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Gabriel Gonzalez Nunez

*The University of Texas Rio Grande Valley*, [gabriel.gonzaleznunez@utrgv.edu](mailto:gabriel.gonzaleznunez@utrgv.edu)

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## **Law and translation at the U.S.-Mexico border: Translation policy in a diglossic setting**

Gabriel González Núñez<sup>1</sup>

The University of Texas Rio Grande Valley

### **1. Introduction**

In the latter half of the 20<sup>th</sup> century, especially in its closing decades, policy makers in some parts of the world started adopting policies of multiculturalism. These were seen as a tool for creating more inclusive societies. The goal was, at least in part, to encourage participatory democracy. That meant including groups in the national conversation that had previously stood at the margins. Some prominent scholars advocated for multicultural democratic models (e.g., Kymlicka 1995), including the possibility of multi-language States (e.g., *ibid.* 2001). Thus, ideas pertinent to increased inclusion and participation raised the issue of language in society.

Scholars have argued that language regimes adopted by states can favour one group over all the others in a way that undermines minority groups (May 2003, 95-96). In essence, when multilingual societies are administered through a one-language regime, inequalities arise (De Varennes 1999, 307). This growing understanding has led States to come up with varying solutions, which in turn created a wide array of language regimes. Some regimes are staunchly monolingual, as is the case of France, which refused to ratify the European Charter for Regional and Minority Languages. Other regimes are complexly multilingual, as is the case of India, as

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<sup>1</sup> The author wishes to express his gratitude to the peer reviewers for their suggestions that helped improve this paper.

seen when it adopted a “three-language formula” to alleviate regional tensions between its states. As political ideas change, these multilingual policies continue to evolve.

One aspect that all these policies have in common is that they will involve choices about translation—ranging from the most basic do-we-even-want-to-translate questions to the more nuanced choices about which specific documents are translated in what language combinations and by whom. As Meylaerts states, “there is no *language* policy without a *translation* policy” (2011, 744). Thus, matters relating to translation policy are important. Translation policy ultimately is about deciding how people communicate, or even if they do at all. The study of translation policy yields insights not only about management, practice and belief as it pertains to translation (see González Núñez 2016) but, more importantly, on social policies that affect the lives of real people.

Thus, the theorizing and studying of translation policy is a welcome means to gain further knowledge on how specific societal challenges are handled. The conclusions that may come from those explorations can be helpful in formulating input for improvement to current policies. Of course, to get there, the first step is an adequate understanding of where things currently stand. In that sense, case studies such as this one are helpful tools toward a larger aim.

Hoping to contribute to said aim, this paper will describe translation policies as found in the judiciary and local government in Brownsville, Texas, USA. These two domains will be explored because they are numbered among the key elements of a just society; if one expects true equality, it is just that everyone is on equal footing before courts and is able to receive the same level of government services. There are other key elements, of course, but focusing on these two allows for some level of comparison with previous case studies (e.g., *ibid.* 2013, *ibid.* 2015) and offers some interesting contrasts.

Unlike these previous case studies, however, this paper will present an overview of translation policy in a place where a significant portion of the population is to some degree bilingual. Brownsville is a border town, and like many similarly situated cities, it straddles two major languages. Translation policies developed here are thus the result of an amalgamation of two major cultures, as will be seen below. This can provide new insights on the use of translation policy among populations that are reported to be close to fully bilingual. These insights are derived from interviews carried out among certified/licensed interpreters and mid-to-high level managers who work in the two domains stated above. The paper will then conclude with some normative statements for the development of translation policy in this specific setting.

## **2. History and current linguistic make-up of Brownsville**

Native Spanish speakers have been part of what is now Brownsville for at least four centuries (Mejías et al. 2002: 121). During the early stages of colonization,<sup>2</sup> the region was not densely populated as it was divided among Spanish/Mexican cattle ranchers. Brownsville itself can trace its origins to 1846, when a fort was placed on the northern side of the Rio Grande to help the United States (U.S.) take control of what was then an area disputed with Mexico (Aiken 1991, 3). But even when the area came firmly under U.S. control, the border in its early days was somewhat of a political fiction. Locals did not really see it as a border and moved back and forth between the U.S. and Mexico “without thought” (Mejías et al. 2002, 121).

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<sup>2</sup> Prior to the arrival of the Spanish, the area was inhabited by what we now call American Indians. Early explorers documented several groups in the Rio Grande area (Salmón and Garza 1986, 36). These were hunter-gatherers such as the Coahuiltecans who became extinct or fully assimilated into the colonizing cultures by the mid-19<sup>th</sup> century (ibid., 44).

As time passed, a town grew surrounding this fort. As early as 1848, the U.S. government started encouraging the settlement of the area with Anglos and quickly set up its own institutions (Mayén Mena 2013, 25). These were English-speaking newcomers and the institutions were predominantly English-speaking as well. For example, in the late 19<sup>th</sup> century a public school system was slowly set up where instruction took place through the medium of English even though almost every child in the schools came from Spanish-speaking households (Gawenda 1986, 191). English speakers slowly imposed “una actitud de sentimiento de superioridad y prejuicio racial”<sup>3</sup> that contributed to English gaining a dominant position in society (Mayén Mena 2013, 25).

Even so, the majority of speakers continued to use Spanish. The weak nature of the border and events in Mexico contributed to providing a steady inflow of Mexicans into Brownsville. For example, during the Mexican Revolution,<sup>4</sup> which broke out in 1910, many people from neighbouring Matamoros and other parts of North-eastern Mexico fled to Brownsville (ibid.). Decades later, the Bracero Program<sup>5</sup> brought in Mexican workers to the U.S.-side of the border (see Scruggs 1963). Spanish-speaking immigrants continued to come to Brownsville throughout the 20<sup>th</sup> century (Mayén Mena 2013, 26). Even today, as drug-related violence escalates in Mexico, many Mexicans continue to move north to Brownsville.

Thus, in Brownsville, “Spanish/English language contact” has been a fact of life since the arrival of Anglo immigrants in the 19<sup>th</sup> century (Mejías et al. 2002, 121). And for a long time,

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<sup>3</sup> “[A]n attitude of superiority and racial prejudice” (translation by this paper’s author).

<sup>4</sup> The Mexican Revolution was a complex, ten-year civil war that killed at least one million Mexicans and displaced many to the U.S. and elsewhere.

<sup>5</sup> The Bracero Program was a U.S.-government program which imported Mexican farm workers along the Southern border of the U.S. from the early 1940s to the mid-1960s.

only Mexicans and Americans lived in Brownsville, but as of late some additional diversity has come to the area as a small number of “immigrants from the Philippines, India, Arabic nations, Korea, and so forth” have arrived (ibid., 122).

Understanding these historical developments is key to understanding Brownsville’s current linguistic make-up. This history is, of course, inexorably linked to Brownsville’s geographical position right on the border between the U.S. and Mexico. Even as the border became enforced—a wall now runs across basically all of the city’s southern edge—Brownsville’s location has led to an on-going, rather close relationship between its residents and residents of Matamoros on the Mexican side. Families extend from one side of the border to the other, and many residents move freely back and forth between both cities. This, coupled with Brownsville’s relative isolation from major cities in the U.S., has contributed to the vigorous, permanent presence of the Spanish language in this American city, alongside English.

According to the American Community Survey,<sup>6</sup> 14% of Brownsville’s population report speaking only English at home (U.S. Census Bureau 2010a). That is not to say that people who speak English are a minority in Brownsville. In fact, the contrary is quite true: 64% of the city’s population aged five and over speak English “very well” (U.S. Census Bureau 2010a). The key here is that most of Brownsville’s population is bilingual. In this city, 86% of the population speak a language other than English at home (U.S. Census Bureau 2010a). Mostly that language is Spanish: 85% speak it,<sup>7</sup> so all other languages combined—including Indo-European, Asian

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<sup>6</sup> The American Community Survey is a statistical survey that is carried out on an on-going basis by the U.S. Census Bureau to gather data on a number of questions not covered by the decennial census.

<sup>7</sup> The Census data from which this percentage is derived tells us nothing about how well these respondents speak Spanish—only that they claim they do.

and Pacific languages—amount to only 1% of the city’s population<sup>8</sup> (U.S. Census Bureau 2010a). Again, it should be stressed that few households are monolingual in any language. Case in point: 77% of households have at least one person aged 14 or over who speaks English at least “very well” (U.S. Census Bureau 2010b). So most of Brownsville’s population has both English and Spanish abilities, and English-only households apparently are less common than Spanish-only households.

This means that the English-Spanish language pair is quite dominant, which should come as no surprise given the city’s history and location. English and Spanish, however, are not on equal footing in terms of language policy—at the official level, institutions tend to favour English. This is a consequence, in part, of the overall policy in the U.S. to promote English and restrict the use of other languages (see Wiley and De Korne 2014). Top-down pressures have long existed for speakers to move into English. For example, the language of public education is English, and the so-called bilingual education available in the first years of schooling is intended to streamline students into English-only classrooms.<sup>9</sup> At the same time, bottom-up pressures have tended to favour the maintenance of Spanish. For example, as explained above, a steady influx of native Spanish speakers from Mexico has been observed for at least a century. This has led to a more or less diglossic community. In this sense, Brownsville is like so many other bilingual U.S. communities in which “English and Spanish have taken on specialized functions and are

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<sup>8</sup> There is some possibility that the percentage of individuals who speak neither English nor Spanish is somewhat underreported, as speakers of indigenous languages from Mexico and Central America who are undocumented tend to avoid census takers.

<sup>9</sup> In Texas, bilingual education is understood to be “instruction in which students learn to read and write in the native tongue while gradually transitioning to English” (Rossell 2009, 3). Sometimes, even a program taught through the medium of English only will be termed “bilingual education” if the students have limited English proficiency (ibid.)

associated with certain domains of activity or subject matter” (Valdés 2000, 105). Specifically, English is the “high” language, the language of prestige (e.g., the political process), and Spanish is the “low” language, the language of casual communications (e.g., domestic conversations) (ibid.).

### **3. National policy determinants that affect Brownsville**

The linguistic picture painted in the previous section results in specific challenges for authorities and others who provide public services. The bulk of the population speaks both Spanish and English, but there is a segment of the population who can only communicate in English or only in Spanish. And even among bilinguals, Brownsville’s diglossic society is one where not everyone may be able to communicate fluently or even comfortably in both languages for every situation. Additionally, there are some immigrants in the community who may have limited abilities in both English and Spanish. A relevant question for authorities and others who provide public services is what language policies to adopt in order to function effectively while helping create a just society where everyone is included and can participate. This will include choices about the use or non-use of translation, which, if systematic, become translation policies.

Translation policy in Brownsville is the result of pressures that are often rooted outside the city itself. The most obvious example of this is U.S. language policy, which extends into this border town as well. Language policy in the U.S. is complex, but generally speaking there has been a history of “the imposition of English for an ever wider range of purposes” (Hernández-Chávez 1994, 141). Even though the federal government has no *de jure* official language, the



trend for the last 30 years or so “has been toward official recognition<sup>10</sup> and protection of English, and restrictionism with minimal linguistic accommodation toward other languages” (Wiley and De Korne 2014: 3). This national language policy is felt to a great degree in Brownsville as well. While English is not the official language of the city or its institutions, it is the “high” language and is thus well established as the language of official functions, as well as the working language of institutions and the main language of instruction in schools.

In the context of this implicit (or covert) policy favouring the use of the English language, there are several explicit (or overt) policies enacted through the legislative and executive powers of the federal government. These policies counteract, in some ways, the implicit policy promoting English by providing for situations in which other languages may be used when communicating with the authorities. They are the Civil Rights Act, the Court Interpreters Act and Executive Order 13166, all of which will now be considered.

The first of these is the Civil Rights Act of 1964 (42 USC § 1981 et seq.), as amended, which “continues to be the single most important piece of legislation for providing LEP [limited English proficiency] individuals a legal right to language assistance services” (Chen et al. 2007, 362). Under this law’s Title VI § 601, “[n]o person in the United States 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 USC § 2000d). Thus, entities that receive federal funding are barred from discriminating

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<sup>10</sup> English has been recognized as the official language of 31 states (Official English 2016). Texas has no de jure official language, but English is de facto the official language. Under Texas Government Code § 2054.116(b), state agencies must “make a reasonable effort to ensure that Spanish-speaking persons of limited English proficiency can meaningfully access state agency information online”. This wording assumes that English is the language of state agencies and mandates their websites provide meaningful access to information, presumably via translation.

based on certain enumerated factors. Glaringly, language is not one of them. However, under the landmark case *Lau v. Nichols* (414 U.S. 563 (1974)),<sup>11</sup> the U.S. Supreme Court in essence conflated national origin with language,<sup>12</sup> and since then, federally funded institutions and programs must make language accommodations for individuals who otherwise would not have equality of access. Neither the Civil Rights Act nor *Lau* indicate that a translation policy ought to be developed. Together they simply stand for the proposition that when someone does not speak English, federally-funded bodies must provide accommodations.

Another major development in terms of language accommodations is Executive Order (EO) 13166 of August 2000, Improving Access to Services for Persons with Limited English Proficiency (3 CFR 13166). This EO dictates that each federal agency must prepare and implement “a plan to improve access<sup>13</sup> to its federally conducted programs and activities by

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<sup>11</sup> *Lau v. Nichols* was a class-action lawsuit in which a group of students of Chinese ancestry who did not speak English sued the San Francisco school system because they did not receive any linguistic accommodations in their schooling. They argued this amounted to national-origin discrimination, and the Supreme Court sided with them. The ruling has been taken to apply to all federally funded entities, not just schools.

<sup>12</sup> This is problematic, of course—being of Chinese ancestry does not equate to being a native speaker of a Chinese language any more than being of American ancestry equates to being a native speaker of English. The discrimination occurred because of the student’s inability to communicate properly in English, not because of their ancestry. The idea that language discrimination amounts to national origin discrimination reinforces the notion that one nation equals one language.

<sup>13</sup> The following agencies have created plans to improve access by LEP persons: Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of State, Department of the Interior, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Environmental Protection Agency,

eligible LEP persons”. It also mandates that agencies that provide federal financial assistance must draft guidance documents for the recipients of such assistance so that they might know what their obligations are to provide meaningful access to persons with limited English proficiency.<sup>14</sup> In 2011, a Memorandum to Federal Agencies from Attorney General Eric Holder Reaffirming the Mandates of Executive Order 13166 was issued. This Memorandum includes the following requests:

- (6) When considering hiring criteria, agencies should assess the extent to which non-English language proficiency would be necessary for particular positions or to fulfill an agency's mission.

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Equal Employment Opportunity Commission, Federal Deposit Insurance Corporation, Federal Trade Commission, General Services Administration, Institute of Museum and Library Services, National Aeronautics and Space Administration, National Archives and Records Administration, National Council on Disability, National Credit Union Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Nuclear Regulatory Commission, Office of Management and Budget, Public Benefit Guaranty Corporation, Railroad Retirement Board, Small Business Administration, Social Security Administration, US Commission on Civil Rights, US Consumer Products Safety Commission, and US Office of Special Counsel.

<sup>14</sup> The list of guidance materials for recipients of federal aid is also long. The following federal agencies have produced such guidances: Department of Agriculture, Corporation for National Community Service, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of State, Department of the Interior, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Environmental Protection Agency, General Services Administration, National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Nuclear Regulatory Commission, Office of Management and Budget, and Small Business Administration.

(7) For written translations, collaborate with other agencies to share resources, improve efficiency, standardize federal terminology, and streamline processes for obtaining community feedback on the accuracy and quality of professional translations intended for mass distribution.

In essence, EO 13166 mandates compliance, through the implementation of plans and guidance documents, with the Civil Rights Act's Title VI § 601 in terms of language (as interpreted by the U.S. Supreme Court). The follow-up Memorandum provides specific suggestions, and it mentions at least two possible strategies: bilingual staff and written translation. No policy of using written translation is explicitly mandated, but rather, the Memorandum assumes that such translation is bound to take place. This is not an unfair assumption. When institutions have to provide equality of access in a language other than English, they seem to have three major options: bilingual staff, written translations (whether non-professional, professional or machine-produced) and interpreters (whether non-professional or professional, in-person or remotely). Not surprisingly, a number of guidance documents explicitly call for the use of translation and interpreting, as is the case of the Department of Health and Human Services' Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.

Finally, the third key development in terms of language access and translation policy is the Court Interpreters Act of 1978 (28 USC § 1827), as amended. While the Act has its shortcomings, "it is unquestionable that the Act has significantly improved the quality of court interpretation in the federal court system" (González et al. 2012, 174; for an in-depth treatment of the Act, see *ibid.*, 169-183). The Act establishes the creation of a program whereby "the use of

certified and otherwise qualified interpreters” is facilitated for “judicial proceedings instituted by the United States” (28 USC § 1827(a)). As understood in the federal court system, the phrase “judicial proceedings instituted by the United States” refers to “all in-court criminal proceedings and any in-court civil proceeding in which the United States is the plaintiff” (Administrative Office of the U.S. Courts 2016, 2). As a result of this Act, certifications programs in Spanish, Navajo and Haitian Creole were developed, even though currently only the Spanish certification program is in effect. Additionally, a National Court Interpreters Database was set up for courts to contact contract interpreters. Thus, this Act has the effect of making mandatory the use of interpreters as needed in criminal federal trials and in any civil or bankruptcy trials initiated by the U.S. government; in the case of Spanish speakers, interpreters must be federally certified. Additionally, the Act “became a model for interpreter certification for state and municipal courts, as well as administrative law agencies” (González et al. 2012, 173).

These overt and covert policies originate outside of Brownsville but their impact is felt locally. There is an unspoken assumption that, despite societal bilingualism, the language of official functions, and certainly the working language of official bodies, will be English. However, federal programs and federally funded programs cannot discriminate on the basis of language and must take steps to make sure their services are accessible to everyone, even those who do not speak English. In some cases, this includes having actual written plans to help LEP individuals gain equality of access. These plans may or may not include translation; as long as access is obtained, the exact means whereby it is obtained matter not. The one area where the use of certified interpreters is specifically mandated is in the court systems.

In the following section, this paper will analyse translation policy in two domains—the judiciary and local government. The information presented will reflect the effect of these

national policies in terms of language and civil rights. It will show, from a practical standpoint, to what extent these competing policies help shape translation policy. This information is derived from eight semi-structured interviews carried out by this paper's author. Most interviews were then recorded, transcribed and coded. Where interviewees did not authorize the use of recording equipment, detailed notes were taken and later coded. As needed, additional clarification was sought through follow-up correspondence in electronic format. This process yielded the results found below.

#### **4. Translation policy in Brownsville's courts**

For purposes of this study, the term "courts" refers to trial courts at the federal and state level. No research was carried out in terms of municipal courts or administrative courts.<sup>15</sup> Brownsville has one federal court division that operates in a single courthouse with two magistrate judges and three district judges. Additionally, it has eleven state courts—eight district courts and three county courts—that operate in their own, single courthouse. We will first consider translation policy at the federal level and then at the state level.

The language of record in the federal court at Brownsville is English. English is also the court's working language. When someone with limited English proficiency comes before the court, whether as a defendant, a victim or a witness, the court is bound by the Court Interpreters Act to provide an interpreter. In this scenario, it will nearly always be a Spanish speaker who lacks English proficiency. This means that certified Spanish-language interpreters are used to

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<sup>15</sup> Municipal courts were excluded because they have a narrow jurisdiction (mostly class C misdemeanors, traffic infractions, city ordinance violations), are not courts of record, and do not currently have the same requirements in terms of language access as state and federal courts. Administrative courts were excluded because they also have limited jurisdictions and are not bound by the same procedural safeguards as judicial courts.

communicate with him or her during proceedings. The federal courthouse in Brownsville has two full-time, in-house Spanish interpreters. These interpreters also work as translators to satisfy the court's written translation needs, always in the Spanish-English pair. Whenever a situation arises where the two full-time interpreters cannot meet all the interpreting needs in the courthouse, there is a list of certified Spanish-language freelance interpreters that are called upon for sessional work.<sup>16</sup> Should interpreting be required into a language other than Spanish, court personnel will hire an interpreter for that session only from the National Court Interpreters Database, which is maintained by a central Administrative Office in Washington DC. Informants indicate the use of languages other than Spanish is rare, but there have been instances where speakers of languages such as Arabic or Portuguese have come before the court. In such situations, interpreters are brought in from major cities such as Austin or Houston. Generally, interpreters are used only for proceedings. Communications outside of proceedings can occur through bilingual staff.

A somewhat similar picture emerges when considering state courts in Brownsville. English is both their language of record and their working language. When someone with limited English proficiency comes before these courts, each court is bound by Chapter 57 of Texas' Government Code, titled "Court Interpreters". In civil or criminal proceedings, licensed interpreters *may* be appointed if the judge deems it necessary and *must* be appointed if a party or

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<sup>16</sup> According to informants, there is one local, federally certified interpreter who is brought in to interpret if in-house interpreters are already scheduled for other hearings. There is also one local, state-licensed interpreter (see n. 13) who is used to interpret with magistrates as needed (in the U.S. legal system, magistrates have a more limited jurisdiction than judges). These certified, sessional interpreters are called according to the nearest geographical availability: first from Brownsville, then from nearby McAllen, then from cities farther out, like San Antonio, Houston or even Austin.

witness so requests it (Tex. Gov't Code § 57.002). Licensed interpreters are spoken-language interpreters<sup>17</sup> who have undergone a certification process to obtain a license that authorizes them to interpret in state courts. In cities with less than 50,000 inhabitants or for languages other than Spanish, a non-licensed interpreter may be appointed as long as certain criteria are met (Tex. Gov't Code § 57.002). Brownsville has more than 50,000 residents, and the language that is required for interpretation is almost universally Spanish. This means that Spanish-language interpreters are used to communicate with LEP individuals. The state courthouse in Brownsville has four full-time, in-house Spanish interpreters. Three of these interpreters are assigned to the eight district<sup>17</sup> courts, and the remaining interpreter is assigned to the three county courts. There is no real process in place to deal with individuals who do not speak either Spanish or English. One informant indicated that during their seventeen-plus years as an interpreter they are only aware of one case where a party spoke neither English nor Spanish sufficiently well. The man in question spoke an indigenous Latin American language and had limited Spanish capabilities, so communication was attempted through Spanish. To what extent communication was successful cannot be independently ascertained. Like at federal courts, communications outside of proceedings can be carried out by bilingual employees (Tex. Att'y Gen. Op. No. JC-0584 (2002)).

When considering translation policy in Brownsville's federal and state courts, one can observe more similarities than differences, especially if one is considering only the Spanish language. All courts have a policy of employing full-time certified/licensed interpreters for their

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<sup>17</sup> In state and municipal Texas courts, interpreters who work with spoken languages obtain a "license" while those who interpret for the deaf and hard of hearing obtain a "certification". Hence, the former are "licensed interpreters" and the latter are "certified interpreters".



Spanish-language needs during proceedings. Additionally, interpreters do written translation work whenever the court requires them to do so. This does not mean that spoken communications outside of proceedings, e.g. with a court clerk, will happen via interpreters. In those non-proceedings settings, bilingual employees fit the bill just fine. So when national or state law requires the use of interpreters, these are used; but their role does not extend too far beyond the legal requirements.

Perhaps the most clear difference between the two court systems in terms of their translation policy has to do with how they approach speakers of languages that are not English or Spanish. The federal courthouse benefits from a national program which provides access to interpreters in a wide range of languages. In the state courthouse, on the other hand, no such scheme is apparent, and the strategy in times past has been to have people communicate in Spanish, if they can. Informants feel there is no real need for services in any language other than Spanish. Intuitively, this would seem to make sense: only 1% of Brownsville's population does not speak either Spanish or English at home, and one can perhaps assume that even that 1% can speak some English if they live in a city where there is no critical mass of immigrants (other than Spanish- or English-speaking immigrants). But for that one percent the question is to what extent they really understand what is going on if summoned by a state court. To them, this could be an issue, even if no one else can see it.

## **5. Translation policy in Brownsville's local government**

For purposes of this study, Brownsville's local government will be considered as the form of government that takes place at the city level and at the county level. This is so because, to some extent, a two-tier level of local government exists in Brownsville. The City of Brownsville is the

most local form of government. It provides a wide range of services, from running the local airport to providing public transportation, law enforcement, street maintenance and public libraries. Other responsibilities, however, befall Cameron County. It provides services such as health services for low-income families, issuance and maintenance of vital records, registration of motor vehicles, development and maintenance of some parks and other services for individuals living in lower-income sections of the city. This county government covers several cities, including Brownsville. Additionally, the county is the most local form of government in a section of Brownsville that has not been administratively incorporated to the city.<sup>18</sup>

As indicated in the previous paragraph, the City of Brownsville performs a wide range of public functions, and thus translation policy varies somewhat from one city department to another. This non-uniform policy is the result of a lack of central policy direction. There is no written policy document to outline how the City should deal with LEP residents. Even so, some general observations can be made. Again, these observations stem from practice and not from specific policy guidelines.

The first observation is that there is an almost universal reliance on bilingual personnel to handle linguistic diversity. City employees are either monolingual in English, bilingual or monolingual in Spanish. Monolingual Spanish employees often work “in the field”, doing things such as street and building maintenance. Bilingual Spanish employees tend to be found in places where interaction with the public takes place. The premier example of this is 546-HELP, Brownsville’s “one-stop-shop” for customer service. This is a call centre where bilingual

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<sup>18</sup> Specifically, this refers to Cameron Park, an urbanized area within the Brownsville city limits that is not administered by the City of Brownsville. Because of Cameron Park’s unusually high poverty rates, it is unincorporated so that it may qualify for special aid programs (Jasinski 2010).

employees take all calls into the City government and create service requests. Employees here are filtered to make sure they can read, write and speak both Spanish and English fluently. They always answer the phone in English but switch into Spanish if the caller signals a preference for Spanish (most callers do). Not all positions with the City of Brownsville require bilingual skills. For example, at the city library, everyone is screened for English skills but it is only preferred (not required) that front-office personnel additionally speak Spanish. These bilingual employees are the main tool used by authorities to provide access to city services. They are not trained as interpreters or translators, and professionals are hardly ever used to perform interpreting or translation. Professional interpreters are used only at rare, high-profile events such as when a “sister city” ceremony is held and Mexican government officials are invited. Similarly, professional translators are not hired to engage in written translation. When documents are to be translated, it is bilingual employees who have other duties that are tasked with it. The choice of which documents to translate depends on each department. Some departments will produce materials in both languages as a matter of course, while others will not. Regarding the City of Brownsville’s webpage, it is available only in English. No option to have the website translated by a machine is available, and there are no current plans to offer content in Spanish.

All efforts to offer language access to LEP residents focus on Spanish speakers. Informants indicate that this is a reflection of the city’s demographic reality. It is assumed that everyone can communicate on either one of those languages. Other than occasional French-speaking Canadian tourists coming to the library during the winter months, speakers of other languages are not visible in Brownsville. This does not mean that they are not there, but their numbers are not enough to become noticeable to the authorities.

When considering translation policy in Cameron County, some similar patterns can be observed. Bilingual staff are also at the heart of the County's translation policy. There is no written language or translation policy document, so practice too has been the main factor in developing policy.

The County's working language is English, so all County employees are expected to be able to communicate in English. A great many of the county's employees are bilingual. This is, in some respects, inevitable due to the linguistic composition of the local pool of potential hires. While being able to speak Spanish is not a requirement to be hired by the County, the ability to communicate in Spanish is preferred for positions that require interaction with the public. This means that there will be one or several employees who can speak Spanish at all points of contact with the public. As needed, these members of staff will interact with the public, including answering the phones. Professional interpreters are occasionally hired to interpret specific events, such as high-profile public meetings. Such meetings are held in English, but simultaneous interpretation is made available for members of the public who might need it. In terms of written translation, there is no policy to systematically translate certain materials into Spanish (or any other language). Forms, for example, are often only provided in English. When a Spanish speaker struggles with the form, bilingual staff can help sight translate. Some documents, however, can be singled out for translation, as is the case, for example, of certain public notices. These documents are not translated by professional translators but rather by bilingual staff who generally perform other duties. The County's website is available only in English and no translation of content, machine- or human-produced, is available.

As can be seen in this last paragraph, all linguistic efforts focus on the English-Spanish pair. This is so because it is rare that someone who approaches the county cannot communicate

in either language. One informant indicated that in eleven years working at the county, they had never seen an instance of someone who could not communicate in English or Spanish. The assumption is that immigrants from places such as Korea or India can communicate in English sufficiently well. Whether that assumption is warranted was not verified through this study.

When comparing translation policy at the City of Brownsville and at Cameron County, one can see a number of similarities. Neither tier of government has taken to writing language or translation policies, so policy in this regard has developed ad hoc, with a general preference for English but extensive accommodation for Spanish. That accommodation is carried on the backs of bilingual employees, to some extent on a case-by-case basis. Speaking metaphorically, they are the foot soldiers who carry out the day-to-day battles in the field of language. They have regular duties, but they are expected to additionally help with translation and interpreting, as needed. It should be noted that these are not trained translators or interpreters, and they receive no on-the-job training regarding linguistic duties. They are simply tapped because they happen to speak Spanish, often without any actual testing of their level of Spanish skills. With specific exceptions, their ability to speak Spanish is not even a requirement for their job but rather a preferred trait. There seems to be very little use of professional interpreters, and even less of professional translators.

The fact that both City and County have English-only websites is telling of how little thought goes into translation policy. Websites are, after all, the point of entry for many residents seeking services. No thought, or at least effort, has gone into how to get around the obvious problem that the website is not accessible to a significant portion of the population it serves. If these individuals cannot access the website in English, then it is *their* responsibility to figure out how to get around this communication barrier.

Even so, based on the interviews the impression is created that the City understands the importance of translation perhaps somewhat more than the County. Whereas the County does not engage in translation as a matter of course, there are some departments in the City that do. Perhaps because of this, there are some jobs with the City that require proficiency in the Spanish and English languages, while this does not seem to be the case with the County.

## **6. Concluding thoughts**

In the introduction to this paper it was stated that the study of translation policy is a tool to see how specific societal challenges are handled. In that spirit, this case study focuses on a border. Brownsville is not just a political border but a cultural and linguistic one as well. It is a place where cultures from the U.S. and Mexico meet and permeate each other freely. This means that English and Spanish as well as their speakers meet and interact frequently. Any time a society becomes profoundly bilingual, this presents both opportunities and challenges. Issues arise regarding what language or language combinations ought to be used in specific contexts. These are not simple matters, and inevitably policy develops, whether covert or overt, to handle them. To see how these issues are dealt with in Brownsville, this study has focused on the domains of the judiciary and local government.

The general observation can be made that language policy in Brownsville is affected by both demographic considerations and overt policy decisions from outside local domains. To begin with, the overwhelming majority of the population in this U.S. city speaks Spanish, and there are more monolingual speakers of Spanish than of English. Even so, Brownsville's history of colonization and domination has led to Spanish adopting the "low" position in the city's

diglossic context. Because English is the language of “high” functions, it is the language of courts and local government. At the same time, national advances in terms of civil rights legislation and litigation have led to the provision by authorities of widespread language accommodation for individuals with limited English skills. This was not always so, but it is the case now. Much of this accommodation must of necessity take place through translation and interpreting. Translation and interpreting take place both in the courts and in local government to allow residents access to the services provided in these domains. However, the way translation and interpreting are handled reflects different policy approaches.

In the courts, laws such as the Court Interpreters Act have resulted in explicit translation management rules which shape translation practice by making professional interpreting, and consequently translation, the norm in Brownsville’s courts. These interpreters are certified/licensed by the court system itself, which then turns around and hires them. The purpose behind the certification/licensing is to make sure that interpreters can provide high-level services. This is based on the translation belief (i.e., belief about translation) that interpreters make it possible for individuals with limited English proficiency to participate in their own defence. The idea is that in order for an individual to present in his or her own legal defence, that person must be able to understand what is said during proceedings and must be able to speak and be understood in that context. Interpreters make this possible, both when they interpret during hearings and when they translate texts to facilitate written communication.

In local government, there are no explicit translation management rules. This means that translation practice is the result of pragmatic problem-solving by those who face the immediate difficulty of having to communicate with LEP individuals. The solution tends to be bilingual employees. It is they who are regularly tasked with communicating in Spanish as needed but also

with translating documents and, if necessary, with acting as language mediators between staff who cannot communicate in Spanish and residents who cannot communicate in English. They are neither trained nor certified to carry out these roles but simply fulfil them due to their being bilingual. This is based on the translation belief that anyone who speaks two languages can translate competently without the need of any further skill development.

Thus, this case study describes two contrasting policy approaches to the challenge of how to provide services to a population where two non-cognate languages are spoken. Seeing these approaches one might wonder about quality. Assuming that translation and interpretation are worth doing—and the belief is at present that they are—the question might be how one goes about making sure they are done well. One might surmise there are at least three ways to ensure quality. The first is to have some certification process by which the translation/interpretation provider is deemed to be competent to carry out the task. For example, an organization might require that all its translators have certain specific credentials, such as a professional certification. The second is to have some internal translation process by which the task is carried out through specific stages the result of which is deemed to be a quality product. For example, an organization might require that in order for a document to be translated, it must undergo a translation phase, a content revision phase and finally a language/style check phase. The third is to actually check the product for quality. For example, an organization might carry out quarterly audits of its translated documents and recorded interpreting encounters to verify the quality of the products being produced. And, of course, any combination of these three can increase quality.

In Brownsville's courts, quality is safeguarded mainly through the first approach: certifying the workers. This is done through a rigorous certification/licensing process that is



capped by passing an exam where candidates are tested on specific skills. Candidates to become state or federal interpreters must sit an exam that tests for general linguistic skills in Spanish and English and for the ability to effectively interpret in three modes: sight translation, consecutive interpretation and simultaneous interpretation. In the case of state courts, candidates must additionally attend an orientation course before being allowed to take the exam. This system is designed to assure that those who will be interpreting in the judiciary will provide a high-quality service.

A very different picture emerges in Brownsville's local government. Here no mechanism is observed to ensure quality. Translation, and as needed interpreting, is usually carried out by individuals whose main qualification to do this specific task is that they happen to be bilingual. Incidentally, they are not hired to be translators or interpreters but end up fulfilling this function on top of whatever their main obligation might be. So there is no certification process in place. Additionally, there are no specific, streamlined processes in order to create translations. Neither the City of Brownsville nor Cameron County have established translation offices or alternatively hired translations officers tasked with overseeing that translation procedures are in place. Finally, no recurring auditing procedures of translation and interpreting outputs have been observed. This means that there is no quality assurance for translation and interpreting in the local government domain.

Such contrasting policy approaches are the result of differences in translation management. In the judiciary, there are written rules that dictate how language difference is to be managed. These rules have resulted in specific translation and interpreting practices that are conducive to increased quality. On the other hand, local government has no specific rules to

provide instruction on how to manage translation. There are no written rules to follow, and so translation practice evolves organically, much like an untended garden.

Thus, at least one conclusion can be drawn from seeing how the challenge of a bilingual population is handled in Brownsville: when translation policy lacks written rules, there is no systematic way to ensure quality. Now, the opposite is not necessarily true. The fact that written rules are adopted does not mean that there will be quality assurance. All that is observed in Brownsville is that a lack of a written policy which spells out how translation is to be dealt with is conducive to improvised, ad hoc solutions. The easiest solution, in this particular context, is bilingual employees. This should not be surprising, as hiring the services of interpreters and translators is more expensive than using workers already at hand who will be paid anyway. So costs are an issue, which stresses the fact that in order to ensure an investment in quality language access, public entities often have to receive some sort of mandate to do it, either from the organization's top leaders or from higher up.

This is where the law can become a powerful agent in helping realize certain rights. People have a right to accessing certain government services without fear of specific types of discrimination. Yet if the service is provided in perfect English for speakers of English and in irregular Spanish for speakers of Spanish, the latter group is more likely to run into difficulties. These difficulties may range from the relatively unimportant (e.g., having to spend more time at the counter to receive a service) to the crucial (e.g., not being able to access a service due to difficulties in communication). If a federal law, state law or city ordinance requires that public institutions write out strategies or plans to ensure that quality is achieved in language access, then managers at those institutions have to take certain steps to make complete equality of access a reality.

The preceding paragraphs should not be seen as an attack on bilingual employees or as an endorsement of using professional translators and interpreters only. Rather, what is being stressed is that if quality in language access is desired, translation and interpreting should be done either through a process conducive to quality or/and by individuals who can create a quality product. Bilingual employees may be able to do this just fine, if they are properly selected and trained. But this is not currently going on at the local government level in Brownsville, so quality access cannot be guaranteed. At least not systematically.

In short, one way that local governments in some bilingual areas can improve their policies is by creating written rules for translation and interpreting. These rules should consider that the ultimate aim should be to bring about equality within society. For example, a policy document may create a translation office staffed by trained personnel charged with providing quality translation so that speakers of Spanish in Brownsville are on an equal footing with speakers of English. In a place where speakers of one language have long been made to feel that their language is somehow less deserving (and by extension, so are they), the adoption of such written guidance within public institutions can be an important tool for creating a more just society. In the end, that's what this is all about.

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