



Indigenous Languages and the Courts: Challenges in Providing Language Access to Indigenous Immigrants

By Dan DeCoursey

In 2010, California Rural Legal Assistance (CRLA), a non-profit legal services program, published a report stating that nearly all of California's indigenous farmworkers were from a small region of southern Mexico (eastern Guerrero and Oaxaca).¹ In fact, CRLA found that over 80% of these workers came from Oaxaca. In this region, a majority speak either Mixtec, Zapotec, or Triqui. It is no coincidence, then, that these are the most commonly requested indigenous languages at the U.S. District Court for the Southern District of California (San Diego), where I am a staff interpreter. In particular, the need for Mixtec interpreters has increased dramatically over the past three years, and this year's statistics for the court suggest that the trend will continue. Other federal courts on the southwestern border, such as the federal courthouse in Las Cruces, New Mexico, are experiencing similar

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increases. Many state courts in California have also noticed a growing need for interpreters who speak the indigenous languages of Mexico.²

Unfortunately, despite a decades-long effort by community organizations and interpreting programs to recruit and train interpreters in indigenous languages, many courts continue to struggle to find professional interpreters. Oftentimes, the courts must resort to short-term solutions, such as relay interpreting and remote interpreting via telephone, sometimes with interpreters who have limited or no courtroom experience. Regrettably, the ideal solution—a professionally trained

interpreter fluent in English with courtroom experience—remains elusive to serve the needs of many speakers of indigenous languages.

While the shortage of indigenous-language interpreters at a time of growing demand presents numerous challenges, persistent misconceptions among other participants in the court process regarding these languages can make matters worse. A close look at this situation, however, might help set the record straight and provide us with some ideas on what needs to be done. The following article will focus primarily on the indigenous languages of Mexico, with commentary from various professionals in the field.

Indigenous Languages: A Quick Overview

Ethnologue.com, a comprehensive reference cataloging all of the world's known living languages, documents over 250 indigenous languages spoken in Mexico. (This number varies widely, depending on whether dialects are counted as separate languages.) These are pre-Columbian languages that are completely unrelated to Spanish, although many employ some borrowed Spanish words.

Isolation between indigenous communities or regions often means that many communities speak their own variety, or dialect, of a certain language. For example, according to Ethnologue.com, Mixtec has 53 dialects and Zapotec 57. The website also specifies in which towns and regions certain dialects are spoken, as well as the amount of intelligibility between dialects. Two closely related dialects may have up to 85% intelligibility, whereas more distantly related dialects may have as low as 10% intelligibility, even in instances where both dialects are considered part of the same language.

Although Mexico's indigenous languages have been marginalized in the past, many in Mexico have begun to view them as an important part of their cultural heritage.³ For example, in 2003, Mexico passed the General Law of Linguistic Rights of Indigenous Peoples, which requires that the government make its services available in indigenous languages.⁴ The enactment of this law led to the establishment of the National Institute of Indigenous Languages (INALI), a Mexican federal public agency that aims to develop and promote the use of indigenous languages. Mexico's new system of oral trials, which all states must adopt by next year, has also created a need for trained court interpreters. As a result, INALI has initiated such training in various indigenous languages.⁵

Georganne Weller, a professor of translation at Anahuac University in Mexico City who has worked closely with INALI, including a three-year

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stint as director of language policy, explained to me that INALI has covered around 40 dialects in these trainings. Weller says that the language barriers faced by indigenous communities in Mexico can be enormous, especially in legal settings. Lack of formal education among many indigenous communities can hinder communication. Furthermore, Weller suggests that many speakers of indigenous languages tend to "overestimate their proficiency in Spanish, but when they start hitting the legal concepts, it is over their heads. To save face, they won't admit that they don't understand."

Moreover, Weller says that even when immigrants understand the basic message in Spanish, they often still prefer access to an indigenous-language interpreter. Weller explains that this is because indigenous languages often lack precise terms for certain legal concepts, so an interpreter must offer a more detailed explanation.

Indigenous Immigrants in the U.S: A Struggle for Language Access

Despite recent efforts by the U.S. Census Bureau, it is difficult to find exact numbers for immigrants of indigenous origin. This is because many don't respond to the census and others are confused about how to identify themselves.⁶ The U.S. Department of Labor estimates that indigenous immigrants make up 17% of the country's farmworkers, and perhaps up to 30% of California's farmworker population.⁷ It is believed that California has the largest population of indigenous immigrants from Latin America, estimated to be at least 200,000.⁸ CRLA's report attributes this large presence to increased immigration from southern Mexico, especially Oaxaca, over the past few decades,

due in part to various economic conditions that have made it more difficult for farmers in that region to make a living.

Indigenous immigrants in the U.S. often face additional challenges that others from Latin America do not. Since Spanish is the *lingua franca* among immigrants from Latin America, indigenous immigrants tend to have more difficulty than other immigrants accessing information in their languages on health care and government services.⁹ In the early 1990s, the Indigenous Oaxacan Binational Front, a human-rights group that represents native people from Oaxaca, began looking for solutions. At a Los Angeles news conference in 1997, members from this group expressed concerns that most judges, prosecutors, and defense attorneys assumed that everyone from Latin America speaks Spanish. The group asserted that when assigned a Spanish interpreter, many indigenous-language speakers could barely understand court proceedings.¹⁰

One of the most egregious examples of this language barrier was the case of Santiago Ventura Morales, a Mixtec immigrant from the state of Oaxaca. In 1986, Morales was wrongly convicted of murder in Oregon. During his trial, he was provided with a Spanish interpreter, even though Spanish was not his native language. Five years later, his conviction was set aside, in part due to his attorneys' arguments that Mixtec witnesses had difficulty responding to questions posed in Spanish during the trial.¹¹

In 1997, CRLA and other community groups partnered with the Monterey Institute of International Studies (now the Middlebury Institute of International



Studies at Monterey) to offer an intensive one-week training course in interpreting skills to several indigenous-language speakers, to include the dialects of Mixtec, Zapotec, and Quiche. Due to the limited English skills of many of the participants, the trainers decided to teach relay interpreting, which would allow those in the course to interpret between the indigenous language and Spanish. A Spanish interpreter could then interpret between Spanish and English.

In a paper published soon after this project, Holly Mikkelson, one of the program’s trainers, considered the program “a qualified success,” while recognizing that “crash courses and relay interpreting itself are mere Band-Aid solutions to a serious and lasting problem.”¹² Mikkelson hoped that the children of indigenous immigrants, after receiving formal education in English, could one day interpret between English and the indigenous language. She acknowledged that continued immigration by monolingual indigenous speakers would make relying less on relay interpreting difficult to achieve. Community groups such as the Binational Center for the Development of Oaxacan Communities (Fresno), the Natividad Medical Foundation (Salinas), and Maya Vision (Los Angeles) continue to provide community and medical interpreters in various indigenous languages.

Finding Indigenous-Language Interpreters: A Persistent Challenge

Despite these efforts, the courts continue to struggle to meet the growing demand for indigenous languages. The Judicial Council of California, in an attempt to recruit indigenous-language court interpreters, has added several indigenous languages as registered languages (for which speakers are tested in English skills, but not in the foreign language). But here’s a sobering fact: the entire state only has one registered Mixtec interpreter, one Zapotec interpreter, and no Triqui or Quiche

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registered interpreters.¹³ (Los Angeles does have a handful of professional Quiche interpreters with courtroom experience in relay interpreting. These interpreters, however, are not registered because they might lack the English proficiency needed to pass the exam.)

The Southern District of California is fortunate to have a Mixtec interpreter who is able to interpret between English and Mixtec. However, finding qualified interpreters for many other indigenous dialects, such as Zapotec and Triqui, continues to present many challenges.

Indigenous languages for which no interpreter is available locally often leave Rebeca Calderon, a manager of interpreter services for the U.S. District Court for the Southern District of California (San Diego), scrambling. Normally, a Spanish interpreter identifies the need for one of these languages on the morning of an initial appearance of a defendant or witness. When I spoke to her, Calderon explained that she must pinpoint the correct dialect, which involves numerous complications. One issue is that when asked what language they speak, most indigenous persons identify only the generic language, without naming the specific dialect. Moreover, the names of indigenous dialects catalogued on Ethnologue.com and INALI frequently do not match. Occasionally, this mismatching has meant that interpreters who were secured for a certain hearing actually spoke the wrong dialect.

To avoid this situation, Calderon always tries to determine which town an indigenous person is from. She then contacts community organizations in the U.S. and, if necessary, in

Mexico. Since most of the interpreters who work with these community organizations have limited courtroom experience, she must review relevant terminology and court documents over the phone with the interpreter before the assignment. A staff interpreter then needs to set up a courtroom for remote relay interpreting over the telephone. Statutory time limits often mean that all of this needs to happen that same day, or the following day at the latest.

Remote Interpreting from South of the Border

Increasingly, Calderon has been turning to a community group in Oaxaca called Centro Profesional Indígena de Asesoría, Defensa y Traducción (CEPIADET) for help. CEPIADET offers legal translation and interpreting services in various indigenous languages that are spoken widely in Oaxaca, including several Mixtec, Zapotec, and Triqui dialects. Most of their interpreters have been trained as community interpreters, but not specifically as court interpreters. Many are also attorneys, but, as Calderon explains, “because of the huge differences in the legal systems, we still need to explain terms that are completely foreign to them.” These concepts include what a grand jury is and the difference between a magistrate judge and a district judge.

Setting up remote relay interpreting—basically a three-way phone call with the defendant, the Spanish interpreter, and the indigenous-language interpreter—can be a daunting task. Before the hearing, a phone call is made from the courtroom to the remote interpreter in Mexico. If the interpreter lives in a rural area of Oaxaca, the call must be made to the

interpreter's mobile phone. (As one can imagine, poor mobile reception has been an issue.) Calderon says that "interpretation is strictly in a short-consecutive mode," since these interpreters have not been trained to interpret simultaneously. This means that all of the parties in the courtroom must pause frequently when speaking, which can prolong the hearing substantially.

Other challenges include last-minute changes to court calendars, working across different time zones, and making special arrangements with security personnel for attorney-client interviews if an indigenous defendant is in custody. Despite all of the practical and technical difficulties surrounding remote relay interpreting via telephone, for many indigenous-language speakers, the alternative is clearly worse: understanding little or none of the legal concepts explained by a Spanish interpreter, or understanding perhaps 40% when explained in the wrong indigenous dialect.

Tony Rosado, a court interpreter and attorney who is part of an advisory committee in Mexico responsible for helping the courts comply with issues regarding language access in the new system of oral trials, believes that judicial reform in Mexico will create resources that could benefit U.S. courts. Rosado says that the Mexican states that have already adopted oral proceedings have demonstrated the need for sign, foreign, and indigenous-language interpreters for oral proceedings. "The vast majority of cases that need an interpreter involve indigenous languages, especially in criminal cases," he explains.

Although Rosado insists that using a professional indigenous-language interpreter in the U.S. is preferable, when no such interpreter is available, he suggests that interpreter coordinators continue looking south of the border for solutions. Currently, many indigenous interpreters in Mexico lack formal training as court interpreters, but

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Rosado believes that Mexico will have a cadre of professional indigenous-language court interpreters in a few years. He proposes that in the near future "American courts could offer workshops in Mexico explaining how to work remotely by telephone or video."

Still, interpreters in the U.S. must look for signs that a person might need an indigenous-language interpreter. Rosado says that while making non-native grammatical mistakes and avoiding eye contact (doing otherwise is considered disrespectful in many indigenous cultures) might offer clues, "the best practice is to ask." Rosado feels this is especially important when working with individuals who "come from Mexican states with a large indigenous population, such as Oaxaca, Guerrero, Yucatan, Chiapas, or Quintana Roo, or when they come from Central America." When speakers of an indigenous language say that they speak Spanish, Calderon suggests that Spanish interpreters ask questions that call for a narrative, and not questions requiring a "yes" or "no" answer, to gauge understanding.

A Long Road Ahead

Limited resources might very well mean that ideal solutions are a long way off and that these challenges will not disappear any time soon. Let's hope that Mexico continues to invest in its indigenous-language court interpreters, so they can provide remote relay interpreting for dialects that are rare in this country, and that community groups and interpreting programs in the U.S. continue to recruit and train interpreters for

the indigenous languages with the widest diffusion in this country. In the meantime, clearing up common misconceptions about these indigenous languages would go a long way toward minimizing these challenges. For now, let's commit to doing just that. ■

Notes

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4. General Law on the Linguistic Rights of Indigenous Peoples (World Intellectual Property Organization), <http://bit.ly/linguistic-right>.
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11. "Santiago Ventura Morales" (The National Registry of Exonerations, June 2012), <http://bit.ly/national-registry>.
12. Mikkelsen, Holly. "Relay Interpreting: A Solution for Languages of Limited Diffusion?" *The Translator* (Volume 5, 1999), <http://bit.ly/Mikkelsen>.
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Additional Resources

Binational Center for the Development of Oaxacan Communities

<http://bit.ly/binational-indigenous>

A community group based in Fresno, California, offering an indigenous interpreters program.

Centro Profesional Indígena de Asesoría, Defensa y Traducción

www.cdi.gob.mx/cepiadet

A community group based in Oaxaca, Mexico, offering legal and translation services in Mixtec, Zapotec, and other indigenous languages.

Ethnologue

www.ethnologue.com

A website that catalogues the world's languages by country.

National Association of Judiciary Interpreters and Translators

<http://bit.ly/NAJIT-position>

"Preparing Interpreters in Rare Languages" (Position paper, 2005)

National Institute of Indigenous Languages

www.inali.gob.mx

A government organization in Mexico that promotes the use of indigenous languages.

Natividad Medical Foundation

<http://interpretnmf.com>

A community health organization based in Salinas, California, offering interpreting services in various indigenous languages.

The Savvy Newcomer
ATA's Blog for Newbies to Translation and Interpreting

Check out
The Savvy Newcomer blog at: www.atasavvynewcomer.org
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