

**NATIONAL ASSOCIATION OF WOMEN
JUDGES
ENSURING ACCESS TO JUSTICE FOR
LIMITED ENGLISH PROFICIENT AND DEAF
AND HARD OF HEARING APPELLANTS**

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LEARNING GOALS

Understand barriers to access to justice for Limited English Proficient (LEP) Individuals and those who are Deaf, Deaf-Blind and Hard of Hearing (DDH)

Be aware of implicit bias and its effects on interactions with LEP and DDH Individuals

Understand Relevant Laws and Regulations

Acquire Practical Resources for Hearings

- How to assess and establish interpreter qualifications.
- How to determine what information should be translated and what tools can be used to do it.
- How to evaluate access to justice for services outside the hearing room

INCREASE IN LEP INDIVIDUALS LIVING IN US

Unprecedented globalization and immigration

Interactions between native and non-native speakers are rapidly increasing

Number of international migrants - 244 million

Number of people forcibly displaced - over 65 million

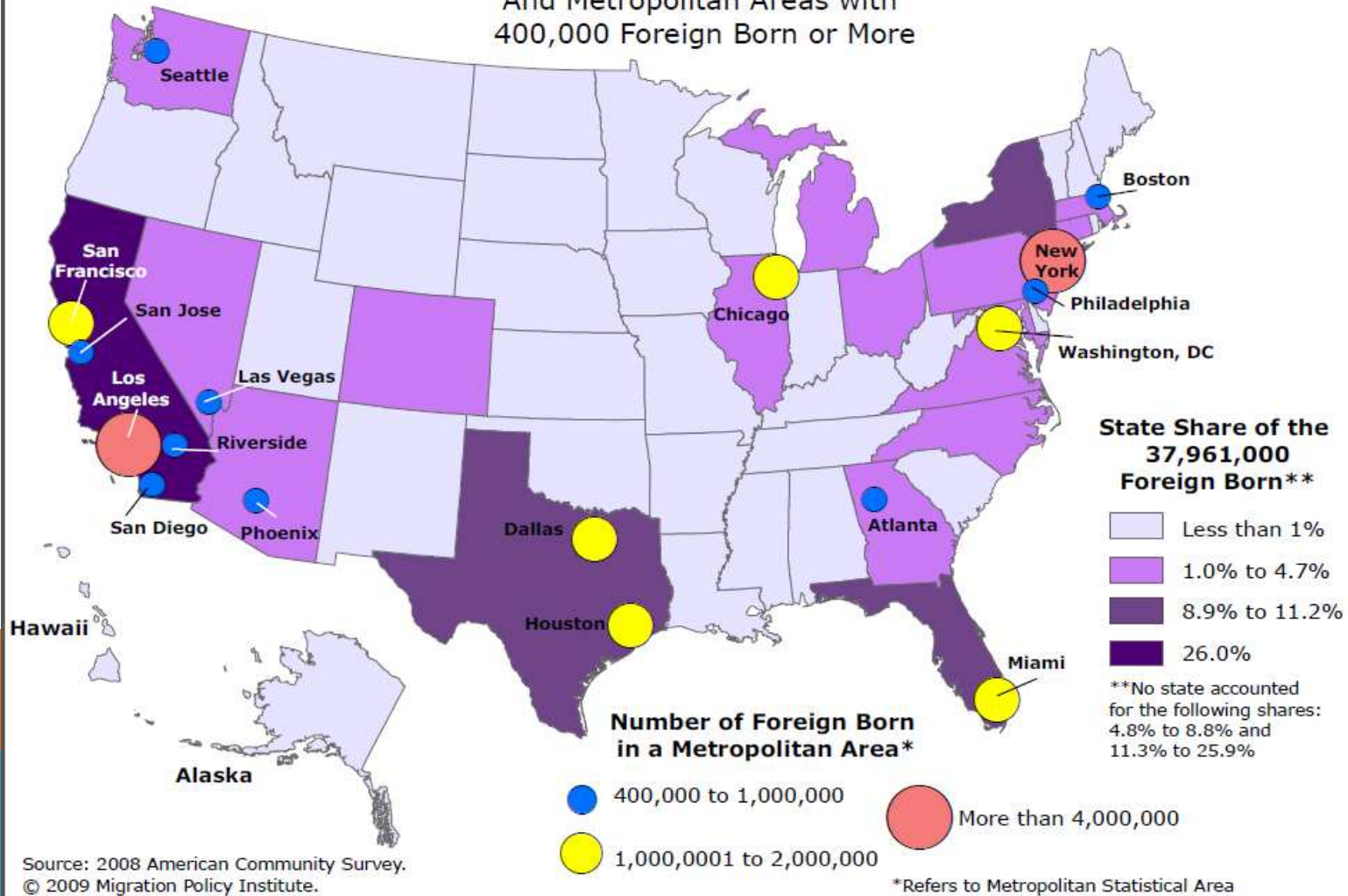
Number of non-native speakers of English - More than 1 billion

Number of LEP individuals in the US - 25 million



State Proportion of the Foreign-Born Population in the United States

And Metropolitan Areas with 400,000 Foreign Born or More



QUICK POLL

How many know a language other than English?

How well do you speak,
understand,
read,
and write it?

COMMON MISCONCEPTIONS ABOUT LANGUAGE ACQUISITION AND LANGUAGE ACCESS

Myth: Learning English is easy, after living in the US for a few years you should know the language.

Facts: –3 million adults are interested in ESL but not enrolled for a variety of reasons, including lack of classes.

–Older adults, those with little formal education or cognitive problems due to depression, PTSD or other trauma, are unlikely to learn enough English for complicated medical or legal issues.

Myth: People who have some ability in two languages can interpret, it's pretty straightforward.

Fact: Simultaneous interpretation is extremely demanding. Pass rates for interpreter certification are low.

AWARENESS OF ACCENTS AT EARLY AGE

Preference for native accent emerges in

Infants as early as 5 months of age

Children in US and in France prefer friends
with native accent

Preferences may hold true for all languages

Adaptation to accented speech occurs in a short time

Some studies show over-correction in explicit bias despite implicit
bias showing discrimination



The Way They Speak: A Social Psychological Review Perspective on the Stigma of
Nonnative Accents in Communication, Gluszek and Dovidio

Measuring Implicit and Explicit Attitudes Toward Foreign Accented Speech

Journal of Language and Social Psychology 2013 32: 3 Andrew J. Pantos and Andrew
W. Perkins

STUDIES SHOW ACCENTS ASSOCIATED WITH A RANGE OF NEGATIVE STEREOTYPES

Less intelligent

Less loyal

Less competent

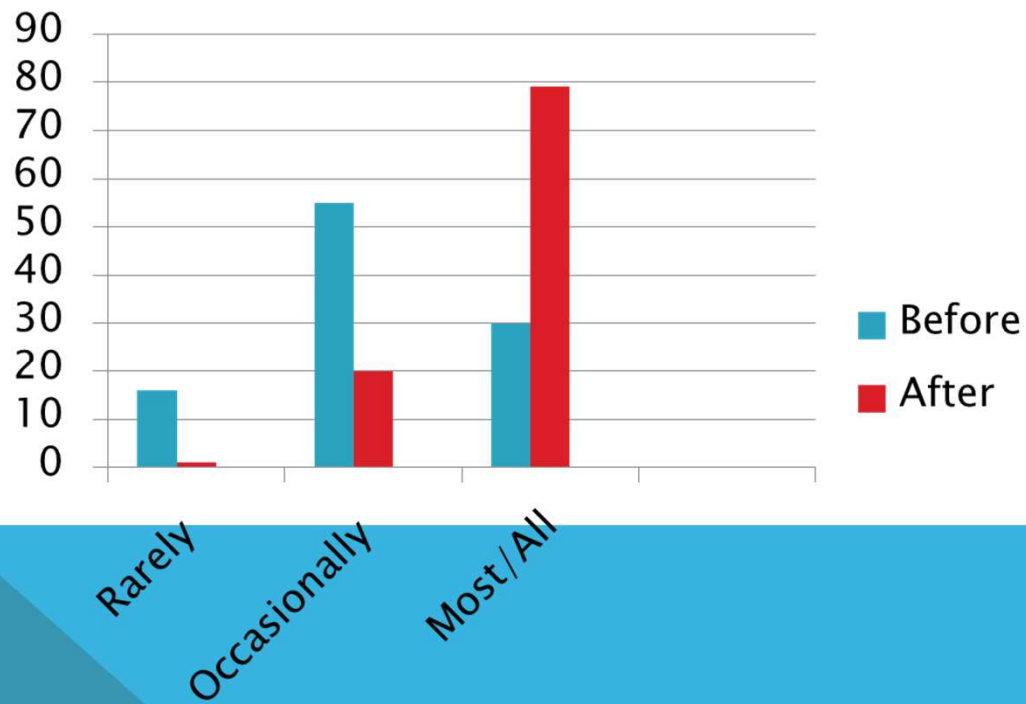
Lazy (false belief that accents are within the speaker's control)

Speaking the language poorly



IMPLICIT BIAS IN THE COURTROOM

NATIONAL CENTER FOR STATE COURTS – SURVEY OF JUDGES' BELIEF THAT IMPLICIT BIAS CAN AFFECT DECISION MAKING– BEFORE AND AFTER WATCHING DOCUMENTARY ON NEUROSCIENCE OF BIAS



<http://www.uclalawreview.org/?p=3576>

UNDERSTANDING RISK FACTORS FOR DECISION-MAKING

Risk factors include:

The presence of **certain emotional** states

Ambiguity in decision-making criteria

Environmental cues that make the social categories associated with cultural stereotypes more salient

Low-effort decision-making

Distracted or pressured decision-making

Environments that lack appropriate feedback mechanisms and **accountability**

STRATEGIES THAT ATTENUATE IMPLICIT BIAS OR MITIGATE ITS INFLUENCE ON DECISIONS

1. **Raise awareness** of implicit bias (this in and of itself is insufficient to mitigate the effects of implicit bias on judgment and behavior).
2. Seek to identify and **consciously acknowledge** real group and individual differences.
3. Routinely **check thought processes and decisions** for possible bias.
4. **Identify sources of stress and remove them** from or reduce them in the decision making environment.
5. **Identify sources of ambiguity** in the decision making context and **establish a structure to follow** before engaging in the decision making process.
6. Institute **feedback** mechanisms.
7. **Increase exposure to stigmatized group members** and/or counter-stereotypes and **reduce exposure to stereotypes**.

COMMON LANGUAGE ACCESS PROBLEMS



Interpreter not provided.

Interpreter appointed but not qualified.

Interpreter appointed but client asked to pay for interpreter services.

Forms, information booklets, and brochures not translated.

Lack of bilingual staff (hearing office)

LAWS REQUIRING LANGUAGE ACCESS

Due Process–

- Fifth Amendment—right to a fair trial
- Sixth Amendment—right to be confronted with adverse witnesses
- Fourteenth Amendment

State Statute

Judicial Integrity

Civil Rights Act of 1964



CIVIL RIGHTS ACT OF 1964/ TITLE VI

Section 601 provides:

- No person shall “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
42 U.S.C. 2000d

DOJ regulations implementing Title VI require recipients of Federal financial assistance:

- To “ensure meaningful access to their programs and activities by persons with limited English proficiency.” 28 CFR 42.104 (b)(2).
- Forbids recipients from “utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin...” 28 CFR 42.104(b)(2).



Lau v. Nichols, 414 U.S. 563 (1974), brought by Chinese American students living in San Francisco, California who had limited English proficiency. National origin includes language.

RCW 2.43 INTERPRETERS FOR NON-ENGLISH SPEAKING PERSONS

- Legislative Intent: “secure the rights, constitutional or otherwise, of persons who, because of a non-English-speaking cultural background, are unable to readily understand or communicate in the English Language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.” RCW 2.43.010
- Provides for appointment of qualified interpreters for LEP persons in *legal proceedings*. RCW 2.43.030
- Cost structure: RCW 2.43.040



INTERPRETER'S ETHICAL OBLIGATIONS

GR 11.2 - Code of Conduct for Court Interpreters

- Interpret the material thoroughly and precisely, adding or omitting nothing, and stating as nearly as possible what has been stated in the language of the speaker...
- Not render services in any matter in which the interpreter is a potential witness, associate, friend, or relative of a contending party...
- Interpreters shall not disclose any communication that is privileged by law without written consent of the parties, or pursuant to court order.

http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret_display&fileName=generalRule11



HOW DO YOU FIND OUT ABOUT INTERPRETER QUALIFICATIONS?

[HTTP://WWW.NCSC.ORG/SERVICES-AND-EXPERTS/AREAS-OF-EXPERTISE/LANGUAGE-ACCESS/RESOURCES-FOR-PROGRAM-MANAGERS/LAP-MAP/MAP.ASPX](http://www.ncsc.org/services-and-experts/areas-of-expertise/language-access/resources-for-program-managers/lap-map/map.aspx)

Washington State Court Certification

The following languages are Court Certified within the State of Washington:

Arabic (Egyptian)	French	Marshallese
Arabic (Levantine)	Khmer (Cambodian)	Russian
Bosnian/Croatian/Serbian	Korean	Somali
Cantonese	Lao	Spanish
Chuukese	Mandarin	Vietnamese

Please note: the Arabic (Levantine), Khmer and Lao certification exams are not available for testing in 2010.

Washington State Court Registration

The following 39 languages are Court Registered within the State of Washington:

Albanian	Hausa	Portuguese
Akan-Twi	Hebrew	Punjabi
Amharic	Hindi	Romanian
Armenian	Hmong	Samoan
Bengali	Indonesian	Slovak
Bulgarian	Italian	Swahili
Burmese	Japanese	Swedish
Cebuano	Javanese	Tagalog (Filipino)
Chavacano	Kurdish-Kurmanji	Thai
Czech	Malay	Turkish
Dari	Modern Greek	Ukrainian
Dutch	Nepali	Urdu
German	Norwegian	Yoruba
Haitian Creole	Pashto	
Farsi	Polish	

Interpreters are certified and registered by the
Administrative Office of the Courts in Olympia, Washington.

QUALIFYING AN INTERPRETER

Are you a Washington Court Certified Interpreter?

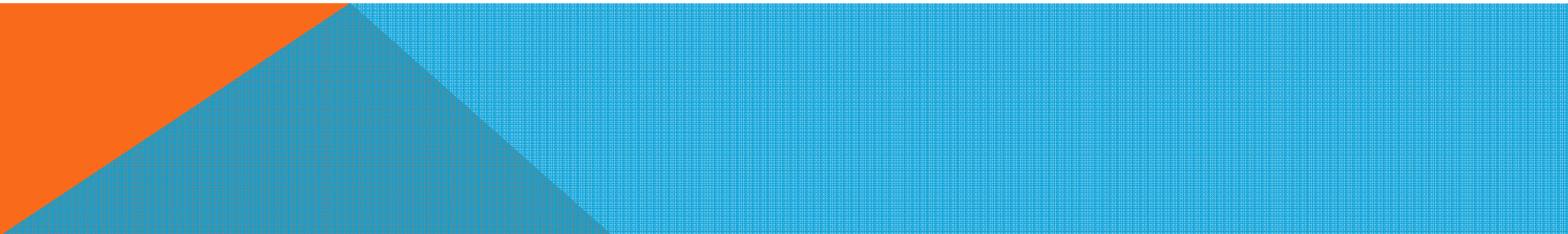
When and how did you learn English and _____ ?

What is your level of formal schooling?

Do you have any training as an interpreter / legal interpreter training?

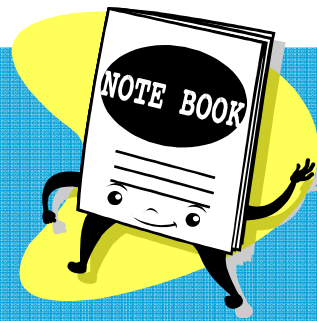
What experience do you have working in legal settings?

Do you know any of the parties or witnesses?



PROPER COMMUNICATION TECHNIQUES DURING THE HEARING

- Explain interpreter role
- Speak in short sentences and instruct on use of signals to ask for pause
- Make sure interpreter does not summarize or paraphrase
- Interpreters should have note pad and dictionary



ADDITIONAL TIPS FOR TELEPHONIC COMMUNICATION WITH INTERPRETER

- Check equipment in advance
- Avoid speakerphone unless high quality
- Avoid where emotional issues, hearing impairment, and cultural differences may make communication difficult
- Give oral description of physical scene for interpreter
- Where possible have interpreter in same room with LEP individual
 - NOTE: Consider use of video remote interpreting (VRI)



DETERMINING INTERPRETER EFFECTIVENESS

Signs of a trained interpreter:

Uses the 1st person

Takes notes

Indicates when the sentence is too long to interpret.

Interprets responses from the client verbatim even incoherent or stammering

Signs of lack of training:

Appears to be giving a much shorter version

Has “side bar” conversations with the client

Interpreter facial expressions and body language convey lack of respect



ASSESSMENT OF STAFF LANGUAGE SPEAKING SKILLS

Telephonic exams for speaking and comprehension with reliability studies and scoring system

Language Testing International

- \$147, two raters
- www.languagetesting.com



ALTA Languages

- \$55, one rater (with spot checking)
- www.altalang.com

JUDICIAL BEST PRACTICES

Before.

1. Train all staff on working effectively with interpreters.
2. Determine interpreter resources.
3. Inform appellants of right to interpreter during hearing.
4. Send translated notices

During

1. Explain how interpreter functions at hearing (script recommended).
2. Qualify interpreter before hearing.
3. Inquire into language access provided.

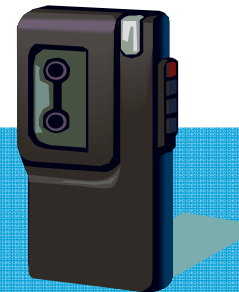


After.

1. Provide interpreted or translated final decision (Recorded sight translation).
1. Track languages and expenses.
2. Survey all parties for effectiveness.

ADDITIONAL COURTROOM ISSUES

- Oath
- (Tape) record to preserve record
- Simultaneous versus consecutive



WHEN AND WHETHER TO TRANSLATE?

- 1. EARLY CONSIDERATIONS**
- 2. WHAT ABOUT FREE WEB TRANSLATIONS?**
- 3. MANAGING TRANSLATION PROJECTS**
- 4. ONGOING MAINTENANCE**



DO NOT TOUCH BREAD WITH HANDS
PLEASE USE TONGUE

VITAL DOCUMENTS

“Vital” may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

- Can include webpages, online applications, texts, tweets, and other social media
- Consider each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

WEBSITES – TOP 10 PRACTICES

<http://www.digitalgov.gov/2012/08/12/top-10-best-practices-for-multilingual-websites/>

Ensure that the English versions are fully edited and reviewed.

Review for Plain language before translation

FREE ONLINE TRANSLATION TOOLS

DO YOU
GET
WHAT YOU
PAY FOR?

Translation Software

Identifies patterns in already translated documents.

Uses statistical analysis.

Varying quality by language.



GOOGLE TRANSLATE EXAMPLE:

“OLYMPIA JOINS NATIONAL FIGHT AGAINST ANTIBIOTIC-RESISTANT BACTERIA IN THE FOOD SUPPLY.”

Chinese:

Olympia added antibiotic resistant bacteria in the food supply of the country's struggle.

Somali:

Olympia joined the fight against the bacterial infection resistant to food supplies.

GOOGLE TRANSLATE EXAMPLE:

“PLEASE WRITE YOUR NAME ON THIS PAPER.”

Chinese:

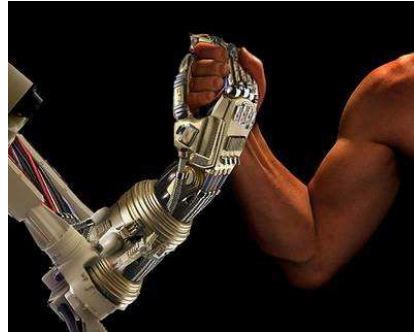
Please write your name on the paper.

Somali:

Please write a letter to this name.



Online
Translation



Humans



Free
Fast
Questionable Accuracy
No Accountability

\$\$\$
Requires
Time
Higher Quality
Accountability

WHEN *MIGHT* ONLINE TRANSLATION BE OK?

Communicating Out:

Informal, emergency situations, and

Using simple, short sentences

Receiving Communication:

As a tool to facilitate further processing, e.g. if a non-English email is received and you need to identify general content to forward to appropriate department.



“Eat Your Fingers Off”

MANAGING THE TRANSLATION

1. Selection of Translation Team Members
2. Work Closely With The Translation Team
3. Glossary Development
4. Budget for minor updates to existing translations.

Changes in law, procedure, rules, etc.

Changes in evolving terminology – e.g. domestic partnership.

Ideal = Three Layer Process



1. Translator,
2. Editor
3. Reviewer

WHAT TO LOOK FOR IN A TRANSLATOR

- Ideally, native speaker of the target language.
- Certification, education, and/or other qualifications.
- Experience in the topic or field.
- Access to necessary technology.
- Ability to meet your timeline.

Monolingual Translation

Notice to the Vulnerable Adult

생활장애인에게 보내는 통지서

Download the English version of this document from the Courts' website via:

(아래 법원 웹사이트에서 이문서의 영어본을 다운로드 받으십시오.)

<http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=70>

이 서류는 생활장애인에게 보내는 통지서입니다. 이 통지서는 판사가 서명한 것이 아닙니다. 이 통지서는 생활장애인에게 그 또는 그녀를 위하여 신청서가 제출되었음을 알려 줍니다. 이 통지서는 또한 만약 신청이 승인되면 무슨 일이 일어날 것이라는 것과 생활장애인이 어떤 권리들을 가지고 있는지 알려 줍니다.

법원 서기는 명명서의 원본을 법원의 공기록부에 첨부하고 그 사본을 다음 사람들에게 보냅니다:

- 당신 (인증된 사본을 무료로 제공)에게.
- 만약 당신이 생활장애인을 위한 신청인일 경우, 생활장애인에게 송달합니다.
- 만약 생활장애인의 추천인이 있으면, 그 추천인에게 송달합니다.

통지서를 작성하기 전에 법원 서기에게 알아 보십시오.

어떤 법원에서는 판사가 통지서를 직접 작성합니다. 다른 법원에서는 당신이 통지서를 작성할 것으로 기대합니다. 법원 서기에게 먼저 물어 보십시오.

- 만약 당신이 양식을 작성하는 것으로 되어 있으면, 아래 지시사항을 따르십시오.
- 당신이 이 양식을 작성하는 데 도와 줄 대변인 서비스를 받게 해당라고 법원 서기에게 요청하면 도움이 될 것입니다.

검은 색 또는 파란 색 잉크를 사용하여 글씨를 선명하게 쓰십시오!

1 페이지:

페이지의 맨 첫부분

- 신청서가 제출되는 카운티 이름을 써 넣으십시오.
- 생활장애인의 이름 (이름의 첫자, 이름의 둘째 자, 성)을 써 넣으십시오.

Bilingual Translation

Notice: You must complete this form in English.
(주의: 이 양식은 영어로 작성되어야 합니다.)

Superior Court of Washington
For _____ County
(워싱턴 주 _____ 카운티 고등법원)

Order for Protection –
Vulnerable Adult
(보호명령서- 생활장애인)

In re the Matter of:
 (사건제목:)

No. _____
 (사건번호)

A Vulnerable Adult (Protected Person) **DOB**
 (생활장애인 (보호받는 사람)) (생년월일)

Court Address
(법원주소) _____

Telephone Number: () _____
 (전화번호:)

Respondent (Restrained Person) **DOB**
 (피신청인 (제약받는 사람)) (생년월일)

(Clerk's Action Required) (ORPRTVA)
(여기가 표시되어야 함)

Violation of Restraint Provisions 1, 3, 4, or 5 With Actual Notice of its Terms is a Criminal Offense Under Chapter 26.50 RCW and Will Subject a Violator to Arrest. RCW 74.34.145
(실제로 통고된 후 행동제한 조항들 1, 2, 4 또는 5항을 위반하면 RCW [워싱턴주 수정법전] 제26.50장의 규정에 따른 범죄행위이며 범법자는 체포대상이 됩니다. RCW 74.34.145)

Petitioner is:
(신청인은:)

- the vulnerable adult.
 (생활장애인 자신입니다.)
- is _____ (Name), who
 filed on behalf of the vulnerable adult and is:
 (이름이) [_____] (이고 생활장애인을 위하여
 신청한 사람이며 또한:)
- the vulnerable adult's guardian or legal fiduciary.
 (생활장애인의 후견인 또는 법적
 수탁인입니다.)

Respondent Identification:
(피신청인의 신원:)

Sex (성별)	Race (인종)	Hair (머리색)
Height (키)	Weight (몸무게)	Eyes (눈동자색)

Respondent's Distinguishing Features:
(피신청인의 신체적 특징들:)

1.2 Child alleged to be a youth-at-risk.
(El/la menor supuestamente en peligro.)

Name (Nombre)	
Date of Birth (Fecha de nacimiento)	
Sex (Sexo)	
Home Address (Dirección del domicilio)	

15. Petitioner is **Granted** the temporary care, custody, and control of the minors named in the table above
 these minors only:
(Se **Concede** a la parte demandante el cuidado, tutela y control provisorio de [-] los menores
identificados en el cuadro anterior [-] solamente los siguientes menores):

**GLOSSARY DEVELOPMENT
EXAMPLE: "ARRAIGNMENT"**

Lectura de cargos

Presentación de cargos

Acusación

Instrucción de cargos

Vista Incoatoria

RESOURCES – LEP

www.lep.gov

ABA Standards--

http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/language_access.html

How to find an interpreter –

- [Administrative Office of the Courts](#)
- [WITS](#)
- [NOTIS](#)
- [American Translator's Association](#)
- <http://www.wascla.org/directory/>
- Videos

<http://www.youtube.com/watch?v=pVm27HLLiiQ>

<http://www.youtube.com/watch?v=skw9vWlpZjQ>

<http://www.youtube.com/watch?v=4WIHnF8Q6KQ>

WORKING WITH INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING



How many know sign language?

What are the differences between those who are LEP and those who are:

Deaf

Deaf-Blind

Hard of Hearing

What is audism and how does discrimination affect individuals who are DHH?

Do you know how to communicate effectively?

What responsibilities do different agencies have?

FAST FACTS BASED ON FEDERAL DATA AND PUBLISHED RESEARCH

2 to 4 of every 1,000 people in the United States are "functionally deaf," though more than half became deaf relatively late in life;

1 out of every 1,000 people in the United States became deaf before 18 years of age.

9 to 22 out of every 1,000 people have a "severe hearing impairment" or are deaf. *

37 to 140 out of every 1,000 people in the United States have some kind of hearing loss, with a large share being at least 65 years old.

Total of 36 million people currently living in US experience some hearing loss.

*At least half of these people reported their hearing loss after 64 years of age.

IMPLICIT ASSOCIATION TESTING – SAMPLE TOPICS

Disability

Weapons

Native American

Weight

Sexuality (Gay-Straight)

Asian American

Arab-Muslim

Race (Black-White)

Gender-Career

Age (Young-Old)



► Implicit Association
Test, or IAT

<https://implicit.harvard.edu/implicit>

DISCRIMINATION AGAINST DEAF AND HARD OF HEARING

AUDISM

- The belief that one is superior based on one's ability to hear or to behave in the manner of one who hears.*
- The view that life without hearing is futile and miserable.
- An attitude which results in a negative stigma toward anyone who does not hear.
- The corporate institution for dealing with deaf people, dealing with them by making statements about them, authorizing views of them, describing them, teaching about them, governing where they go to school and, in some cases, where they live; in short, audism is the hearing way of dominating, restructuring, and exercising authority over the deaf community.

* Tom Humphries, *Communicating across cultures (deaf-hearing) and language learning*. (Doctoral dissertation. Cincinnati, OH: Union Institute and University, 1977), available at <http://libguides.gallaudet.edu/content.php?pid=114455&sid=989379>

OVER 25 YEARS AFTER ADA



Employment discrimination. Voices from Deaf Media

“Over 70 percent of individuals who are deaf or hard of hearing are without suitable employment. Many of them rely on government programs for survival. In certain parts of the country, there is a Stone Age attitude that remains”.

“One would think 23 years after the passage of a major civil rights law – the amended Americans with Disabilities Act of 1990 – ‘Everything’s all good now.’ No, that’s not true.””

Deaf Americans Still Struggle To Find Acceptance, August 21

<http://www.mintpressnews.com/amid-discrimination-deaf-americans-still-struggle-to-find-acceptance/164582/>

MICRO-AGGRESSIONS RELATED TO HEARING LOSS

We are spoken to like we are mentally deficient, in a very extremely slow, exaggerated tone.

We are treated as if we are children, unable to take care of ourselves.

We've gotten very silly questions like, "Can you drive?," "I thought all deaf people only used ASL."

And more aggressive questions like "Why didn't you listen to me? You have a cochlear implant/hearing aid, so you should be able to hear what I told you,"

We also have gotten questions about our mental ability such as the ability to comprehend written and spoken language. These forms of questions are very insulting because of the underlying assumptions about that deaf person.

When I tell you that a comment or a question about my deafness is offensive, don't accuse me of playing the "deaf card" or attempt to explain away your insulting comment.

http://www.huffingtonpost.com/lydia-l-callis/deaf-discrimination-the-f_b_7790204.html

<http://www.dailykos.com/story/2010/12/8/927140/>

WHO IS AFFECTED? “DEAF,” DEAF OR HARD OF HEARING:

- No legal definition
- Many identify as member of linguistic minority, not disabled.
- Late deafened -- may use oral English and lip read (speechread) (Only 5 to 26% of what is spoken is distinguishable if read on the lips)
- Deaf blind

Terms to avoid -- Deaf mute, deaf and dumb, hearing impaired

COMMUNICATION MODES OF CULTURALLY DEAF

Minimal Language Skills (MLS)

- Exposure to language delayed
- Foreign born deaf individuals
- Don't learn ASL through overhearing conversations, radio, etc.
- Isolation



EVOLUTION OF ASL INSTRUCTION



90% of children born to parents who don't sign

1815 Thomas Hopkins Gallaudet adapted French sign language to develop ASL, Gallaudet University in 1850's

Alexander Graham Bell focused on oral programs, led movement to prohibit ASL

Residential schools (deaf children continued to sign secretly)

ASL tested in early 1970's

MODES OF COMMUNICATION

271 Identified Sign Languages and Dialects throughout the world

American Sign Language (ASL)

- Different grammar, repository of cultural knowledge, social identity, not written
- Regional dialects
- Used by 75% of Deaf adults in US and Canada

Signed English

- Signed Exact English (SEE)
- Pidgin Signed English (PSE)

Deaf blind client communication

Home signing

Lip-reading (only 30% of English words distinguishable)



SOURCES OF LAW:

- Americans with Disabilities Act
28 C.F.R. Part 35, 56 Fed. Reg. 35694 (July 26, 1991)
(U.S. Department of Justice Final
Rule: Nondiscrimination on the Basis of Disability in
State and Local Government Services)
- Rehabilitation Act of 1973 Section 504
- Court Interpreters Act of 1978
- (State law – Washington Example)

RCW 2.42

GR 11

Washington Law Against Discrimination

AMERICANS WITH DISABILITIES ACT. TITLE II:
GENERAL PROHIBITION AGAINST AN UNEQUAL, SEPARATE BENEFIT
ALLOWS FOR REASONABLE ACCOMMODATIONS:

“It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.”

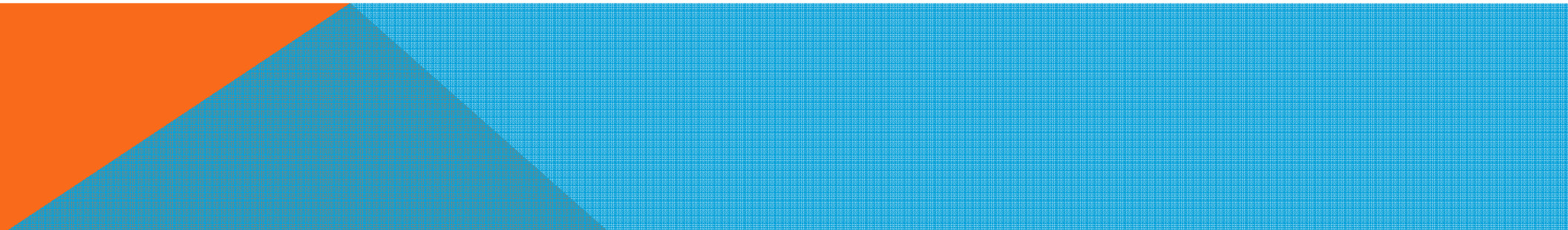
- 42 USC § 12182(b)(1)(iii)



ADA IMPLEMENTING REGULATION

“A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service program or activity conducted by a public entity...**In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.**” (emphasis added)

28 CFR § 35.160(b)(1992)



REHABILITATION ACT OF 1973 SECTION 504



Section 504 states “No otherwise qualified individual with a disability in the United States,... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity **receiving federal financial assistance** or under any program or activity conducted by any Executive agency or by the United States Postal Service”.

REVISED CODE OF WASHINGTON

RCW 2.42

Provides for ASL interpreters for deaf and hard of hearing persons in *legal proceedings*

Definition of “*impaired person*”

No IFP standard permissible.

2.42.010

Legislative declaration — Intent.

It is hereby declared to be the policy of this state to secure the constitutional rights of deaf persons and of other persons who, because of impairment of hearing or speech, are unable to readily understand or communicate the spoken English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

It is the intent of the legislature in the passage of this chapter to provide for the appointment of such interpreters.

[1989 c 358 § 12; 1983 c 222 § 1; 1973 c 22 § 1.]

Notes:

Severability -- 1989 c 358: See note following RCW [2.43.010](#).

INTERPRETER OBLIGATIONS AND CERTIFICATION

Ethics

- GR 11.2 - Code of Conduct for Court Interpreters
http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=generalRule11
- RID Code of Ethics for ASL Interpreters

Certification

- Certified Deaf Interpreters (CDI) (relay or intermediary interpreter)
- Oral Transliterators (speechreading)
- Certification available through Registered Interpreters for the Deaf (RID)
 - Specialist Certificate Legal (SC:L)
 - 3 Levels of Certification

ACCOMMODATIONS REQUIRED

Written policy

ADA coordinator

Primary consideration to request of the individual

Grievance process (retaliation for request for accommodation is a violation of the ADA)

Notice to the public

Remedies include penalties, monetary damages, attorney's fees, and other equitable relief

WRITTEN LANGUAGE LEVEL OF SAMPLE COURT DOCUMENTS

Literacy levels in English

10% read at 10th grade level,
60% at 3rd to 4th grade level,
30% at 2nd grade level

Miranda warning	7 th grade
Guilty plea	9 th grade
Waiver for search	13 th grade
Notice to appear	11 th grade
Credit card agreement	11 th grade

MIRANDA WARNING

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

WAIVER

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU?
HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?

Note: Contrast “reading” words versus comprehending them

TECHNOLOGY AVAILABLE

Assistive Listening
Systems

Communication Access
Real-time
Translation(CART)

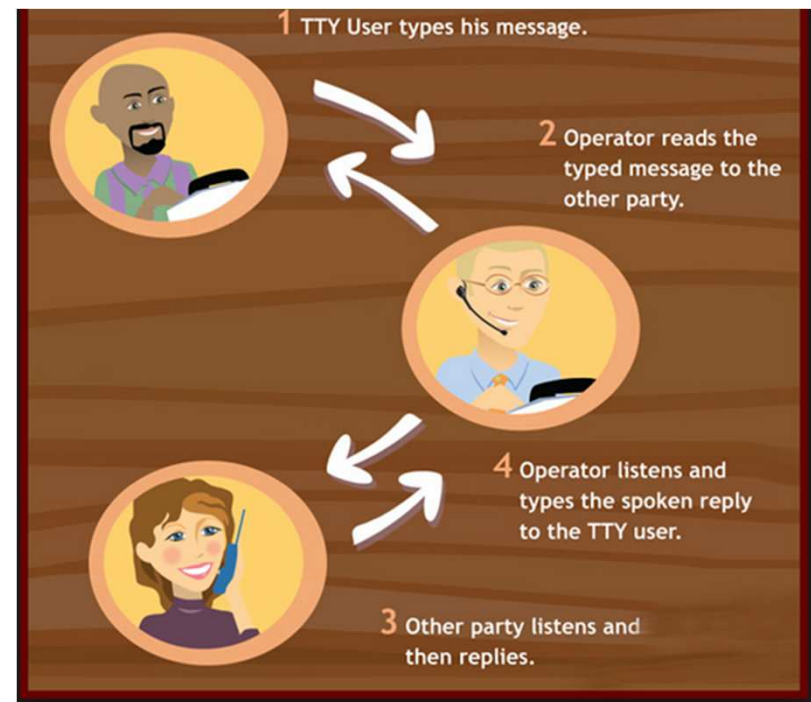
Teletypewriter (TTY)

Amplified phone

Voice carryover phone

Close captioning

Video remote
interpreting (VRI)



SPECIAL ISSUES FOR HARD OF HEARING

Variable hearing difficulty (time of day)

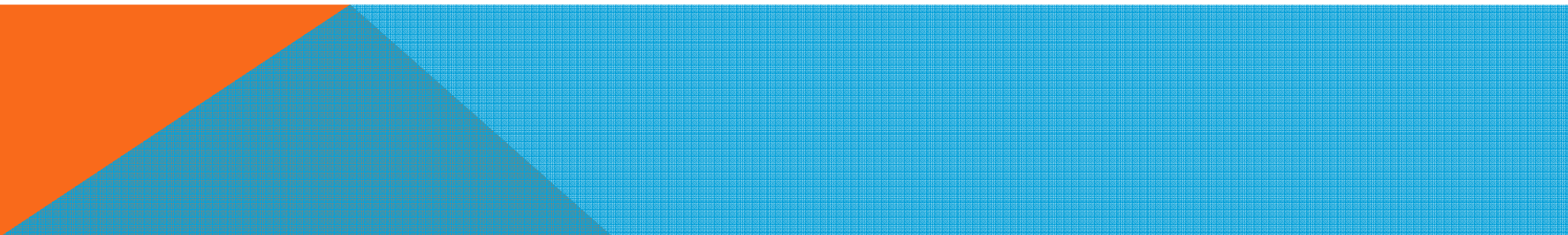
Impacted by surroundings

Shame

Unlikely to indicate when not hearing adequately (head nod indicates *reception* not comprehension)

Not familiar with assistive devices

Affected by fatigue and resulting frustration



DURING THE HEARING

Speak directly to and look at the appellant

Explain the role of the interpreter and judge

Use proper seating

Where client using auxiliary aid—room should be quiet, speak slowly and clearly

Reduce visual distractions (bright lights, etc.)

Do not talk while appellant is reading

Ask appellant if he/she wants the same interpreter again.

If satisfied, continue to use the same interpreter

Must have privacy for attorney client communication.

RESOURCES: DEAF AND HARD OF HEARING

WA resources www.courts.wa.gov/ADA Assistive Technology

Court Guide at [Ensuring Equal Access For People With Disabilities: A Guide For Washington Courts](#)

Administrative Hearing Guide at <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Access-to-Justice-Board/ATJBLC/~media/73292065DB15413D865E7AB3426806F4.ashx>

Bench card

http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/ATJ%20Board/EqualAccessToWACourtsBrochure.ashx

DOJ: <http://www.ada.gov/> for information on Title III of the ADA.

National Registry of Interpreters for the Deaf www.rid.org

National Association of the Deaf www.nad.org

National Consortium on Deaf-Blindness www.nationaldb.org

National Association of Late-Deafened Adults (ALDA) www.alda.org

Office of Deaf and Hard of Hearing. <http://www.dshs.wa.gov/hrsa/odhh/>

Standards for Sign Language Interpreters in Washington Courts <http://www.dshs.wa.gov/pdf/hrsa/odhh/SIC.pdf>

Abused Deaf Women's Services <http://www.adwas.org/>

[Communication Access in State and Local Courts](#) – National Assoc. of the Deaf

[Court Spectators who are Deaf](#) – Nat'l Center for State Courts

[Hearing Impairment vs. Deafness](#) – Audiology Awareness Campaign

[New Jersey Guidelines for Trials Involving Deaf Jurors](#) – New Jersey AOC

[Professional Sign Language Interpreting](#) – Registry of Interpreters for the Deaf