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Language Access Advocacy

Language access advocacy has taken many forms, from ensuring that our own programs meet the needs of limited-English proficient (LEP) clients to advocating on their behalf in accessing government-funded and sponsored services. This article highlights creative and innovative language access advocacy efforts covering community-based organizing efforts, legislative advocacy, administrative complaints, and litigation in a variety of legal areas.

The first section focuses on advocacy in public benefits and health care, and the second focuses on language access in the courts and law enforcement. These articles are not meant to be a comprehensive review, but instead offer snapshots of cases around the country in different issue areas. We hope they will give directors and managers some big picture ideas of what programs can do to eliminate linguistic and cultural barriers for all individuals.

This article highlights creative and innovative language access advocacy efforts covering community-based organizing efforts, legislative advocacy, administrative complaints, and litigation in a variety of legal areas.

Language Access Advocacy in Public Benefits and Health Care

(Contributions by Nisha Agarwal, Silvia Argueta, Jodie Berger and Michael Mulé)[1]

Improved access to a wide variety of services "ranging from the delivery of healthcare and access to food stamps… can substantially improve the health and quality of life of many LEP individuals and their families."[2] Language-assistance services increase the efficiency of distribution of government services to LEP individuals and measurably increase the effectiveness of public benefit and health programs.[3]



Michael Mulé

Food Stamps Advocacy

Enforcing civil rights laws that require translation and interpretation is critical toward ensuring the health and well-being of the growing number of the nation's non-English speaking population. One very straightforward area of language access advocacy involves obtaining translations of Food Stamps materials (applications, notices, outreach information, etc.). Virtually all legal services agencies provide assistance with Food Stamps. And many, if not most, states have at least one food stamp certification area that has 100 or more adults in a single language group who are not English proficient.

Federal Food Stamps provisions require that state agencies estimate their low-income language minority population, and provide translation of Food Stamp forms and materials in languages where 100 or more households have no adult proficient in English.[4] Taking the simple step of requesting, through a Public Records Act request, the state's estimate methodology would reveal whether a state has met this threshold requirement. If the state has not, this is a clear violation of Food Stamps law. Another area of analysis is whether the state keeps other statistics on the language groups of *recipients*. If there are no such statistics and the state does not have translations for a language spoken by 100 cases or more, this is another violation.

Advocates can quickly resolve either of these violations through administrative advocacy or a simple demand letter. If the state has a writ or other procedure

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that permits individuals to enforce the state's duty to comply with legal requirements, there is no need for a class action. Both these approaches have proven successful. In Arizona, the National Center for Law and Economic Justice and the Southern Arizona Legal Aid got the Arizona state agency to complete its translation of public benefits forms into Spanish. Further, the agency agreed to implement a detailed action plan improving program access for those with limited English proficiency. This was accomplished after sending a letter of non-compliance to the agency — litigation was not necessary.

Although California "supported" Food Stamps translations in four languages (Spanish, Chinese, Russian and Vietnamese), the state had many other significant language groups. Several legal aid organizations and the National Center for Law and Economic Justice sued to obtain compliance with Food Stamps law.[5] Ultimately, the lawsuit resulted in California now translating a total of nineteen languages. The state reports monthly to petitioners on the translation progress, and notifies counties monthly about new translations and instructs them to use the forms. The state also monitors counties' use of translated forms through its civil rights review process, annual food stamp program survey, and state fair hearing process.

In New York, *Ramirez v. Giuliani* was a 1999 class action lawsuit filed against the New York City Department of Social Services and the New York State Office of Temporary and Disability Assistance (OTDA) for failing to provide interpreter services and translated materials for LEP applicants and recipients of the Food Stamps program.[6] The settlements with New York City and OTDA required Food Stamps materials to be translated into nine languages, appropriate bilingual workers and staff at Food Stamps offices and job centers, that LEP applicants and recipients receive notice of their right to receive interpreter services, and for the state to conduct periodic consumer satisfaction surveys of Food Stamps recipients.[7]

In *Almendares v. Palmer*, Spanish-speaking LEP recipients of Food Stamps filed a lawsuit against the Lucas County Department of Job and Family Services and the Ohio Department of Job and Family Services for providing notices, applications and written communications almost exclusively in English in violation of the Food Stamps Act and Title VI of the Civil Rights Act of 1964.[8] While the Court determined that the Food Stamps Act cannot be used to create a private right of action, it found that the plaintiffs alleged the essential elements of a Title VI claim based on national origin discrimination.[9] In a subsequent decision, the Court granted class certification of the plaintiffs for these Title VI claims.[10]

After years of protracted battles, the Court entered a consent decree in 2005 that included a comprehensive plan to address the Title VI claim. This plan required developing policies and procedures, assessing the eligible LEP populations in each service area, the use of Babel Cards to determine the language needs of applicants, and combining use of bilingual staff, interpreter services, and translated materials, to enable effective communication with LEP persons, in their primary language, for all programs and activities, during all hours of operation.[11] In this settlement the plaintiffs were also awarded $22,000 in attorney's fees.

Administrative Complaint Against Local Welfare Agency

Following "welfare reform" in August 1996 and the creation of the Temporary Assistance to Needy Families program and its time limits, advocates in Los Angeles County were concerned about the effects on poor and isolated LEP immigrants and refugees. LEP individuals on welfare were not getting adequate access to welfare-to-work services and other services which would allow them to address barriers to self-sufficiency. To address these issues, four legal services and civil rights organizations[12] filed an administrative complaint (*APALC et al., v. Los Angeles County Department of Public Social Services, Complaint 09-00-3082, "Complaint"*) with the United States Department of Health and Human Services' Office for Civil Rights (OCR), Region IX.

The complaint sought an end to discriminatory practices and policies affecting Los Angeles County's large and disproportionately poverty-level immigrant and refugee communities. The complaint stated that in this time-limited context, Los Angeles County (1) failed to provide sufficient bilingual workers/interpreters and translated materials as required by federal civil rights law; (2) denied access to English-as-a-Second-Language (ESL) classes and other adult education classes to LEP individuals; and (3) placed LEP individuals in dead-end jobs with no opportunities for growth.

A crucial component to the complaint was the continued involvement of community-based organizations in the complaint process. The complaint was endorsed by over twenty civil rights and community-based organizations with some of those organizations as co-

alitions representing an additional 150 member organizations. These organizations also provided declarations from their staff and clients that supported the claims made by complainants. They highlighted deficiencies in the current service delivery systems and recommended solutions. After the complaint was filed, these organizations remained active in rallying community support and in working with government officials.

After the challenging task of trying to stay involved in the OCR process during the investigation, a difficult decision to go forward with mediation, and a change in the administration, a settlement was finally reached where the Department of Public Social Services of Los Angeles County (DPSS), without admitting liability, agreed to serve LEP individuals in the future by: (1) creating a new internal Central Coordinating Office to oversee daily operations related to LEP; (2) creating a new LEP Community Advisory Board; (3) eliminating bureaucratic barriers to training and education for LEP individuals; and(4) paying $1.7 million dollars to thousands of families whose aid was cut without proper notice to them in their native language. In addition, post-settlement monitoring and reporting was required.[13]

Through the administrative complaint process, advocates learned several valuable lessons. First, the need for continued pressure by supporters and endorsers of the complaint on the local agency was necessary in order to highlight the disparities that negatively impact the affected community. Second, hand-in-hand with continued pressure should be the search for allies within the local agency in order to bring about change that the complaint may not be able to achieve. In this case, advocates continued to press for language-appropriate education and training services through the process of submitting comments to the local agency regarding appropriate vocational ESL training programs. Lastly, the settlement agreement achieved in a complaint should not be the only means of measuring the results achieved through the complaint. Results must be measured by a greater awareness by clients of their rights; greater collaboration between the legal advocates and community-based organizations and the creation of a sense of greater responsibility by the local agency (granted, the last one is the hardest to measure) through constant vigilance by the advocacy community.

Community-Based Organizing and Advocacy with Hospitals

During the spring and summer of 2006, Spanish-speaking members and organizers from Make the Road by Walking, a community-based organization based in Bushwick, Brooklyn, interviewed over 128 LEP Spanish-speaking patients at the Continuum Health Partners network of hospitals in New York City. The survey data revealed that the overwhelming majority of LEP patients at Continuum hospitals were not receiving appropriate language support services.

The results included some startling data: 78.9% reported that they were unable to communicate with their doctor in Spanish; 72.7% were never been informed of their right to receive free translation and/or interpretation services; 64.1% were confused about their medical treatment because they had not received language services; 48.4% needed to find their own interpreter, either by bringing someone with them to the hospital or by asking another patient from the waiting area to help them; 25.0% felt humiliated by the treatment they received at the hospital; and 22.7% felt discriminated against by the hospital.

These results were particularly troubling because, in 2006, the New York State Department of Health promulgated new regulations requiring that each hospital develop a Language Assistance Program in order to ensure meaningful access to the hospital's services and reasonable accommodation for all patients who require language assistance. The requirements include the development of policies and procedures, multilingual patient materials, ongoing staff education and training, documentation of patient needs, and regular monitoring and demographic assessments.

In response, Make the Road By Walking began working with lawyers at New York Lawyers for the Public Interest (NYLPI) to push for improvements in Continuum's language access program. The campaign was unique in a number of ways. First, all the advocates, including the community members and groups, were very well-organized and were in a position to control the terms of the dialogue with the hospital administrators from the outset. For example, advocates arrived at the meeting with a draft "agreement" in hand, which included specific recommendations for how Continuum could improve its services. And advocates brought a large contingent of LEP community members to the actual meeting with the Continuum COO and other top administrators. This helped tremendously because then the hospital administrators could hear directly about how the lack of services was impacting real people.

Second, advocates decided to target the entire hospital network instead of picking off individual hospitals, which had been their strategy in the past. This

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ensured that advocates would have broader impact, but it also proved to be the smarter move strategically because the leadership at the network level was much more responsive and open to hearing community concerns than would have been the case at the individual hospital level — individual hospital administrators tend to feel defensive and are more combative in their approach than network-level administrators.

Finally, the campaign was unique because of the collaborative nature of the discussions with the hospital network. Although the hospital administrators would not agree to sign a "settlement" agreement with advocates, they did agree to revamp their language access policy and NYLPI and Make the Road were consulted at every step of that process, to the point where the final policy reflected patients' concerns in a very direct way and went beyond the requirements of the language access regulations that had been issued at the state level.

Once the policy was complete, advocates co-hosted a press conference with Continuum, in the hope that the improved services would both encourage LEP patients to access health services and encourage other health care providers to collaborate with the community in developing their language access programs. The fact that the community members were well-organized was crucial to the success of the campaign. The community members spoke eloquently with hospital administrators and at media events about why language access was important to them and about how the lack of services is discriminatory. They also kept NYLPI and the staff members of Make the Road accountable.

These examples are but a few of the many collaborative advocacy efforts by attorneys, advocates, and community groups nationwide to ensure limited English proficient individuals are provided the meaningful access to vital public benefit programs and health services required by Title VI of the Civil Rights Act of 1964. Whether commencing an action in federal or state court, sending a demand letter, or filing an administrative complaint, language access advocates ensure federally-funded programs have effective polices and procedures and provide language services to LEP individuals.

Language Access in the Courts and Law Enforcement

(Contributions by Laura Abel and Paul Uyehara)[14]

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.[15] 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.[16] 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,[17] a compilation of state laws regarding interpreters in state court proceedings put together by the American Bar Association Commission on Domestic Violence,[18] and suggestions for improving language access by the courts published by the National Asian Pacific American Legal Consortium (now the Asian American Justice Center).[19]

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

> 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.

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.[22] 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.[23]

Pennsylvania

Community Legal Services of Philadelphia (CLS) has played a key role in ensuring that the Pennsylvania courts are accessible to LEP individuals.[24] 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.[25] 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.

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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 noncompliant 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.[26]

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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2 Office of Management and Budget, Executive Office Of The President, Assessment of the Total Benefits And Costs Of Implementing Executive Order No. 13166: Improving Access To Services For Persons With Limited English Proficiency, Pg. 6, (2002), available at: *http://www.usdoj.gov/crt/cor/lep/omb-lepreport.pdf.*

3 See U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools from the Field, September 21, 2004, available at *http://www.usdoj.gov/crt/lep/tips_tools_92104.pdf.*

4 7 C.F.R. § 272.4(b)(6) (estimate of language groups); 7 U.S.C. § 2020(e)(1) (requirement to use appropriate bilingual staff and translated materials); 7 C.F.R. §§ 272.4(b)(2)(iii), (b)(3)(i), 272.5(b)(3) (translations for 100+ single language minority households).

5 Vu v. Mitchell, San Francisco Superior Court, 04-504362. The Settlement Agreement is available at: *http://www.dss.cahwnet.gov/getinfo/acl07/pdf/07-12.pdf.*

6 Ramirez v. Giuliani, No. 99-cv-9287 (BSJ) (S.D.N.Y. Oct. 2001), Available at Sergent Shriver National Center on Poverty Law, *http://www.povertylaw.org/poverty-law-library/case/52700/52785.*

7 Ramirez v. Giuliani Settlement Agreement is available at *http://www.povertylaw.org/poverty-law-library/case/52700/52785/52785c.pdf (PDF).*

8 Almendares v. Palmer, No. 3:00-CV-7524, 2002. U.S. Dist. LEXIS 23258 (N.D. Ohio Dec. 3, 2002).

9 The U.S. Senate Committee on Agriculture, Nutrition & Forestry amended the 2008 Farm Bill to address the decision in Almendares and clarify that Congress did authorize these regulations and intends that states comply with them, See Sec. 4209. Codification of Access Rules, available at: *http://agriculture.senate.gov/SectionxSection/*

Nutrition_Sec%20by%20Sec_FINAL.pdf (PDF). See also Center on Budget and Policy Priorities, Food Stamp Provisions of the Final 2008 Farm Bill, Codification of Bilingual Access Rules, Section 4118, available at: *http://www.cbpp.org/5-23-08fa.htm.*

10 Almendares v. Palmer, 222 F.R.D. 324 (N.D.Ohio 2004).

11 Almendares v. Palmer, Case No. 3:00-CV-7524, Settlement Agreement dated June 23, 2005. This Settlement is referenced in ODJFS Office of Family Stability Letter No. 39, September 27, 2005, available at: *http://jfs.ohio.gov/OFam/pdf/OFAMLetter39.PDF (PDF)*, Clearance #5680, Legal Services: Amended Rule 5101:6-5-01, available at: *http://www.odjfs.state.oh.us/clearances/show.asp?id=2155 (PDF)*; See also 2008 ODJFS LEP policy, available at: *http://jfs.ohio.gov/civilRights/pdf/LEP_Policy_1.pdf (PDF).*

12 The organizations were the Asian Pacific American Legal Center, Legal Aid Foundation of Los Angeles, Neighborhood Legal Services of Los Angeles County, and Western Center on Law & Poverty. The complaint can be viewed at *http://www.povertylaw.org/poverty-law-library/case/52800/52801.*

13 DPSS was required to post a notice of this settlement in all its offices and to report continually to OCR on Tile VI compliance to show that DPSS had taken the above steps and that it continued to comply with Title VI. Such reports must be made available to the public. These reports include data on: use of bilingual staff, staff interpreters and Language Line; welfare-to-work placements and outcomes; availability of Notice of Actions and other vital forms in threshold and non-threshold languages; other data as requested by OCR.

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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.*

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*

21 Language Access to the Courts in California: A Legal Advocate's Manual (2006), available at *http://www.lsnc.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.