

# JOURNAL

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## **SPECIAL FEATURE: Headline News**

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☉ LANGUAGE ACCESS ADVOCACY

## Language Access in the Courts and Law Enforcement

(Contributions by Laura Abel and Paul Uyehara)<sup>14</sup>

Access to the courts and law enforcement can be frustratingly elusive for individuals with LEP. The inability to report a crime or seek remedies in court can



have tremendous adverse effects on the lives of LEP clients. The consequences

are distressing, resulting in many LEP individuals unable to seek safety and protection from crime, provide critical testimony as victims or witnesses, and assert critical rights if arrested or detained. They are also unable to effectively advance or defend claims, even when they are being denied essential wages, resisting unfair debt collections, obtaining domestic violence restraining orders, fighting for custody of their children, disputing the cut-off of subsistence level welfare payments, or facing eviction from their homes. One result is havoc in their lives and those of their families. Another is that in far too many cases our justice system fails to administer justice.

### *Language Access in the Courts*

State court systems are obligated by federal law to provide translation and interpretation services to individual litigants who need such services.<sup>15</sup> But, in a plain failure to fulfill this mandate, many state laws authorize these services for low-income litigants only in criminal proceedings, not in civil proceedings. And even when judges and court officials recognize an obligation to provide court interpreters for civil litigants who cannot afford it, they often fail to provide competent interpreters.

Increasingly, state courts across the country are recognizing the need to do better, but find themselves without the requisite financial resources, and without the political influence to acquire those resources. Here is how some advocates are trying to help:

### National Advocacy

The National Language Access Advocates Network (N-LAAN) has a newly formed subcommittee on language access in the courts. Members of the subcommittee are working to support passage of the State Court

Interpreter Grant Program Act, S. 702, which would allocate funds to improve interpretation in state court systems.

The Brennan Center for Justice at NYU School of Law is conducting a thirty-six state research project to examine the sufficiency of interpretation services in state courts. The project is focusing on counties that have a large numbers of LEP litigants or that have had a recent increase in the number of LEP litigants.

Justice Speaks — a New York City coalition of civil legal aid providers, domestic violence groups, housing advocates and others, co-chaired by Purvi Shah from Sakhi for South Asian Women and Catherine Shugrue dos Santos from Sanctuary for Families — has conducted, and currently is sharing results from, a national survey of 157 court interpreters regarding their professional experiences.<sup>16</sup> Key recommendations include interpreter training and continuing education, particularly in the areas of domestic violence, sexual assault, and child abuse; training for attorneys and judges on utilization of interpreters; and additional resources allocation for non-Spanish language interpretation.

The Brennan Center and Justice Speaks reports will add to the body of national information on language access in the courts, including a National Center for State Courts report on language access in domestic violence proceedings,<sup>17</sup> a compilation of state laws regarding interpreters in state court proceedings put together by the American Bar Association Commission on Domestic Violence,<sup>18</sup> and suggestions for improving language access by the courts published by the National Asian Pacific American Legal Consortium (now the Asian American Justice Center).<sup>19</sup>

#### Local Advocacy

##### California

Civil legal aid programs from many parts of California contributed to the September 2005 *Language Barriers to Justice in California: A Report on the California Commission on Access to Justice*. The report concluded, among other things, that although bench officers have inherent powers to appoint court interpreters for LEP individuals in civil proceedings, California law does not specifically require such appointment. As a result, many LEP individuals are simply unable to access the justice system.<sup>20</sup> Since then, many advocates have engaged in vigorous advocacy, but the California legislature has not yet acted to remedy the situation. In November 2006, a coalition of

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The examples... are only a fraction of the ground-breaking advocacy taking place all over the country to eradicate language discrimination and promote language rights.

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civil legal aid programs, published *Language Access to the Courts in California: A Legal Advocate's Manual*.<sup>21</sup> The manual provides advice for advocates seeking to use administrative advocacy or litigation to expand language access to the courts for their clients.

##### New York

In New York City, the Justice Speaks coalition discussed above has engaged in language access advocacy for a decade. This advocacy prompted the New York State Office of Court Administration (OCA) to issue a work plan in April 2006, listing concrete steps to improve the court interpreters system, including a pay raise for per diem interpreters, mandatory testing in English, and mandatory training.<sup>22</sup> Also as a result of the group's advocacy, OCA issued a court rule in October 2007, requiring state courts to appoint an interpreter for each LEP individual who is a party to any criminal or civil proceeding.<sup>23</sup>

##### Pennsylvania

Community Legal Services of Philadelphia (CLS) has played a key role in ensuring that the Pennsylvania courts are accessible to LEP individuals.<sup>24</sup> CLS staff testified before the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, served on that committee's working group on LEP litigants, and helped draft the portion of the committee's 2003 Final Report regarding language access.<sup>25</sup> Soon after the committee's report was issued, a state senator issued a bill aimed at ensuring that the courts used interpreters when they were needed, and implementing a certification system for court interpreters. CLS staff helped build support for the legislation, provided testimony and careful analysis, and suggested language for amendments. The legislation, Act 172 of 2006, was signed into law in 2006. CLS staff continue to work to ensure its implementation.

## ● LANGUAGE ACCESS ADVOCACY

*Continued from page 37**Working with Law Enforcement to Increase Language Access*

In May 2004, a member of the Pennsylvania Immigration and Citizenship Coalition (PICC) heard that the Department of Justice (DOJ) was conducting a compliance review of the Philadelphia Police Department (PPD) regarding language access. CLS learned that the DOJ attorney handling the case was leaning toward issuing a favorable letter. Working with PICC, CLS informed the DOJ attorney that PPD was non-compliant with Title VI requirements and that it would be glad to demonstrate it to her given some time.

CLS organized meetings to gather information about LEP individuals' experiences in police encounters then invited the DOJ lawyer to town in July 2004, and had community organizations make a presentation to her which illustrated the reality of PPD policy and practices. Based on the voluminous filings the City of Philadelphia gave to DOJ to respond to inquiries, CLS wrote a report using the four factor analysis which made clear that, even on paper, PPD was not in compliance. By the end of 2004, DOJ reversed course and decided to find PPD in violation and order compliance.

During the next year, working with a PICC committee, CLS negotiated a new police language access policy. During the summer of 2005, CLS prepared a report on the status of police language policy nationally and found it generally poor. The effort was complicated as there were actually five different parties involved: the PPD, DOJ Office of Civil Rights, CLS, City Managing Director's Office, which supervises the PPD, and another DOJ unit that was more knowledgeable on the issue, but not officially involved. In December 2005, PPD issued Directive 71, moving the city from one with typically bad language policy to one of the best nationally.<sup>26</sup>

*The examples above are only a fraction of the ground-breaking advocacy taking place all over the country to eradicate language discrimination and promote language rights. We hope more advocates will join us in our efforts to develop expertise, share resources, devise strategy, advocate for better policies and laws, and more effectively enforce existing language rights.*

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- 15 See Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) et seq.; Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50,121 (August 16, 2000); Department of Justice: Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41,455 (June 18, 2002).
- 16 Mohammad Alam et al., Talking the Talk: A National Study of Court Interpreters, Preliminary Data and Recommendations on Language Access in NYS Courts (2008), available at <http://www.sakhi.org/CIP/Talking%20the%20talk.pdf>
- 17 Brenda K. Uekert et al., Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity to Provide Protection Orders (2006), available at: <http://www.ncjrs.gov/pdffiles1/nij/grants/216072.pdf>.
- 18 American Bar Association Commission on Domestic Violence, State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Proceedings (2007), available at: [http://www.abanet.org/domviol/trainings/Interpreter/Binder-Materials/Tab9/foreign\\_language\\_interpreters\\_with\\_disclaimer\\_language.pdf](http://www.abanet.org/domviol/trainings/Interpreter/Binder-Materials/Tab9/foreign_language_interpreters_with_disclaimer_language.pdf).
- 19 National Asian Pacific American Legal Consortium, Equal Justice, Unequal Access: Immigrants and America's Legal System, Recommendations for Action and Collaboration (2005).
- 20 California Commission on Access to Justice, Language Barriers to Justice in California: A Report on the California Commission on Access to Justice (Sep. 2005), pp. 2-3, available at [http://www.calbar.ca.gov/calbar/pdfs/reports/2005\\_Language-Barriers\\_Report.pdf](http://www.calbar.ca.gov/calbar/pdfs/reports/2005_Language-Barriers_Report.pdf)
- 21 Language Access to the Courts in California: A Legal Advocate's Manual (2006), available at [http://www.lsn.net/special/language\\_access\\_11-16-06.pdf](http://www.lsn.net/special/language_access_11-16-06.pdf)
- 22 New York Unified Court System, Court Interpreting in New York: A Plan of Action (April 2006).
- 23 Uniform Rules for New York State Trial Courts, Part 217, available at <http://courts.state.ny.us/rules/trialcourts/217.shtml>
- 24 The activities of CLS' Language Access Project are described in further detail on their website at <http://www.clsphila.org>.
- 25 See Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, Final Report (2003), available at <http://www.courts.state.pa.us/Index/supreme/BiasCmte/FinalReport.pdf>
- 26 See *Language Access in the Philadelphia Police Department, Translating Justice: Overcoming Language Barriers*, Presentation by: Judi Cassel, City of Philadelphia at the 2006 National Community Policing Conference, Leading the Way to a Safer Nation, available at: <http://www.cops.usdoj.gov/files/ric/Publications/cassel.pdf>.