

JUSTICE SYSTEM INTERPRETER CERTIFICATION

TASK FORCE REPORT

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TASK FORCE STATEMENT

Although members of the task force represent various disciplines and organizations, each participated in the task force as an individual without official status. The report does not purport to represent an official view or endorsement. It does, however, represent a general consensus of the members.

BACKGROUND

On June 21 and 22, 1973, a task force of justice system interpreters met in Los Angeles. Their work was supported initially by The Institute for Court Management (ICM), during the latter part of 1972. Preliminary inquiries were made in courtrooms throughout the nation. When it became apparent that interpreter services only at the trial stage of the judicial process, even if they were effective, did not comply with constitutional protections, the inquiry was extended into related components of the justice system. On January 15, 1973, The Institute for Court Management published and distributed a report entitled "Interpreter Effect Upon Quality of Justice for Non-English Speaking Americans." Efforts were made to obtain funding from governmental and private sources; but, much to the surprise of The Institute and those sources, interpreter services had never been identified as a problem and, consequently, were not on the list of priorities for improvement or correction.

Beginning in January of 1973, contact was made with the National Office of the National Conference of Christians and Jews (NCCJ), and later, through that office contact was made with the Southern California Regional Office of that organization. Although interpreter services had never been considered by NCCJ

either, discussions quickly led to a mutual concern between ICM and NCCJ as to the effects that inadequate language services have on the equal administration of justice. The possible creation, by language barriers, of suspicion and fear of the justice system became an additional concern. The National Conference of Christians and Jews undertook to support the convening of a task force to explore the logistic and educational aspects of developing interpreters for the justice system.

Invitations were extended to a number of national law enforcement and judicial organizations and associations to assist in the funding and to participate in the efforts of the task force. Several made efforts to be represented. One unexpected and welcomed source of support was the Center on Deafness, California State University at Northridge, which has been interested in the training of court interpreters for the deaf.

The major obstacle encountered by ICM in generating interest and support for examination of this major problem is a lack of awareness and an insensitivity on the part of the monolingual English-speaking policy- and decision-makers concerning the inherent problems that affect non-English speaking or language-handicapped persons who seek the fair and equal administration of justice. No legal research of substance has been done on this subject. A multitude of additional considerations of equal importance in the entire issue of language services similarly have not been recognized. Sound legal arguments can be made to support the right to interpreter services. However, an understanding of the language and cultural reasons for providing interpreter services is equally important. Most often, the provision of interpreter services is considered important only at the trial stage of the justice process. The failure to recognize the need for communication and understanding at pretrial stages is of great importance, particularly in view of

the fact that 85 percent or more of criminal cases are disposed of prior to trial. A negative image of the justice system is created in the minds of those who suffer injustice. Such a negative image may be a major source of the lack of understanding, cooperation, and support of a system that is based and prides itself on fairness and equality.

Because funds for the initial, June 1973, meeting were limited, core group members for the task force were selected from persons identified during the latter part of 1972, when the preliminary investigation was supported by ICM. Ultimate selection of core group members was made on the basis of availability, education, and experience.

(Special acknowledgement is due to several persons who, although they were not members of the task force, have given freely of their time and talents to discuss, understand, and advance the importance of adequate language services. Their encouragement and support made this task force meeting possible.)

Recognizing the impossibility of fully accomplishing them, the task force met with the following goals and objectives:

Goal

Provision of competent language services for non-English-speaking and English-language-handicapped persons coming before the justice system, through the development of an interpreter certification program.

Objectives

1. Establish legal basis for the right to interpretation.
2. Establish process points throughout the justice system.

3. Establish the language requirements for competent interpreter services at process points established.
4. Establish basis for determining the right to interpretation at state expense.
5. Develop necessary criteria for determining administrative procedures and instructions to appointed interpreters.

Although the task force made an admirable beginning, much remains to be done.

AN OVERVIEW OF THE PROBLEM

The justice system has given very little or even no consideration to improving the competency and availability of interpreter services to persons with language handicaps. Statutory proof of this judicial neglect is offered by Arizona's antiquated provision for appointment and compensation.¹

Discussion with judges, administrators, attorneys, and others who are daily involved in the administration of justice reveal that they have given little or no thought to the problem. Interpreters are usually appointed in criminal matters when defendants clearly cannot communicate in the English language. But, the important role the interpreter plays and the effect of his competency or incompetency may have on the verdict of judge or jury either has been overlooked or is a matter of indifference to the system. Assuming oversight, it is long past time for action to be taken to correct this inequity.

To be sure, concern for modernizing and improving the administration of justice is relatively recent. Few persons have been professionally prepared to administer a justice system in a manner that is both responsible for efficiently moving judicial workloads and simultaneously attempting to achieve justice in individual cases.² The movement of judicial workloads is reflected in statistics,

but the achievement of justice to individuals is not as easily discerned and measured. Defense attorneys representing non-English-speaking persons can rely on interpreters to assist in the preparation and presentation of their cases. The language-handicapped must rely on interpreters to assist in the preparation and presentation of their cases. Without available and competent interpreters, the non-English-speaking person is caught in the midst of and is at the mercy of attempts to accelerate the disposition of cases because he is unable to exercise his rights.

The appointment of interpreters is in most instances a discretionary matter with the courts, yet it would appear that the courts are ill-prepared to determine their competency.³ It is commonly argued that courts rely on professional personnel services to set standards for and determine the qualifications of interpreters, but they too appear to be ill-prepared to do so.⁴

During a preliminary inquiry into the matter of interpreters, it was found that several sources are used when interpreters are needed.⁵ One source is persons who work within the justice system, but the number of those who are bilingual is limited. In some instances, the qualifications of such persons, hired specifically as interpreters, have been questionable, as discussed above. Even if such interpreters are qualified, in most instances they are assigned additional duties. These added duties usually become primary duties, with the result that the function of interpretation becomes secondary.

Other persons in the justice system who are used to provide interpreting services range from custodial employees and clerks to police officers, but in most instances they have not been qualified according to any established standards. Since the determination of competency is often discretionary with the courts, qualification may be determined by a perfunctory "Do you speak _____?" followed by appointment.

Still other sources of interpreters are friends or relatives who accompany a defendant, persons seated in the courtroom, or passersby in hall and corridors. These persons most often have not been qualified by any standard. Since the matter of competence is discretionary with the court, and the case before the court needs to be disposed, a prompt determination of competency is made, the person appointed, and the trial commences.

Those who are engaged in the business of interpretation and translation are another source of interpreters. They are found mostly in larger cities that have a high percentage of non-English-speaking persons. Although interpreting in courtroom is one source of their income, private interpreters show preference for civil matters and administrative hearings. They prefer to take depositions and render other such services to attorneys and private individuals because by doing so they can command higher fees without committing the large blocks of time often required for court trials. The competency of such private interpreters appears to vary considerably, and it may determine the frequency with which they are called upon and the income they derive. Since a higher degree of competency appears to result in a higher degree of recognition by attorneys and others who utilize their services, these interpreters are not often available to the courts. Interviews conducted in the preliminary inquiry indicate that many private interpreters were formerly police officers or court clerks. Because of a previous relationship they may have become known to the courts or had their names included in an appointed-interpreter list, or they may have gone through some qualifying procedure to have their names placed in such lists.

The challenge to the currently used qualifying provisions continues. Judges and personnel systems have not assessed the complexity of considerations required to establish adequate standards and procedures that define the functions and qualifications of interpreters. If indeed any criteria are used, the criteria

most commonly used are a written vocabulary test and an examination of oral skills. A multitude of other important factors are left unconsidered.

Dialects, regionalisms, idioms, and sub-cultural slang are matters of utmost importance in the determination of vocabulary and oral skills. Misinterpretation of testimony attributable to lack of understanding of such matters may adversely affect the findings of a judge or jury. The difference in findings can of course mean the difference between justice and injustice. The United States Commission on Civil Rights reports a disgraceful example of such misunderstanding:

_____, a Mexican-American who had been drinking, struck his daughter for being tardy in bringing him some shampoo while he was showering. His wife called the police and told them of the assault. Erroneously understanding his wife to mean that her husband was sexually assaulting the daughter, the police arrived with drawn guns. The father, almost shot during the process of arrest, was taken before a city magistrate and charged with sexually molesting his daughter. Understanding little English and thinking he was being charged only with drunkenness, the father made no objection to the charge. No interpreter was present to explain the charge or to help him. He was then placed in the county jail in Phoenix, where he remained for two months awaiting trial because he could not afford the high bail. When he was able to see the defendant and converse with him in Spanish, the probation officer learned the facts and explained them to the magistrate. As a result, the case was dismissed.⁶

In an interview with Mr. Phil Montez, Director of the Western Field Office, U. S. Commission on Civil Rights, stated that what the wife actually said was, "Está molestando mi hija." A literal interpretation is, "(He) is molesting my daughter." The police officers, not understanding the intent of the allegation, assumed that "molestando" meant "molesting", which in our dominant culture is commonly understood to mean sexually molesting.

In addition to those factors mentioned above which affect the interpretation of speech, we find that cultural differences play an important part. Words and phrases used in different cultures may have connotations that are entirely different from those which a literal interpretation would convey. A judicial system and a personnel system which do not understand these subtleties cannot be responsive in providing adequate services.

But we have not yet begun to consider other facets to this service which need consideration and improvement. Most court systems provide interpreting services through systems personnel, that is, either persons hired specifically to interpret or other persons who may be bilingual and are working somewhere within the system. Yet the role of interpreters and the procedure to be followed in providing interpretation services during trial proceedings have not been defined. As a result, the procedure becomes an individual matter among judges, attorneys, and interpreters. Interpreters may work in various ways. They may subsequently summarize the testimony given in a foreign language, they may subsequently endeavor to interpret such testimony verbatim and literally, or they may interpret verbatim as such testimony is given. In some instances only testimony offered by the language-handicapped person is interpreted; in other instances interpreters interpret both for the language-handicapped person (while testimony or comments are made in English) and for English-speaking persons

(while testimony or comments are made in a foreign language). The procedures to be used are dependent upon the instructions of the individual court, the court's acceptance of agreements reached between litigating counsel, and the role-perceptions and capabilities of the interpreter.

The interpreter's perceptions of his role play an interesting and critical part in the trial process. These perceptions seem to fall into three major categories.

First is the prosecution-oriented perception. Most of the employees of the system who work for some branch of law enforcement or prosecution fall into this category. In this perception of their role they often endeavor, knowingly or unknowingly, to strengthen the case for the prosecution, because either consciously or subconsciously their attitude toward the defendant is based on a presumption of guilt.

The second role-perception is defense-oriented. In this role-perception the interpreter views himself as the protector of the person who is at a disadvantage because of a language handicap.

In either of these two roles, the interpreter may be faced with a situation in which marginal interpretation is possible. Marginal interpretation as it is used here applies to testimony or comments which can be worded in different ways without affecting their essential meaning. For example, if testimony seems overly harsh or incriminating, a defense-oriented interpreter might interpret it in such a way as to make the testimony seem less severe. It is possible that to protect his bias the interpreter could defend his interpretation as being accurate. In an adversary system of justice, the intervention of an interpreter as an additional advocate of one interest or another injects one more factor into the proceedings and into the ultimate fair determination of guilt or innocence.

A third role-perception is that of interpreters who view themselves as officers of the court rather than as assistants of the prosecution or defense. In this perception, interpreters endeavor to interpret objectively and accurately, allowing the chips to fall where they may. They believe that if the evidence to be interpreted is either strengthening or weakening to the prosecution or defense, the burden of shifting the strength or weakness lies with the opposing counsel and not the interpreter. A number of causes can be conjectured for these role-perceptions, but conjecture does not address the important differences in role-perceptions, which can and do have a long and lasting effect on the outcome of the trial and the lives of the language-handicapped.

The functions and role-perceptions of interpreters have been briefly discussed from the perspectives of both the system and the interpreter. Yet another very important perspective regarding role-perception merits consideration. What is the defendant's perception of the interpreter? The interpreter is his sole lifeline in an extremely important process that affects his life and that of his family and relatives. The defendant must rely upon the interpreter's competency and role-perception. Can he have any degree of personal assurance that a police officer he saw in the station while he was being booked can and will truthfully and accurately convey his, the defendant's, side of the story? Might he not have similar anxieties if he knows that the interpreter is a clerk who also works in the office adjoining the courtroom? Without discussion of these questions, this simple request is made: emphasize, if you can, with the plight of the language-handicapped person.

This article is not intended to be a comprehensive or exhaustive discussion of all the factors that need to be considered in any attempt to improve interpreter

services. Its primary intent is to create awareness of some of the factors on the part of those judges, administrators, and other decision-makers whose lack of understanding often results in the offering of simplistic, ineffective solutions to a complex problem.

Intentionally this article has up to this point been devoid of legal arguments. However, the latest and strongest case law in support of interpretative services for a criminal defendant is that of Negron vs. State of New York, 434 F 2d 386 (2d. circuit, 1970). The language in Negron states in essence that the right to interpretative services throughout the trial process is even more consequential than the right to confrontation; furthermore that considerations of fairness, the integrity of the fact-finding process, and the potency of our adversary system of justice forbid that the state should prosecute a defendant who in effect is not present at his own trial because of his inability to comprehend the proceedings.

Equal protection of the laws is guaranteed under the Fourteenth Amendment. The justice system is challenged to take the initiative to improve the situation, which presently deprives the language-handicapped of that equal protection. Providing this critical human right is a responsibility of a just justice system and one for which it must be held accountable.

REPORT INTRODUCTION

The task force was composed of core group members and invitees. Special task forces were designated as pretrial, trial, administration, and language groups. Core group members were responsible for facilitating, gathering, and compiling the efforts of such special groups. Invitees were asked to participate

in those groups which were of particular interest to them. Prior to the convening of the task force meeting, materials and assignments were mailed to each participant to increase his understanding of task force objectives.

Despite the complexity of the subject matter and the lack of sound procedural precedents, the task force and special groups worked effectively. Their principal observations and recommendations are included in the following report.

PRETRIAL GROUP

Tasks and Objectives

The group attempted to identify every stage of the pretrial process, prior to court appearance, in which the services of an interpreter would facilitate communication between the pretrial justice personnel and the non-English-speaking suspect. As a concomitant, the group also considered recommendations that would assist the administrative processes of the pretrial stages in matters specifically dealing with language problems.

Recommendations and Rationale

Although the group's discussion covered much more ground, time factors and other practical considerations made it necessary to limit the specific recommendations to these:

Recommendation 1

It is recommended that both the local telephone company and law enforcement agencies develop a mechanism by which Spanish-speaking persons can dial a special

number and be answered by a Spanish-speaking operator or dispatcher.

Rationale

The initial obstacle for a non-English-speaking person who wishes to avail himself of the services provided by law enforcement agencies is his inability to make the initial telephone call. An innovation such as that recommended would assist law enforcement agencies in responding to calls for assistance and lead to the apprehension of persons participating in illicit activities within a non-English-speaking community. Improved police-community relations can also be realized by implementing this recommendation.

Recommendation 2

In respects similar to the affirmative action program (title 7) of the Civil Rights Commission, it is recommended not only that incentives for bilingual applicants be provided but also that Spanish-speaking applicants be hired to meet the language-assistance needs of the community.

Rationale

The absence of bilingual officers within the country's police departments has several undesirable effects. Victims, witnesses, and innocent bystanders may be arrested because they cannot explain why they were in the vicinity of a crime at the time of the officer's arrival. The Los Angeles Police Department physically detains a non-English-speaking person until language services can be rendered. Such a policy has a twofold effect. First, it does not allow officers to fully utilize their time while they wait until language services can be provided, and, second, such detention at the scene of the crime may be interpreted by the residents of that community as police harassment and brutality.

Recommendation 3

Tapes and other audio equipment should be developed in order to convey rights and other arrest information to the non-English-speaking suspect.

Rationale

Some departments utilize a bilingual card explaining rights, and some

departments even read the card to the suspect. Unfamiliarity with accents and other subtleties of a foreign language make it difficult for officers to effectively communicate the rights and other information.

Recommendation 4

Bilingual forms and other instructional materials should be developed that would unequivocally explain rights, privileges, and regulations to non-English-speaking persons.

Rationale

Since most of the rights regarding incarceration are not offered but instead must be requested, the development of bilingual materials would allow an inmate to become cognizant of the rules and regulations that he is expected to follow.

Recommendation 5

In respects similar to recommendation 2, it is recommended that additional bilingual personnel be employed and that their role in incarceration facilities be established.

Rationale

Increasing the hiring of bilingual personnel would conceivably also assist supportive justice components such as probation office, pretrial release program, district attorney, and respective counsel in obtaining necessary and adequate information from the inmate. Non-English-speaking relatives and friends of the inmate could also be assisted by bilingual employees.

Recommendation 6

Audio equipment should be developed to instruct Spanish-speaking suspects at lineups as to procedures that must be followed in such lineups.

Rationale

Inability to understand the English language invariably causes the suspect

to appear conspicuous or suspicious, since he cannot follow instructions. Repeated instructions frequently embarrass the non-English-speaking suspect.

Recommendation 7

Agreements between incarceration officials and counsel for non-English-speaking inmates should be made to provide or permit counsel to provide interpreters in the mail or at the detention facility.

Rationale

Communication prior to court appearance is an indispensable necessity. Providing an interpreter to the attorney will assist him in the development of a foundation for his client's case. Compliance with this recommendation would also make the necessary information available for the courts, police, and other court-appointed personnel during the entire case process period. (For legal justification, see part 1 of document entitled: "Interpreter's Effect Upon Quality of Justice."⁷)

Closing Statement

The primary concern of the pretrial group in making these recommendations is to ensure that the quality of justice afforded to English-speaking Americans by our justice system is also provided to the many non-English-speaking persons who confront our criminal justice system daily.

The complete lack of interpreter and bilingual services in this field calls for many innovations. Hopefully, the reader will be stimulated by the contents of this document to use his imagination in an attempt to reach the goal for which it is written.

TRIAL GROUP

The monolingual, non-English-speaking person, without the assistance of available and competent interpreter services, faces serious problems in communication. The courts to date have not been able to provide competent, licensed, and tested interpreters for such defendants in a uniform manner. The following recommendations and supporting rationale were developed through the efforts of the trial group.

Recommendations and Rationale

Recommendation 1

Interpretative services should be provided for a non-English speaking defendant or one who has difficulty in understanding or communicating in the English language throughout the entire trial process.

Rationale

After a review of the present case law, this group felt that the latest and strongest case law in support of interpretative services for a criminal defendant is that of Negron vs. State of New York, 434 F 2d 386 (2d circuit, 1970). The Negron decision definitely protects the right of an indigent criminal defendant to interpretative services. However, the group felt that ideally such services should be provided to all criminal defendants for the following reasons:

a. It is the government that chooses to prosecute, and therefore the burden rests upon it to furnish the basic apparatus for intelligible and minimally comfortable proceedings, e.g., such physical accoutrements of a trial, such as a court reporter or even

the courtroom itself, neither of which is billed to the defendnat.

b. It is the present practice, at least in the District Court of Puerto Rico, to provide interpretative services to any criminal defendant at government expense. The trial group felt that the provision of interpretative services for all criminal defendants can be achieved through an administrative decision in those districts where the need exists.

c. The language in Negron states in essence that the right to interpretative services throughout the trial process is even more consequential than the right of confrontation, and that considerations of fairness, the integrity of the fact-finding process, and the potency of our adversary system of justice forbid that the state should prosecute a defendant who, in effect, is not present at his own trial because of his inability to comprehend the proceedings.

Recommendation 2

Interpretative services should be provided for non-English-speaking witnesses or one who has difficulty in understanding or communicating in the English language throughout his or her entire testimony.

Rationale

The trial group, through this recommendation, specifically disapproves of the present practice followed in some judicial districts, where the interpreter for the defendant is also used to interpret for the non-English-speaking witness, which results in the deprivation of interpretative services for the criminal defendant during the time that the interpreter is utilized for the benefit of the non-English-speaking witness.

This group felt that the criminal defendant should have an interpreter during the entire trial process, and for that reason a second interpreter should be utilized for the benefit of the non-English-speaking witness.

Recommendation 3

For the sake of continuity and to further the orderly administration of justice, the same interpreter should be provided to the criminal defendant throughout the entire trial process.

Rationale

The reasons as apparent.

Recommendation 4

An interpreter may be disqualified in the same manner that a judge can be disqualified pursuant to Code of Civil Procedure, secs. 170 and 170.6.

Rationale

The trial group, through this particular recommendation, expresses its concern that a criminal defendant must be able to disqualify an interpreter for cause when, for example, this interpreter is incompetent, has a personal interest in the proceeding, or for some reason would not be able to provide adequate interpretative services. The group also felt that the disqualification of an interpreter must be allowed a criminal defendant even when the defendant is not able to articulate sufficient reasons to disqualify for cause. The group felt that the best working relationship between the interpreter and the defense must be nurtured and, because the development of such a relationship includes many variables, that it is best to give the defense a "peremptory" challenge for the disqualification of one interpreter. (C.C.P. sections 170 and 170.6 are shown in an appendix to this report.)

Recommendation 5

Any testimony during trial in a language other than English, the interpretation thereof, and any objections thereto, should be recorded, and such recording should be made a part of the record.

Rationale

This recommendation is made for the purpose of preserving in the records any erroneous interpretation upon which an appeal can be based, when the defense feels that the erroneous interpretation has prejudiced its case. The following note accompanies this recommendation because of the trial groups' awareness that in most situations defense counsel may not be aware of the erroneous interpretation at the time the erroneous interpretation is made.

Note: Failure to object at the time the interpretation in question is made shall not constitute a waiver of any error in the interpretation, unless counsel for the party is aware of the error at the time the interpretation is made.

Recommendation 6

It is the consensus of the trial group that the role of the interpreter should be a neutral one, since the interpreter's function is merely to enable the defendant to understand the proceedings fully. It was also the group's feeling that the administration of justice would best be served if the interpreter were to function in a neutral manner, since to do otherwise would be to inject an additional advocate into the proceedings and the role of advocacy is best left to the attorneys representing the parties.

Points In Trial At Which Interpreter Services Should Be Provided

Testimony

1. Jury selection
2. Non-English-speaking defendant
3. Non-English-speaking witness

4. Communication with counsel
 - a. During trial
 - b. During recess
5. Presentation of the prosecution's case-in-chief
 - a. Opening statement
 - b. Questions to witnesses
 - c. Summation
6. Presentation of counsel's defense
 - a. Opening statement
 - b. Questions to witnesses
 - c. Summation
7. Cross-examination of witnesses
 - a. Prosecution
 - b. Defense
8. Remarks, statements, instructions by judge
9. Expert witnesses
10. Jury verdict
11. Sentence

Documents

1. Evidence
2. Transcripts
3. Probation reports

Rights Of The Criminally Accused

Legal Arguments For the Rights To Have Criminal Proceedings Interpreted

In A Language Defendant Understands

1. Fifth Amendment
 - a. Due process of law
 - b. Self-incrimination
2. Sixth Amendment
 - a. Nature and cause of the accusation
 - b. Confrontation clause
 1. Right to presence at trial
 2. Right to cross-examine
 - c. Right to counsel
 - d. Right to effective assistance of counsel
 - e. Compulsory process
 - f. Speedy trial and impartial jury
3. Fourteenth Amendment
 - a. Due process of law
 - b. Equal protection

4. Other Rights

- a. Fundamental fairness
- b. Human right
- c. Interest in justice
- d. Equality of justice

Right to Interpretation At State Expense

Factors

1. Indigency
2. Constitutional rights
 - a. Fair trial
 - b. Fifth, Sixth, and Fourteenth Amendments
3. Judicial discretion
4. Avoidance of collateral attack: denial of interpreter is reversible error
5. Benefits to defendant, to defense, and to prosecution
6. Enhancement of determination of guilt or innocence
7. Costs may be apportioned
 - a. Indigency: state expense
 - b. Apportions
 - When state uses interpreter service and user party can afford
 - When more than one party uses interpreter services
 - c. Party can afford interpreter: party's expense
8. Public Policy
 - a. Integrity of judicial process
 - b. Recognition of multi-lingual society by enhancement of communication

ADMINISTRATION GROUP

Introduction

The administration group addressed itself to the communication problem of the non-English-speaking and the administrative practices required to furnish interpreter services to those persons throughout the justice system process.

Tasks

The group's major tasks in addressing administrative considerations included

but were not limited to:

1. Identification of administrative and technological requirements at identified points of interpreter services.
2. Development of interpreter instructions and administrative instructions for each of the identified process points.
3. Identification and preparation of necessary written forms, signs, and other documents needed for the improved guidance and direction of non-English-speaking persons.

Assumptions

Assuming the soundness and validity of the legal and linguistic foundations upon which the group's discussion was based, the problem is global. The practical matter is to identify what is required to develop administrative and management procedures, policies, and guides for the provision of language services. Based upon this assumption, the following suggestions and discussion are offered.

Suggestions and Rationale

Suggestion 1.

Assess, evaluate, and review the present personnel practices of the justice system in administering interpreter services.

Rationale

To achieve some justice program that would permit necessary standardization of required tasks and procedures, a substantive understanding of present practices must be gained.

Suggestion 2.

Identify and establish indices, sensors, and administrative mechanisms which could attest to and verify the standards, qualifications, and competency of interpreters throughout the justice system.

Rationale

The most difficult tasks are those related to design, development, and implementation of administrative practices that would facilitate the management of an interpreter services component. The inherent difficulties would be alleviated if specific, acceptable standards for services and competency criteria for the appointment and utilization of interpreters could be established.

Suggestion 3.

Develop and implement skill sensors: administrative mechanisms to validate qualifications, evaluation, classification, assignment, and other administrative procedures.

Rationale

Review of present practices of personnel operations and systems in the areas of job opportunity, announcements, recruitment, classification, compensation, selection, and assignment would permit examination of standards and procedures based upon required interpreter proficiencies and performance.

Suggestion 4.

Develop selection, examination, and assignment procedures in order to identify distinct classifications and interpreter skills.

Rationale

Guidelines and role summaries are needed to explain interpreter functions, tasks, ethics, and responsibilities both to interpreters and to on-line and supervisory judicial services personnel.

Suggestion 5.

Develop interpreter classifications that reflect and represent required standards and levels of proficiency at various stages of the criminal justice process.

Rationale

Competition for certification would upgrade the standards and prestige of the interpreter services. Classification by levels with comparable pay schedules would promote incentives to the profession.

Suggestion 6

Assign bilingual personnel throughout various departments and agencies of the justice system.

Rationale

Various identified communication needs of non-English-speaking persons could be met through the implementation of this suggestion with minimal increased costs in providing bilingual services.

Suggestion 7.

In the absence of bilingual personnel assignments throughout various departments and agencies of the justice system, develop alternative mechanisms for the provision of competent interpreter services.

Rationale

Interpretation needs faced by non-English-speaking persons could be remedied if management were to acknowledge the importance of effective communications and establish mechanisms that would provide interpreter services to various components of the justice system. Such an approach conceivably could be accomplished through the establishment of an interpreter services center that could provide services to separate components of the justice system.

Suggestion 8.

Assign interpreters or bilingual persons according to levels of proficiency required and to interpreter competency and knowledge.

Rationale

Administrative practices of hiring and assigning interpreters without the

design and development of minimum standards, procedures, and assignment criteria, are ineffective and in many situations could mean the deprivation of constitutional protections. Less than proper assignment may also give rise to increased frequency of reverse discrimination and corollary problems. The concept of reverse discrimination relates to biases that interpreters may have toward particular cases, case content, or both.

Suggestion 9.

Make assignments by a process that would meet the needs of the client, court, counsel, and related parties and agencies.

Rationale

At different critical stages of the judicial process, different types and categories of interpreter skills are required. Administrative practices and management assignments could be made according to need, demand, population, and geographical jurisdiction, as well as the skill and level of interpreter services needed.

Suggestion 10.

Develop disqualification procedures, criteria, and sensors to challenge and upgrade the standards of interpreter services.

Rationale

Interpreter selection and appointment procedures; sensor procedures to challenge interpreter competency; and criteria and procedures for interpreter substitution and disqualification need further consideration so as not to restrict services but to provide quality interpreter services.

Suggestion 11.

Develop formal accreditation or training programs for interpreters of the Spanish language, since in all parts of the country and particularly in the Southwest interpretation of this language is most in demand.

Rationale

Development of formal accreditation or training programs for all languages is not presently feasible. Demonstration programs could be initiated to test the feasibility for at least the major foreign languages. These programs could later be improved and extended to other languages.

Suggestion 12.

Compensation of interpreters should be paid by user departments in indigency cases and apportioned when several governmental departments and/or individuals that are capable of meeting costs utilize such services.

Rationale

The justice system presently pays for necessary services when persons requiring such services are indigent. Otherwise, interpreter costs would become the sole and separate obligations of those who use such services.

Evaluation Techniques

Commonly used evaluative techniques may be grouped under five general headings: written tests, performance tests, structured interview, ratings of qualifying education and/or experience, and rating on the basis of job elements representing pertinent knowledge and abilities. No specific suggestions are made because not enough information is presently available relative to interpreter competency and performance and evaluation techniques.

Conclusion

The suggestions proposed are ways in which administrative considerations can result in guidelines, procedures, and practices. No firm recommendations have been made at this juncture. The major problem faced by judicial administration and its ancillary law enforcement agencies is to identify the necessary administrative

mechanisms that will provide effective and competent interpreters when needed and demanded by non-English-speaking persons during the various stages of the justice system process. Implementing at least some of the principal suggestions can result in the ultimate development of needed administrative practices.

LANGUAGE GROUP

Specific Language Requirements

The report of the group contains a section for each stage of criminal proceedings and includes a summary of the language transactional analysis.

Pre-Arrest

This stage requires good consecutive language skills and the ability to respond to non-stereotypic language interactions - usually involving excited persons. Police follow-up requires similar skills, as do subsequent investigative steps.

Arrest

In the case of certain classes of arrests, arrestees may commonly be advised of their right to remain silent and their right to an attorney. These are standardized language interactions that could be taught to many people. A higher language expertise is called for where an interrogation is extended.

Traffic citations and citations for minor misdemeanors required advisement as to court date and any options the defendant may have as to payment of fines and actual appearance at court. Standardized language transactions are required at this stage, although spontaneous, unpredictable questions also may call for responses. Bilingual forms and instructions are particularly appropriate here.

Booking

Each of the booking processes is fairly standardized, although spontaneous, unpredictable language interactions are common and are to be expected.

Post-Booking

Bail posting and OR release interview interactions are fairly standardized, although the second may be diversified, particularly if OR interviewers are interviewing defendants for recommendation to a diversion program.

Detention

Custodial interrogation language skills are required in order that just and efficient questioning is possible. Interactions follow a standard question-and-answer format, and the interactions, although predictable, are by no means uniform.

Arraignment

Preliminary Hearing

Preparation of Case

Trial

Sentencing

The specific language requirements for these last stages vary from standardized to highly intricate and complex interactions. The sentencing process was defined to include pre-sentence investigation by probation staff, which often requires questioning of the defendant, and field investigation. The court proceedings concerned with sentencing are fairly predictable, although spontaneous, unpredictable language interactions do occur. A defense attorney is usually present, although conference with attorneys is not frequent.

A Conceptual Framework

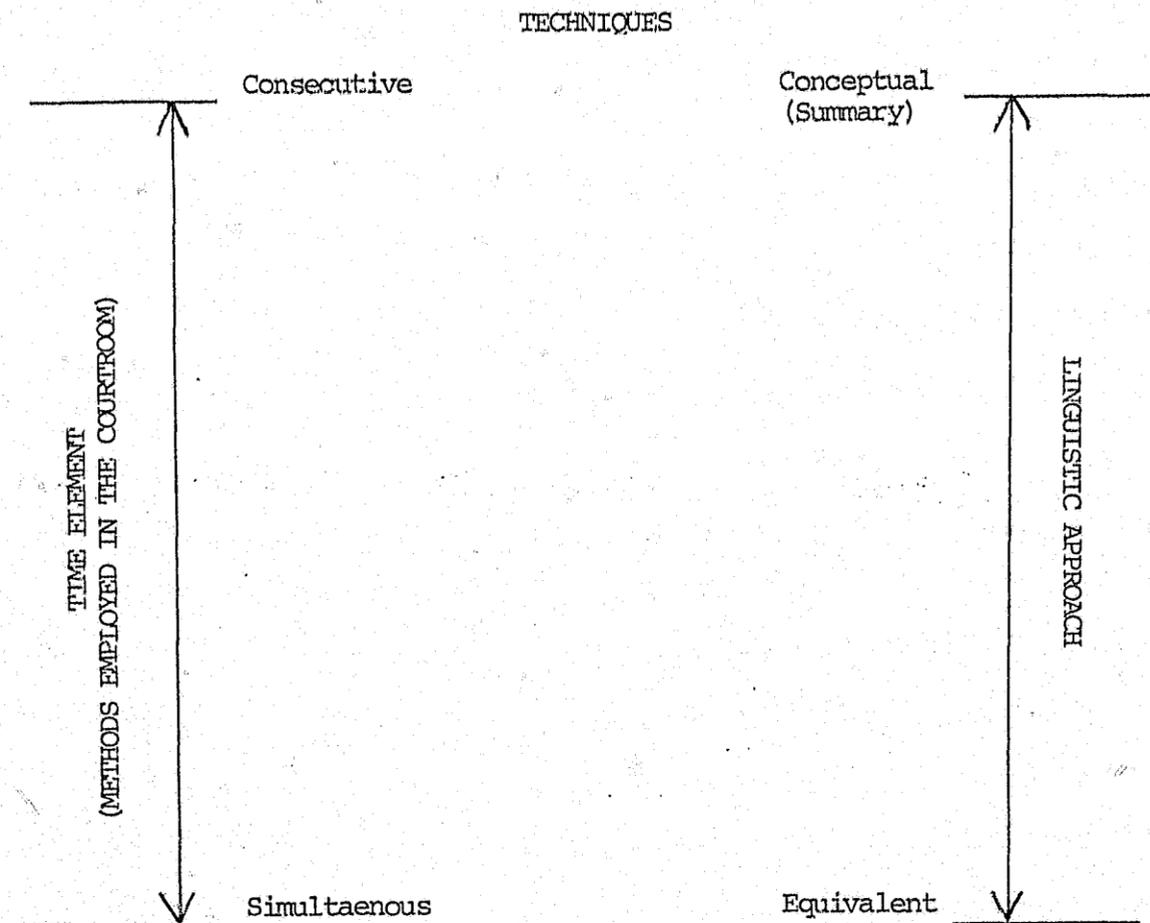
To better define the language competencies required at various stages of the proceedings, a conceptual framework for classifying the techniques required at

each stage was constructed as follows:

The techniques in relation to time element and linguistic approach were purposefully placed on a continuum to indicate that no method is absolute. In fact, simultaneous and verbatim translation is virtually impossible. Simultaneous is a mode in which interpretation is made of a speaker's words as closely in time to the speaker's words as possible. Consecutive is a mode of language interaction in which one speaks and another responds.

Conceptual (or summary) linguistic approach indicates an interpretation made by which the ideas or meanings of a speaker are transferred and the attempt is not to transfer an exact equivalent translation of a speaker's words.

The task group arrived at this conceptual framework at the end of its deliberations, and as a result a full application of the framework to each event was not possible.



Classification of Steps and Stages

Utilizing the general framework presented above, an effort was made to classify the steps and stages of each identified point in the criminal process discussed above, according to the critical interpreter language competencies required for each identified point.

Arrest, Booking, and Detention

These were generally felt to require consecutive techniques regarding the time element. In several instances equivalent translation of standardized, often repeated, messages was required, although conceptual or summarized linguistic methods would frequently be sufficient.

Pre-Arrest, Detention, Interrogation (Police), Attorney Conference, and Pre-Sentence Report

Each of these events generally requires consecutive and conceptual or summarized forms. As a general rule, an interpreter would not have to have the ability to interpret simultaneously at these stages and steps. Nevertheless, interactions are not predictable, and good command of two languages with a high variety of vocabulary may be required.

Arraignment (and other relatively standardized court proceedings) and Sentencing

Simultaneous translation may occasionally be called for, although these proceedings generally require consecutive techniques. Regarding linguistic approach, these two proceedings commonly require very rigorous, equivalent translations of highly technical but standardized and repetitive messages. In addition, good capacity to perform in the context of spontaneous interactions may be required of interpreters.

Pre-Trial and Trial

These require interpretation techniques along both the continuums. High

simultaneous skills are definitely required. Consecutive translation may often be sufficient. Both conceptual (summary) and equivalent interpretation are necessary. Frequently simultaneous, equivalent modes are a necessity.

Typology for Interpreting Levels

Standards are suggested for bilingualist and interpreter levels.

To ascertain who could be trained to perform at the various stages, the language group formulated a classification of language skills. The first element of this typology was bilingualist skill level and the second was interpreter skill. The distinction between bilingualist and interpreter is made clear by the following discussion,

Bilingualist

Bilingualist, Minimal Level

1. Ability to express oneself in the target language, mainly on a survival basis.
2. Ability to understand simple sentences in the target language, with vocabulary level limited to very common words and expressions, and perhaps with a special vocabulary in one's own field of work.

Bilingualist, Elementary Level

1. Ability to make oneself understood by native speakers of target language when conversing on common subjects in simple or complex sentences.
2. Working knowledge of grammatical and syntactical usage in the target language.
3. Ability to understand simple or complex sentences in the target language on any common conversational topic.

Bilingualist, Intermediate Level

1. Ability to understand and express complex thoughts expressed in complex sentences in the target language, including a special vocabulary

in at least one field of endeavor.

2. Thorough knowledge of syntactical and grammatical usages in the target language - both a working knowledge and an academic knowledge.
3. Enunciation and vocal inflection very nearly similar to that of a native speaker of the target language.

Bilingualist, Advanced Level

1. All abilities and knowledge required of an Intermediate-Level Bilingualist.
2. Thorough working and academic knowledge of the literary form or dialect of the target language.
3. Broad working knowledge of most of the principal dialects of the target language.

Bilingualist, Specialist Level

1. All abilities and knowledge required of the Intermediate-Level Bilingualist.
2. Thorough working and academic knowledge of the literary form or dialect of the target language.
3. Thorough knowledge of all the principal dialects of the target language and a good working knowledge of most minor dialects or regional variations.

Interpreter

Interpreter, Minimal Level

1. Knowledge and abilities required of an Intermediate-Level Bilingualist.
2. Ability to interpret consecutively in general terms expressively (from English to the target language) and receptively (from the target

language to English), where time and precision of interpreting are not criteria factors.

Interpreter, Elementary Level

1. Knowledge and abilities required of an Intermediate-Level Bilingualist.
2. Ability to interpret consecutively and with reasonable accuracy, both expressively and receptively, where time may be a factor.
3. Limited ability to interpret simultaneously.
4. Ability to interpret for a client of moderate or high educational attainment.

Interpreter, Intermediate Level

1. Knowledge and abilities required of an Intermediate-Level Bilingualist.
2. Ability to judge a client's approximate educational level and linguistic patterns and adjust one's interpreting accordingly within the literary dialect of the target language.
3. Skill in simultaneous interpreting with a high degree of accuracy.

Interpreter, Advanced Level

1. Knowledge and abilities required for an Advanced-Level Bilingualist.
2. Ability to determine the educational level and linguistic habits of the client.
3. Capability of interpreting simultaneously, with a high degree of accuracy, for any educational level in any principal dialect of the target language.

Interpreter, Specialist Level

1. Knowledge and skills required of an Advanced-Level Interpreter.

2. Ability to interpret in a highly specialized area, such as legal interpreting, diplomatic interpreting, or interpreting in the special jargon of an occupational field or academic discipline; or ability to interpret in a highly esoteric or especially difficult linguistic variation of the target language.

Adaptations

a. Interpreters in each language group should adopt more specific requirements within these general guidelines to allow for special problems or unique characteristics of a given language.

For example:

1. Mandarin, Cantonese, and other tongues might be considered as separate languages rather than as dialects of Chinese, because of the great differences among them.
2. Languages for which there is no written form and certain other languages present unique problems in acquiring academic knowledge concerning them; therefore, such academic knowledge could be deemphasized in favor of an emphasis on a working knowledge.
3. Interpreting for the deaf in American Sign Language should involve especially heavy emphasis upon simultaneous interpreting rather than consecutive interpreting.

Development Program

Graphic and descriptive analysis of the needed training for each level of interpreter according to the steps and stages of the criminal proceedings is fundamental to a development program. The following chart outlines a training development program based on the foregoing discussion.

STEP OR STAGE	BASIC QUALITIES	TRAINING DEVELOPMENT PROGRAM
ARREST BOOKING DETENTION	ELEMENTARY BILINGUALIST ↓ SUB-MINIMAL INTERPRETER	SPECIFIC EVENTS TERMINOLOGY, PHRASES. STANDARDIZED INTERACTION. ENGLISH PARALLELS. HOME STUDY.
PRE-ARREST DETENTION INTERROGATIONS (POLICE) ATTORNEY CONFERENCES PRE-SENTENCE REPORT	INTERMEDIATE BILINGUALIST ↓ ELEMENTARY INTERPRETER POSSIBLY MINIMAL	SPECIFIC TERMINOLOGY LANGUAGE TRAINING (FOR SPONTANEOUS INTERACTIONS, ENGLISH PARALLELS. INTENSIVE RESIDENTIAL TRAINING.
CLERK'S OFFICE		CLERK: STANDARDIZED TECHNICAL, REPETITIVE SPONTANEOUS.
ARRAIGNMENT (AND OTHER STANDARDIZED COURT PROCEEDINGS)	INTERMEDIATE BILINGUALIST ↓ ELEMENTARY INTERPRETER (MAY REQUIRE INTERMEDIATE INTERPRETER)	HIGHLY TECHNICAL, REPETITIVE VOCABULARY, STANDARDIZED INTERACTION AND MESSAGES. ENGLISH PARALLELS. HOME STUDY. INTENSIVE RESIDENTIAL TRAINING.
PRE-TRIAL	ADVANCED BILINGUALIST, EDUCATED NATIVE, OR ACCULTURATED EDUCATED NON-NATIVE ↓ ADVANCED INTERPRETER	SIMULTANEOUS INTERPRETATION, HIGHLY TECHNICAL VOCABULARY AND TERMINOLOGY. CULTURAL AND REGIONAL ENGLISH PARALLELS. INTENSIVE RESIDENTIAL TRAINING. HOME STUDY. SUPPLEMENTAL OR ORIENTATION STUDIES.

Summary and Conclusion

A good starting point is provided herein. The conceptual framework should prove useful to future planning. Significant amounts of time and money will be required to complete the tasks outlined,

Development programs cannot be definitively designed until additional research is carried out to establish the critical language competencies that are required. These competency needs are necessary to conduct a deficiency analysis of existing practitioners, whatever their titles or assumed responsibilities may be, and an analysis of actual minimal entry-level requirements. Minimal entry-level requirements must be tied to a somewhat systematized classification, such as the one briefly outlined above. The classification of Bilingualists and Interpreters would require extensive elaboration. A development program can then be designed and undertaken with persons whose skills are sufficient to warrant further training. Development program designs must be tied to development needs of trainees and a realistic evaluation of critical job competencies. In summary, the conceptual framework on the basis of which to undertake such a task is outlined but the details are lacking.

SUMMARY OF UNRESOLVED ISSUES

Pretrial Group

Although the group's discussion generated a great number of suggestions, recommendations, time and other practical considerations made it necessary to limit the number of recommendations to those made above. Among the unresolved issues are: (a) the need to analyze specific legal provisions to determine criteria affecting protection of rights at various points of the pretrial process;

(b) the need to assess potential legal conflicts affecting the assignment and utilization of interpreters among justice-related departments; (c) clarification and definition of legal provisions for the development of instructions, procedures, and administrative guides for the effective utilization and assignment of interpreters.

Trial Group

Because its monumental task could not be completed, the group makes three major recommendations that would carry forward the work begun and result in the ultimate development of required language services.

1. A group should be formed to undertake collection and analysis of legal statutes, case law, administrative practices, social sciences, and culture to:
 - a. Prepare legal memoranda supporting the provision of interpreter services to all non-English-speaking persons.
 - b. Develop instructions, procedures, and administrative guides pertaining to interpreter appointment, role definition, utilization, disqualification, and evaluation.
 - c. Identify support services necessary for the provision of quality interpreter services.
 - d. Arrive at an understanding of the group and interpersonal dynamics and relations as well as the cultural effects of interpreters assigned and utilized.
 - e. Recommend necessary policies and changes and disseminate appropriate findings and recommendations.
2. Means should be established to seek funding for the investigation of the needs of the language-handicapped and the proposal to the justice system of answers to those needs.
3. Attorneys, administrators, judges, and law enforcement and other

officials related to the justice system must be sensitized to the special language needs of the non-English-speaking and those who have difficulties in understanding or communicating in the English language.

Administration Group

Unresolved issues included the following:

1. Actual curriculum design is completely lacking and would require a massive effort to develop for each level required.
2. Entry-level requirements need to be tested to determine the validity in the actual work-field. This will require extensive field work. Furthermore, verified entry-level requirements must fit terminal training objectives.
3. Field work is needed to evaluate those who are currently engaged in interpreting and to catalogue their training and development needs in relation to minimal entry-level requirements. In all probability, existing job holders will make up a good part of any future work force.
4. Requirements as defined above may be too rigid and thereby incorrectly exclude some holders of paraprofessional positions.
5. Educational programs for other justice system personnel (e.g., presiding judges, court executives, county managers, prosecutors, etc.) need to be conceptualized and designed.
6. Classification and testing should be established for specialties such as translating, administration of interpreter services (by size of court), and the training and evaluation of interpreters and educators.

APPENDIX

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NOTES

- 1 Arizona Revised Statutes Annotated, Vol. 4 (St. Paul: West Publishing Co., 1956) Title II, Section 11-601.
- 2 Friesen, Gallas and Gallas, Managing the Courts, (Indianapolis: Bobbs-Merrill Co., 1971), p. 18.
- 3 Ventura County, An Investigation Under Section 1421 of the California Labor Code, The California Fair Employment Practice Commission, June, 1972, documents the following:

Spanish-Surname Population: 20%

County Employment by Ethnic Group

<u>Department</u>	<u>Spanish-Surname</u>	<u>Other Caucasian</u>
Superior Court	0%	24 %
Personnel	4*	16
Municipal Court	4**	61

* "Poor minority utilization--all minorities are Spanish-surnamed female clerks."

** "Poor minority utilization--all minorities are service-clerical."

The investigation documents a pattern of employment practices in Ventura County which supports allegations of such practices throughout the country.

- 4 Ibid.
- 5 Peter S. Lopez and Refugio Rodriguez, Interpreters' Effect on Quality of Justice of non-English-Speaking Americans, (Denver: The Institute for Court Management, January 15, 1973).
- 6 Mexican-Americans and the Administration of Justice in the Southwest, A Report of the United States Commission on Civil Rights, March, 1970, p. 70.
- 7 Lopez and Refugio, op. cit.

END