Be sure to explain what confidentiality means, often the statement “No information about your case, not even your name, will be shared with any other person” gives a sense of how secure the information should be. It can also be very helpful to tell each client that all interpreters have signed an agreement of non-disclosure.¹³

4. Contracting with Competent Translators. Whether translating court documents, client correspondence or community education brochures and materials, good translation is critical. Like interpreting, translation is a skill that requires training and expertise. For instance, when materials do not use the same word consistently, confusion about the advice given is likely to occur. Recently a Northwest Justice Project staff attorney worked in a committee set up by the State Administrative Office of the Courts to develop a protocol to ensure high standards. The protocol requires:

- Certification by a national translation organization or academic program; *or*, five years of legal translation work experience.
- Translators must provide five work references and five samples.
- Certification or Registration as a Court Interpreter is preferable but not required.
- The primary translator will use an editor, qualified as a translator, to review the work product for accuracy and completeness.
- One additional reviewer, qualified as a translator, shall review the work product for accuracy and completeness. If an editor is not utilized then 2 additional reviewers shall review the document for accuracy and completeness.
- A glossary of terms used must accompany each completed assignment. Translators will be required to use the master glossary that is developed.
- Translators must adhere to the National Association of Judiciary Interpreters and Translator’s code of ethics. (www.najit.org)

This protocol is currently being used for translation of court documents, and NJP is discussing how to adapt it for use within legal services generally. For all documents, if they are to be submitted to a court or other tribunal, the document should include a certification that demonstrates both the translation and the apparent understanding of the person for whom the document was translated to the content of the document.¹⁴

5. Training and Implementation. For a policy to be effective, training needs to be provided in each law office and incorporated into new employee orientation. Training should include the requirements of this policy, information on the LEP populations served, the resources to meet the language assistance needs of clients, how to work effectively with an interpreter, a description of translated materials available¹⁵ and instructions

on how to obtain language assistance services telephonically when regular interpreters are not available due to emergency or prior commitments. Cultural competence is also critical to ensure good communication and should be included as a separate topic in addition to training on working with interpreters and translators.

Implementing the Policy: Some Tips for Training

Once a law office has adopted a policy it is essential to train staff on the nuts and bolts of how to work with interpreters. Many resources exist for this and some can be accessed on the web by going to such sites as www.lep.gov. Training should include instructing all staff who work with clients on how to arrange for and use interpretation and translation services, how to evaluate such services, and how best to facilitate client communication through interpreters. At the Northwest Justice Project there is an LEP Handbook to implement the policy, which is available in each of the local offices and on its internal website. The following tips are adapted from the NJP handbook and can be useful in training staff.

Define your terms. *Interpreting* is the term used to refer to oral interpretation of one language into another; *translating* is the term used for written interpretation. When working with an interpreter/translator, it is important to keep in mind that good interpreting is a highly skilled activity that differs greatly from the informal kinds of interpreting found in conversations between two people that do not speak the same language.

Informal interpreting often includes summaries, additions/deletions of material, and advocacy by the interpreter on behalf of one of the parties. It does not involve any of the protections of confidentiality.

Formal interpreting usually consists of a complete interpretation of all communication (including non-verbal) between two parties by a trained interpreter who acts purely as a confidential conduit of information.

Arrange for interpreters. Before proceeding further, staff should inquire whether the interpreter knows the client personally, whether the interpreter has interpreted for the client before, and if so, whether the client and interpreter both agree that the interpreting can proceed without violating the rules of professional conduct. Sometimes, interpreters are familiar with the client because they have interpreted for them in another setting, such as a doctor's office. In this case, clients may actually prefer someone they already know. On the other hand, clients who know the interpreter as a neighbor or acquaintance at their church or apartment building may be unwilling to provide confidential information and may wish to ask for another interpreter. Keep in mind that telephonic interpreter services companies may potentially draw interpreters from around the country, including in your town or city, and if a community is small, clients may know the

interpreter. Finally, assure the client that their identity and information are completely confidential. Be aware that in cases of domestic violence or human trafficking, considerations of safety make it especially important to ensure that interpreters keep confidential *all* information regarding the client's identity, whereabouts etc., and in such circumstances a language line should probably not be used.

Evaluate interpreter competence. In general, it is a good idea to ask the interpreter for his/her qualifications before the interview begins. Many interpreters have some kind of certification; be sure you know what they measure. For instance, in Washington, for certification the State Administrator for the Courts (AOC) uses a process which tests knowledge of English and the target language in written and oral form. Interpreters must demonstrate knowledge of legal vocabulary and an ability to do both consecutive (translate the sentence when the speaker pauses) and simultaneous (translate the sentence just a few words behind the speaker as the speaker continues) interpretation. For the Washington Registry, a newly offered process for languages in which there is no certification, everything is tested except the interpreter's actual ability to interpret in a real life setting. At a lesser level of qualification, the Washington State Department of Social and Health Services (DSHS) uses two procedures: one in which an interpreter is "certified" in a process which is less rigorous than the court test but still tests fluency in both languages; another in which an interpreter is "qualified" in a test which measures knowledge of English and interpreter code of ethics. Neither agency tests in all languages.

Whether or not the interpreter is certified there are two things you can do to check interpreting:

1. *Ask about experience and education.* This includes the following: years of each language (English and the other language), spoken years of formal training (both languages), country where language training took place, level of education (particularly for written translation skills), number of years and kind of interpreting experience (ask about frequency and whether oral or written).
2. *Listen to the interpreter during the interview.* Even though you do not speak the client's language, by paying careful attention to the interpreter and the client, you can pick up some important clues about the quality of the interpretation.

Signs of a trained interpreter:

- The interpreter uses the 1st person when interpreting the client's conversation (e.g., "I don't remember when I left the country." Contrast this with "He doesn't remember when he left the county.")
- The interpreter takes notes during the conversation to ensure accuracy.
- The interpreter asks you or the client to pause when the sentence is at risk of becoming too long to interpret.

- The interpreter interprets responses from the client verbatim even when the responses are incoherent or indicate stammering or nonsense. (This is especially important when you are trying to ascertain disability or competency of the client.)
- The interpreter explains when clarification is needed.

Signs of lack of training:

- The interpreter appears to be giving a much shorter version of what the client is saying. (Occasionally, to be correct, the interpreter should provide a *longer* version because there are no easy words in the target language and the interpreter must explain in detail.)
- The interpreter has “side bar” conversations with the client without explaining to you what these conversations are about.
- The interpreter’s facial expressions, tone, or body language conveys a lack of respect for the client.

Remember, if you do not believe the interpreter is competent, or if your client seems uncomfortable with the interpreter, you must try to find out what the problem is and correct it or locate another interpreter for a future interview. It is always a good idea to inform the interpreter during the interview if you see any signs of lack of training. For example, you might remind the interpreter to ask the client to pause, or to interpret every word, if this is not being done. However, if the interpreter does not respond to these requests, it is important to avoid the use of the interpreter in the future. At the Northwest Justice Project there is an Interpreter Grievance Form so that the agency (including Language Line Services) can be notified that we prefer not to use the interpreter in the future.

CONCLUSION: Having a Good LEP Policy Can Help Lawyers Advocate for Adequate Services for their Clients.

With a good policy in place, lawyers will be able to serve their LEP clients effectively. It is likely that they will soon be reminded of the need to improve services for clients in courts, hospitals, administrative agencies, and even with other advocacy organizations. This has certainly been the case for many of us in Washington State. Although there has been much advocacy on behalf of LEP clients in most of the past two decades, recently efforts have been renewed with a new focus on taking a statewide approach.

In May of 2005, several lawyers from the Northwest Justice Project met with other advocates at a Department of Justice-sponsored summit in Wyoming; their goal was to address the needs of survivors of domestic violence. Before attending the summit, Washington State individuals and organizations had identified the lack of adequate interpretation and cultural awareness as a major barrier for LEP individuals. Despite existing laws, agencies and advocates spoke of police officers using abusive spouses to interpret at the crime scene, of courts

unable to adequately decide whether to grant a protection order or immigration relief due to a lack of interpreters, and of service providers whose staff did not have the training or the resources to provide culturally and linguistically appropriate care.

Washington State had many organizations and institutions providing services to the immigrant and LEP population; to address the concerns raised at that first meeting in Wyoming, representatives from Washington State's interpreter/translator, advocacy, medical, and governmental agencies formed the coalition known as the Washington State Coalition for Language Access (WASCLA). Their goal was to use a collaborative effort to create internal written policies for working with the LEP population, improve access to interpreting and translation services and quality of those services, develop training resources, and to encourage others to be involved in the process.

To date, the coalition has held three conferences and established a website (www.wascla.org) to share best practices. In addition to sharing materials, WASCLA members have helped organizations around the state develop LEP policies and improve services. At their upcoming conference in October 2008, the group is planning to launch a statewide directory of interpreters and translators. By collaborating with interpreter and translator organizations, WASCLA hopes to continue to push language access in Washington one step further, building on a rich history and the expertise of its many members.

And so, attorneys in Washington State have learned much in their work on behalf of LEP clients, and continue to work to improve services, both within their organizations and outside them. The incident mentioned at the beginning of this article has already been taken up within WASCLA, whose members include staff from the Department of Social and Health Services. They have agreed that the circumstances warrant further investigation, and perhaps some renewed emphasis on training and development of policy. If by providing adequate interpreter and translator services, we can continue to help clients such as this young girl to escape from danger and abuse, it will have been well worth the effort it has taken to make sure our services are accessible.

¹ Persons whose primary language is a language other than English and who have a limited ability to read, speak, write or understand English are commonly referred to as "Limited English Proficient" or "LEP," although some have suggested "English Language Learners" as a preferred term.

² The other large legal services provider in Washington State is Columbia Legal Services (CLS). The CLS mission is to seek social and economic justice through systemic change. It has six offices located across Washington State.

³ U.S. Census Bureau, State & County QuickFacts, King County, Washington, <http://quickfacts.census.gov/qfd/states/53/53033.html> (last visited May 9, 2008).

⁴ Modern Language Association Language Map, http://www.mla.org/resources/map_main (last visited May 9, 2008).

⁵ *Id.*

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

⁷ *Lau v. Nichols*, 414 U.S. 563, 568 (1974).

⁸For more information on federal laws governing LEP issues and policies see Limited English Proficiency: A Federal Interagency Website at www.lep.gov (last visited May 8, 2008).

⁹ To review NJP’s LEP policy and forms, see <http://www.wascla.org> (last visited May 8, 2008). For examples of resources on serving LEP clients from legal services organizations around the United States, see Legal Services Corporation Resource Information, LEP Resources at, <http://www.lri.lsc.gov/access/lepaccess.asp> (last visited May 8, 2008).

¹⁰ The [Washington Code of Conduct for Court Interpreters](#) (GR 11.1) is a good model of the high standards necessary to successful formal interpreting.

¹¹ In Washington, interpreters may demonstrate formal qualifications in several ways:

“Certification” or “Registry” with the Washington State Administrator for the Courts (AOC);

“Certification” by the Washington State Department of Social and Health Services (DSHS); or

“Qualification” by DSHS.

¹² In one case handled by our office, an applicant for citizenship was too embarrassed to disclose an arrest for shoplifting which would have made her deportable. On the day before her interview she revealed it and just in time, the case was withdrawn, in hopes that there would be no further inquiry into her status until her innocence in the case could be established.

¹³ For instance, NJP uses the following form language:

“No language interpreter or translator shall discuss, report or comment upon a matter or case in which the person serves as an interpreter or translator. Interpreters and translators shall not offer an opinion to anyone regarding the prospective outcome of a case or any other matter. Interpreters shall not disclose any communication that is privileged by law without the written consent of authorized parties to the communication, or pursuant to court order. Any circumstance which poses a possible violation of the confidentiality rules above shall be called to the immediate attention of the interpreter and will be a direct violation of Northwest Justice Project’s Rules of Professional Conduct.”

¹⁴ A model certification form is available to all staff as part of NJP’s LEP Handbook, developed to complement the LEP policy.

¹⁵ In Washington these can be found at www.washingtonlawhelp.org.