Denton, Douglas

From: Melanie Vliet [pmvliet@gmail.com]
Sent: Sunday, March 02, 2014 2:10 PM
To: Denton, Douglas
Subject: Input on California's Prospective Language Access Plan
Attachments: My LAP Comments.docx

Dear Sir or Madame:

Attached please find my views on language access policy for your consideration and for inclusion in the public record of the upcoming hearing. I hope to attend Tuesday's hearing in Los Angeles, although I shall be unable to arrive by 10:00 due to the fact that the Spanish class I teach at Biola University in La Mirada meets from 8:30 to 9:20.

Thank you for considering these issues.

Yours in the pursuit of justice,

Melanie Vliet

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P. Melanie Vliet, Esq.
MA Linguistics and Teaching Lang. CSULA 1984
MA General Linguistics USC 1986
JD Western State College of Law 2013

“A lawyer . . . is . . . a public citizen having special responsibility for the quality of justice.”
-- Preamble to the Model Rules of Professional Conduct

For the Public Hearing on the Statewide Language Access Plan for California Courts

I was admitted to the California State Bar three months ago today (on December 2, 2013). While awaiting my bar results, I began volunteering at the Legal Aid Society of Orange County (hereinafter "LASOC"), where I have the privilege of serving clients who are unable to afford to pay for legal services. The following comments represent my own views and are not necessarily those of LASOC.

Many of our clients at LASOC are limited-English-proficient (LEP) individuals, most of them native speakers of Spanish or Vietnamese. In assisting them, I have been surprised, saddened, and disappointed to discover that few of the court forms required in order to address their legal concerns are available in a language that they can comprehend and produce. The linguistic level of the forms, available exclusively in English, is well beyond their level of proficiency in English.

We at LASOC address this significant problem by explaining the forms to our clients personally in one-on-one interviews. This is quite time-consuming and can result in miscommunication or in our omitting portions of the information that we view as non-essential.

Of particular concern to me as I have assisted the parents of teens with developmental disabilities in being appointed limited conservators over their children as the latter reach the age of majority is the requirement that the proposed conservators obtain a copy of the Handbook for Conservators and attend a conservatorship class at the courthouse. Both the Handbook and the class are available in English only. LEP clients must pay $20 for a lengthy tome that they cannot read with comprehension and take it and an interpreter—unavailable through the court system—with them to the class. The information set forth in the class, which necessarily is a mere fraction of the material that the state deems sufficiently important to be included in the Handbook, is then concurrently translated—an extremely complex and difficult task—by an untrained friend or relative.

It seems that only in criminal proceedings is the court required to provide a LEP party with an interpreter; in civil cases the party is responsible for providing his own interpreter and may not be aware of this need until the proceeding has begun.

Recently I was in the gallery of a civil courtroom as an observer when an unlawful detainer case was called in which the defendant was a LEP speaker of Spanish. He presented himself before the court with the expectation that a court-employed interpreter would assist him. The judge rather sarcastically informed the defendant (in English, of course) that he had "good news" for him: he was not accused of a crime. The judge went on to explain that for this reason it was the defendant's responsibility to provide an interpreter if he needed one—that the court could not do so. Fortunately the judge then asked whether anyone in the courtroom might be able and willing to interpret for the defendant; being a Spanish teacher, although not trained as a court interpreter, and seeing no one else volunteer, I offered my services. Had I not been present, the unfortunate defendant would have had no way of following the hearing and presenting his defense.

I submit that all court forms and related information and proceedings, both written and oral, ought to be made available to California residents in a language that they can comprehend and produce fluently. I see this as a due process issue. Under the Due Process Clause of the Fifth and

Fourteenth Amendments, the government is required to employ “fundamental fairness” when it considers depriving an individual of life, liberty, or property. Such an individual is entitled to adequate notice, the opportunity to be heard at any proceedings against him, and a decision-maker who is impartial with respect to the matter at issue. A party who cannot read and understand the forms he is required to fill out and who must complete them in a language that he does not command or who must attend a court proceeding without an interpreter if he cannot himself supply one cannot be said to have adequate notice and the opportunity to be heard, whether the matter is one of criminal or civil law.

It is of the utmost importance that the state and counties of California take it upon themselves to offer on their websites all court and administrative forms in all languages represented by their residents and that they supply trained interpreters at no charge to LEP parties at all hearings and trials.

March 4, 2014

Honorable Tani G. Cantil-Sakauye
Chief Justice
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Honorable Steven Jahr
Administrative Director of the Courts
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

Honorable Maria P. Rivera
Co-Chair, Joint Working Group for
California's Language Access Plan
California Court of Appeal
First Appellate District
350 McAllister Street
San Francisco, CA 94102

Honorable Manuel J. Covarrubias
Co-Chair, Joint Working Group for
California's Language Access Plan
Superior Court of California
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009

Honorable Steven K. Austin
Chair, Ad Hoc Joint Working Group to
Address Court Interpreter Issues
Superior Court of California
County of Contra Costa
725 Court Street
Martinez, CA 94553

Re: Recommendations for California Courts Language Access Plan & $12.9 Million TCTF Court Interpreter Surplus

Dear Chief Justice Cantil-Sakauye, Judge Jahr, Justice Rivera, Judge Covarrubias & Judge Austin:

The undersigned groups write to present specific issues regarding language access in the courts, as the Judicial Council and Administrative Office of the Courts (AOC) move forward in developing the Statewide Language Access Plan. We also write to provide input on the implementation of the recommendations recently approved by the Judicial Council to spend down the $12.9 million Trial Court Trust Fund (TCTF) court interpreter surplus.

We acknowledge the current efforts of the Judicial Council in recognizing the overwhelming need for a statewide language access plan, as well as its overall commitment to linguistic access to the courts and the provision of interpreters in all proceedings. As cited in many of the materials circulated by the Judicial Council, Californians speak over 220 languages[1], with approximately 7 million who "cannot access the courts without significant language assistance, cannot understand pleadings, forms or other legal documents and cannot participate meaningfully in court proceedings without a qualified interpreter."[2] As legal services providers and community organizations that serve large indigent limited-English proficient (LEP)

[1] *See* California Commission on Access to Justice, "Language Barriers to Justice in California" at 1 (2005), available at: http://www.calbar.ca.gov/LinkClick.aspx?fileticket=79bAIYydnho%3D&tabid=216.
[2] *Id.*at 1.

populations, we are especially concerned because many LEP communities have higher rates of poverty than the general population.[3] We have seen and heard accounts of many LEP litigants experiencing exceptionally adverse results in court due to inadequate language services. Some examples include LEP litigants who have been evicted from their homes, lost custody and/or visitation of their children, and been unable to obtain safety and protection from abuse through restraining orders. We have also observed many LEP litigants face extreme delays in service and continued hearing dates because of their inability to navigate the complexities of the court system. We provide these comments in an effort to work with the Judicial Council and the California state court system to promote justice for all Californians, regardless of language ability.

We are aware of the current Department of Justice (DOJ) investigation of the Los Angeles Superior Court and Judicial Council and have reviewed the DOJ letter dated May 22, 2013 (DOJ Letter), summarizing observations and recommendations. We believe that the DOJ Letter's recommendations are a meaningful first step in the process of providing language access for all litigants, as required by Title VI of the Civil Rights Act of 1964, its implementing regulations, and the Omnibus Crime Control and Safe Streets Act of 1968. The DOJ Letter raises many issues of great concern within California's courts – issues that serve as significant barriers for LEP litigants. We express our specific concerns regarding these issues and other observations below.

Community and Legal Services Stakeholders Should Have More Significant Involvement

We believe that there must be continuing, significant, and meaningful community stakeholder input as plans are developed and implemented. Many advocates were disappointed that one of the initial listening sessions for community stakeholders was scheduled with little notice and no call-in capacity. We would like to have a seat at the table and be part of internal discussions regarding court language access issues. Our unique experience working with diverse LEP populations provides a depth of knowledge that should be tapped. In addition, our past experiences in various advocacy efforts have included discussions and analyses of a wide range of approaches and solutions to enhance court access for LEP individuals. We request that more legal services leaders be included in the working groups and other similar processes as they arise.

We would also like more direct meetings with the Judicial Council and the AOC in various locations, such as in rural communities, to obtain input from a diverse range of community stakeholders. Public hearings are not a substitute for in-person meetings with the Judicial Council. We are also open to the creation of a separate advisory group to be involved in working groups and other platforms for input.

[3] *See* U.S. Census Bureau, American Fact Finder, available at: http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_S1603&prodType=table (listing characteristics of people by language spoken at home, 2011 American Community Survey 1-Year Estimates).

Key Issues Affecting LEP Litigants and Communities

1. **Involvement in the Implementation of Recommendations Approved by the Judicial Council on January 23, 2014**

We request more information and involvement regarding the process of how local courts will receive and be allowed to utilize the $12.9 million in unspent TCTF court interpreter funds. Local courts should work with community stakeholders, including legal services organizations, to develop a clear and consistent process by which litigants will be provided interpreters utilizing the unspent funds. If necessary, we can provide feedback on a process by which cases may need to be prioritized for the limited purpose of implementing these recommendations.

In addition, we urge the Civil and Small Claims Advisory Committee to develop the new form referenced in the recommendations to take effect as soon as possible. Many of the issues detailed below regarding training, outreach, and assessment should be worked into procedures for spending down the surplus. The use of these funds should be closely monitored and analyzed to provide insight and guidance for future efforts.

2. **Interim Process for Providing Interpreters for Indigent/Fee Waiver Litigants**

We request that the Judicial Council and local courts create an interim process immediately to facilitate the appointment of interpreters and waiver of fees for indigent LEP litigants. This is well within judicial discretion, and a clear policy should be implemented immediately, in conjunction with #1 above, with appropriate training for all court staff and judicial officers. Although our position is that *all* LEP litigants should be provided interpreters for all proceedings, we believe that creating a process for indigent litigants is an immediate attainable step as the California Language Access Plan is developed and implemented. As part of the policy, clerks should be trained and instructed to request interpreters without delay for LEP litigants with fee waiver orders. If an LEP litigant appears without an interpreter, judges and clerks should inform the litigant in his or her language of the right to request a fee waiver for a court-appointed interpreter. We also agree that having these forms available in the various languages listed in the DOJ Letter is a critical part of providing appropriate access.

3. **Implementation of a Meaningful Complaint & Monitoring Procedure**

We request that there be an effective monitoring and complaint procedure created for litigants to report problems. The draft outline of the plan mentions some complaint procedures, but there is no explicit process for the public to complain about the denial of an interpreter in a proceeding. The complaints referenced in the draft plan are focused on the quality of interpretation and translation. Although such complaints are also very important, LEP litigants often face wholesale denials of language access, not merely inadequate interpretation. The complaint process should include the full range of language access issues and should serve as a valuable tool in informing future efforts.

As part of the statewide language access plan, local courts in each of the 58 counties should be required to submit a plan that is compliant with Title VI and the statewide plan. There

must also be an effective monitoring process of all local plans, policies and court rules, including outreach efforts and disseminated documents. All previous documents that are non-compliant should be destroyed. An example is the general order for unlawful detainer cases in LA, which facially violates Title VI by requiring litigants to bring their own interpreters, with no continuances permitted based on the failure to do so:

http://www.lasuperiorcourt.org/civil/ui/pdf/GeneralOrderforUDCasesMOSK.pdf
http://www.lasuperiorcourt.org/civil/ui/pdf/GeneralOrderforUDCasesrev.pdf

In the interim, a complaint process should be implemented immediately to obtain a true understanding of what is happening on the ground. Currently, there is no formal mechanism through which to report issues of interpreter quality or denial of interpreters. This will also inform data collection and assessment efforts.

4. Robust Data Collection, Assessment and Analysis

The Judicial Council and AOC should conduct a thorough assessment of language needs and resources. Courts should not just rely on U.S. Census and American Community Survey data, but also look at other robust and more detailed resources, such as the demographic data collected by the California Department of Education, as well as information provided by local community organizations, refugee groups, and others that work directly with LEP populations. Additionally, the use of GIS and other mapping tools can help identify languages in specific areas throughout the state. Case types, subject matters, and income of LEP litigants should also be studied and considered.

With community stakeholder input, the Judicial Council and the AOC should also examine the needs of individuals who speak indigenous and emerging languages. While finding trained, qualified interpreters in some languages may be challenging, far more interpreter resources exist than are currently being utilized. The Judicial Council and the AOC should be involved in efforts to train more interpreters in indigenous and other emerging languages, and court staff should receive further training and education to better understand and identify the nuances within specific languages. Mixteco, as an example, includes upwards of 50 different languages and dialects; Guatemala has about 22 indigenous languages. Although many community stakeholder groups have developed their own interpreter training programs, the certification of those interpreters is impossible due to lack of testing for some languages. The complaint process and more community involvement suggested within this letter will also produce relevant data regarding language needs.

5. Access, Outreach and Services Outside the Courtroom

We would also like to highlight the need to provide meaningful language services outside the actual courtroom. As you know, the DOJ has articulated that statutory mandates include services outside the courtroom, as well:

> Examples of such court-managed offices, operations, and programs can include information counters; intake or filing offices; cashiers; records rooms; sheriffs

> offices; probation and parole offices; alternative dispute resolution programs; *pro se* clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs. Access to these points of public contact is essential to the fair administration of justice, especially for unrepresented LEP persons. DOJ expects courts to provide meaningful access for LEP persons to such court operated or managed points of public contact in the judicial process, whether the contact at issue occurs inside or outside the courtroom.[4]

There should be proper staffing and language services available for LEP litigants throughout the course of their judicial proceedings. The proper translation of state court materials and forms is also essential to bridging the language divide between the California court system and the LEP populations it serves. The following suggestions are ways in which state courts can make themselves more accessible to LEP populations.

First, courts in each county should create materials and clear guidance such that LEP individuals understand the steps they need to take in order to obtain interpreters and linguistic access in court proceedings. As a start, each county's courts should provide any such materials and/or guidance in the five most widely spoken non-English languages in each county. These materials should be readily available and provided to litigants as early as possible. Courts should also have bilingual staff or access to interpretive services at filing windows, public kiosks and self-help centers so LEP litigants can ask questions and seek assistance.

Second, courts in each county should provide bilingual forms containing translated text written alongside the original English text, thus facilitating litigants understanding and completing forms in English. The courts should create one such form for each of the five most widely spoken non-English languages in their respective counties.

Third, courts should be strongly discouraged from using Google Translate or similar services to translate court webpages, as the translations have been proven to be inaccurate and confusing to non-English speakers. The use of online translators such as Google is not an adequate substitute for human translation. Many of our bilingual staff have attempted to explore several court and legal websites using Google translation offered on homepages. Navigating the website in several Asian languages, as translated by Google, did not provide meaningful translation of the content and was very confusing to the reader.

Finally, the courts must conduct effective outreach to LEP communities concerning any changes in policy. Courts in each county should create signs and flyers to be posted prominently in each courthouse. These signs and flyers should appear in the five most widely spoken non-English languages in the county. Additionally, courts should place translated notices pertaining to the changes in local media that reach LEP communities, such as non-English language newspapers and radio stations. This multilingual outreach should clearly explain how litigants can obtain interpreters and linguistic access throughout their court proceedings. Without proper safeguards and policies in place, LEP litigants will continue to be denied meaningful access to

[4] Letter Issued to State Courts from U.S. Department of Justice, Civil Rights Division, Thomas E. Perez, Assistant Attorney General, August 16, 2010, found at www.lep.gov/final_courts_ltr_081610.pdf.

the courts.

We look forward to working collaboratively with the Judicial Council, AOC, and local courts in these efforts. If you require any further information or have any questions, please contact the individuals listed at any of the organizations below. Thank you.

Sincerely,

American Civil Liberties Union (ACLU) of California
(Francisco Lobaco, flobaco@acluca.org, (916) 442-1036)
Asian Americans Advancing Justice – Asian Law Caucus
(Winifred Kao, winifredk@advancingjustice-alc.org, (415) 896-1701)
Asian Americans Advancing Justice – Los Angeles
(Carolyn Kim, ckim@advancingjustice-la.org, (213) 977-7500 x222)
Asian Law Alliance
(Richard Konda, sccala@pacbell.net, (408) 287-9710)
Asian Pacific American Bar Association of Los Angeles County
(Puneet V. Kakkar, kakkar@caldwell-leslie.com, (213) 629-9040)
Asian Pacific American Women Lawyers Alliance
(Sandra Fujiyama, sfujiyama@wsgr.com, (323) 210-2903)
Asian Pacific Islander Institute on Domestic Violence
(Cannon Han, chan@apiidv.org, (415) 568-3326)
Asian Pacific Islander Legal Outreach
(Cindy Liou, cliou@apilegaloutreach.org, (415) 567-6255 x243)
Bay Area Legal Aid
(Amy P. Lee, alee@baylegal.org, (415) 982-1300 x6369)
California Partnership to End Domestic Violence
(Krista Niemczyk, krista@cpedv.org, (800) 524-4765 x101)
California Rural Legal Assistance, Inc.
(Maureen Keffer, mkeffer@crla.org, (415) 777-2752)
Center for the Pacific Asian Family
(Debra Suh, debras@cpaf.info, (323) 653-4045 x218)
Centro Legal de la Raza
(Bianca Sierra Wolff, bwolff@centrolegal.org, (510) 437-1554 x111)
Chinese for Affirmative Action
(Grace Lee, glee@caasf.org, (415) 274-6750)
Community Legal Services in East Palo Alto
(Larisa Bowman, lbowman@clsepa.org, (650) 326-6440 x309)
Disability Rights Legal Center
(Paula Pearlman, paula.pearlman@lls.edu, (213) 736-8362)
Family Violence Prevention Fund
(Erin Scott, escott@fvlc.org, (510) 208-0220)
Inner City Law Center
(Javier Beltran, jbeltran@innercitylaw.org, (213) 891-3220)
Japanese American Bar Association
(Steven K. Yoda, syoda@orrick.com, (949) 567-6700)

Korean American Bar Association of Southern California
(Lisa Kwon, lisa.kwon@davita.com, (310) 536-2608)
Korean American Family Services
(Connie Chung Joe, cchungjoe@kfamla.org, (213) 235-4840)
Korean Resource Center
(Jenny Seon, jenny@krcla.org, (323) 937-3718)
Koreatown Youth and Community Center
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Law Foundation of Silicon Valley
(Kyra Kazantzis, kyrak@lawfoundation.org, (408) 280-2401)
Legal Aid Foundation of Los Angeles
(Joann Lee, jlee@lafla.org, (323) 801-7976)
Legal Aid Society – Employment Law Center
(Christopher Ho, cho@las-elc.org / Marsha Chien, mchien@las-elc.org, (415) 864-8848)
Legal Services for Children
(Abigail Trillin, abigail@lsc-sf.org, (415) 863-3762 x303)
Legal Services of Northern California
(Stephen Goldberg, sgoldberg@lsnc.net, (916) 551-2181)
Little Tokyo Services Center
(Vivian Lee, vlee@ltsc.org, (213) 473-3035)
Los Angeles Center for Law and Justice
(Verónica Sauceda, veronica@laclj.org, (323) 980-3500 x21)
Los Angeles Community Action Network
(Becky Dennison, BeckyD@cangress.org, (213) 228-0024)
Los Angeles Gay & Lesbian Center
(Roger Coggan, rcoggan@lagaycenter.org, (323) 860-3730)
Mexican American Bar Association
(Erick Solares, erick.solares@dot.ca.gov, (213) 749-2889)
Neighborhood Legal Services of Los Angeles County
(Neal S. Dudovitz, ndudovitz@nls-la.org, (818) 834-7590)
People Organized for Westside Renewal (POWER)
(Bill Przylucki, bill@power-la.org, (310) 392-9700)
People Organizing to Demand Environmental & Economic Rights
(Antonio Diaz, adiaz@podersf.org, (415) 431-4210)
Public Counsel
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South Asian Network
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Thai Community Development Center
(Panida Rzonca, panida@thaicdc.org, (323) 468-2555)
Western Center on Law and Poverty
(Claudia Menjivar, cmenjivar@wclp.org, (213) 235-2636)
Youth Law Center
(Jennifer Rodriguez, jrodriguez@ylc.org, (415) 543-3379)

Joint Working Group for California's Language Access Plan | Public Hearing on March 4, 2014

Public Comment (2-3:45 p.m.)

Judicial branch leaders welcome and encourage the public to share their concerns, thoughts and ideas in the formulation of a language access plan that will provide greater access to justice.

Public Comment by Piers Armstrong (Cal State L.A.)

Piers Armstrong, PhD, is the Director of the Legal Interpreting and Translation Program at California State University, Los Angeles (Cal State L.A.). Email: parmstr@calstatela.edu

First, my deep thanks go to the organizers of this event and the leaders of the LAP initiative, and to all the participants.

I wish to connect a series of aspects of the challenge we face. Given the complexity of their interrelation, it is best to identify at the outset the main issue they point toward, which is the compelling need for institutionalization of the interpreting profession so that it can be accountable, measurable, and comprehensible.

Points. The points, in sequence, can be briefly stated as follows:

- the notion of interpreter services as a material resource (i.e., if we had enough money and enough interpreters, there would not be a problem), rather than as a human resource with professional peculiarities is a common misconception and leads to significant distortion of pragmatic realities
- a common theme of testimony regarding legal interpreting is that it is misunderstood as a professional skill set
- the real reason for the general ignorance as interpreting is non-institutionalization, i.e., the lack of responsible state and professional institutions with expertise and authority in the professional skill set
- this non-institutionalization of legal interpreting is anomalous in relation to analog professionals (attorneys, doctors, nurses, social workers, engineers, etc.)
- the ignorance of interpreting and its non-institutionalization manifest in illustrative structural contradictions
- the first requirement for institutionalization is supervision of qualification (certification of legal interpreters)
- the contracting-out of the qualification system is symptomatic of non-institutionalization, and of the self-characterization by possible authorities (such as the Judicial Council itself) as having no (linguistic) content expertise and thus only limited accountability in any question in which linguistic issues pertain
- the institutionalization of the qualification system should be incumbent on, and draw on human resources from, a triangulation of stakeholder interests, including: (i) clients (notably, defendants and their advocates (attorneys and others); (ii) various content area authorities (with linguistic, psychometric and educational expertises); (iii) state administrative patrons (notably, but not exclusively, the Judicial Council)
- cogent, conventional and documented institutionalization should be understood as the prototype for the implementation of a LAP rather than as an eventual refinement of the same; funding of language access services should not precede longitudinal design

Discussion

The misunderstanding of interpreting, together with the ancillary 'under-the-radar' character of professional interpreting, and its lack of public projection, are less due to the putative cause – the fact that it involves foreign languages, and foreigners, often socioeconomically marginalized, and 'strange' to the legal brethren that shepherd them through miscellaneous proceedings – than to the absence of conventional institutional checks and balances, and institutional cultivation (teaching, research, documentation, professional development, quality control) which would afford public projection and normalize perception of this professional activity. The professional world of attorneys is structured by such components – law schools, a central professional organization (ABA), scholarship, public activism, and, above all, the arena of litigation itself, the measuring of evidence and of discourse, and the accumulation of judgments in 'precedent.' Medical doctors are governed by medical schools, scholarship, rigid ethical standards and procedures, and exposure to possible litigation. Each has its 'science' – jurisprudence and medical research. Ask yourself for a moment: what are the equivalents in interpreting? Most of you will find no answers, and will attribute this to your own ignorance of foreign language matters as a sort of alien substance connecting to alien existences, like moon dust. However, the real cause is the non-institutionalization of interpreting. Interpreting is less abstruse and obtuse than many technical fields. Notwithstanding, engineers are accountable; the work of computer code designers is eventually objectively documented and so trackable; social workers must complete a degree at an accredited institution, be supervised by senior personnel, etc.; nurses are closely monitored through training and must pass a series of practical and theoretical exams, etc. By contrast, legal interpreting work is not normally monitored for quality control or even recorded (the transcript excludes the foreign language, and there is no audio record); the selection of interpreters per qualification is profoundly erratic; the qualification of legal interpreters hinges on a short test of dubious reliability despite its overall validity, followed by a life-time license with no further oversight; interpreting work is not reported or documented regularly in applied research, there is no normalization of curricular points and performance levels in interpreter education, there is no state regulation or

accreditation of interpreter education, etc. The world of interpreting is a sort of Bermuda triangle for the conventional paraphernalia of civilly sanctioned technical professions. The Judicial Council is not the oversight authority for legal interpreting. Rather, it is a judicial authority which commissions third parties to qualify interpreters because it considers (reasonably) that it has no intellectual authority in the language field. These third parties should answer to an ensemble of institutional entities with content area expertise (schools, researchers, supervisors of publicly employed court interpreters and of language services). That ensemble must itself be institutionalized as a public office and made accountable for content area decisions including qualification.

On related legislative precedents and initiatives, with a view to institutionalization

There is something of a precedent, at least for incipient institutionalization, in legislation proposed in 2014 for medical interpreting for Medical customers (see AB 2325, introduced 2/21/2014 by John A. Pérez); this calls on the CA Dept. of Health to:

> develop, monitor, and evaluate interpreter competency, qualifications, training, certification, and continuing education, (2) by September 1, 2015, approve an examination and certification process to test and certify the competency of medical interpreters, and (3) maintain a registry of those persons who meet the requirements to provide CommuniCal services (...)[1]

On related legislative precedents and initiatives, as a caution against assumptions that institutionalization proceeds naturally with time: the federal courts, driven by a legislative imperative (the Court Interpreters Act of 1978 [PL 95-539])[2] to provide interpreters and thus warrant for their competence and thus get involved in certification, present their own anomalous aspects: 35 years later, certification exams have been developed in Spanish, Haitian Creole and Navajo, but not in the widely used LOTEs ('languages other than English') other than Spanish. What most people understand as the institution responsible for the Federal Certification exam, the FCICE (Federal Court Interpreter Certification Exam) is in fact not an institution per se but rather a 'program' which runs a pair of exams (written then oral) for one language only, Spanish. This program is currently housed in the National Center for State Courts (NCSC), which provides no information on exams for languages other than Spanish, nor stipulates clearly its own exact status (federal vs. state, governmental vs. professional, etc.). [3]

On structural contradictions

The federal situation above illustrates one sort of structural contradiction – the disconnect between law and language policy on the one hand, and the provision and accountability of interpreter services on the other. We can also look at this in the familiar corridors and concrete cases of the state justice system in California. In the absence of accountable institutions, in certain areas ad hoc decisions are made arbitrarily, while in others, inaction or omission of judgment endures. Judges routinely make executive decisions regarding interpreting, whether by qualifying a bilingual person as an interpreter by fiat, deploying (or denying) criminal court interpreting resources for civil cases, and by deciding on the base of common sense and apparent language skills whether a defendant requires an interpreter or not. In contrast, the Judicial Council – though it is not compelled by the urgency of a case at hand, and though it has time for deliberation and access to diverse human resources – delegates language decisions to external third parties.

About institutionalization

Any ideal design for the provision of language services (e.g., based on abstract notions of inalienable rights) will, upon implementation as policy, have to negotiate two contrary forces: (i) practical constraints (such as funding, or the availability of qualified interpreters in certain languages); (ii) the politics of stakeholder interests (beginning with interpreters themselves, whose economic interests per the configuration of state funded services do not necessarily coincide with their advocacy for the general right to language services). It is important to understand that Institutionalization does not mean abstraction; functioning institutions accommodate pragmatic realities; they adapt to them with a view to gradually changing the balance of pragmatic realities; they respond, awkwardly but progressively, to criticisms of them which are based on abstract notions including 'inalienable rights.' Institutionalization is never the total cure but it is often a substantive compromise for the management of a need, which has the power to deploy significant resources, the expertise to do so intelligently and judiciously, and, in light of the same, is accountable, so that in the face of putative denial of warranted services, miscarriages of justice, alleged incompetence, etc., the buck stops with certain designated officers of the state.

Notes

[1] CA AB No. 2325, Introduced by Assembly Member John A. Pérez on 2/14/2014. Retrieved from: http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2301-2350/ab_2325_bill_20140221_introduced.pdf

[2] 'Court Interpreters Act.' Public Law 95-539,Oct. 28, 1978. Cited from US Govt. Printing Office. Retrieved from: http://www.gpo.gov/fdsys/pkg/STATUTE-92/pdf/STATUTE-92-Pg2040.pdf

[3] *FCICE* is the acronym of the 'Federal Court Interpreter Certification Exam.' The FCICE homepage (http://www.ncsc.org/fcice/) opens with the words, ' Welcome to the Spanish-English Federal Court Interpreter Certification Examination homepage,' and continues, at bottom, with 'The National Center for State Courts is contractor to the Administrative Office of the United States Courts for the development and administration of the Spanish/English Federal Court Interpreter Certification Examination.' The acronym of the National Center for State Courts is NCSC. The NCSC homepage is http://www.ncsc.org/. Curiously, the NCSC is not linked from the FCICE home-page; rather, a subpage of the Administrative Office of the United States Courts is linked (http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters.aspx). In reality, of course, despite the phrasing, the Federal exam does not have a homepage as it is not a human or corporate agent in itself; rather, there is a homepage for (about) the exam on a website controlled by a non-government organ, which has a contract for the federal legal interpreter exam of one language (Spanish). The government organ with ultimate authority is the Administrative Office of the United States Courts. At the previous link, basic details are provided regarding certification (for Spanish only) and another form of qualification – designation as a professionally qualified (P.Q.) interpreter, for languages other than Spanish, Haitian Creole and Navajo; the P.Q. designation can be awarded via either of two exams (neither focused on legal intepreting) or membership in either of two professional organizations(neither focused on legal intepreting). No information is provided as to how a candidate might sit an exam for Haitian Creole or Navajo. The FCICE page is essentially a page to provide would-be test candidates in the Spanish-English test with information about the test and to channel their registration. In this sense it follows the commercial template of a for-profit test provider. The page implies that it is a 'program,' and provides this help: 'For answers to general questions about the FCICE program, please click here.' This links to the following page: http://www.ncsc.org/sitecore/content/microsites/fcice/home/About-the-program/Frequently-Asked-Questions.aspx. At this page, we have more information about the exam – not about the 'program.'
The reader may by now be exasperated with the the seemingly needless punctiliousnous of this long-winded footnote. The expectation of concision, however, is only warranted if one can in fact proceed (initially by virtual link, then by correspondence, or by visiting an office) to the seat of a known governmental or paragovernmental authority with jurisdiction over the content point and effectively dialog with that power (as parties do with the courts). That is precisely what cannot be done here, despite the 1978 legislative determination that:

> **(a)**
> The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.
>
> **(b)**
> **(1)** The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters (...)
> **(3)** The Director shall maintain a current master list of all certified interpreters and otherwise qualified interpreters and shall report periodically on the use and performance of both certified and otherwise qualified interpreters in judicial proceedings (...)

The convoluted nature of the information search correlates to this crucial circumstance: the term 'program' is ambiguous, and all sorts of political nuances play out in manipulations of term. The word 'program' can mean an office, a curriculum or a amorphous 'initiative' to achieve some abstract end. The basic meaning, however, is an institutionalized curriculum for which the same institution accepts students or trainees, or – in situations where qualification is effectively handled by prior, third party institutions and testing agencies – a systematic effort by another agency to distribute resources (here, qualified personnel, i.e. certified or otherwise qualified interpreters). The latter meaning is intended in (a) above; something of the former meaning (actual involvement in the process) is intended in (b). The problem is that the lighter, latter meaning presupposes a prior competent agency, which in this case does not exist or is not identifiable.

The FCICE page does include a link to a very important sub-page (FCICE / About the Program / 6. Who administrates the FCICE?) (see http://www.ncsc.org/sitecore/content/microsites/fcice/home/About-the-program/Examinee-Handbook/6-Who-administrates-the-FCICE.aspx), where, for the first time, the reader encounters mention of a commercial vendor partner (now owned by Berlitz). The general (non language-access) mission of the NCSC is also better explained here. The text then reverts to the exams themselves (i.e., written and oral, for Spanish-English). More precisely, the remaining information mentions a series of content experts (linguistic and/or legal) who contributed to the development of the exams at unidentified moments in the past with unspecified roles. The implication is of a large-scale humanist and altruistic endeavor by enlightened public officials and academics. Agency, power relations and respective authorities, are not identified. Plans for development of exams for other languages are not mentioned. The official overtones of the term, 'program,' are invoked, and appropriate official institutional underwriting of the 'program' is heavily implied. Real elucidation of agency is, however, not afforded nor, apparently, intended.