

Nebraska Judicial Branch Language Access

Enabling Nebraska's Court Users to Tell Their Own Stories in Their Own Words

by Jennifer A. Verhein

Since 1973, the Nebraska Legislature and Supreme Court have recognized language access as necessary to providing justice, ensuring people who cannot understand or speak English or who are deaf or hard of hearing have equal access to participate in cases in Nebraska State Courts.¹ Language access to court proceedings and probation services may have a lasting and life-altering impact upon a Limited English Proficient (LEP) court user and his or her family. Today, the Nebraska Judicial Branch remains committed to fulfilling the promise of equal access to justice despite language or other barriers.

The Nebraska Supreme Court created the Language Access Committee² in 2005 with the mission to secure and protect the rights of persons who are unable to readily understand or communicate in the English language. That Committee envisioned and supported the development, implementation, and exponential growth of what began as a fledgling court interpreter program into the now robust statewide Language Access Program.

Jennifer A. Verhein



Jennifer Verhein, a graduate of the University of Minnesota Law School, advocated for access to justice as an Iowa Legal Aid staff attorney and an Assistant Des Moines County Attorney. She honed her administrative skills as Midland University's registrar and the University of Nebraska-Lincoln's Assistant Registrar for Graduation Services. She joined the Nebraska Judicial Branch in 2015 as its first

leader of the Statewide Language Access Program.

Perhaps the most significant achievement of the Committee is that the important work of language access has become a fully integrated part of the Administrative Office of the Courts and Probation (AOCB) infrastructure, with a Director of Language Access in the AOCB and Interpreter Coordinators and a Language Access Scheduler strategically placed in the state's largest population centers. Their primary function is providing effective and cost efficient spoken language access services by using employee and independent contractor court interpreters so that LEP Nebraskans are able to tell their own stories in their own words in courts and probation offices across the state.

There is a clear connection between national origin, primary language, and limited ability to read, write, speak, or understand the English language. The presence of LEP parties and witnesses in courthouses is not new, but Nebraska's LEP population has increased significantly in the past five years. "While many of these people use English at work and in their daily lives, understanding what happens in a courtroom can be more difficult. Many others have less facility with English and are lost in telling their story—whether inside the courtroom or speaking with court clerks—without the support of a trained and qualified interpreter and without translation of official court documents."³ The United States Census Bureau's American Community Survey is a valuable resource for the identification of the various non-English languages spoken at home in Nebraska. The Community Survey data reveal in 2019, 5% of the Nebraska population aged five years and over, an estimated 90,623 individuals, spoke English less than very well.⁴ Of that group, 42.7% speak Spanish.⁵ Other broad categories of languages spoken in Nebraska include Indo-European languages and Asian and Pacific Island languages.

While COVID-19 has not changed the Judicial Branch's



NEBRASKA JUDICIAL BRANCH LANGUAGE ACCESS

commitment to language access, it has often affected the method by which interpreters could appear in court or probation settings. Chief Justice Heavican noted in his *2021 State of the Judiciary* speech to the Nebraska Legislature, “The Language Access Program was quick to implement remote interpreting services by telephone and by using a variety of video platforms. Our interpreter coordinators offered guidance and test runs to assure seamless interpretation for Nebraska’s court users with limited English proficiency, as well as judges, attorneys, and jurors requiring interpreter services.”⁶ Even in the midst of the pandemic, Nebraska’s court interpreters have provided language access in person, and remotely by telephone or video, recognizing the dignity of LEP individuals and fulfilling this fundamental precept of access to justice.

Interpretation vs. Translation

Language access has two components with discrete skill sets and different credentialing processes:

- **Spoken Language Interpretation:** Facilitating spoken communication between individuals who are not sufficiently proficient in the same language. “Interpreting is the process of fully understanding, analyzing, and processing a spoken message and then faithfully rendering it into another spoken language.”⁷ The role of the court interpreter is to act as a conduit. Interpreters must be able to completely and accurately convey the meaning from one language into another in a culturally appropriate manner, without adding, omitting, explaining, or embellishing in any way.
- **Written Word Translation:** Converting written text from a source language into a target language. “This is far more than replacing one word with another. The translator must also convey the style, tone, and intent of the text, while taking into account differences of culture and dialect. The finished document should read as if it had originally been written in the target language for the target audience.”⁸

“The skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.”⁹ Many translators are daunted by the real time nature of spoken language interpretation, and not all court interpreters are adept at reading and writing in both English and their non-English language.

For example, spoken language interpreters and translators would approach the homophones **discreet** and **discrete** quite differently. Attorneys quickly recognize that although the two adjectives sound the same, they have distinctly different meanings. The spoken language interpreter must discern the meaning of the word as it is articulated and promptly render it orally in another language. Interpretation is a nearly real-time

process, so for the interpreter, the meaning comes entirely from context, not spelling or a dictionary definition. It “requires the interpreter to listen, analyze, comprehend, and anticipate the speaker’s intent through the use of clues derived from the context of the discourse to convert meaning in one language into meaning in another, and immediately render an equivalent of the speaker’s original utterances.”¹⁰ This is akin to the in-the-moment phraseology of a highly skilled litigator in the midst of a contentious trial.

Alternatively, the translator working with written text must be keenly aware that the different spellings have distinct meanings, rendering those meanings accurately in writing from English into another language. For the translator, meaning comes from the spelling of the word, its linguistic origin, and its written context. The turn-around time on translation projects, which are typically billed by the word, is dependent upon the length and complexity of the document to be translated, the individual translator’s availability to work on the project, and the reviewing translator’s availability to provide feedback. The translator’s work is akin to the meticulous research, analysis, and proofing required in preparing an appellate brief.

Interpreting in the Courts

The cornerstones of spoken language interpretation are accuracy and completeness. “Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.”¹¹ These essential principles are ingrained in Nebraska Judicial Branch court interpreters through their three-step professional credentialing process of Interpreter Orientation, Written Exam, and Oral Exam. Interpreter Orientation is an intensive two-day workshop developed and presented by the Judicial Branch Language Access team. Court interpreter examinations are developed by the National Center for State Courts and administered locally by the Director of Language Access.

Certified spoken language court interpreters have completed the three-step professional credentialing process. Each interpreter takes an oath that, to the best of their skill and judgment, they will provide a true interpretation of all court proceedings, probation activities, or any other proceeding into a language which the party understands and that the interpreter will in the English language repeat the party’s statements to the court or jury. Nebraska courts administer a comparable oath to those court interpreters still in progress toward full certification. Each court interpreter should have native-like proficiency in both English and a second language, a broad knowledge of English terms and court-related vocabulary, and verified ability to accurately interpret in a wide range of registers and subject matters.

While Spanish is the most frequently interpreted language in the Nebraska Judicial Branch, in FY2020 speakers of 47

NEBRASKA JUDICIAL BRANCH LANGUAGE ACCESS

different languages were provided interpreter services to fully access justice in all 12 judicial districts across the state. Spoken language and American Sign Language interpreter services are not limited to criminal defendants. Interpreter services are available to any party involved in litigation, as well as witnesses and parents or guardians of juveniles. In addition, deaf or hard of hearing jurors are provided American Sign Language interpreters or other reasonable accommodations under the Americans with Disabilities Act.

If you have an LEP client or witness, it is important to notify the court that an interpreter is required for a proceeding as soon as you become aware of that need. Be sure you accurately identify the LEP individual's language for the court. If in doubt, use the I Speak Language Identification Guide, published by the U.S. Department of Homeland Security and available on the Judicial Branch website.¹² Delay in requesting an interpreter or misidentification of the LEP individual's language is likely to result in the delay of court proceedings.

Although language access services are provided at no cost to LEP court and probation users, court interpreters are paid a two-hour minimum for their services each morning and each afternoon they have a Judicial Branch assignment. If an interpreter has an assignment which is canceled within two business days of the time the assignment is due to commence, the court shall, by written authorization, allow the interpreter payment for all the reserved time. If you have a trial or hearing scheduled to last more than two hours, you may be contacted by an Interpreter Coordinator or the Director of Language Access for confirmation that your case will proceed as scheduled. The purpose of this contact is not to alter your trial strategy or affect the outcome of your case, but rather to make best use of Nebraska's small cadre of court interpreters and limited Judicial Branch resources.

Translating Court Documents

Like spoken language interpretation, multiple skills are essential for effective written translation. Translators must not only be competent in two languages, they must be able to read and comprehend as well as write comprehensibly in two languages.¹³ In addition, translators must exercise congruity

judgement.¹⁴ The essence of the translator's task is choosing the equivalent expression in the target language that both fully conveys and best matches the meaning intended in the source language.¹⁵ Legal translation requires familiarity with the dialects, registers, and terminology needed for accuracy in the assigned project, a process that mandates the use of a primary and reviewing translator.¹⁶ The more isolated or indigenous the language, the greater the translation challenge.¹⁷ These essential skills are tested in a translator certification examination. The American Translators Association translator certification examination is a three-hour, open-book, proctored exam that offers the candidate three passages of about 225 to 275 words each, designed to determine whether a candidate is able to produce a translation that is professionally usable. Two of these passages must be translated and are graded upon the ability to accurately render the entire message of the original document into the target language, not on the ability to rewrite or improve upon it.

Likewise, translators are ethically obligated to "represent [their] qualifications, capabilities, and responsibilities honestly and to work always within them,"¹⁸ thus barring the professional translator from providing spoken language interpretation on demand.

Interpreting and Translating at Work in the Nebraska Judicial Branch

The enabling statute for the Judicial Branch Language Access Program declares, "It is the policy of this state that the constitutional rights of persons unable to communicate in the English language cannot be fully protected unless interpreters are available to assist such persons in legal proceedings."¹⁹ Because Nebraska's Judicial Branch includes Probation Services, Supreme Court-funded interpreter services extend to Probation's adult and juvenile probation services. Spoken language interpreters assigned in Nebraska's courts and probation services and paid by the Judicial Branch to provide consecutive interpretation, simultaneous interpretation, and, in rare instances when afforded sufficient preparation time, sight translation. Sight translation, an unfortunate misnomer for the lay user, is "a true and accurate *verbal* translation of *written* material into spoken form so that the parties can understand what documents written in a foreign language say" (emphasis added).²⁰ Sight translation is a verbal rendition, never the fully analyzed written preparation of a document or form from one language into another.

Even though there is no statutory mandate for written translation services within the Judicial Branch for LEP court users or probation clients, the Nebraska Judicial Branch does recognize there are instances when providing translation services may be necessary. Due to limited translation resources (e.g., staff and funding), the AOCF prioritizes the translation of

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vital documents. Vital documents are those Nebraska Judicial Branch materials, forms, legal materials or related items determined most useful to the State's largest LEP populations. Depending on the circumstances and the document prioritized for translation into Spanish, Nebraska's Language Access coordinators may be assigned the project and if their schedule allows. Translations into languages other than Spanish are by necessity performed by independent contractor translators or outside vendors.

However, in those instances where the legal materials or other vital documents are more nuanced, the AOCPC recognizes the criticality of using a certified translator as recommended by the U.S. Department of Justice in its June 2002 policy guidance document²¹ and recognized by the American Bar Association.²² The AOCPC strongly discourages court interpreters from preparing written translations on-demand and instead directs them to immediately convey to the court or other requestor it is their ethical duty to assess at all times their ability to deliver the service demanded of them and communicate any reservation they have about their ability to competently complete an assignment.²³

Just as no ethical attorney provides legal advice on demand without research, nor drafts a contract without a granular understanding of the agreed upon terms, professional court interpreters should not be pressured or induced to generate written translations on-demand.

While AOCPC does aspire to eventually phase in cost effective and sustainable translation of vital documents in priority languages, we are not there yet. Even when Judicial Branch translations become available, they will not be an on-demand service, but rather an incremental process as vital documents are identified, priorities are established, and qualified translators identified. In addition, the Judicial Branch strives to be well prepared to fulfill future translation needs due to changes in the LEP populations and changes in filings of new cases, recognizing that a proportional change in LEP population for a specific language does not necessarily mandate additional languages for translation. 

If you have any questions about the Language Access Program and accessing language services for your clients, please reference the Nebraska Judicial Branch website at <https://supremecourt.nebraska.gov/programs-services/interpreters> or email the author at jennifer.verhein@nebraska.gov.

Endnotes

- 1 Neb. Rev. Stat. § 25-2401. Interpreters; public policy, Source: Laws 1973, LB 116, § 1; Laws 1987, LB 376, § 11; Laws 2002, LB 22, § 8.
- 2 Created on September 14, 2005, as the Interpreter Advisory Committee. Renamed the Language Access Committee, March 20, 2017, when made a standing committee of the Access to Justice Commission.
- 3 The Justice Index 2016, National Center for Access to Justice, Fordham Law School.
- 4 U.S. Census Bureau, American Community Survey, Language Spoken at Home – Nebraska 2019. <https://data.census.gov/cedsci/table?q=language%20spoken%20at%20home&g=0400000US31&tid=ACST1Y2019.S1601&hidePreview=true>.
- 5 Ibid.
- 6 Chief Justice Mike Heavican, State of the Judiciary, January 21, 2021.
- 7 ASTM F2089-15 (3.1.1.), Standard Practice for Language Interpreting, ASTM International, West Conshohocken, PA, 2015, www.astm.org.
- 8 Translators do the writing, ATA, https://atanet.org/clients/translators_do_the_writing.php.
- 9 U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, Federal Register vol. 67, no. 117, page 41464 (June 18, 2002).
- 10 National Association of Judiciary Interpreters and Translators, POSITION PAPER, Team Interpreting in Court-Related Proceedings © 2020 by the National Association of Judiciary Interpreters and Translators.
- 11 Code of Professional Responsibility for Interpreters, Canon 1, Accuracy and completeness. Nebraska Supreme Court Rules, Chapter 6, Article 7, Appendix 1.
- 12 U.S. Department of Homeland Security, I Speak Language Identification Guide, DSH Version 1.1, August 2011. https://supremecourt.nebraska.gov/sites/default/files/Programs/interpreters/i-speak-booklet_crcl_DHS_extra_languages.pdf.
- 13 American Translators Association, Translations: Getting it Right, http://www.atanet.org/docs/Getting_it_right.pdf.
- 14 Ibid.
- 15 Ibid.
- 16 *ABA Standards for Language Access in Courts*, p. 88 American Bar Association (2012).
- 17 *Id.* at p. 102.
- 18 American Translators Association, Code of Ethics and Professional Practice, Item 3, May 27, 2011.
- 19 Neb. Rev. Stat. §25-2401. Interpreters; public policy, Source: Laws 1973, LB 116, § 1; Laws 1987, LB 376, § 11; Laws 2002, LB 22, § 8.
- 20 National Association of Judiciary Interpreters and Translators, NAJIT POSITION PAPER, Modes of Interpreting: Simultaneous, Consecutive, & Sight Translation, © 2006 by the National Association of Judiciary Interpreters and Translators.
- 21 U.S. Department of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, Federal Register vol. 67, no. 117, page 41464 (June 18, 2002).
- 22 *ABA Standards for Language Access in Courts*, p. 77, American Bar Association (2012).
- 23 Nebraska Supreme Court, Code of Professional Responsibility for Interpreters, Cannon 8, adopted September 20, 2000, amended September 17, 2003.