



National Association of Judiciary Interpreters & Translators

NAJIT POSITION PAPER LANGUAGE ASSISTANCE FOR LAW ENFORCEMENT

The information provided in NAJIT position papers offers general guidance and practical suggestions regarding the provision of competent language assistance to persons with limited English proficiency. This information is intended to assist in developing and enhancing local rules, policies and procedures in a wide range of settings. It does not include or replace local, state or federal policies. For more information, please contact: National Association of Judiciary Interpreters & Translators, 206-267-2300, or visit the NAJIT website at www.najit.org.

■ INTRODUCTION

The work of law enforcement depends on fast, accurate communication of information, directives and instructions. With the U.S. population expanding in diversity, law enforcement officers may need language assistance in their interactions with victims, witnesses or suspects who do not speak English or are limited English proficient (LEP). The manner in which these interactions are handled has an impact on safety, investigations, and the effective administration of justice. This paper offers practical guidelines to facilitate and monitor language services — in particular interpreting — in any law enforcement setting. Section I addresses why and when an interpreter is needed. Section II discusses specifics of interpreting.

I. WHY AND WHEN AN INTERPRETER IS NEEDED

Do I need a *translator* or an *interpreter*?

These job titles may seem interchangeable, but the distinction is important. Translators work with written text and interpreters work with the spoken word, rendering messages in one language into their equivalent in another language. The skill set is similar but not identical, although for each, a highly developed knowledge of both languages is necessary. When

faced with a language barrier, then, the first question to ask is whether the job requires a translator for written communication, or an interpreter for spoken communication.

Who decides whether an interpreter is needed?

Federal and state laws, professional association standards, and case law govern the appointment, qualifications, role, ethics and professional responsibilities of interpreters in legal and quasi-legal settings.¹ Given that background, when determining whether to use an interpreter, three questions should be asked:

1. What level of language assistance does the LEP person need to communicate effectively?
2. What level of assistance does the law enforcement officer need to carry out his official purpose?
3. What is the objective of the communication? Is it simply to communicate information, or will the communication be used later for evidentiary purposes?

Law enforcement is better served by erring on the side of caution and providing a qualified interpreter at the request of the non-English or limited-English speaker. Please note that sometimes an officer may believe that a person understands English, but basic English is not sufficient when an individual is confronted with the criminal justice system. The Title VI LEP Guidance Policy, referenced below, recommends that law enforcement inform the LEP person of the right to an interpreter provided at the agency's expense.

Can bilingual personnel serve as interpreters?

In any legal or quasi-legal context, professional language assistance means that accuracy is paramount, along with the duty to remain impartial. Bilingual personnel

without prior training should not be expected to function as interpreters. To work with languages at a professional level, one needs to know forensics terms, medical terms, police procedure, the legal system, idiomatic expressions and street slang both in English and the foreign language, and one needs to prove such knowledge in a reliable test. The knowledge, skills and abilities needed to produce accurate interpreting or translating are not the same as those used in ordinary conversation. If language assistance at a professional level is expected within the department, those job competencies should be clearly defined and tested for by the law enforcement entity.

Why not use bilingual officers as interpreters?

If the officer's foreign language skills were previously tested and documented, bilingual officers can conduct police business in a foreign language in emergency situations when no exchange of sensitive information is required. However, an increasing number of poorly handled interactions have had a negative impact in court. Interactions handled through a qualified interpreter are more advisable.

Why not use someone already at the scene to interpret?

There are several reasons why it is inappropriate for children, friends, relatives or bystanders to provide language assistance in law enforcement settings:

- These individuals are not neutral parties.
- They may have an interest in the outcome of the case — or may even be potential suspects themselves.
- They were not tested for language proficiency.
- They are not trained to retain meaning while interpreting in a legal context.
- They do not know the limitations of their role and may manipulate the information or take on the role of advocate for one side or another.

What if the person needing language assistance is from another jurisdiction or is an undocumented alien?

The provision of appropriate and competent language assistance is based on the language access needs of the LEP person, not on residency or immigration status. State and federal constitutional and statutory provisions extend their protection to any "person."²

When do I need a professional interpreter?

Police officers encounter diverse scenarios that are not easily categorized. The need for a certified or otherwise qualified interpreter will be determined based on the interaction. Keep in mind that the manner in which an officer handles interviews and interactions with LEP victims, witnesses, suspects and defendants will have a direct impact on the case. For that reason it is important to have a procedure already in place (see suggestions below). At the least, there should be a prioritized list of interactions that require professional language assistance available to guide officers.

As a rule, the higher the risk, impact, or importance of the scenario, the higher the standards of interpreting and translating must be. For Miranda warnings, Vienna Convention matters, or interrogations, it is strongly recommended that a certified or otherwise qualified interpreter be used. Use of a non-qualified interpreter may be subject to later challenges in court. Use of a bilingual officer may be regarded as a conflict of interest and may also be challenged in court.

Has lack of interpreting or poor quality interpreting at the law-enforcement point of contact ever affected the disposition of a case?

Yes. Many cases have been affected by substandard interpreting during law enforcement encounters with LEP persons. Three examples are:

- *State of Ohio v. Alejandro Ramirez*³, in which a twenty-year-old Mexican national who could not speak, read, or understand English was interviewed by a law enforcement official. The administrative assistant who acted as interpreter had no familiarity with legal terms and produced a non-intelligible rendition of the questioning and the Miranda warning. Ramirez was convicted of one count of murder but the case was later reversed and remanded. This case has been a learning landmark for the judiciary with regard to communication with LEP persons.
- In *People v. Sandoval*⁴, the tape-recorded interrogation revealed that the person acting as interpreter failed to interpret accurately and made erroneous and conflicting statements to a defendant about his Miranda rights.

- In *People v. Mata-Medina*⁵, an inexperienced detention officer interpreted an interrogation. The officer failed to relate to other officers the defendant’s statement indicating that he could not afford an attorney.

II. SPECIFICS OF INTERPRETING

How long will it take?

Translation of documents is an exacting task and any translation needs to be verified. This takes time, so documents cannot be instantly translated—not even with the help of machine translation programs, which can produce only very rough drafts. Depending on the length, complexity, and purpose of the original text, accurate translation could take days, weeks or even months. However, in some instances “sight translation” may be used—see next points.

Interpretation also is complex, and needs to be accurate, but it is done either at the same time as the speakers are talking or with a short time lag. Time enters as a factor only inasmuch as it may take time to obtain an interpreter on the scene. Note that interpreters may be available in person or on the telephone.

How does an interpreter get the job done?

Three *modes* or techniques are used by the interpreter: consecutive interpretation, simultaneous interpretation, and sight translation. A professional interpreter can handle all three and will use whichever technique is appropriate to the situation.

As a matter of ethics and for the sake of accuracy, a professional interpreter does not add, change, omit or summarize any utterance. See NAJIT’s position paper on “Summary Interpreting in Legal Settings” for further explanation of this point.

When is each technique used?

- *Consecutive interpretation* is used in interrogations, interviews, or question and answer scenarios. An individual speaks in Spanish, for example, and then the interpreter gives the meaning in English. This requires a short waiting time between the question and the answer. Such sessions can be recorded to create a permanent record of both the original

speech and the interpretation, because the voices do not overlap.

- *Simultaneous interpretation* is used in the courtroom or in any situation in which running renditions are needed at the same time as the English language communication. Usually, one or more parties talk for an extended period while others listen to the interpretation either over headphones or by having an interpreter sit next to the LEP person. In the case of sign language interpretation, the deaf person and the interpreter need to see each other’s face and hands at all times.
- *Sight translation* is used when the content of an English or foreign language document needs to be rendered aloud immediately in the other language. Recommended practice is to afford the interpreter sufficient time to review the document’s contents before rendering it.

See NAJIT’s position paper on “Modes of Interpreting” for more details on these techniques.

How hard is it to interpret accurately?

Research reveals that interpreting accurately and consistently at a moderate rate of speech (120 words per minute) is relatively difficult. Memory, speed, mental flexibility, patience, and many cognitive skills come into play. Interpreters need training and practice to achieve minimal levels of competency.

How can I verify the interpreter’s competence?

Credentials and professional references should be verified rather than taken at face value. A qualified interpreter has interpreting credentials from a bona fide source and extensive experience in legal interpreting.

Federal courts certify interpreters in three languages: Haitian Creole, Navajo, and Spanish. The Administrative Office of the U.S. Courts maintains a roster of certified interpreters.

State courts certify interpreters in various languages, and some make their lists of certified individuals available to the public. At this time, 35 states belong to the Consortium for State Court Interpreter Certification, a project of the National Center for State Courts. Some

states do not have a certification program or are in the initial phase of development.

Professional associations may offer certification programs. NAJIT certifies individuals in Spanish/English judiciary interpreting and translating. The American Translators Association certifies individuals for general translation.

Private sector language companies, for the most part, work with subcontracted translators and interpreters. When using a private company, ask how they test or verify interpreter credentials. Ask if they train contract employees in the ethical standards to which legal translators and interpreters must adhere. Lack of training in this area may result in disclosure of confidential information, lack of neutrality, conflict of interest, or misrepresentation of credentials, among other repercussions.

How can an officer monitor interpreter-mediated communication?

Law enforcement officers are advised to monitor interactions between the interpreter and the LEP person.

Useful strategies to ensure accuracy:

- brief the interpreter on the context before commencing an interrogation
- check comprehension by asking the LEP person to explain in his own words what he has understood of the communication thus far
- repeat questions in different form to verify answers
- look to body language
- notice if there are significant “gaps” in the interpreted portions
- Frequent hesitation or hedging by the interpreter may indicate doubt as to vocabulary or meaning (though pauses may also mean that the interpreter is taking the appropriate time necessary to make the right choice of words)

Transparency is a key aspect of good interpreting services. If confusion or doubt exists, the interpreter should keep all parties included in any inquiry for clarification.

Above all, officers should not permit private conversations between the interpreter and the LEP person.

How can our office improve Title VI compliance regarding language assistance?

Bear in mind that “There are many underlying issues that animate locals’ reluctance to make direct contact with the police: their limited English proficiency; their own or a household member’s legally problematic status; fear of retribution; concerns about police prejudice, discrimination, and entrapment; and a desire to keep the home and family below the radar of the law and courts.”⁶

The following are some recommendations:

- Assess your district’s needs and set a policy. First, assess language needs by tracking the languages encountered by officers on the job. Study your community to identify LEP populations. Then devise policies and implement strategies to ensure effective communication.
- Always validate projections based on demographic data against program experience, based on the observations of your staff and input from the community (see the resources section below).
- Have a written action plan and integrate it into policy academy training.
- Hire officers or staff members who are proficient in foreign languages—particularly those languages reflected in the demographics of the agency’s jurisdiction.
- Attract bilingual staff by aggressive recruitment and pay differentials for language abilities. Post open positions in newspapers and employment agencies that target minority populations.
- It is strongly advised that the proficiency skills of bilingual staff be tested above and beyond the simple submission of credentials. Investigate available services to test bilingual personnel.
- Train bilingual staff in basic interpretation and translation protocols.
- Have vital forms and documents professionally translated into languages commonly spoken in your community.
- Encourage officers and other bilingual staff to call in professional interpreters and translators when needed.
- Equip your officers and staff with effective language tools (“I Speak _____” cards, translated Miranda Warning, etc.) and language access protocols in order for them to fulfill their duties.

- Partner with volunteers from community-based and charitable organizations.
- Conduct periodic in-house training regarding the use of qualified on-staff or contracted interpreters.
- Hold cultural sensitivity training sessions for officers.
- Conduct community outreach to strengthen ties and cooperation with law enforcement.

NAJIT applauds the work being done by law enforcement authorities that are aware of these issues and dedicated to ensuring due process and equal access to justice for all. We wish to work as partners with law enforcement and support your efforts. Please contact our office if we can be of any assistance as you work to strengthen your department's programs in this arena.

For further information please consult the following resources:

■ Specific to Law-enforcement

“The Summit/Lorain Project, A Resource Document for Law Enforcement: Interpretation and Translation Services.” www.co.summit.oh.us/sheriff/LEP.pdf

LEP Planning Tool for Law Enforcement: http://lep.gov/Law_Enforcement_Planning_Tool.htm

LEP Planning Tool for Corrections: http://lep.gov/LEP_Corrections_Planning_Tools.htm

■ Federal Level

Executive Order 13166. Coordination and Review Section, Civil Rights Division, Department of Justice. www.usdoj.gov/crt/cor/13166.htm

Executive Order 13166. Limited English Proficiency Resource Document: Tips and Tools from the Field.” www.usdoj.gov/crt/lep/lepdoc%20frontpage.htm

Title VI of the 1964 Civil Rights Act. www.usdoj.gov/crt/cor/coord/titlevistat.htm

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.htm

2000 Census. www.census.gov/population/cen2000/phc-t20/tab04.pdf

Census 2000 Brief: Language Use and English-Speaking Ability, www.usdoj.gov/crt/lep/lepdoc%20chapter1.htm#a

National Center for Education Statistics. <http://nces.ed.gov/fastfacts/display.asp?id=96>

■ State Level

Consortium for State Court Interpreter Certification, National Center for State Courts. www.ncsconline.org/D_Research/CourtInterp/CICourtConsort.html

Language identification card issued by the State of Ohio Office of Criminal Justice Services, the Summit County Sheriff's Office, the National Association of Judiciary Interpreters and Translators and the American Translators Association. <http://www.ocjs.ohio.gov/Publications/Pocket%20Card.pdf>

■ Professional Associations

National Association of Judiciary Interpreters and Translators. www.najit.org

American Translators Association, www.atanet.org

Community and Court Interpreters of the Ohio Valley's Resources for Interpreters, “Explanation of Court Interpreter Certification.” www.ccio.org

Community and Court Interpreters of the Ohio Valley. “Getting It Right By Doing It Right.” www.ccio.org

■ Footnotes

- 1 Title VI 42 U.S.C. §2000d
- 2 See Fifth and Fourteenth Amendments to U.S. Constitution; Section 601 of Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d. The term “person” under the fifth and fourteenth amendments has been held to include undocumented persons for the purposes of due process and equal protection. See, eg., *Plyler v. Doe*, 457 U.S. 202 (1982), *Mathews v. Diaz*, 426 US 67 (1976).]
- 3 *State v. Ramirez*, Case No. 97-L-289, Court of Appeals of Ohio, Eleventh Appellate District, Lake County, 135 Ohio App. 3d 89; 732 N.E.2d 1065; 1999 Ohio App. LEXIS 6241, December 23, 1999, Decided, Counsel Corrected November 20, 2000.
- 4 *People v. Sandoval*, 736 P.2d 1201 (Colo. 1987)
- 5 *People v. Mata Medina*, District Court, Pueblo County (Colorado), Case No. 97 CR 307, May 7, 1998
- 6 Ibarra, Peter R. “Contacts with the Police: Patterns and Meanings in a Multicultural Realm.” *Police & Society: An interdisciplinary Israeli journal of law enforcement and criminology*. April 2003 <http://www.ojp.usdoj.gov/nij/specialissue/policesociety.html>

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