

Opening Our Doors to Language-Minority Clients

By Paul M. Uyehara

Mr. C, a 62-year-old recent Albanian immigrant, came to our office for help with a welfare problem. He showed pride and determination in explaining his problem in slow, broken English. His lawyer suggested an interpreter might help, but Mr. C said it was not necessary as he could understand and just needed a little time to find the right words in English. After talking about the problem some more, the attorney complimented Mr. C on his English but explained that an interpreter was needed since each of them had to understand everything the other was saying. Mr. C appeared aggravated and exclaimed, "It's impossible! It's too much trouble."

The attorney called a telephone-interpreting service, and an Albanian interpreter was on the speakerphone in about thirty seconds. Mr. C's face lit up. He explained that he never imagined we could get an interpreter so quickly! He said that, of course, speaking in Albanian was much easier for him, but no one had ever provided an interpreter before, and so he was doing his best in English. He did not want to cause any trouble or have to come back later.

In 1998, after one of only two remaining neighborhood offices of Community Legal Services closed, and Philadelphia Legal Assistance was created in response to the new Legal Services Corporation (LSC) restrictions, a joint committee of staff from

the two programs reviewed client services. A key finding of the committee was that the programs were serving language and cultural minorities poorly. We were seeing an increasing number of clients such as Mr. C., for whom we could not provide the best representation without offering language services. Asian clients, estimated to constitute perhaps 7 percent of the population, accounted for only 1 percent of the programs' clients. And the closure of our Northeast office, which had served a diverse low-income area with substantial numbers of white, African American, Latino, and Asian families, had an interesting impact. That office had housed a clinic that handled custody and support matters for the entire city. The proportion of the clinic's clients who were Latino dropped from about 23 percent to about 14 percent when the clinic moved downtown from northeast Philadelphia. Committee members were also concerned that clients who spoke neither English nor Spanish were receiving poor service even when they did get in the door. Both programs lacked reliable, quick access to competent interpreting and translating services. The report recommended that the programs comprehensively increase outreach and services to underserved language-minority populations.

With support from the William Penn Foundation, Community Legal Services created the Language Access Project in

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1999 and assigned two lawyers and a paralegal to staff the project, all on a part-time basis. The project's charge was to implement the committee's recommendations to expand service to immigrants and limited-English-proficient clients by delivering services in languages other than English and Spanish, reaching out to immigrant communities, reviewing case-acceptance practices, and advocating on language rights issues. The work of the Language Access Project led to an increase in Community Legal Services intake among non-Spanish-speaking limited-English-proficient language groups of some 250 percent over three years, while overall intake among limited-English-proficient clients (including Spanish speakers) increased by about 50 percent during the same period.

To assist other programs that have yet to undertake such changes, I set out below some of the issues that arose and lessons we learned as we pushed Community Legal Services in a new direction to improve service to our total client population. I focus particularly on ways to approach the essential first step of being able to deliver services in other languages. Our approach is only one among various options that can lead to improved service to language-minority communities; others may adopt other methods.¹ Working effectively with increasingly diverse client groups requires addressing issues other than language.² For most programs, how-

ever, improvement in language capacity is essential.

I. The Impetus for Change

Multiple factors are pushing legal aid programs to improve service to language-minority clients. The increase both in the foreign-born population and in the number of geographic areas where immigrants reside has made the issue relevant for many more programs than in the past. At the same time the increasing understanding of language access as a civil rights issue is causing legal aid programs to examine their own practices before demanding linguistic access to other government services for their clients.

A. Demographic Trends

The population of the United States has changed dramatically since the creation of legal aid programs in the 1960s and 1970s. Some changes are readily apparent, while others may have gone virtually unnoticed. The foreign-born portion of the population has more than doubled since 1970 (see fig. 1), and immigrants now make up a larger proportion of the population than at any time since 1930.³ Moreover, these changes have accelerated; the foreign-born population has increased by 57 percent just since 1990.⁴ Spanish emerged as the predominant language spoken by the foreign-born only in 1970 and has become the dominant second language since then.⁵ An esti-

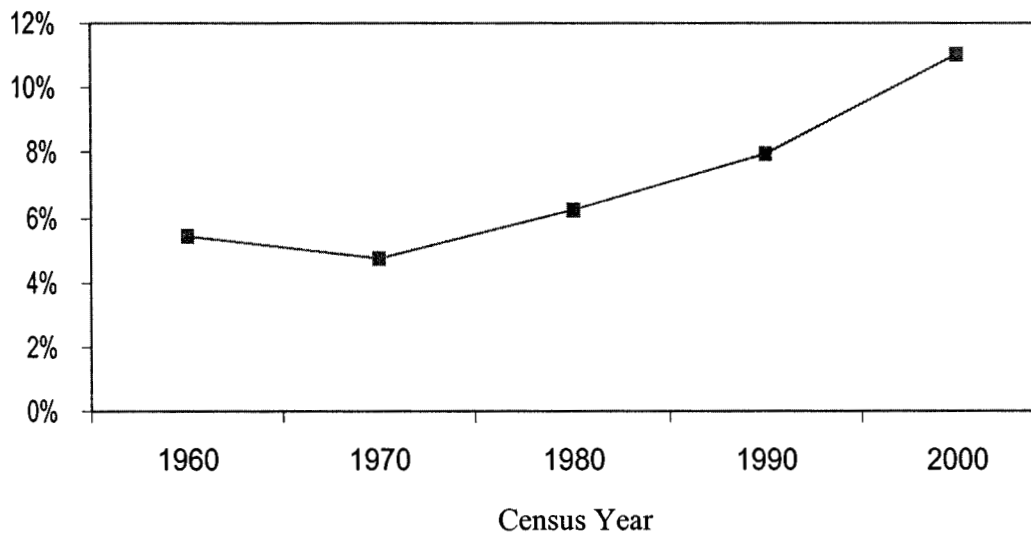
¹ See, e.g., Joann H. Lee, *A Case Study: Lawyering to Meet the Needs of Monolingual Asian and Pacific Islander Communities in Los Angeles*, 36 CLEARINGHOUSE REV. 172 (May-June 2002) (exploring a model that relies on an extensive network of bilingual staff and partnerships with other providers of legal services and community organizations to staff Asian language intake lines and outreach clinics).

² See Zenobia Lai et al., *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 UCLA ASIAN PAC. AM. L.J. 1 (2000) (Greater Boston Legal Services community lawyering approach to advocacy for clients in Boston Chinatown).

³ See U.S. CENSUS BUREAU, Table DP-2: PROFILE OF SELECTED SOCIAL CHARACTERISTICS: 2000 (2002), http://factfinder.census.gov/servlet/QTTable?_ts=62968974469; CAMPBELL J. GIBSON & EMILY LENNON, HISTORICAL CENSUS STATISTICS ON THE FOREIGN-BORN POPULATION OF THE UNITED STATES: 1850 TO 1990 (1999), <http://landview.census.gov/population/www/documentation/twps0029/twps0029.html>. The accompanying graph was also prepared from data found in these sources.

⁴ Compare U.S. CENSUS BUREAU, *supra* note 3, with U.S. CENSUS BUREAU, Table DP-2: PROFILE OF SELECTED SOCIAL CHARACTERISTICS: 1990 (2002), http://factfinder.census.gov/servlet/QTTable?_ts=62968106571.

⁵ Compare Gibson & Lennon, *supra* note 3, tbls. 5-6, with U.S. CENSUS BUREAU, CENSUS 2000 Supplementary Survey tbl. P034 (2000), http://factfinder.census.gov/servlet/DTable?_ts=62969168047 (2001).

Figure 1.—Foreign-Born Portion of Population

[Source: U.S. Census Bureau.]

mated 60 percent of those who speak a language other than English at home, regardless of country of birth, are Spanish speakers.⁶ The Latino population in the United States increased by a factor of almost 40 between 1960 and 2000, but more than a third of this population entered the country or was born after 1990.⁷ Similarly the Asian-Pacific Islander population has exploded through immigration, with the number of foreign-born in this group tripling in the 1970s and then doubling in the 1980s. Two-thirds of the current Asian-Pacific Islander population is foreign-born, and about half of this group arrived in the 1990s.⁸

The changes are not simply the result of increased numbers. New Americans

are settling all across the country and are no longer confined to states such as California or cities such as New York that have traditionally had sizable immigrant populations. Limited-English-proficient communities are now found in rural as well as urban areas, in the Midwest and South as well as on the coasts.⁹ The foreign languages that newcomers speak have also changed as greater numbers of immigrants arrived from Latin America, Asia, Eastern Europe, and Africa, outnumbering immigrants from Western Europe.¹⁰ Communities that have been unaccustomed to the presence of immigrants are learning to accommodate substantial immigrant populations. Areas long accustomed to large immigrant pop-

⁶ U.S. CENSUS BUREAU, CENSUS 2000 SUPPLEMENTARY SURVEY, *supra* note 5. The Census Bureau estimates that in 2000 more than 26 million people 5 and older spoke Spanish at home.

⁷ U.S. CENSUS BUREAU, CENSUS 2000, Table PHC-T-1 tbl. 4 (2001), <http://www.census.gov/population/cen2000/phc-t1/tab04.pdf> (2001).

⁸ U.S. CENSUS BUREAU, CENSUS BRIEF, FROM THE MIDEAST TO THE PACIFIC: A PROFILE OF THE NATION'S ASIAN FOREIGN BORN POPULATION (2000); U.S. CENSUS BUREAU, *supra* note 7.

⁹ *E.g.*, Yilu Zhao, *Wave of Pupils Lacking English Strains Schools*, N.Y. TIMES, Aug. 5, 2002, at A1.

¹⁰ In 2000 the top five languages other than English spoken at home, regardless of country of birth, were Spanish, Chinese, French (including Patois and Cajun), Indic (Hindi, Bengali, Punjabi, Marathi, and Gujarati), and German. U.S. CENSUS, CENSUS 2000, Table P034, *supra* note 6. Compare this to the top five languages spoken by foreign-born residents in 1960: German, Italian, Spanish, Polish, and Yiddish. GIBSON & LENNON, *supra* note 3.

ulations have had to adjust to different languages.

These demographic changes have naturally changed the composition of the low-income population as well. Poverty rates among the foreign-born are higher than among the native-born, and among the foreign-born population the poverty rate for noncitizens is more than twice that of naturalized citizens.¹¹

The dramatic growth in immigration and immigrants' settlement in areas unaccustomed to such populations have other significance. More than 21 million of those 5 and older, or more than 8 percent of the total U.S. population in that age bracket, speak English less than "very well," a 50 percent increase in those with limited English proficiency since 1990.¹² Many are not U.S. citizens; the number whose status is undocumented was estimated at 8.5 million in 2000.¹³ Immigrants with varying cultural backgrounds and familiarity with different kinds of legal systems are a special challenge for advocates. Providing quality legal services for the low-income segment of the newcomer population requires sensitivity to issues of language, citizenship, and culture. Especially after the wave of mergers that LSC has spurred among legal aid programs, not surprisingly programs now serve at least one substantial language-minority population. The demographic changes mean that programs that fail to create or upgrade language policies will increasingly exclude or provide inferior services to clients on the basis of the clients' ability to speak English.

Programs that cannot deliver better services to limited-English-proficient clients also risk becoming detached from

the needs of a changing client community. The legal problems that these clients experience may involve language or immigration status or may arise out of cultural norms with which advocates have little experience. Programs that fail to respond to new issues or to learn to deliver services in new ways risk losing their relevance.

B. Poor Communication = Poor Lawyering

At the center of virtually everything advocates do with and for their clients is communication, both oral and written. Communication is essential to obtain facts, understand a client's goals and concerns, give advice, negotiate, and litigate. When advocate and client are not fluent in the same language, the simplest tasks can become difficult for both. Assuring that the two can communicate well when one is not proficient in English is a matter of professional responsibility, and this responsibility falls on the program, which is, after all, paid to deliver quality legal services. Misunderstood facts or goals can obviously lead to erroneous pleadings or legal strategies, implicating malpractice or ethics questions.

C. The Civil Rights Angle

Just as demographic realities have changed, so has the legal setting in which we operate, in that the rights of language minorities are receiving increased attention. Programs that fail to provide linguistically accessible services may violate clients' civil rights under federal, state, or local laws barring discrimination based on national origin. Title VI of the Civil Rights Act of 1964 bars discrimination

¹¹ Of foreign-born residents, 16.8 percent were below the federal poverty level in 1999, compared to 11.2 percent of the native-born. Lisa Lollock, *The Foreign Born Population in the United States: March 2000*, U.S. CENSUS BUREAU, CURRENT POPULATION REP. P20-534 (2001).

¹² Compare U.S. CENSUS BUREAU, TABLE DP-2: PROFILE OF SELECTED SOCIAL CHARACTERISTICS: 2000, *supra* note 3, with U.S. CENSUS BUREAU, TABLE DP-2 PROFILE OF SELECTED SOCIAL CHARACTERISTICS: 1990, *supra* note 4.

¹³ MICHAEL FIX ET AL., URBAN INST., THE INTEGRATION OF IMMIGRANT FAMILIES IN THE UNITED STATES 12 (2001).

based upon national origin by recipients of federal funds.¹⁴ Language is a recognized proxy for national origin.¹⁵ Discrimination need not be intended to violate Title VI regulations.¹⁶ Pres. William J. Clinton issued an executive order in 2000 mandating that federal agencies adopt language access policies for themselves and require recipients of their funding to ensure that persons of limited English proficiency have meaningful access to government-funded programs and benefits.¹⁷ Numerous federal departments and agencies have issued policy guidance regarding language access, under both the Clinton and Bush administrations. LSC has not yet issued guidance on services to limited-English-proficient clients but is considering doing so.¹⁸

Many legal aid programs receive financial support, directly or indirectly, from federal sources other than LSC, such as the Department of Justice; the programs also sometimes receive funds from state or local government programs that are in turn funded by the federal government. Of course, even programs that are not covered by such requirements would likely have difficulty articulating any sound reasons why they should not adhere to the same civil rights standards that apply to federally funded programs. This is especially true if the program may pursue language-based complaints on behalf of clients against entities that are subject to Title VI. Programs that are unable to deliver legal services effectively to limited-English-proficient clients will naturally

encounter more challenges when seeking to advocate on their behalf.¹⁹

II. Assessing Needs

In redirecting its activities to ensure that the needs of language-minority clients are met, a legal aid program must consider the nature of the client community and its own resources.

A. Client Language Needs

The first step in making programs more accessible to clients with limited English proficiency is to conduct a language-focused assessment of both the client community and the program. The program should gather data on its existing caseload to determine the proportion of clients whose English proficiency is limited, the primary languages that they speak, and the extent to which the program is using language services. Programs that cannot gather this information may survey staff members, especially the intake staff, informally. Fiscal personnel can tabulate expenditures for contracted language services. The program should also compare how many clients receive full legal representation and how many receive limited services such as brief advice or a referral. These numbers should indicate the language spoken by clients who find their way to the intake stage and those who are actually being represented.

Also gather information about the geographic area that the program serves. Demographic information from the 2000

¹⁴ “No person in the United States shall, on ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d (2002).

¹⁵ *E.g.*, *Gutierrez v. Mun. Court of S.E. Judicial Dist.*, 838 F.2d 1031 (9th Cir. 1988), *vacated as moot*, 490 U.S. 1016 (1989).

¹⁶ *Lau v. Nichols*, 414 U.S. 563 (1974) (Clearinghouse No. 3,321) (failure to provide special language instruction to Chinese students violates Title VI regulations).

¹⁷ Exec. Order No. 13166, 65 Fed. Reg. 50121 (Aug. 16, 2000).

¹⁸ The Legal Services Corporation (LSC) requested comment on whether it should issue guidance on providing services to limited-English-proficient clients. 68 Fed. Reg. 1210 (Jan. 9, 2003). The notice raises some interesting issues about whether LSC-funded programs are recipients of federal financial support for Title VI purposes and points out that the programs are contractually obligated to avoid national-origin discrimination.

¹⁹ *See, e.g.*, Victor Goode & Phyllis Flowers, *Invisibility of Clients of Color: The Intersection of Language, Culture, and Race in Legal Services Practice*, 36 CLEARINGHOUSE REV. 109 (May–June 2002).

census is available online at www.census.gov. Look for data on households or individuals who do not speak English “very well” and for tabulations by primary language, by race, of foreign-born individuals, and of poverty.²⁰ Community organizations and other agencies may also have useful data. The point is to identify the languages spoken in your service area and their relative prevalence. Also, understanding the geographic distribution of language groups is important.

Since sorting 2000 census data simultaneously by English language ability and by income does not appear doable, generating a direct tally of the low-income limited-English-proficient population may not be possible. However, one can calculate separately the size of each category in an area as small as a census tract or block group and thus locate at least roughly potential clients with limited English proficiency. Race-specific poverty calculations in specific geographic areas also are available, and these data may help locate concentrations of low-income Latinos and Asians. U.S. Census Partnership and Data Services specialists in each regional census office can guide or train on data gathering, and customized data reports are also available.²¹

With these data in hand, compare the eligible client population with the clients that the program actually represents, to determine if any groups are underserved. Does the percentage of the income-eligible population that is limited-English-proficient roughly correlate with the percentage of clients whose English proficiency is limited? Is the program serving clients from geographic areas that data suggest should contain high concentrations of low-income limited-English-proficient families? Do some language groups appear to be receiving services at a higher rate than others? If disparities are evident, consider

Finding Census Figures

Go to <http://quickfacts.census.gov/qfd>.

Click on your state.

Select a county. A chart will show demographic information for that county and the state as a whole, including the percentages of Asians; Latinos; foreign-born; people speaking a language other than English at home; and poverty based on the 2000 census.

Click on the “Browse More Data Sets” link, then on “Social Characteristics,” to view county statistics regarding the foreign-born population and region of origin; those who speak English less than very well for Spanish and two general language groups; poverty; and breakdown of Asians and Latinos by country of origin.

whether the manner and methods of delivering client services, or the types of services provided, are making the program less accessible to limited-English-proficient clients generally or to specific language groups. Aside from the obvious—that limited-English-proficient clients are not seeking service because of language barriers or lack of familiarity with the program—numerous issues deserve consideration. These include

- location of offices and availability of public transportation (Are your offices more convenient for some groups than others? Are offices located in an area unfamiliar to or uncomfortable for some groups?);
- the impact of requiring telephone communication to obtain services (Many programs rely on centralized telephone intake systems. Can someone who does not understand English (or Spanish) penetrate the system? Is service available to someone without a phone? Clients whose English proficiency is limited may prefer in-person contact because they assume that interpretation is not available by phone or is provided more easily in person);

²⁰ Data on language spoken at home can be located for an area as small as a block group by clicking on Summary File 3 from the U.S. Census Bureau home page, www.census.gov, clicking on Access to all Tables and Maps in American FactFinder, selecting Enter a Table Number, entering table QT-P16, and selecting the desired geographic area.

²¹ Contact information for regional census staff is available at www.census.gov/field/www/. State data centers have additional information, including customized data. See www.census.gov/sdc/www/.

- areas of law in which the program provides services (Specific language or nationality groups may encounter particular legal problems. For example, fraudulent or incompetent preparers of tax returns seem to appear more frequently in immigrant communities. Community Legal Services has encountered an apparently unusual number of Russian-speaking immigrants with trade school disputes. Become familiar with the particular legal needs of different language groups. Consider developing expertise in immigration law and advocating language access at other agencies with which limited-English-proficient clients interact);

- type of assistance offered (How is the decision made to offer a client full representation, limited service, referral, or advice only? Some restricted levels of service may be of little value to a client unable to send a letter, read a response, or file an application in English. Referrals to linguistically inaccessible pro bono programs may be of little value. Consider being more flexible in determining what type of help to offer clients whose English proficiency is limited. Offering the same services to different groups can have an unintended discriminatory impact); and

- community partnerships (Forge relationships with community organizations, including those based on ethnicity; grassroots groups; religious organizations; and service providers that work closely with immigrant and other limited-English-proficient communities).

Completion of this initial assessment should inform a program's knowledge of the languages in which it must develop capacity and the extent to which barriers may be blocking access to its services.

B. Program Resources and Practices

A program must assess the resources that it has to serve limited-English-proficient clients, its current policies and practices, and language barriers to its services. Which staff members are proficient in a second language? Are arrangements in place to obtain trained interpreters and translators for other languages widely spoken in the service area? Does the program

have any policies regarding identifying and tracking a client's primary language, providing language services, using staff members for language services, and encouraging or permitting clients to provide their own interpreters? Policies aside, what practices do staff members actually follow? Are language-access matters the responsibility of any specific staff member?

The program should comprehensively evaluate its delivery of services to limited-English-proficient clients. Review all stages and aspects of client services—including intake, referral, advice, representation, advocacy, community education, and outreach—to identify potential barriers.

III. Policy

After assessing client needs, existing program resources, and the state of program practices, a legal services program must establish policies to promote meaningful access for limited-English-proficient clients. The program policy can begin with a general rule, for example, "The program delivers quality legal services to clients in their primary language." Through bilingual staffing or free, competent language assistance to clients, the policy should make clear that the program, not the client, is responsible for eliminating language barriers. Services for limited-English-proficient clients should not be limited, unreasonably delayed, or otherwise inferior to the services that other clients receive.

The program should craft a comprehensive written policy, distribute it to all staff members, and make it available to the public. However, before thinking about how to flesh out the policy, the program must assemble the components needed to deliver services in other languages.

A. Gathering Language Resources

The essential element for a language access program is creating a network of staff members and services to interpret and translate for a wide range of communities with limited English proficiency. Although special attention must be given to the language groups encountered most frequently, the program must also have an adequate system for serving less frequently encountered language groups

since all clients are entitled to meaningful access.

1. Bilingual Staff

The first element of language services, especially for high-volume languages, is built upon in-house bilingual staff. Identify these individuals and determine their proficiency levels in both English and the second language. Consider a formal assessment of their language capability.²² Compile and circulate a staff language directory that lists those with second-language ability and categorizes them according to skill in speaking and writing. Bilingual staff members can function both as case handlers and as interpreters or translators when qualified. Bilingual case handlers, in particular, are the best way to serve limited-English-proficient clients since the case handlers can communicate directly with the client without the attendant loss in communication from having even a good interpreter. Bilingual staff members are also more efficient in that they make additional time for interpreting unnecessary.

Establish a protocol that addresses the use of staff members for interpreting and takes into account their other job duties, training, and skill level. Remember that bilingual staff members, including native speakers, need training to function as interpreters. Programs unable to hire staff members dedicated to language services should consider adjusting the compensation and duties of those who do provide such services so that they are not unfairly burdened. The protocol should specify the order in which staff members should be called—considering their skill, training, and availability—for language help.

Since most programs lack staff members who can cover the array of lan-

guages that clients speak, hiring new staff members with second-language ability should be a high priority. Diversifying staff members based on language skills increases the cultural awareness among staff members and enhances the program's ties to a variety of client communities and organizations.

2. Outside Contractors

As in-person interpreters for languages that staff members cannot cover adequately and as backup for bilingual staff members, professional outside contractors are almost certainly indispensable. The program may want alternatively to enter into formal arrangements with community-based organizations, student groups, and volunteers to provide language services. Take care, however, not to depend on unpaid support from community organizations, which have their own programs to operate. These organizations can be essential for outreach and referral but do not expect their staff to function as an unpaid adjunct to the legal aid program. Reliance on donated help from community groups may discourage referrals and thereby undercut outreach. No matter who serves as an interpreter, quality must be assured. The potential for questionable linguistic or interpreting skills on the part of a volunteer interpreter is compounded by the delicacy of questioning, criticizing, or dismissing a volunteer or community partner for unsatisfactory work. When a program pays for services, it more easily can demand quality work and avoid taking advantage of other agencies.

A telephone interpreter service is an essential component of a language access policy. Telephone services can cover a large number of languages and are particularly necessary in programs that

²² One way to accomplish this would be to have someone who is clearly very fluent in a second language observe a simulated interview in which the staff member acts as an interpreter; the observer should assess the staff member's vocabulary, speed, accuracy, pronunciation, and diction, in both languages. Similarly the staff member can be asked to translate documents so that the staff member's translation skills can be assessed. Alternatively an outside company or educational institution under contract may test the staff member's written and oral skills. A certification examination may be available to test skills in the language in question. Note, however, that court certification may be too high a standard. Such examinations require simultaneous interpretation, which is beyond the capacity of even most comfortably bilingual people.

A Teenager as Family Translator

I am 16 years old, and my family moved to the United States from China about nine years ago. I speak Cantonese at home because my parents still have a lot of difficulty speaking English. I am the oldest child in my family, which means my family expected me to help them translate. Translating is a lot of pressure! Translating from one language to another is very different and difficult. Every time when I'm translating for my parents I'm afraid I will translate something wrong, and that my mistakes will hurt my family. . . .

Not only is translating hard, but it also causes a lot of tension between me and my parents. My parents do not like to rely on me, and they know that I am tired of translating for them. Recently my father and I argued because I didn't want to miss school to go to the DMV [Department of Motor Vehicles] to help him get his California ID renewed. And when I tell my parents that I don't know how to translate something, they get upset. Sometimes, I don't think they trust me.

Grace Zeng, Testimony Before the California Senate Judiciary Committee and the Assembly Select Committee on Language and Access to Government Services, Feb. 26, 2002.

[Source: Chinese for Affirmative Action, San Francisco, Cal.]

depend on telephone intake systems or that encounter a wide range of languages. Good telephone services can have an interpreter of most languages on the phone in less than a minute. They can also identify a client's language and the general nature of the client's need until an in-person interpreter can be obtained. They are likely to be more cost-effective for day-to-day communication with clients since they usually charge by the minute. In-person interpreters, whose rates are likely to be hourly and to include a minimum charge and travel, may be more economical for long discussions.

Telephone interpreters should not be the only source of interpreters, for they do have drawbacks. Because these interpreters are not physically present, they are unable to observe visual cues that may signal concern or misunderstanding. Much legal representation is based on documents, which a telephone interpreter cannot view. The quality of voice transmissions over a speakerphone usually makes comprehension more of a challenge at both ends of the conversation. And, of course, the disembodied voice is impersonal and may contribute to the unease of

a client already uncomfortable discussing personal problems with a lawyer.

3. Translation

Translation of written documents (to be distinguished from interpretation, which refers to oral communication) raises some separate issues. Generally documents should be translated for clients with limited English proficiency so that the clients have the opportunity to read and understand forms, correspondence, and pleadings just as English-speaking clients have. But because translation is not only quite expensive but also, in some situations, of limited benefit, consider when it may be unnecessary. Sight translation, in which a qualified interpreter reads a document and tells the client what it says, may in some instances be a reasonable alternative to written translation.

Programs should review their forms, community education materials, and other documents to determine which should have priority for translation (e.g., those that the client will sign or that are used to obtain the client's consent or explain the client's rights). Programs should keep a supply of these translated forms in languages that are regularly encountered.

Select translators with the same care as interpreters but understand that different skills are needed. For example, bilingual staff members may have the language skills needed to interpret competently yet lack the more formal educational background (in either English or the foreign language) typically needed to translate competently. Because translation involves written communication without opportunity for clarification, it requires a higher level of precision in both content and grammar. (Conversely interpretation requires a higher level of conversational skill.)

To assess accuracy, have a second translator review the work of a primary translator from time to time. As with written communication in English, the translator, as well as the staff member who composes the writing to be translated, must be conscious of the client's literacy level in the client's primary language so that written communication occurs at an appropriate level.

Look into upgrading word processing software. Keyboards, dictionaries, and grammar checkers in other languages can simplify translation. However, translation software that automatically translates from one language to another should be used, if at all, only for initial drafts of translations. Since words have multiple possible meanings depending on context, translation software cannot be relied upon to translate accurately; a translator's review is also necessary.

B. Policy Components

Clearly post, and publicize through flyers and other means, the program's policy to provide bilingual help or free interpreting and translating services, and inform clients of the policy when they contact the program initially. In waiting rooms, display multilingual posters informing clients that free interpreting services are available. Supply intake and reception staff members with language identification cards that the staff can give to non-English-speaking clients; these cards, in numerous languages, instruct clients to point to the language that they speak so that an interpreter can be called.²³

Maintaining records and enhancing the program's ability to gather data on clients' primary languages is important. Intake forms should be formatted to record the primary language of clients who need language services. To be useful, the data field that identifies the primary language should be mandatory; the software should not default to English. The database should offer a full range of languages from which to select. If the choices are too limited (English, Spanish, and other), reports that the database generates will be unable to distinguish among non-Spanish-speaking clients of limited English proficiency or to yield data on the range of languages that clients speak. Computer and paper client files must

always include language information so that the need for language services is evident when a file moves from one staff member to another.

Consider carefully who should provide interpretation services. Many programs are deficient in this area. As a general rule, trained professionals must be used; they must, of course, be fluent in the second language as well as in English, and fluency in two languages at the level needed for legal interpreting is rare. Dual fluency by itself is not sufficient, however; a qualified interpreter must also be trained in the various modes and proper uses of interpretation (e.g., consecutive, simultaneous, and sight translation) and in the various roles assumed by interpreters (e.g., conduit, clarifier, cultural broker) as well as the ethical standards governing interpreters.²⁴ Furthermore, an interpreter should have the requisite training and experience to function as a legal interpreter, so that she is familiar with the court system, stages of litigation, and legal jargon. Optimally the interpreter should be certified as a legal or court interpreter. However, many states have not yet developed certification standards and procedures, and those with such standards and procedures cover few languages. Even if certification as a court or legal interpreter is unavailable, other forms of certification may be available in a particular jurisdiction.

A client's relatives and friends generally should not be permitted to function as interpreters. They seldom have any training and may not be proficient in both languages. The use of friends and family extends past bad habits of making the client, rather than the program, responsible for overcoming language barriers. Another reason for caution is that the client and a relative may have conflicting interests that are not readily apparent. The client's right to privacy is also undermined when relatives or friends interpret. Any

²³ A government version of one format for a language identification card, as well as a host of other resources and information, is available at <http://www.lep.gov/>.

²⁴ A model ethical code for court interpreters can be found in WILLIAM E. HEWITT, NAT'L CTR. FOR STATE COURTS, COURT INTERPRETATION: MODEL GUIDE FOR POLICY AND PRACTICE IN THE STATE COURTS 199–210 (1995).

policy must clearly forbid staff from requiring or encouraging clients to procure their own interpreters.

All the reasons not to use a client's friends and relatives for interpreting are more pronounced when applied to the client's minor children. Using minor children to interpret is a notoriously poor practice that is a clear sign of a program's lack of commitment to linguistic accessibility. Young children are likely to be deficient in language skills, often in both languages. They often miss school to act as interpreters. They are least likely to understand the legal system and most likely to feel qualified to answer for the client rather than simply be a neutral intermediary. Relying on children may undermine family structure as well as burden the child psychologically. Programs should strongly discourage, if not outright prohibit, the use of minor children as interpreters.

Carefully consider how to determine when an interpreter is needed. The easy case is when staff members are clearly unable to communicate with a client due to a language barrier. However, even a client who is able to answer questions sufficiently to fill out an intake form may still need an interpreter, particularly for more in-depth communications. Consider the needs and desires of both the client and the staff member, and when in doubt, use an interpreter.

Clients often decline language services for the wrong reasons. Some refrain from requesting an interpreter so as not to impose a burden on the program, while others may take pride in how much English they have learned without realizing their deficiencies. Intake staff and receptionists must be trained to notify clients of the availability of free language services and never to give the impression that communicating effectively with staff members is the clients' responsibility. Clients should not decline services for fear of having to pay or of facing delay in receiving help. They should also understand that interpreters are bound by rules of confidentiality.

This not to say that use of "professional" interpreters is necessarily prob-

lem-free. Some language communities are so small that a client may reasonably fear that the professional interpreter is someone who knows the client or the client's family, and this can cause great embarrassment. The client may have had bad experiences with poorly trained interpreters. Or the client may prefer the comfort of using a friend or relative to interpret and at the same time to help handle a difficult situation.

A program's policy should be cognizant of why clients may be reluctant to use a professional interpreter and should address these concerns with clients. However, the client should not always have the final word on whether an interpreter is used. Case handlers must be assured that they have an accurate understanding of what the client is saying and that the client has an accurate understanding of what the case handler is saying. Failure to use a professional interpreter may make communication unreliable to the extent that the program cannot assist the client in a way consistent with professional standards. For this reason, program staff must be free to call in an interpreter when help is needed to understand the client, even if the client appears to understand the staff and states that an interpreter is unnecessary.

A comprehensive policy should also deal with the distribution of cases involving limited-English-proficient clients. Cases in which an interpreter is used typically require three times as much time for any tasks involving communication with the client. Even when the case handler is bilingual, the case takes more time because of the need for translation work and for interpreting whenever others are involved. Immigrant clients also are more likely to lack a basic understanding of the U.S. legal system and their options within it. Another reason that higher levels of service may be required is that adequately serving clients with limited English proficiency on an advice-only or other limited-service basis is more difficult. For these reasons, case handlers should receive extra credit for assisting limited-English-proficient clients through interpreters, and

bilingual staff should receive similar appropriate adjustments.

All of the program's policies and procedures on language access should be written and distributed to all staff members. Note that many other issues arise in setting language access policies. Ideas about policy concerns and existing standards can be found in the guidance published by federal departments and agencies.²⁵

IV. Staff Training

Staff training is essential for successful implementation of a language access program for a number of reasons. The language policy is likely to be a new concept to staff members, so that an initial round of training is necessary to explain the policy and to emphasize its importance. Training is an opportunity to discuss the policy's rationale and to build staff support for its implementation. Current staff members may need to be pushed to change habitual and no longer acceptable ways of doing business. Ongoing training should be planned for some time to assure uniform understanding and application of policy and to allow the staff to discuss the policy's strengths and weaknesses.

One reason to formalize a language policy is to facilitate training. Staff members need to read the policy as well as hear about it and discuss it. They also need to refer back to it later when issues arise. Consider creating a highly visible file folder that contains the policy, the staff language directory, instructions for obtaining in-house and outside language support, a language identification card, and tips on how to work with an interpreter.

Training on how to work with interpreters is essential. Interpreter training is

a necessity for bilingual staff members who have any role to play as interpreters. And training on the use of interpreters is needed for all staff members who may have occasion to work with interpreters. The methods used by trained interpreters are not difficult to understand, but neither are they obvious or comfortable for the untrained. For example, interpreters expect to function simply as a conduit between two parties to a conversation, not to participate in a three-way conversation. They speak in the same person as the speaker: "I would like to get child support" rather than "she says she would like to get child support."²⁶ Trained staff members speak directly to the client rather than to the interpreter, while the untrained tend to converse with the interpreter and treat the client as the object of discussion. Untrained bilingual staff members who act as interpreters, especially those accustomed to interviewing clients on their own, may be having side conversations with the client to help ascertain the facts and be omitting information or questions of importance.

Training in working with interpreters is particularly important because in many jurisdictions and in certain languages the interpreter's competence cannot be assumed. Programs should strive to rely upon in-house, language-qualified staff and professional outside interpreters rather than family and volunteers. But, in practice, "professional" may mean little more than "paid." Some individual interpreters, as well as personnel sent by interpretation and translation services, may not be fully fluent in English or in the second language. Or they may have adequate language skills but lack training in interpreting or translating methods and familiari-

²⁵ See, e.g., Department of Justice Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons and Language Assistance Self-Assessment and Planning Tool, at www.lep.gov/recv.html.

²⁶ Eliciting a factual narrative from a client with limited English proficiency can become very confusing when such conventions are not followed, as distinguishing the client's statements from her reference to a hearsay statement from a third party is difficult: "She said men never take care of their children." Trained interpreters refer to themselves in the third person to distinguish the interpreter's statement from the speaker's: "The interpreter would like to interject that the client asked the interpreter if the client could trust a lawyer."

ty with ethical standards. Staff members who are trained in what high-quality interpreting entails can recognize poor interpretation, even when they do not understand the language.

V. Monitoring

Once a policy is drafted, resources are in place, and staff members are trained, the program should monitor itself to assure compliance with the policy and to continue efforts to improve services to limited-English-proficient clients. One or more staff members should be assigned oversight responsibility. Monitoring can take various forms; several suggestions follow.

With intake forms modified to code for primary language, track service delivery to clients, broken down by language, including changes in service over time, comparison among different offices or units, and the like. This type of analysis reveals information such as which units are serving large numbers of limited-English-proficient clients, which are reaching particular language groups, and which are doing well with outreach. The data can also show where the policy is not being followed, which offices or units need to undertake more effort to break down barriers, and where program resources should be directed. Also:

- Consider creating a time-keeping system code for staff time spent on interpreting or translating duties. Gathering such data may show where resources are needed.
- Monitor the use of contracted language services to see which languages are being used, which offices or units are using services, and whether services are being used properly (e.g., use of telephone interpreters for long conversations or relying on outside help when in-house staff members are available may be inappropriate).
- Observe whether translation services are being provided in tandem with interpreting services, as would normally be expected.
- Solicit input from clients and client organizations to help assess whether lan-

guage-appropriate services are being delivered.

- Set up your client grievance system so that clients can complain about language problems, and the staff members responsible for monitoring language access will receive these complaints.

Monitoring should address the overall question of whether specific language-minority communities are not seeking help from the program. If a significant disparity continues between the low-income population, broken down by language, and the makeup of the clients who seek service, targeted outreach may be necessary to open the door to groups that are not being served and to mitigate historic inequities in service delivery. Forge community partnerships by meeting with ethnic associations, grass-roots groups, religious organizations, and service providers who work closely with language-minority communities. Introduce and promote your program's services and express the program's particular interest in improving and expanding its work with limited-English-proficient clients. Consider advertising or writing a column in ethnic newspapers and searching out opportunities for appearing on ethnic radio and television programs. Set up new community education programs aimed at limited-English-proficient clients and conducted in their language. Consider establishing new intake sites or systems to reach certain groups.

Monitoring must be ongoing and cyclic. Programs should revisit questions raised during the initial assessment, such as whether particular methods of delivering service, case selection, or priority areas of practice may cause language-based inequities. The monitoring function should include an annual review and revision of policy.

One or more individuals should be designated to be responsible for language access. Assessing language needs, establishing policy, training staff, and monitoring implementation of the policy require a significant amount of staff time and resources over an extended period. With many staff overburdened, manage-

ment must carve out time for the designated staff to get the job done.

VI. Conclusion

In this article I have offered a mere starting point for legal aid programs undertaking a serious effort to make themselves accessible to clients with limited English skills. I intended to introduce legal aid programs to a basic approach that we at Community Legal Services found useful, together with just enough explanation to convey a minimal understanding of some of the issues that are likely to arise. In the interest of brevity, I omitted some important issues and mentioned others only in passing. For example, entire books have been written on the ways in which cul-

tural differences can inhibit communication or working relationships. However, treatises are not necessary to confirm that many programs need improvement in this area or to guide those programs determined to deliver services in a more equitable manner.

Once programs begin to break down language barriers to service, more work lies ahead. We need to develop skills and capacity to work effectively with clients of diverse backgrounds. Cultural differences can impede delivery of quality legal services as much as language. Bridging cultural and linguistic differences between programs and clients should be a priority for all of us.²⁷

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²⁷ A shorter version of this article appears in *MIE Journal* (Spring 2003).