

# LANGUAGE ACCESS

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- Department of Justice and ABA Language Access Standards
- Attorney Perspective
- The Court Interpreter Act
- Working together to expand access

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# Importance of Language Access

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“Equal justice under the law is not just a caption on the façade of the Supreme Court building. It is perhaps the most inspiring ideal of our society.... It is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

*~ U.S. Supreme Court Justice  
Lewis Powell, Jr.*

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# Executive Order 13166

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- On August 11, 2000, the President Clinton signed Executive Order 13166
    - “Improving Access to Services for Persons with Limited English Proficiency”
    - Requires federal agencies to examine the services they provide, identify any need for services to those with LEP, and develop and implement a system to provide those services to LEP can have meaningful access
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## Executive Order 13166, continued

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- ❑ Also requires the federal agencies to work to ensure that recipients of federal financial assistance provide meaningful access to LEP applicants and beneficiaries
  - ❑ Title VI of the Civil Rights Act of 1964 LEP Guidance Document – re access and no discrimination
  - ❑ [www.justice.gov/crt/cor/13166.php](http://www.justice.gov/crt/cor/13166.php)
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# Judicial Council efforts

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- ❑ AOC and all trial courts develop LEP plans to serve litigants with Limited English Proficiency in response to DOJ
  - ❑ Continue efforts to secure funding for interpreters in all case types
  - ❑ Seek bilingual staff to assist throughout court operations
  - ❑ Translate materials
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# Letter to Courts from DOJ – 8/17/10 raises issues

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- ❑ Limitations on types of cases where interpreters are provided
  - ❑ Charging for interpreters
  - ❑ Restricting language services to courtrooms
  - ❑ Failing to ensure effective communication with court-appointed personnel
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# Judicial Council report

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Every five years, the Judicial Council is required per Govt Code 68563 to conduct a study of spoken language need and interpreter use in the 58 counties

August 30, 2010 Judicial Council Report to Legislature  
Prepared by Institute for Social Research  
California State University, Sacramento  
May 2010 based on data from 2004 to 2008

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# Key Findings

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- Sizeable and growing demand for interpreters in California Courts
    - The state's courts provided more than one million days of spoken language interpretative services in 147 languages with the total number of service days for mandated proceedings increasing 14%
    - 40% of those services days were in Los Angeles
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# Key Findings, continued

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- Spanish comprises 83% of all mandated service days
    - Spanish, along with Mandarin, were the only languages showing significant increases – 11% and 89% respectively
  - ASL saw a decline of 41% from 2004 to 2008, but ASL was the second most common language interpreted in all proceedings in the courts during the five years
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# Key Findings, continued

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- Immigration trends between 2004 to 2008 shows there continues to be significant growth (42%) in individuals immigrating to California
    - 4:10 persons in California live in a household where a language other than English is spoken
  - Full report can be accessed at [www.courts.ca.gov/documents/language-interpreterneed-10.pdf](http://www.courts.ca.gov/documents/language-interpreterneed-10.pdf)
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# AB 663 (Jones) Legal Aid, Court Interpreters

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- ❑ Judicial Council sponsored bill
  - ❑ Establish a working group to identify and develop best practices to expand the use of interpreters in civil proceedings
  - ❑ Implement three year pilot project in up to five courts to provide interpreters in civil proceedings
  - ❑ Senate Appropriations Committee – died
  - ❑ But Civil Gideon, AB 590.....
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# Judicial Council Programs for Language Access

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- Translated Court Publications
    - DV, dependency, traffic and unlawful detainers (Hmong, Korean, Lao, Russian, Spanish, Tongan, Ukrainian, Urdu)
  - Translated Judicial Council Forms
  - Translated Court Websites
  - Multilingual Glossaries
  - Online Translation Tools
  - Multilingual Posters
  - Small Printable Signs
  - Tools for Dealing with Cross-Cultural Communication Issues
  - Resources for Providing Services to LEP Litigants
  - Many other resources, [www.courts.ca.gov/partners/53.htm](http://www.courts.ca.gov/partners/53.htm)
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# Court Interpreters

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- Certified Interpreters
  - Registered Interpreters
  - Non-certified, non-registered, litigants' family, friends, children, opposing party or attorney
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# Certified Interpreters

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- Pass bilingual written and oral exam
  - Register with Judicial Council
  - Pay \$100 annual fee
  - Attend a Judicial Council Code of Ethics Workshop
  - Twelve Languages
    - Arabic, Eastern Armenian, Western Armenian, Cantonese, Japanese, Korean, Mandarin, Portuguese, Russian, Spanish, Tagalog, Vietnamese
  - No need to be sworn
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# Certified Interpreters

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- Whether court or parties are providing the interpreter, the interpreter needs to be certified (or registered in non-designated languages).
  - Use of non-certified interpreters of any kind should be the exception, requiring finding that proposed interpreter is qualified and good cause shown for the exception. Govt. Code **§ 68561**(a)
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# Court Interpreter Act (implemented 2003)

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- 880 employees statewide (all certified and registered) – 37 counties, 57 languages
  - Cross-assignments system – courts share resources between counties
  - Employees work in both:
    - Mandated (criminal, juvenile, traffic)
    - Non-Mandated (family, civil harassment, mediation, court ordered programs, etc.)
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# Registered Interpreters

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- Interpreter of a spoken language other than the 12 designated languages
  - There is no state certifying exam
  - Required to pass a written English and an oral English fluency exam
  - Register with the Judicial Council
  - Pay \$100 annual fee
  - Attend Judicial Council Ethics Workshop
  - Attend Judicial Council Orientation Workshop
  - No need to be sworn
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# Other Interpreters

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- ❑ Need to be sworn by the Court
  - ❑ Will discuss tips and pointers later in this presentation
  - ❑ Family members, friends, children
  - ❑ Hospitals and other entities experiencing similar challenges
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# 17 Most Common Languages Spoken in California (in descending order of popularity)

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- Spanish
  - Vietnamese
  - Korean
  - Mandarin
  - Russian
  - Eastern Armenian
  - Cantonese
  - Punjabi
  - Farsi
  - Tagalog
  - Hmong
  - Khmer
  - Laotian
  - Arabic
  - Japanese
  - Mien
  - Portuguese
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# ABA Efforts

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- ❑ Advisory Group for the development of ABA standards for language access in state courts
  - ❑ Met every other week via conference call and website postings
  - ❑ Group is comprised of lawyers, judges, court administrators, interpreters, translators (three of us from California)
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# ABA Efforts continued

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- ❑ Developed ten standards with extensive commentary containing examples from throughout the country
  - ❑ ABA standards usually aspirational
  - ❑ Concerns raised by Conference of Chief Justices and Conference of State Court Administrators re: funding for the effort
  - ❑ February 2012, ABA House of Delegates meeting and vote on standards
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# ABA Efforts, continued

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## □ Goal of Standards

- Improving language access
  - Providing guidance to judges, court administration and lawyers on how interpreter and translation services should be provided to LEP (Limited English Proficiency) to ensure full access to the continuum of services provided by state courts
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# ABA Goals, continued

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- Build upon considerations of cultural competence and use of interpreters in attorney client communications discussed in 2006 ABA Standards for the Provision of Civil Legal Aid
  - Incorporate legal requirements from Title VI of the Civil Rights Act of 1964 which prohibits discrimination against individuals on the basis of national origin
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# Considerations for Lawyers

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- Where the court does not provide interpreter services
    - Can your client hire interpreter
    - Can you use someone in your office
    - Family and Friends
    - Children – challenges because not just interpreting, privacy, appropriateness
    - Opposing attorney, party
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# Considerations continued

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- Language Line
  - Language Banks
  - Justicecorps and other volunteer programs
  - Training for non-professional interpreters
  - Training for attorneys in working with interpreters
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# Issues for attorneys to consider

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- Talking too fast
  - Assuming that interpreter can adjust the register and make legal language understandable
  - Not verifying comprehension
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# Ways to address need

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- Training new or volunteer interpreters
  - Supervision required
  - Understand skills needed for interpretation – not just bilingual
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# Considerations in the courtroom

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- Notepad and Pen
  - Numbers
  - Tools
    - Sacramento binders in courtroom
    - Glossaries
  - Preparation of client in advance
  - Use of pronouns
  - Eye contact
  - Respect
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# Considerations continued

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- Where the Court does provide interpreter
    - Can you understand the language?
      - Approach the bench
    - Can the jury understand?
      - Admonish the jury
    - Did you get the right dialect?
    - Advise client to stay in the language
    - Capture side discussions between interpreter and speaker
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# Considerations continued

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- Is the translation good?
    - Check with your client!
  - Is the interpreter translating?
    - Example of DV conviction in Cambodian-speaking defendant's case
  - What can interpreters do?
    - For SRL's
    - National Center for State Courts
    - California's position
    - Work to be done
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# Other ideas for expanding access

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- What ideas do YOU in the audience have for expanding language access???
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# Conclusion

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## □ ACCESS

- Ac-cess, noun
  - Middle English, from Anglo-French and Latin; from Latin *accessus*, approach
  - “permission, liberty or ability to enter, approach, or pass to and from a place or to approach or communicate with a person or thing”
  - “freedom or ability to obtain or make use of something”
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