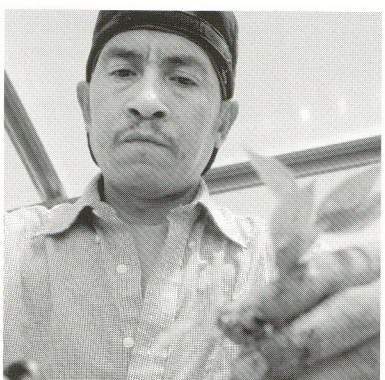
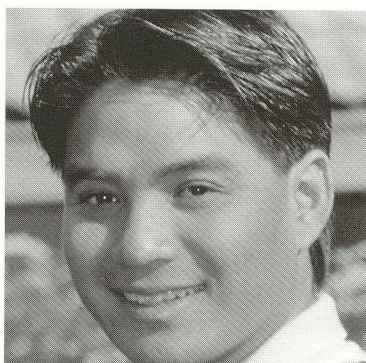
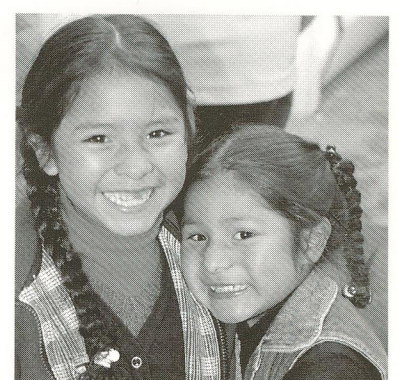


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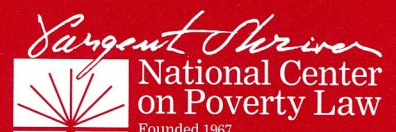
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# Serving Clients with Limited English Proficiency: Resources and Responses

By Patricia Hanrahan

In the summer of 2003 the Legal Services Corporation (LSC) convened a group of individuals from the national legal services community. Each had experience with clients of limited English proficiency in a legal services environment. For six months, the group met regularly via conference calls to discuss approaches to reaching and representing people who spoke English not at all or with only limited ability. The goal was to gather in one place ideas and approaches that LSC grantees might find useful. The results are contained in a draft program letter that is currently posted on the Legal Resource Initiative page of LSC's website, [www.lri.lsc.gov](http://www.lri.lsc.gov), while the letter undergoes further refinement before being sent to LSC-funded programs.<sup>1</sup> The draft notes that "[i]f a program has undertaken all the activities described below, the program is most likely providing equal avenues of access to justice for eligible [limited-English-proficient] residents in its service area." In this article I report on the conversations and resources that emerged from the group's discussions.<sup>2</sup>

The steady influx of immigrants into the United States over the past few decades has been one of the most significant influences on the operation of poverty law programs in recent times. Perhaps no organization has been untouched by the profound changes in client communities that new non-English-speaking immigrants have brought.

More than 31 million people in our country are foreign born, in addition to the 3.5 million Puerto Ricans who live in the United States. Almost 47 million people in our nation speak a language other than English at home, and of these almost half (over 21 million) speak English "less than very well."<sup>3</sup> Many are U.S. citizens or legal residents; many are quite poor; often they are children. Current demographic patterns indicate that immigrants are settling in parts of the United States where traditionally they did not locate. For example, almost 129,000 Asians and Pacific Islanders now live in Nevada; the foreign-born population of Oklahoma rose from 65,489 to 131,747; and the number of foreign-born people in Utah almost tripled in the decade between the 1990 and 2000 census.<sup>4</sup>

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<sup>1</sup>The draft program letter is at [www.lri.lsc.gov/pdf/other/011204\\_drftleprogtr.pdf](http://www.lri.lsc.gov/pdf/other/011204_drftleprogtr.pdf).

<sup>2</sup>In addition to the author, group members from programs funded by the Legal Services Corporation (LSC) were Neal Dudovitz and Kate Meiss of Neighborhood Legal Services of Los Angeles County, Lillian Moy of Legal Aid Society of Northeastern New York, and Irene Morales of Inland Counties Legal Services. Participants from non-LSC-funded programs were Larry Lavin and Doreena Wong of the National Health Law Program, Keith Talbot of Legal Services of New Jersey, and Paul M. Uyehara of Community Legal Services of Philadelphia. Christine Stoneman, limited-English-proficiency coordinator at the U.S. Department of Justice, and Linda Perle of the Center for Law and Social Policy also contributed.

<sup>3</sup>U.S. Census Reports, Language Use and Speaking Ability: 2000 1-5, available at [www.uscensus.gov/prod/2003pubs/c2kbr-29.pdf](http://www.uscensus.gov/prod/2003pubs/c2kbr-29.pdf).

<sup>4</sup>Migration Policy Institute, Migration Information Source, State Data on Foreign Born, at [www.migrationinformation.org/usfocus/ranktable.1.html](http://www.migrationinformation.org/usfocus/ranktable.1.html); ASIAN PACIFIC AMERICAN LEGAL CENTER, EXPANDING LEGAL SERVICES: SERVING LIMITED ENGLISH PROFICIENT ASIANS AND PACIFIC ISLANDERS 11-12 (2003), available at [www.apalc.org](http://www.apalc.org) and [www.lri.lsc.gov/abstracts/abstract.asp?level1=Diversity&level2=LEP&abstractid=040002&imgeld=2](http://www.lri.lsc.gov/abstracts/abstract.asp?level1=Diversity&level2=LEP&abstractid=040002&imgeld=2).

Communication is central to legal representation. How can advocates increase the flow of meaningful information between their programs and impoverished non-English-speaking communities? How do we bridge the cultural gap that is often a greater barrier to access to justice than language? In organizations that operate on a shoestring, the cost of acquiring necessary language and staff resources can be prohibitive. For this reason, programs will want to collaborate on service strategies with community partners, use local and low-cost resources developed by other groups or available over the Internet, and plan to implement a response over time. This article and related postings on the LSC Legal Resource Initiative website may also be helpful to advocates who represent clients for whom English is not a primary language.

### Responses Determined by Language Needs

Advocates should assess the language needs of the limited-English-proficiency poverty population groups in their communities—people who do not speak English proficiently and are eligible or likely to become eligible for a program’s services.<sup>5</sup>

A client who has limited English proficiency is one who does not speak English at all or who speaks English less well than the client’s “primary language” and therefore elects to speak or have documents translated into that language or both. Using the language preferred by the client for a particular purpose is essential. Clients may wish to communicate orally in one language and have documents translated into another. For example, a client may want to speak Spanish

with her advocate but prefer that correspondence be in English. Such a client may be illiterate in both languages but have bilingual family members who speak both English and Spanish fluently but have been educated in the United States and read English but not Spanish.

A would-be client seeking representation or advice should be assessed for English proficiency; the assessment should not be influenced by the English language proficiency of a friend or family member who accompanies the client, unless the client is a minor child or an incapacitated adult. In that case communication is with those who decide for the child or incapacitated adult.

### Finding the Limited-English-Proficient Community

Since census data on limited-English-proficient population groups are inexact at best, consider seeking information from state and local government entities, including planning agencies, departments of health, education and social services, universities, hospitals, immigration and refugee advocacy organizations, and public schools. Several questions will likely guide your quest to determine the size and needs of your limited-English-proficient community. How many limited-English-proficient persons are likely to be encountered by your program? How frequently do they come in contact with your organization? What kind of legal services do you provide? What resources are available to you, and what is the cost of obtaining them?<sup>6</sup>

Consider how often in the past members of the limited-English-proficient community asked for help, what services they needed, and in what languages you were called upon to respond. For programs

<sup>5</sup>The National Health Law Program has proposed one useful approach; see NATIONAL HEALTH LAW PROGRAM, ENSURING LINGUISTIC ACCESS IN HEALTH CARE SETTINGS: LEGAL RIGHTS AND RESPONSIBILITIES 1.3–1.4 (2d ed. 2003). See also 67 Fed. Reg. 4969 (Feb. 1 2002) (“The National Health Law Program views the 21 million people who speak English less than ‘very well’ as LEP persons in the health care context. This is because medical terminology is difficult to understand, so the level of English comprehension needs to be high. This view of limited English proficiency finds support from the United States Department of Health and Human Services Office for Civil Rights (OCR), which defines LEP persons as those who ‘cannot speak, read, write or understand the English language at a level that permits them to interact effectively with health care providers and social service agencies.’”).

<sup>6</sup>The efforts of one program, Community Legal Services of Philadelphia, to make its services more available to limited-English-proficient clients are recounted in Paul M. Uyehara, *Opening Our Doors to Language-Minority Clients*, 36 CLEARINGHOUSE REVIEW 544 (March–April 2003).

with culturally competent staff and records of clients' primary languages, this may be a relatively straightforward internal survey. Other organizations may have to rely on more anecdotal information from staff.

Look at the degree to which your office's services have been or are inaccessible to people with limited English proficiency. While those with whom you have had the most contact may desperately need your program's services, other groups may be equally needy but smaller or more isolated.

### Critical Legal Needs

Civil legal aid programs protect vulnerable people from violence, homelessness, illegal discrimination, and denial of critical benefits. For some, legal services truly can be the difference between life and death. Advocates should weigh the extent to which limited-English-proficient individuals and families do without desperately needed legal assistance when it is not available in their primary language and alert clients to the availability of legal services while educating the clients on legal rights and responsibilities. What is the place of outreach and client education in your organization's service agenda? If you provide these services for English-speaking clients, they should be available also to those who do not speak English.

### Resource Examination

Review policies, practices, and language barriers that could interfere with client access to your program:

- Are bilingual advocates available, or are arrangements in place for trained interpreters and translators for languages that you are likely to encounter?
- How does your organization identify a client's primary language and provide language services for that client?

- Are staff members aware of, and do they actually follow, these policies and practices?

Institute a way to determine at the initial encounter whether a client has limited proficiency in English, and if so include that fact in all of the client's records so that the client's language can be accommodated throughout the client's contact with the program. To help clients identify their language abilities, you may want to use the "I speak cards," available at [www.lep.gov](http://www.lep.gov).<sup>7</sup> Posting multilingual announcements on the availability of free interpreters, even in languages that you do not think are spoken in the service area, will help determine limited-English-proficiency needs.<sup>8</sup> Since clients may be illiterate in both their primary language and English, staff should make oral inquiries. Programs that use "I speak" cards and posters can have the client point to their preferred language.

### Policy Considerations

To serve limited-English-proficient clients appropriately your program may want to create a comprehensive, programwide policy that reflects the organization's resources and the clients' needs. The policy should reflect input from staff whose work is affected by limited-English-proficient communities and the various functions of the organization. Base the policy on your program's strengths and mission and the limited-English-proficient community's culture and legal needs. Inform those charged with implementation about the policy and about the importance of meaningful access for all potential clients.

### Bilingual Resources

Clients should be informed in their preferred language that free interpreters are available to enable them to communicate with their advocate at the program's

<sup>7</sup>Small "I speak" cards identify in English the language of the bearer (e.g., "I speak Spanish" or "I speak Tagalog"). Programs may also want to provide wallet-size "I speak" cards for clients to use in obtaining services in addition to legal services and for other purposes.

<sup>8</sup>A useful sign is available from the U.S. Department of Health and Human Services at [www.hhs.gov/region10/ocr/pdf/interp2.pdf](http://www.hhs.gov/region10/ocr/pdf/interp2.pdf).

offices as well as at court and administrative hearings.<sup>9</sup> Clients with a sufficient grasp of English to give basic intake information may still require an interpreter for a complex discussion of legal remedies. Complications increase when people who can communicate on a rudimentary level in English are illiterate in both English and their first language. An interpreter may be needed to help them understand legal documents requiring their assent and signature.

Assessing who is competent to interpret (spoken language) and translate (written language) is part of any effort to serve limited-English-proficient clients effectively. Bilingual staff, translators, and interpreters should be fluent in two languages (English and that of the limited-English-proficient client) and understand legal terms and concepts that are involved in the services rendered. Staff who work directly with clients should know when to obtain an interpreter, what documents must be translated, and the program's competency standards for translators and interpreters.

Interpreters and translators must be informed about rules governing confidentiality and impartiality in interpretation, and understand their obligation under the interpreters' professional code of ethics. Programs should consider offering training and professional development opportunities for their bilingual staff and include interpretation ethics.<sup>10</sup>

All efforts to increase bilingual resources will increase a program's ability to reach

its limited-English-proficient community. Bilingual staff is likely the most effective resource for serving limited-English-proficient clients, as staff members' familiarity with program services can facilitate the creation of long-term strategies for serving such clients.<sup>11</sup> Finding bilingual employees is not always possible even if an organization has the resources available to hire them. Contract and voluntary translators and telephone language services are critical to filling gaps in an organization's bilingual resources and enhancing the usefulness of bilingual staff.<sup>12</sup> When using these resources, as with other volunteers and experts, assure yourself that the translator meets your organization's internal standards of fluency, ethical behavior, and comprehension of the legal terms and concepts required in a particular situation.

A model voir dire to help judges ascertain whether an interpreter is qualified is available through the National Center for State Courts.<sup>13</sup> The National Code of Responsibility for Interpreters (and some state variations) may help you convey to interpreters and clients the obligations of that role. The code addresses the importance of accurate and complete interpretations, of impartiality and confidentiality, and of reporting any impediments that the interpreter knows of and could interfere with the interpreter's performance.<sup>14</sup>

Although not unusually programs (and clients) rely on family and friends, this is

<sup>9</sup>Advocates and clients must be able to communicate during hearings and at breaks in hearings, and the program's interpreter is critical in these situations. A court interpreter's role is to enable client-court communication; this is quite different from that of the program's interpreter, who facilitates client-advocate conversations.

<sup>10</sup>The National Association of Judiciary Interpreters provides resources in this area. See [www.najit.org](http://www.najit.org). For additional information on the organization and its standards for interpreters, see Molly McDonough, *Lost in Translation*, 89 AMERICAN BAR ASSOCIATION JOURNAL 22-23 (2003).

<sup>11</sup>Bilingual fluency is a permissible job requirement.

<sup>12</sup>Programs that are members of the National Legal Aid and Defender Association (NLADA) may have an additional resource if they take advantage of a contractual agreement between NLADA and Language Line; the agreement offers the following benefits to NLADA members: waiver of the enrollment fee; reduced monthly minimum; and aggregate discounts for per-minute charges based on usage by all participating programs.

<sup>13</sup>See [www.ncsconline.org/wc/publications/Res\\_CtInte\\_ModelGuideChapter6Pub.pdf](http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter6Pub.pdf).

<sup>14</sup>Angela McCaffrey, *Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters*, 6 CLINICAL LAW REVIEW 347, 376-77 (2000), available at [www.lri.lsc.gov](http://www.lri.lsc.gov). Legal aid programs may find this article a very useful resource in addressing the many issues that can arise when clients need interpreters in order to be understood by English speakers.

the least preferred approach. Far too frequently family and friends are not trained interpreters—they may not be proficient in English and may not understand legal terminology or situations. Interpretation by family members carries the risk of bias in translation, whether inadvertently through choice of word or emphasis or through intentional omission of facts. When nonprofessionals such as family members are involved, the client's privacy diminishes along with, perhaps, the client's willingness to be candid. For these reasons, programs must strongly encourage the use of bilingual staff or qualified interpreters instead of family and friends.<sup>15</sup>

When a client insists that a family member or friend acts as interpreter, you may want to document that decision and even consider having on hand a waiver for the client to sign, in the client's language and in English, acknowledging the risk and clarifying that free professional interpreter services were offered and rejected. To protect staff from later effects of linguistic or cultural miscommunication, seriously weigh the benefits of including a program-sponsored interpreter in the client interview and subsequent meetings.

Using minor children as interpreters is an even greater concern. In addition to the problems set forth above, relying on children exposes them to information that they may be too young or too immature to handle. Rely on minor children as interpreters only in extreme emergencies and if there is no other resource, and then only until you are able to obtain the services of a bilingual interpreter.<sup>16</sup>

## Translating Documents

Written material and materials based on writing (such as "how to" videos) must be translated accurately. Documents that require translation include those that the client must understand and sign, such as retainers. When clients are illiterate in their primary language, interpreters may be necessary to help them comprehend translated documents.

Although community outreach material is also critically important to service area residents, some documents may not need to be translated completely to be useful to potential clients as long as essential information about access to the program and the availability of free interpreters is included in the target community's primary language.<sup>17</sup> Programs will have to make difficult decisions about translating documents even if they serve a large population of that language group.

## Language Protocols

Despite their best efforts, programs or branch offices may not always have interpreters on hand or vital documents translated. Do not allow the lack of available language services to result in denial of effective services or impose an undue burden on the client. If no in-person interpreter is available, the limited-English-proficient client should have to wait no more than the time it takes to obtain a telephone interpreter. Understandably one may not be able to secure an interpreter's services immediately. In those instances, conduct an initial assessment of the urgency of the client's problem by using telephone services or similar resources that can be obtained

<sup>15</sup>None of the sample policies on LSC's Legal Resource Initiative website permits relatives, friends, or children to translate for clients. See policies from Legal Aid Society of Mid-New York, Advocates for Basic Legal Equality, Legal Services of Northwest Ohio, and Pine Tree Legal Assistance (Maine) at [www.lri.lsc.gov](http://www.lri.lsc.gov).

<sup>16</sup>For a firsthand account of one teen's experience as the family translator, see Paul M. Uyehara, *A Teenager as a Family Translator* 36 CLEARINGHOUSE REVIEW 552 (March–April 2003), also available at [www.lri.lsc.gov](http://www.lri.lsc.gov).

<sup>17</sup>Programs serving large limited-English-proficient population groups who are illiterate may also want to consider having recorded material (e.g., on video, digital video disk, or cassette tape) including essential and often repeated information. In these situations, too, oral presentations are far more effective than even brochures and flyers written in the clients' primary languages.

quickly, and schedule more thorough client interviews and other meetings for a later date, when interpreters are available. This approach is reasonable if the client's legal needs are not urgent and the client's rights will not be compromised.

### Staff Considerations

Staff members should be trained on limited-English-proficiency procedures regularly, and the topic should be part of new staff orientation. The staff need to understand the cultural and language barriers faced by limited-English-proficient clients and to be sensitive to those barriers.<sup>18</sup> Advocates and other employees who must rely on interpreters during client meetings will often need additional training on how to work with interpreters. Staff who are asked to provide interpretation and translation services, particularly if they are not trained in those areas, should be given opportunities for improving techniques, obtaining or maintaining certification, and refreshing language skills.

To facilitate limited-English-proficiency activities, programs may want to appoint at least one staff person as coordinator to make sure that translations occur, translated documents are current, and ongoing program work is responsive to changes in the limited-English-proficient community.

As with any client-based activity, services to limited-English-proficient clients should be evaluated as part of staff performance appraisals. Supervisors should

take into account the "multitasking" that can come to be expected of staff who are hired for certain positions but become ad hoc interpreters because of their proficiency in a second language. If such individuals are expected to be available for interpreting and translating, their responsibilities in other areas should be reduced to reflect this additional charge. Similarly supervisors should be aware of the time required for client interviews in which an interpreter is used. Anyone who has ever questioned a witness or deposed an individual through an interpreter knows that the process easily can take twice as long, as everything must be said twice. Staff functioning in tandem with interpreters will, of necessity, have longer meetings and other oral interactions with their limited-English-proficient clients. Caseload distribution should reflect this added time requirement.



America is a land of immigrants, and most of us trace our ancestors back to foreign shores. We are once again in the midst of a significant wave of immigration, with its cultural complexities and riches. We recognize that this phenomenon poses great challenges to providers of civil legal services for the poor. The promise of liberty and justice for all has captured immigrants' hearts and propelled them to our shores. But meaningful translation of those words, with their passionate commitment to equality, requires our resolute action.

<sup>18</sup>For a vivid delineation of the importance of helping staff understand the cultural background of their limited-English-proficient clients, see Trang Nguyen, *Working with Linguistically and Culturally Isolated Communities: The Cambodian Outreach Project of Merrimack Valley Legal Services*, 37 CLEARINGHOUSE REVIEW 79 (May-June 2003). An additional useful resource is Sue Bryant & Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering*, available at [www.cleaweb.org/multiculture/multiculture.pdf](http://www.cleaweb.org/multiculture/multiculture.pdf). Staffing and other issues along with proven models are discussed in ASIAN PACIFIC AMERICAN LEGAL CENTER, *supra* note 4.