

## Interpreters in Federal Courts/ Ensuring Due Process

Supplemental Material from Regina Cannon, Esq., Federal Defenders Office

11/15/2017

Article Name and Details	Cite
<p>Abel, Laura K., <i>Language Access in the Federal Courts</i>, Drake Law Review (2013). 46 total pages</p> <p>Summary: The federal courts are lagging behind other national standards in provisions for interpreters. Interpreter access is a matter of Due Process. Some Judges deny interpreters when the LEP individual can speak or understand some English.</p> <p>Key Facts:</p> <ul style="list-style-type: none"> <li>• Georgia expects courts to provide interpreters to provide interpreters to LEP individuals in all court proceedings.</li> <li>• The federal courts only certify Spanish interpreters, while many state courts certify interpreters in a wide variety of languages.</li> <li>• Federal cases have found a right to an interpreter only in criminal matters and in some immigration matters (asylum and deportation). Interpreters are provided by the court in civil cases if the US is a plaintiff.</li> <li>• The American Bar Association goes further, opining that due process may require the appointment of an interpreter in other types of civil cases with serious consequences for the people involved.</li> <li>• While the Administrative Office of the U.S. Courts has begun exploring the possibility of developing certification for additional languages, it has not yet implemented certification for any language other than Spanish.</li> <li>• More than 100 other languages are used in the federal courts. Mandarin Chinese was used 1,682 times in 2011. Russian was used 1,376 times in 2011.</li> <li>• Title VI of the Civil Rights Act requires courts to provide an interpreter if an individual lacks sufficient proficiency in English to participate meaningfully in a judicial proceeding. A number of state court systems follow the meaningful-participation standard.</li> </ul>	<p>61 Drake L. Rev. 593</p>
<p>Turner, Will, <i>Que Dijo-The Plain Error Rule's Effective Denial of Due Process to Non-English-Speaking Clients</i>, Alabama Civil Rights &amp; Civil Liberties Law Review (2013). 16 total pages</p>	<p>3 Ala. C.R. &amp; C.L. L. Rev. 141</p>

<p>Summary: The plain error rule unduly disadvantages criminal defendants who are not fluent in the English language in violation of the Due Process Clause of the Fourteenth Amendment.</p>	
<p><b>De Jongh, Elena M., <i>Court Interpreting</i>, Florida Bar Journal (2008).</b>  <b>15 total pages</b></p> <p>Summary:</p> <p>Key Facts:</p> <ul style="list-style-type: none"> <li>• Spanish (214,355 events) remains the language most often interpreted in the courts, accounting for 94 percent of all reported events, followed by Mandarin (1,792 events), Arabic (1250 events), Vietnamese (863 events), Korean (796 events), Cantonese (745 events), Russian (610 events), French (417 events), and Foochow (409 events). [Unclear what year/years this refers to]</li> <li>• [On Certification:] Moreover, it should be noted that, although different states “have several different kinds of interpreter testing, not all tests are recognized by law as certification tests.”<sup>14</sup> The establishment of a consortium by the National Center for the State Courts (NCSC) is a significant improvement toward professionalizing and setting uniform requirements in court interpreting services at the state level. In addition to administering court interpreting examinations, the NCSC provides court interpreter orientation and training.<sup>15</sup></li> </ul>	<p>82-AUG Fla. B.J.  20</p>
<p><b>Construction and Application of Court Interpreters Act, 28 U.S.C.A. §§ 1827, 1828</b></p> <p><b>Index on all uses of the Court Interpreters Act</b>  <b>96 total pages</b></p>	<p>40 A.L.R. Fed. 2d  115</p>
<p><b>Wong, Annette, <i>A Matter of Competence: Lawyers, Courts, and Failing to Translate Linguistic and Cultural Differences</i>, Southern California Review of Law and Social Justice (2012).</b>  <b>37 total pages</b></p> <p>Summary: Limited English Proficiency persons have a right to court interpreters. This right is impeded due to a shortage of interpreters, languishing proposed legislation, and the disqualification of bilingual jurors. Focusing on the incompetency of the individual LEP litigant to understand his or her proceedings is misguided. Cultural information can be used as mitigating evidence and cultural awareness is a professional responsibility.</p> <p>Key Facts:</p> <ul style="list-style-type: none"> <li>• Spalding County, GA case used as introductory example; Annie Ling was a Malaysian immigrant charged with child cruelty who did not have an interpreter at trial. <ul style="list-style-type: none"> <li>○ She did not understand that instead of trial she could plea to serve a one-year prison term.</li> </ul> </li> </ul>	<p>21 S. Cal. Rev. L. &amp;  Soc. Just. 431</p>

<ul style="list-style-type: none"> <li>○ The decision to not have an interpreter at her trial or to not allow Annie to testify was her attorney’s decision, not her own.</li> <li>○ Later in November, the Georgia Supreme Court vacated the trial court’s decision, holding that without an interpreter, “one who cannot communicate effectively in English may be effectively incompetent to proceed in a criminal matter and rendered effectively absent at trial.”</li> <li>● Delays to proceedings often result from the inability to locate a certified translator, especially for cases that take place in rural counties or involve less frequently spoken languages.<sup>98</sup> In Huntsville, Alabama, Tereso Salinas, a Mexican national who speaks Chatino, has been held without trial in the county jail since July 2008 on charges of child rape.<sup>99</sup> The court, the prosecution, and the defense have all been unable to find him an interpreter.<sup>100</sup> Mr. Salinas, who speaks no English and little Spanish, is hardly able to communicate with his own lawyer.<sup>101</sup></li> </ul>	
<p><b><i>The Changing Face of Justice: A Survey of Recent Cases Involving Courtroom Interpretation, Harvard Latino Law Review (2004).</i></b></p> <ul style="list-style-type: none"> <li>● [Quoting William E. Hewett] Court interpretation for foreign language speaking and deaf or hearing impaired individuals is a highly specialized form of interpreting that cannot be effectively performed without commensurate specialized training and skills. Arguably, it is the most difficult form of interpreting. Being bilingual, even fluently so, is insufficient qualification for court interpreting. Court interpreters must be able to preserve “legal equivalence” while interpreting. Moreover, they must be able to do this in each of three modalities: simultaneous interpreting, consecutive interpreting, or sight translating documents.</li> <li>● Details challenging courtroom interpretation in the appeals process.</li> </ul>	<p>7 Harv. Latino L. Rev. 1</p>
<p><b><i>Finding Justice in Translation: American Jurisprudence Affecting Due Process for People with Limited English Proficiency Together with Practical Suggestions, Harvard Law Review (2011)</i></b></p> <p>Summary: Exploring the issue of court-based interpreting issues in order to ensure that linguistic minorities are as protected by the Constitution as every other U.S. resident.</p> <p>Facts:</p> <ul style="list-style-type: none"> <li>● Explores standards of review related to language issues with respect to judicial review proceedings.</li> <li>● “a linguistically disadvantaged person may display perfectly sufficient competence while lacking language comprehension.” (p.10)</li> </ul>	<p>14 Harv. Latino L. Rev. 117</p>