

The United States' access to justice in Spanish



As a Canadian lawyer-linguist with a keen interest in how language issues affect the court process, observing the issues and developments that have arisen in the United States over the last year has provided brilliant examples, and warnings, on how the court system should handle foreign language speakers and their need for translation and interpretation, particularly in Spanish.

It is no secret that in the United States there is great need for legal services provided in Spanish. The US Census Bureau reports that there are 54 million Hispanics in the United States as per the 2013 Population Estimates, comprising 17% of the total population of the United States. In addition, the US Census Bureau estimates that the Hispanic population will increase to 128.8 million in 2060, or 31% of the total United States population. Lawyers within both private practice and the court system will continue to require a significant supply of both Spanish translation and interpretation services in order to properly serve the Spanish-speaking community and to protect their constitutional rights.

Despite the fact that there appears to be a great demand for legal services offered in Spanish, one cannot assume that those services are readily available when needed. A number of factors have an effect on access to justice for Spanish speakers, some more positive than others.

First the good news. Judicial districts in both Philadelphia and Washington State have expended time and energy to make court documents available in Spanish, among other languages. For the general public, family law, criminal law, and municipal issues are what typically bring them to court. As such, the Philadelphia First Judicial District provided

Spanish translation of its most frequently used family law and municipal law court documents. In Washington State, numerous court documents are available in Spanish. These initiatives represent a clear intent on the part of these individual court systems to accommodate Spanish speakers in what can be a very stressful experience for anyone – completing court documents and appearing before a judge.

Furthermore, in a case that could be seen as a warning to multilingual lawyers and at the same time confirmation of the constitutional right to an interpreter, Texas Court of Criminal Appeals Judge Elsa Alcalá wrote a scathing opinion in *Irving Magaña García v. State of Texas*, clearly stating that "...the trial judge and defence lawyer didn't fully advise Garcia of his constitutional right to an interpreter, impeding his ability to confront the witnesses against him. Garcia, 25, should be granted a new trial with a full-time interpreter." In this case, the lawyer, who also spoke Spanish, advised his client that he should waive his constitutional right to an interpreter, and the lawyer would instead summarize the English-language testimony of 13 English-speaking witnesses. In short, Spanish-speaking lawyers, who clearly provide a vital service when assisting their clients privately, are not a substitute for a qualified Spanish court interpreter; rather, the lawyer and court interpreter should have been seen as both holding critical roles in providing the accused with the ability to adequately present his defence.

Now for the bad news. While Spanish translation and interpretation services are to be used as tools to enable access to justice, these same services, simply put, require the financial support of the court system, i.e. the state

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government. *The New York Times* reported last year that in New Mexico, a state with a significant Hispanic population, one in three residents spoke a language other than English at home. It is therefore of great concern that the New Mexican courts ran out of money to pay interpreters as it has been claimed that interpretation services have become so expensive. Other states such as Ohio, Kansas and Illinois face the same challenge in convincing state governments to allocate more funds for interpretation services.

We cannot forget the critical role of qualified Spanish interpreters in family law or criminal court proceedings, matters that can have serious consequences to individuals, families or entire communities. It is worth referring to

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the 2002 Supreme Court of California decision, *Correa v. Superior Court of Orange County (The People)*, a criminal law proceeding in which police officers, who did not speak Spanish, accepted statements made by an alleged victim and a witness, both of whom only spoke Spanish, via interpretation provided by "apparently unbiased bystanders during the officers' investigation of the crimes." The accused objected to this, stating that those statements constituted hearsay and were consequently inadmissible. The Court decision states that "the persons who acted as translators during these interviews also testified at the preliminary hearing regarding their language skills and the circumstances of the translation." Surprisingly, the Supreme Court of California held that "in sum, we agree with the general view, expressed in the majority of recent cases we have discussed above, that if a contemporaneously translated statement fairly may be attributed to the declarant under the particular circumstances of the case, applying the factors we have outlined, the translation does not add a layer of hearsay." It is important that the interpretation of these statements was conducted by bystanders, not accredited interpreters.

In conclusion, the handling of the need for access to justice in Spanish in the United States, while constitutionally entrenched, poses many financial challenges for various court districts. Clearly, there are excellent examples of the US court system making provision for Spanish language services; however, continued cooperation between Spanish translators and court interpreters, lawyers and the court system will be necessary in order to avoid any gaps in protecting litigants' rights. **M**



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