

Language Access at Crime Scenes: Improve Successful Criminal Investigations and Prosecutions

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Workshop IV, Session A

New Orleans, LA

Introductions

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Learning Objectives

By the end of this workshop, you will be better able to:

- Understand how to improve investigations by using language access tools
- Enhance victim safety and participation in the criminal justice system
- Use language access and certification programs to enhance officer/victim/community safety
- Improve community policing in immigrant communities

Participant Introductions, Goals, and Expectations



Major Challenges Working with Immigrant Victims of Crime

- Language, Limited English Proficiency (LEP)
- Fear of deportation
- Lack of knowledge of legal rights
- Do not trust that police/prosecutors will help them
- Lack of reporting and/or cooperation as the case moves forward

First Responders –
*What do you do when you
arrive at a crime scene?*

First Response

- Locate and secure the scene
- Are there any weapons?
- Is anyone injured?
- Identify the people involved:
 - Victim
 - Offender
 - Witnesses
- If offender is not on the scene:
 - Where is the suspect?
 - Are they a continuing danger?
 - Is suspect in possession of weapon?



*What do you do when the individuals
at the scene are LEP?*

*How can you get the information you
need to **secure the scene**?*

Title VI - Civil Rights Act of 1964

- Any recipient of Federal financial assistance has a responsibility to ensure access/understanding to LEP persons
- Department of Justice (DOJ) strongly suggests, but does not require a written language assistance plan be put in place
 - This does not preclude the obligation of the recipient
- DOJ discourages use of informal interpreters (family members, guardians, caretakers, friends) except in limited or emergency situations
- DOJ leaves the determination of what documents need to be translated for the benefit of the LEP persons up to the recipient

DOJ Model Guidance

- Police provide free language access to:
 - LEP persons who request it
 - *When an officer decides it is helpful to the criminal investigation or prosecution*
- Police will inform members of the public that language assistance is available free of charge
- Language access is provided in persons primary language

DOJ and Exigent Circumstances

- Use the most reliable *temporary* interpreter available to address exigent circumstances:
 - Fleeing suspect
 - Weapons
 - Threat of life to an officer, victim, or the public

Exigent Circumstances: What You Do Now Matters Later

PROS

- Safety
- ID offender
- Locate weapons
- Admissible statements
(Excited Utterances)

CONS

- Mistaken ID of offender
- Arrest of victim
- Misinterpretation
results in inaccurate
statements
- Trauma to children

Now that the emergency is over, how do you work with victims, witnesses, and offenders who do not speak English?

The Investigation Begins

- Call Detective
- Call Fire/Rescue
- Take initial statements
- Call crime scene
- Photograph
- Formal interviews at the station
- Develop probable cause
- Prepare case for prosecution

Language Resources

- Language Line
- Department interpreters line developed in response to large local refugee population
- Immigrant community based organization partners
- Health care providers
- School systems



Bilingual Officer v. Interpreter

- Bilingual officers
 - When they are interpreting, they are not investigating
- Biculturalism v. bilingualism
 - Different words have different meanings:
 - e.g., Variations on the word “highway” depending on what state you’re from

Tips for Working with Interpreters

- Control the interview
- Pre-session with the interpreter
 - Where are they located?
 - Establish what your rules are
 - How do you want the interpreter to interpret?
- Interpreter has to interpret everything that you say
 - Example: when you are explaining confidentiality

DOJ Requirements for Investigations & Interrogations

- “A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness’ legal rights could be adversely impacted”
 - Criminal interrogations
 - Crime witness interviews
- Vital written materials translated into primary language
 - Miranda warnings

Who are Individuals with Limited English Proficiency (LEP)?

- Individuals with LEP do not speak English as their primary language and have a limited ability to read, write, speak, or understand English.
- Deaf (upper case 'D') refers to an identity with its own culture, language, and diverse communities
 - 'Deaf' refers to a physical condition/ impairment
 - Deaf and hard of hearing often understood as a disability issue, but is also a language issue

Meaning.....

- Government & government funded programs must provide meaningful access to programs & benefits to persons with limited English proficiency
- Because a police department receives federal funds, then all your programs, activities, and benefits must be language accessible
- Having an incompetent language service is tantamount to having no service at all*

*Summit Lorain Project citing Handbook for the Legal Profession, National Association of Judiciary Interpreter and Translators

Points of Identification

- Dispatch
- Walk-in
- On the scene
- Accompanying service agency (e.g., Child Protective Services)
- Call into station
- Others?

Identifying LEP

- Use open-ended questions and clarifying questions
 - Avoid asking questions that only require a one word answer
- Consider whether the individual mixes English and another language
- Listen to whether the individual uses incomplete sentences to explain the situation
- Country of origin – starting point, but may not be the primary language of the LEP individual
- What if the individual does not want to get an interpreter?
 - Stigma
 - Fear of causing inconvenience → “ I will be requesting an interpreter because I need one to do my job...”

Definitions

- **Interpretation** - Process of orally rendering communication from one language to another language (interpreter)
- **Translation** – preparation of a written text from one language into an equivalent form in another language (translator)
- **Qualified Bilingual Member** - Department members who identify themselves as “bilingual” must demonstrate, through a formal procedure, which has been established by the City or Department, competency to communicate in the source language by demonstrating the ability to listen to a communication in one language (source language) and orally convert it to another language (target language) while retaining the same meaning

Modes of Interpretation

- **Simultaneous** – The process of orally rendering one language into another language virtually at the same time that the speaker is speaking
- **Consecutive** – The process of orally rendering one language into another language after the speaker has completed a statement or question
- **Sight Translation** – The rendering of material written in one language into spoken speech in another language

Interpretation Exercise

1. Person A will read the paragraph out loud and Person B will attempt to reiterate/interpret the entire paragraph consecutively, in either English or the target language
2. Person B should not look at the material being read by Person A
3. Person A should read the paragraph without pausing and Person B will not be able to ask Person A to repeat the sentences or utterances
 1. Person B, however, can take notes as Person A is reading
4. When Person B has finished, Person A will then be the interpreter and Person B will read a different paragraph or exercise with the same rules as #2

Summary ≠ Interpretation

- Summarization is
 - Not allowed in legal and medical settings due to professional standards
 - Can lead to the exclusion of crucial information in interviews or interrogations
- Untrained interpreters resort to this mode because they lack the skills for simultaneous or consecutive interpretation
- Cannot use an untrained bilingual individual, who might use their discretion to say what they view is important or summarize, thereby not accurately and completely interpreting

Bilingual Staff versus Interpreter

Bilingual Staff

- Fluent in English and native language
- Not a conduit or neutral party
- No government standard, but recommends assessment
- Qualified

Interpreter

- Spoken language from one language to another
- Training
- Neutral party
- Fluency in English and native language
- Conduit to communicate
- In-person
- Telephonic

Bilingual Staff as Interpreter Considerations

1. Are you fluent in English and the foreign language?
2. Are you able to interpret in the consecutive or simultaneous mode accurately?
3. Are you familiar with specialized terminology of domestic violence & sexual assault in the source language?
4. Can you avoid a conflict of interest?
5. Can you stay in the interpreter's role and avoid functioning in the police role?
6. Will there be confusion by your change of roles?
7. Could you be a potential witness in the case?
8. Will you be interpreting for the victim and not the batterer?
9. Will waiting for a qualified interpreter negatively affect a victim's immediate safety?

Meza Case - 2008

- Charged with First degree Murder – Charge was dropped to manslaughter
 - Baby died after Meza shook his son so violently the child's brain began to swell, ultimately killing him
 - Detectives used a Spanish speaking officer to assist with the interview
 - Review of the tapes revealed that the officer interpreting left out some of the information, misinterpreted several statements made by the suspect and the detective

Assessing Interpretation Ability

- **Certified:** Passed language testing specializing in legal or medical settings; should provide certification number and state; native or near native fluency
- **Registered:** completed an English fluency test; should provide registration number and state registered
- **Qualified:** May not be certified or registered, but has completed interpreter trainings, fluent in both languages, and understands interpreter ethics and canons
- Assessing the interpretation skill without certification
 - Identify the skill level needed
 - Having bilingual staff assess
 - Using articles and texts in the target language

Qualified Interpreter

- Proficiency in English and interpreted language
- Can interpret using either the consecutive or simultaneous modes of interpretation
- Knowledge and use of a broad range of vocabulary, subject-specific terminology, and slang
- Knowledge and use of cultural nuances, regional variations, idiomatic expressions, and colloquialisms in all working languages
- Speak with proper pronunciation, diction, and intonation in all working languages
- Ability to listen to and comprehend various regional accents and/or dialectical differences in all working languages
- Following interpreter ethical standards

Code of Ethics and Professional Conduct

- Accuracy and completeness
- Representation of qualifications
- Impartiality and avoidance of conflict of interest
- Professional demeanor
- Confidentiality
- Restriction of public comment
- Scope of practice
- Assessing and reporting
- Impediments to compliance
- Duty to report ethical violations
- Professional development

Working Effectively with an Interpreter

- Explain to the interpreter the circumstances
- Everything said by you and the LEP individual is interpreted (including false starts, mumbling, cursing, thinking out loud, etc.)
- Maintain pauses/hand signals to regulate the speaker
- Be attentive to extraneous noise
- Use a team of interpreters for events lasting more than two hours
- Be aware of the LEP individual's education level
- Explain and “break down” the legal system and legal concepts
- Do not give the interpreter any explanatory responsibilities

Working Effectively with an Interpreter by Phone

- Use straight, simple, direct language, short phrases, and first and second person
- Speak slower, not louder
- Go sentence by sentence and pause
- Talk through, not to, the interpreter; continue to speak to the CLIENT and maintain eye contact as if the interpreter is not present
- Don't ask interpreter for his/her opinion about the LEP individual
- Have patience since interpreted interviews will take longer
- Be aware of interpreter fatigue
- Check and recheck to be sure the client understands using open-ended questions
- Don't be afraid to step in if you see something amiss
- Thank the interpreter

Telephonic Interpreter – Language Access Plan Protocol

- Ensure that patrol can access the telephonic interpretation service
 - Smart phone
 - Need to radio to have phone brought to them
 - Personal cellphone
- Train officers to recognize bad interpretation and ask for a new interpreter when needed
 - Factor in circumstances such as time, emergency, and necessity
 - Inform the interpreter that you will be requesting another interpreter; then, tell the client via interpreter “I will be requesting a new interpreter, please wait as I call in again for a new interpreter”
 - Best practice is to record the bad interpreter’s ID number

Vetting and Preparing the Third Party

- Qualifying questions
 - Ask about experience or credentials – Is the person educated in both languages? Have they worked in both languages?
 - How did they learn the language?
 - Relationship to the party?
- Review interpreter role
 - Complete
 - Accurate
 - Neutral
- Record the use of a third party bilingual speaker

Qualifying an Interpreter: Spotting a Bad Interpreter

- Can you understand the interpreter?
- Does the LEP individual look confused?
- Does the interpreter appear confused?
- Is the interpreter engaging in side conversations?
- Is the interpreter engaging in conversations with the individual before/after the interpretation meeting?
- Is the interpreter summarizing?
- Is everything being interpreted?
- Is there a change in the individual's demeanor?

Relay Interpreting



Examples

- Excerpt from San Francisco Police Training Video

<https://www.youtube.com/watch?v=i8qY1zi0tzc&feature=youtu.be>

- Communicating with LEP video

Preferences

- Different in every situation
 - Homicide
 - Time-critical scenarios
 - Hostage
 - Suicides
 - Domestic violence
 - Booking
 - Traffic Stop
 - Interrogation
 - Trial
- Depends on resources, language, time shift
- Consider scenarios applicable for your precinct/district/department
- If unspecified, remember precinct's/district's/department's general preferences

Case Scenario #1:

Arriving at a crime scene, you find that there has been a robbery and an assault. The victim is LEP with blood on her head, screaming, and pointing in one direction. An English-speaking bystander states that he saw a man run down the alley right before you arrived.

1. What's the best choice to communicate with the LEP?
2. Second Best?
3. OK and Last Resort?
4. Unacceptable?

Considerations

- Use of children? Family of victim or bystander?
- Is there an injury, imminent harm or, for immediate information gathering, a need to pursue a suspect while waiting for an interpreter?
- Will there be a conflict of interest?
- Seriousness and injury?

Exigent Circumstances

PROHIBITED, EXCEPT where there is immediate danger of serious physical harm, or life threatening situation to any person:

1. Using children to interpret
2. Family members to interpret
3. A bilingual officer or employee regardless of level of bilingual competency for police interrogations
4. Bilingual inmates to interpret

Case Scenario #2

There has been a car accident. One of the drivers is intoxicated and is LEP. The other driver begins to mix Spanish and English together.

- How would you go about identifying the language needed to question the intoxicated driver?
- How would you request language assistance for the other driver?
- For Both drivers identify:
 - Best choice to communicate?
 - Second best?
 - OK and Last resort?
 - Unacceptable?
 - Reasoning?

Large Group Discussion

Based on the training today, what will you take back when you return to your agency?

- What might you want to implement?
- Questions you want to ask?

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2015
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- **APIIDV Technical Assistance:**
Interpretation Technical Assistance & Resource Center (ITARC)
 - Wendy Lau wlau@apiidv.org
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- Web Library: www.niwaplibrary.wcl.american.edu

Questions



Evaluations



Thank you!

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