

The Hamilton County Clerk of Courts' Office and a National Interpretation Shortage

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When Aftab Pureval took over the position of Hamilton County Clerk of Courts in 2016 his campaign promised sweeping progress towards modernity and efficacy. Although he succeeded in reforming a previously un navigable website, digitalizing ticket payments, and streamlining other aspects of the Courthouse, the administration has left some administrative problems unresolved. Similar to judicial systems across the United States of America, the Hamilton County Courthouse struggles to effectively connect with the non-English speaking community. Hamilton County can and should implement solutions arising from both theoretical national approaches and specialized local needs. By carrying out such changes, the Hamilton County Courthouse and judicial branches throughout the country can fulfill their mandate of social responsibility to all people while becoming more efficient.

The issue with the non-English speaking community in the legal system stems from a disparity between the reality of the population that utilizes the judicial branch and a courthouse's preparedness to assist them. Roughly 37.5 million people in the United States and 7,500 people in Cincinnati speak Spanish natively. Other non-English populations prevalent in the Cincinnati area include French, African languages, and Russian (Lopez) but the Courthouse also often assists speakers of Punjabi, Nepali, Portuguese, and many more. Minority communities are often poorer, more vulnerable, and more likely to not only use the judicial system and other public services, but rely on them as a means of protecting themselves from abuse. The minority populations of the US and Cincinnati are not an anomaly, they are expected to grow in coming years. By 2020 the number of Spanish speakers in the country is projected to reach 41 million people (Lopez). The significant current populations and gargantuan projections of non-English speakers warrant a reanalysis of the judicial branch's ability to work with minority communities.

Interpretation services are mandated by federal law but the lack of a significant uniform precedent in the area leaves room for ambiguity. "The federal Court Interpreters Act of 1978 governs interpreter issues in federal proceedings and requires interpreters 'for the hearing impaired . . . and persons who speak only or primarily a language other than the English language.' As a practical matter, however, courts possess broad discretion, guided largely by common law and constitutional concerns" (Shepard, 644). A state or local system possesses individual discretion according to the demographic needs of a geographic area, but an improved foundation for the civil rights of non-English speakers in the courtroom is necessary because, in addition to civil rights concerns, areas with fewer non-English speakers are entirely unprepared to service the members of their

community who do need interpretation. According to former Indiana Supreme Court Chief Justice Randall Shepard, “the need for an interpreter may not be recognized until a judge is face-to-face with a party or witness whom the judge cannot understand” (Shepard, 644). The problems that arise from the nebulous nature of interpretation in a courtroom setting are real and dangerous.

A courthouse’s inability to effectively assist non-English speakers can have resounding consequences for the individual and for the courthouse, a shortage of interpreters being the primary, but not only, manifestation. In Hamilton County, Spanish interpreters often rush between dozens of in-court appearances (Vásquez) as well as less formal assistance at help centers and other places where communication is necessary to complete paperwork. The problem is similar for interpreters of many other popular languages. Former Chief Justice Randall Shepard also stated that “a shortage of qualified interpreters can lead judges, lawyers, and parties to accept the varied interpretation as ‘close enough.’” “An inaccurate translation can end a person’s liberty or defeat an otherwise meritorious claim” (Shepard, 646). These miscommunications are not simply mistakenly translating words, cultural aspects of interpretation are equally important and may cause miscommunication as well. For example, hand gestures and tone can relay paramount information that an unaware interpreter may fail to recognize. Despite interpreters swearing to interpret correctly to the best of their ability, limited time with their clients can lead to miscommunication. Ultimately, peoples’ livelihood can be compromised as a result of the faulty interpretation infrastructure of a courthouse.

Further problems arise in the clerk’s office where court proceedings are recorded and paperwork is processed. During the hearing, “the court reporter typically only records the English translation, and the original words of the non-English speaker are forever lost. This phenomenon makes it difficult to identify interpreter problems, and even if the problem is identified, it may be impossible to challenge the interpretation on appeal” (Shepard, 645). Not only are non-English speakers at risk of losing a case due to interpretation errors, but they lose their constitutional right to appeal their case. Similarly, a lack of consistency, interpretation being rarely recorded or utilized as precedent in future cases, can cause bureaucratic friction and inhibit cooperation (Kin Meng, 58). This failure leads to an amalgamation of records that is difficult to search and is consequently wasteful. Thus, the problems arising due to a failure to assist non-English speakers extend far beyond the judicial rulings in courtrooms and inhibit the efficacy of clerks, secretaries, paralegals, and more.

These errors are contrary to the goals of the Clerk of Courts both in Hamilton County and the United States and can corrupt the justice system. The causal role of rapidly shifting demographics of the US cannot be overstated, especially because this issue primarily affects minority communities. “Interpretation requires a deep familiarity both with their respective cultures. Court interpreter training must therefore include instruction in cross-cultural awareness” (deJongh, 288). Social responsibility simply is not prevalent enough in the current administration of the

judicial system. “In court interpreting, biculturalism plays a significant role in preserving the rights of non-English speakers who come into contact with the judicial system, because to interpret speech is to transpose it with its entire semantic, emotional, and aesthetic baggage into a language using completely different modes of expression” (deJongh, 288). However, bureaucracy and finance are equally important roots of the issue. Hiring more translators, paying for cultural sensitivity training, and more are expensive barriers to perfect non-English communication. Most importantly the linguistic and stylistic preferences of the judges obstruct change. Judges’ need to read court documents perfectly clearly and preference for paper documents often slows the modernization of communication techniques, and interpretation services are no exception. The complication here lies not with the complexity of the problem, but with a failure of the problem-solving mechanism. Bureaucratic and financial obstacles to perfect relations with the non-English community are enormous and require more attention in the future.

One consequence that arises due to bureaucratic friction that is of particular interest to most courthouses is vulnerability to discrimination litigation. Some courthouses have experimented with translating the most commonly utilized documents into Spanish, however exclusive preference cannot be demonstrated towards Spanish speakers or any particular language, or else the courthouse may enter into ambiguous legal territory with regards to discrimination. Mark Valimont confronted a similar problem in Minnesota when prosecutors dismissed him from serving on a grand jury when his deafness required a sign language translator. According to law professor H. Allen Blair, without a justifiable reason for releasing him, Valimont was able to sue the court, “calling for training for district court judges, administrators and staff in charge of selecting people to serve on Minnesota grand juries,” “asking that juries be provided with American Sign Language interpreters ‘or other appropriate auxiliary aids’ and for changes to juror questionnaires to avoid similar confusion in the future” (Montemayor). Changes on behalf of non-English speakers must be conducted in a responsible manner to protect those people and to ensure that courthouses are not discriminating against anyone.

Bureaucracy has also prevented the use of automated interpretation in Hamilton County and in many courtrooms around the country. According to Sam Kim Meng et al, computer aided translation includes basic word processing and terminology, term retrieval and reference from past usage of words and phrases, and interactive computer assisted translation with human translators giving feedback to the system (Kim Meng et al, 58); computer translation is and ought to be a tool to assist human translators, not replacements for them. These tools could unify and facilitate interdepartmental translation efforts through a database of agreed upon terms, minimize errors, and alleviate some pressure from human translators. Hamilton County experimented with the idea of similar computer-based translation at its help desks and other places where paperwork is filed and processed. Like other efforts to transition from a system based exclusively on paper to computers and digital record keeping, judges prefer physical paper copies and judges’ ability to

make rulings must be paramount in a legal system. In addition to judges' wariness, "machine translation can hardly make dramatic progress before AI makes some breakthroughs" (Kim Meng, 58). However with technological progress and new judges who are more accustomed to the complexities of the Internet and computers, computer assisted translation may become more viable in the future.

Although the problems facing Hamilton County and the entire United States are complex, solutions are emerging and their shared perspectives may serve as a bilateral way to develop ideas. One of Hamilton County Courthouse interpreters' most important areas of concern is limited time with clients resulting in rushedness when navigating the often confusing variety of documents necessary to utilize the justice system. According to one Hamilton County interpreter, the lack of easily understood documents can interfere with her time with her clients. The simple but effective solutions for Hamilton County may apply to other courthouses in the US. Hamilton County utilizes third party interpreters for those in need of a language that is not provided by in-house interpreters, thus those interpreters have to wait in security lines to enter the Courthouse, pay for daily or hourly parking spots, and deal with other physical barriers to their work. Simply granting them the same security clearance as in-house interpreters and providing them with employee parking spots could dramatically improve their services, help clients, and attract the best outside interpretation services. Without sacrificing safety, recognizing the importance of interpreters' work and facilitating it can help non-English speakers and save courthouses time and money.

Priority hiring for bilingual employees can also alleviate some of the pressure on interpreters and reduce demand for interpretation services inside and outside of the courtroom. Instead of wasting employee time, and by extension taxpayer money, by waiting for interpretation services to arrive, office workers and clerks in every department who speak other languages can directly assist clients with paperwork, directions, and generally streamline the process. Subsequently, interpreters can spend time with higher level legal action in the courtroom. However, linguistic skills must be comprehensive because interpretation even in a such an informal engagement should not sacrifice thoroughness. Giving added weight to multilinguality during the hiring process can quickly and effectively improve the experience of non-English speakers in the judicial system if executed correctly.

Finally, community outreach inside of the courthouse, outside of the courthouse, and on the Internet is an important step in fulfilling the offices' social justice mandate. Many non-English speakers are unlikely to even seek out judicial services for fear of embarrassment, an unacceptable demonstration of the failure of public services. Advertisements in the courthouse, in the community, and online normalize the use of the judicial branch across the spectrum of languages. Hamilton County Courthouse specifically lacks an clear centralized place for non-English speakers to go for interpretation services, obfuscating the process. The first floor Help Center as well as multilingual signs directing customers to that location should streamline connecting non-English speakers with the necessary services. Outreach outside of the courthouse and online is perfectly demonstrated by the

recently reformed LibGuide service of the Hamilton County Courthouse which offers an updated resource specifically for non-English speakers. The tab offers a summary of the Clerk of Courts' mission statement, contact information for interpretation services, and a link to the State of Ohio's immigration services, and all of these services are detailed in both English and Spanish. Continually updating various standards for community outreach in Hamilton County and the United States is a vital step towards helping non-English speakers navigate the judicial branch.

Accomplishing such changes will take the next step in providing equal access to justice for everyone and fulfill a courthouse's social responsibility mandate, but the benefits of those changes extend far beyond altruism. The presence of multilingual employees on-site and other policy changes directly save money by reducing the need for hiring external translators, and indirectly saves money by increasing efficiency, as does improved security clearance for those translators. Community outreach and the improved reputation of the courthouse for assisting non-English speakers will lead to increased traffic that subsequently increases revenue of the courthouse through filing fees, notary fees, certifying copies, and more. Courthouses across the country can implement changes exemplified by Hamilton County to improve national standards.

National examples of success in this area are concrete. According to Pamela Cordullo Ortiz of the Maryland Law Review, the State of Maryland establish a Justice Commission to review and resolve issue areas within their civil legal services resulting in mandatory pro bono service reporting, support for family law help centers, technology used to collect demographic data, and training for non-court staff for how to ethically aid the public. A report regarding the Justice Commission concluded that "the courts... are uniquely qualified to recognize that to fulfill the promise of equal justice for all, we need a robust civil legal services delivery system through which the poor and vulnerable can secure representation and other forms of legal help" (Ortiz, 1098). Simply analyzing social justice programs such as pro bono practice allows states to understand the full effect and potential of their civil legal services and in turn tailor the legal system to better serve the community's most vulnerable (Ortiz, 1100). Since the Justice Commission's emergence, Maryland has risen as a leader in responding effectively to the legal needs of the self represented, who are largely poor or minorities.

The benefits of the Justice Commission, much like the changes exemplified by the case study of Hamilton County's Courthouse, exceed beyond improving the lives of low-income individuals. The Justice Commission and similar civil legal reforms for the underrepresented "significantly [boost] the state's economy each year by bringing in millions of federal dollars... and saving the State millions in expenditures... "In fiscal year 2012 alone, Maryland civil legal services programs generated \$190 million." (Ortiz, 1099). The monetary benefits of improving civil legal services are an asset to the state and incentivize administrators to make those changes. By implementing programs to serve the community, courthouses at the

local, state, and federal level can experience varying but real levels of success socially and financially.

The shifting demographics of the United States are a phenomenon to which every facet of American life must adapt in the coming years. Those adaptations will not naturally happen, but rather administrations must actively take steps to drive progress. The disparity between the real American population and the court system's preparedness for its present challenges related to interpretation including a lack of uniform federal policy, interpreter shortages, inaccurate judicial rulings, vulnerability to litigation, failure to fulfill the needs of the community, and wasted time and money. However, examination of individual courthouses' needs, such as the Hamilton County Courthouse, and the needs of the broader judicial system reveal simple solutions including hiring more multilingual employees, improving security clearance for third party interpreters, utilizing community outreach, and more. Continuous reexamination of the judicial system should be the norm so that no member of the American community is ever left behind by an outdated bureaucracy.

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