

Language Justice During COVID-19

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Interpreters are learning to work remotely by receiving training on privacy concerns, equipment, and protocols.

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Practicing social distancing, I virtually sat down with Alena Uliasz, Joann Lee, and Ana Paula Noguez Mercado, co-authors of [Language Justice in Legal Services](#) published in the Management Innovation Exchange (MIE) for Legal Aid Journal. During our interview, I received tips for ways lawyers can use language justice principles in our everyday practice and during COVID-19.

What is language justice?

Language justice is an evolving framework based on the notion of respecting every individual's fundamental language rights—to be able to communicate, understand, and be understood in the language in which they prefer and feel most articulate and powerful. Rejecting the notion of the supremacy of one language, it recognizes that language can be a tool of oppression, and as well as an important part of exercising autonomy and of advancing racial and social justice.

From finding an attorney, understanding options and remedies, filling out forms, and simply navigating the courthouse, inadequate communication in any aspect of accessing the justice system can have serious consequences. In a legal context, language justice is a commitment to

ensuring individuals marginalized based on their national origin, ethnic identification, and language are not denied equal access to services, remedies, and justice overall.

How do attorneys play a role in language justice?

Attorneys can either facilitate language justice or perpetuate the marginalization of people who communicate in non-dominant languages. In certain contexts, ensuring meaningful access to services is a requirement under Title VI of the Civil Rights Act of 1964, as well as other federal, state, and local statutes including the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. Attorneys committed to language justice meet and exceed these obligations by ensuring equitable communication.

A few examples among the many things attorneys can do:

- Educate themselves on the linguistic diversity of their client pool;
- Ensure the use of qualified interpreters and translators to support effective communication with our clients;
- Advocate for our clients' language rights as they access the justice system;
- Advocate for systems change by working to change the rules and policies of court systems and government agencies, as well as the culture and practices of legal services organizations;
- Engage coworkers in dialogue about language justice and how to improve internal practices related to serving people who use non-dominant languages.

A concrete example of how attorneys can play a role in promoting language justice is in cases of gender-based violence. Immigrant survivors of domestic violence, sexual assault, and human trafficking are especially in need of adequate access to language services, as they have been disproportionately impacted by the COVID-19 pandemic and measures to contain it. When working with clients who are immigrant survivors, providing language services supports their ability to obtain:

- Safety by ensuring meaningful access to law enforcement, legal services, and courts to seek remedies, including emergency protective orders;
- Healthcare services to receive COVID-19 testing, treatment, and care without interference from abusers, and to undergo sexual assault examinations; and

- Economic assistance through benefits that allow survivors to escape from abuse, recover from assault, and be healthy and independent.

Why is language justice important during the COVID-19 pandemic?

Language justice is more important than ever during this pandemic as those who primarily use non-dominant languages have historically faced challenges in seeking access to basic amenities, legal remedies, and supportive services. Reports have found that English proficiency impacts access to fundamental needs, such as housing, employment, law enforcement, and health care. Unsurprisingly, access to justice has proven difficult for individuals who use a language other than English at home, who have higher rates of poverty than the general population. Linguistically marginalized communities are often the most isolated and vulnerable, making services and benefits difficult to access and obtain.

To honor the tenets of language justice, we must advocate for community organizations and government entities to use best practices for reaching diverse language communities. These communities include not only Spanish speakers, but people who primarily communicate in any of the more than 300 non-English spoken and sign languages in the United States. This includes proactive outreach to non-dominant language users by utilizing written translations, trained bilingual staff, and interpreting services. Steps to ensure language inclusion must be an integral part of any changes and updates to policies and practices during this time. Government entities should also work with local stakeholders to ensure that information is being disseminated. Legal services and community groups cannot be expected to be the main vehicle for reaching out and communicating changes regarding access to critical benefits and protections for low-income and linguistically marginalized communities.

What can public agencies do if they cannot reach specific linguistic groups? In that case, they should provide organizations that work with individuals who do not use English as their dominant language ongoing stipends to conduct outreach and education on services and assistance with applications. Such organizations have deep community relationships, trust, and cultural intelligence to effectively communicate with diverse communities.

This is not the time to let poor language access practices slide. The health, safety, and fundamental rights of tens of millions of individuals who do not use English as their dominant language are at stake and could be lost without such access to justice.

During this COVID-19 pandemic, most attorneys are working from home and are unable to meet with our clients in person. how can we use technology to promote language justice?

Lack of access to technology has been one of the greatest barriers to promoting justice during the pandemic. Many of our client communities have unstable or no internet connections, have limits on phone data and minutes, lack home computers and printers, and are unfamiliar with using email and texting for reliable communication and accessing needed benefits. Victims of domestic violence under stay-at-home orders may have increased risk when accessing technology and communicating with attorneys.

Legal service providers and interpreters are adjusting to the new usage of technology. Organizations are providing equipment, wi-fi access, training, and technical assistance to staff on using technology, such as various video platforms and electronic signature programs, as well as specific guidance on working with remote interpreters. Interpreters are learning to work remotely by receiving training on privacy concerns, equipment, and protocols. In the context of courts, it is especially critical to consider appropriate safeguards in utilizing technology and remote interpreting, such as having the required high-speed bandwidth connections, as well as proper physical positioning to ensure all parties can participate fully.

With our clients, we have been more deliberate about keeping in closer communication and ensuring that communities know we are still operating. We have also built in extra time to explain how to navigate various programs, download apps, utilize online portals, and even create email addresses for them and teach them how to use them. The vast majority of all materials and online portals to access pandemic relief has been in English with some Spanish translations, which has made information dissemination and access to critical benefits extremely challenging. Many nonprofits have stepped in to develop videos and other explanatory materials in-language to ensure that linguistically marginalized communities are connected and able to access relief, such as housing and homelessness programs, unemployment insurance, small business loans, stimulus checks, and other government benefits. Community groups and legal aid organizations have also created videos in multiple non-dominant languages, explaining eviction protections, obtaining restraining orders and other domestic violence resources, and rights to access to healthcare. It is by no means *justice*, but small steps to bridge technology gaps that exist.

How can attorneys correspond with our clients with letters and emails? what about when we have documents that we need our clients to sign?

When you need to share written information with someone who uses a non-dominant language, you have three options:

- 1 Translation:** A translator converts written text in one language into written text in another language.

- 2 **Sight Translation:** An interpreter reads the document aloud in the other language.
- 3 **Plain Language Explanation:** You explain the information in the document aloud in plain language and an interpreter repeats that information aloud in the other language.

The options you use will depend on the document(s) and the client. Translation is a great option for clients who read their preferred language, but not so helpful for clients with limited literacy, a group that includes many Deaf and Hard of Hearing clients. For clients who read, prioritize translation for anything they have to sign and documents they may need to refer back to in the future, like settlement agreements. For a letter or email, these can be quick and inexpensive to translate, but it may be more efficient to call the client to relay the information orally with the help of a remote interpreter.

Who should do the translation? Be sure anyone who translates your documents is qualified and vetted—so *not* an intern who mentioned they're taking a class to learn Hmong! And by all means, don't use Google Translate or other machine translation. The tech isn't there yet, errors are common, and the potential risks outweigh the benefits. To find qualified translators, you can check with your remote interpreting provider to see if they offer translation services. There are great agencies who specialize in legal translation (like [Transcend](#)), you can search for translators certified by the American Translators Association on their [website](#), and you can build your network of skilled translators over time.

What about sight translation? In general, stay away from relying on sight translation of legal documents. If you were to call me and read me a settlement agreement in English, I would have a hard time absorbing that information. Plus, it can be hard to email documents to remote interpreters, so they frequently can't see the document you're reading from. That means they end up consecutively interpreting as you read legalese aloud—making for a tough assignment with a lot of room for error! I use sight translation as a last resort. If you have to use it, make sure you send the documents to the interpreter in advance so they can prepare.

So, should you always translate? You might be surprised that the cost of written translation sometimes isn't much more than the cost of hiring interpreters for sight translation. Plus, you will save money by translating forms that you use repeatedly, rather than having them sight translated every time. But there are times when it may not make sense to invest time and money in translating a document if the client doesn't have to sign or refer to it later, they just need to get the gist of it. In that case, an oral explanation with an interpreter may be a better option than translation, and your plain language explanation may help the client with comprehension more than sight translation.

Is it acceptable to bring a client in and use an over-the-phone interpreter to walk through a court order or other legal document line by line?

This is acceptable but not ideal. In most cases, to promote full understanding, I recommend this two-pronged approach:

- 1 Get a written translation of the court order and send it to the client;
- 2 Once the client has the written translation, meet with them (or call them) with a qualified interpreter so you can explain the document in plain language, answer questions, and have a back-and-forth conversation about it.

If you can't get a written translation for some reason, then calling an interpreter to do a sight translation is okay, but be sure to send the document to the interpreter in advance. Whenever possible, request interpreters with legal training because generalists may not be ready to interpret advanced legal concepts.

Sometimes a client brings a friend along to their appointment because the client feels comfortable with that friend interpreting for them. What is an appropriate way to explain, without damaging rapport, that for attorney-client privilege, the client cannot use their friend as an interpreter, and instead they must use our office interpreter or our remote interpreting service?

This is an important question. There are many reasons to hold the line and refuse to use a client's family members or friends as interpreters—it interferes with client-attorney privilege, jeopardizes confidentiality, and risks the accuracy of the communication. Using an ad hoc interpreter (meaning any bilingual person without formal interpreter training) can seriously damage a case, so our organization only allows this only for emergencies and for limited conversations to gather the information we need to find the right interpreter, like the name of someone's language and where they're from.

Even so, a client may insist. This is understandable because many family members are used to interpreting for each other. Plus, our refusal may be taken as an insult to the family member's language skills. If they are from a small, close-knit community of people who share their language, they may be worried that the interpreter will be someone they know and that word will get out about their legal problem.

So, how do we communicate the boundary in a culturally respectful way that doesn't damage the trust we're trying to build with a new client? I think it can help to start by appreciating the person who offered to interpret and saying that we're sure they have great language skills, but we aren't allowed to let them interpret. We can explain that because attorneys need

interpreting to do our jobs correctly, we must use a qualified interpreter with formal training. Tell them that using a family member could create problems for their legal case. We can also remind them that professional interpreters follow a strict code of ethics, which includes confidentiality, so their personal information will be protected.

In the rare circumstance where you can't avoid using an ad hoc interpreter, be sure that the client agrees to the arrangement and signs a waiver and that the ad hoc interpreter signs a confidentiality agreement.

Language Justice Webinar

To learn more, [watch the replay](#) for the ABA YLD “Language Justice During COVID-19” webinar (June 3, 2020).

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