

## Interpreters in the Judiciary

### Talking Points

Requirement to provide qualified interpreters for LEP individuals in judiciary settings

#### **A. Constitutional due process and equal protection rights cannot be preserved for LEP individuals in judiciary settings without qualified judiciary interpreters**

- Amendment 5 – Due process, right to counsel, testify in own defense during trial and the right against self-incrimination
- Amendment 6 – Right to: be physically and linguistically present, speedy trial, confront witnesses
- Amendment 14 – Equal protection guarantees apply to all persons in all states
  - Due process applies to all persons, citizen or alien and corporations

Landmark case(s) on point linking language with above rights:

**[Meyer v. Nebraska, 262 U.S. 390 \(1923\)](#)**

U.S. Supreme Court held that a 1919 Nebraska law restricting foreign-language education violated the Due Process clause of the 14<sup>th</sup> Amendment.

**[U.S. ex rel Negrón v. New York 434 F2d 386\(1970\)](#)**

The 2<sup>nd</sup> U.S. Circuit Court of Appeals overturned the murder conviction of Rogelio Negrón, a Puerto Rican farm laborer in Suffolk County, NY on the grounds that he was not “meaningfully present” as no effort was made to interpret the trial into Spanish, Negrón’s only language. The decision inspired Congress to pass the [Court Interpreters Act of 1978](#).

Underpinnings of decision:

“[Cross-examination] is essential and fundamental requirement for [a]...fair trial.” **[Pointer v. Texas, 380 U.S. 400 \(1965\)](#)**

“[A criminal defendant should possess] sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.” **[Dusky v. U.S., 362 U.S. 402 \(1962\)](#)**. Otherwise, “[t]he adjudication loses its character as a reasoned interaction ... and becomes an invective against an insensible object.” Note, “Incompetency to Stand Trial,” *Harvard Law Review* 81 (1969): 454.

“When it appears that a defendant **may** not be competent to participate intelligently in his own defense because of a possible mental disability, the trial court must conduct a hearing on the defendant's mental capacity.” **[Pate v. Robinson, 383 U.S. 375, 384 \(1966\)](#)**.\*

\* “Negrón’s language disability was obvious, not just a possibility, and it was as debilitating to his ability to participate in the trial as a mental disease or defect. But it was more readily ‘curable’ than any mental disorder. The least we can require is that a court, put on notice of a defendant's severe language difficulty, make unmistakably clear to him that he has a right to have a competent translator assist him, at state expense if need be, throughout his trial. ...” **[U.S. ex rel Negrón v. New York 434 F2d 386\(1970\)](#)**

#### **1. Title VI of the Civil Rights Act of 1964 42 U.S.C. §§ 2000d – 2000d-7**

Prohibits denial of benefits, exclusion from participation or discrimination on the grounds of “race, color, or national origin” under any program or activity receiving Federal financial assistance

Uses the words, “No person in the United States...” to refer to individuals that cannot be denied benefits, be excluded or discriminated against as described above

Landmark case on point: [Lau v. Nichols, 414 U.S. 563\(1974\)](#)

U.S. Supreme Court held that a person’s language is so closely tied to their national origin that to discriminate based on language was a proxy for national origin discrimination.

2. [Executive Order 13166 \(2000\)](#)
  - Improving access to services for persons with limited English proficiency
3. [U. S. Assistant Attorney General’s letter from 8/16/2010 reiterates that state courts must provide and pay for interpreter services for LEP individuals.](#)
  - To not do so would be a violation of Federal law

### **B. Interpreters help to protect the integrity of the justice system and promote the fair and equitable dispensation of justice**

LEP victims and witnesses have a voice.

The [Canons of Ethics](#) for court interpretation require neutrality and impartiality as well as a duty to preserve the fidelity of every utterance, minding things such as tone, register, etc.

LEP defendants, witnesses, victims and civil litigants are neither afforded an advantage nor a disadvantage due to their English proficiency.

Trained and qualified judiciary interpreters help to ensure that the “People’s” interest in justice is not hampered by language.

- The challenges associated with conducting hearings and trials with the use of an interpreter are mitigated when the court utilizes competent interpretation services thus eliminating the possibility that a defendant would be prosecuted less vigorously when he/she is LEP.

### **C. The complexities of court interpretation and the stakes involved make gauging interpreter competence paramount.**

1. Language component
  - Exacting complexities versus typical bilingual communication
    - The concept of “conservation v. adaptation”
      - Register
      - Tone
      - Variances from country to country
2. Cognitive skills necessary are unique and not normally acquired naturally
  - The ability to hear, understand, translate mentally and talk, at a nearly simultaneous rate is not normal
    - Attention
    - Concentration
    - Flexibility
    - Memory
    - Problem solving
3. Tolerance for high-pressure, high-responsibility situations

4. Adherence to the ethical canons of judiciary interpretation may place interpreters in stressful situations as personal feelings must be put aside.

#### **D. Qualifications - Credentialing**

1. Federal level
  - [Court Interpreters Act of 1978 Title 28 Part V Chapter 119 § 1827](#)
    - Directs the Director of the Administrative Office of the United States Courts to establish a program to facilitate the use of certified interpreters
  - Languages tested by Federal Court Interpreter Certification Examination
    - Spanish, Haitian Creole, and Navajo
2. State level
  - In many states, court rules or sometimes state law establishes a credentialing process for judiciary interpreters in state courts
  - [National Center for State Courts](#)
    - Consortium for Language Access in State Courts
      - 40 member states as of 2010
        - Non-members: Arizona, Montana, North Dakota, South Dakota, Oklahoma, Kansas, Louisiana, Rhode Island, West Virginia, and Wyoming.
      - Languages tested (full, partial and abbreviated)
        - Arabic (Modern Standard), Arabic (Egyptian Colloquial), Cantonese, Chuukese, Bosnian/Croatian/Serbian, French, Haitian Creole, Hmong, Ilocano, Korean, Laotian, Mandarin, Marshallese, Polish, Portuguese, Russian, Somali, Spanish, Turkish, Vietnamese.
      - Testing calendars for member states  
<http://www.ncsc.org/education-and-careers/state-interpreter-certification/testing-schedules-by-state/exams-available-to-members.aspx>

  - Qualifying a judiciary interpreter
    1. [NAJIT position paper: Information for Court Administrators](#)
    2. [Bruno Romero report, Dayton Law Review](#)
  - Development of qualified interpreters
    1. Immigration, population shifts, awareness of the need as well as other factors will create a high demand for professional interpreters going forward.
      - Impediments to development
        - Few degree or certificate programs in interpretation and translation
          - [List of TI Programs](#)
        - Lack of standardized practices limits the viability of judiciary interpreting as a profession in many areas
        - Lack of funding from private and public sources for the training and development of judiciary interpreters –
          - Kohl Bill 7/6/09: Senator Herb Kohl (D-WI) introduced legislation to create a federal grant program to ensure high quality state court interpreter services are made available to non-English speakers appearing in court.

- Senator Kohl's legislation addresses the shortage of qualified court interpreters by authorizing \$15 million per year, over five years, for a State Court Interpreter Grant Program. Failed to pass the Senate.
- Languages of lesser diffusion are becoming more prevalent in the court systems while identifying and training of interpreters in these languages lags far behind

#### **E. Cost of interpreter services**

1. According to DOJ guidance, failure to provide interpreter services at no cost to the LEP individual is a violation of Federal Law
  - Costs of defending possible civil rights actions brought against jurisdictions would far outweigh the costs of interpreter services
  - The use of qualified interpreters in accordance with DOJ guidance would reduce the unwitting violation of court or probation rules by LEP individuals, due to poor communication; this could result in improved judicial economy by reducing the number of courtroom events related to cases involving LEP individuals.
2. LEP volume should dictate as to when freelance certified interpreters at higher hourly rates should be used and when hiring a staff interpreter makes more fiscal sense
3. As states tackle the issue of providing and paying for interpreter services, it will become necessary to differentiate between judiciary interpretation and simple language facilitation and the acceptable times and places for both
  - Professional organizations have begun to take the lead in this.