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Language Access in State Courts

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BRENNAN
CENTER
FOR JUSTICE

LANGUAGE ACCESS IN STATE COURTS

Laura Abel

Brennan Center for Justice *at New York University School of Law*

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EXECUTIVE SUMMARY

Across the country, people are stuck in a Kafkaesque nightmare: they must go to court to protect their children, homes or safety, but they can neither communicate nor understand what is happening. Nearly 25 million people in this country have limited proficiency in English (LEP), meaning that they cannot protect their rights in court without the assistance of an interpreter. At least 13 million of those people live in states that do not require their courts to provide interpreters to LEP individuals in most types of civil cases. Another 6 million live in states that undercut their commitment to provide interpreters by charging for them. And many live in states that do not ensure that the "interpreters" they provide can speak English, speak the language to be interpreted, or know how to interpret in the specialized courtroom setting. Many of those states are violating Title VI of the Civil Rights Act, which requires state courts receiving federal assistance to provide interpreters to people who need them.

When state courts fail to provide competent interpreters to LEP people in civil cases, the costs are high. People suffer because they cannot protect their children, their homes, or their safety. Courts suffer because they cannot make accurate findings, and because communities lose faith in the justice system. And society suffers because its civil laws – guaranteeing the minimum wage, and barring domestic violence and illegal eviction – cannot be enforced.

For these reasons, the federal Civil Rights Act requires state courts that receive federal funds to provide interpreters to LEP individuals in all civil and criminal cases. The constitutional guarantees of access to the courts, due process, equal protection and the right to counsel also require that interpreters be provided. The interpreters must be provided without charge. Courts must ensure that interpreters have essential language and interpreting skills. Judges and other court personnel must know when and how to use interpreters. And, courts must accord LEP individuals the same treatment they accord other individuals.

Despite these legal requirements, across the nation courts are shirking their responsibilities. We examined interpretation services in 35 states and found:

1. 46% fail to require that interpreters be provided in all civil cases;
2. 80% fail to guarantee that the courts will pay for the interpreters they provide, with the result that many people who need interpreters do not in fact receive them; and
3. 37% fail to require the use of credentialed interpreters, even when such interpreters are available.

These failings take a heavy human toll. Often, they violate federal law. Fortunately, the picture is not entirely bleak. Each of the failings is avoidable. In the last decade, the states have begun to develop programs to recruit, test, and assign court interpreters. At least 40 states have joined the Consortium for State Court Interpreter Certification, to obtain access to exams assessing the competence of their interpreters. As a result, states seeking to improve their interpreter programs have examples to follow. A revitalized federal Department of Justice is now energetically enforcing civil rights laws. And, federal legislators are looking for ways to provide state court systems with additional funding for essential court interpreter services. With this report, we hope to facilitate and accelerate all of these efforts, to help states meet their obligations, and to ensure that, in the end, justice will speak.

INTRODUCTION

THE IMPORTANCE OF LANGUAGE ACCESS IN THE STATE COURTS

For many of the tens of millions of Americans with limited proficiency in English, our court system is impenetrable. With no access to an interpreter, they cannot communicate with judges, court clerks or even their own lawyers, cannot give or understand testimony, and cannot even comprehend settlement agreements or court orders. As the Arizona Supreme Court puts it, a trial involving a defendant who cannot understand English and has no interpreter is "an invective against an insensible object."[1] The consequences can be dire. Litigants who cannot understand court proceedings cannot obtain restraining orders to protect them from domestic violence, argue for custody of their children, successfully fight against their family's eviction, or compel employers to pay wages owed them.

> "You have been involved in promoting the need for court interpreters. How important are they today, given not only the number of litigants with disabilities, but also the increasing number of pro se litigants who do not speak English as their primary language?
>
> [Judge] Brown: On a scale of 1 to 10, it's a 10. A person who doesn't understand what's going on in the courtroom is not able to participate and justice can't be meted out."
>
> *Wisconsin Law Journal, Mar. 3, 2008.*

The problems are widespread. Nearly 25 million Americans have limited English proficiency (commonly known as "LEP" individuals).[2] The number of people who lack proficiency in English has grown rapidly, catching many state court systems off guard. The number of people who spoke a language other than English at home increased by 38% in the 1980's and by 47% in the 1990's.[3] In part because of a national shortage of English as a second language classes, it will take years for many to become proficient. Some – particularly people with disabilities, senior citizens, and people who cannot read any language – will never do so.[4]

Here is what happened to just two LEP individuals who were unable to obtain an interpreter:

Estefani almost ended up in foster care

Estefani's grandparents needed to enroll her in school and get health care for her, but could not do so without a court order. They went to court several times but were unable to accurately describe their situation in English. After many delays, including two hearings continued for lack of an interpreter, they learned they were pursuing the wrong order. Because the child's medical condition was worsening and the school year approaching, they nearly gave her up to foster care. Finally, they turned to a court self-help

center, which, with the assistance of a volunteer interpreter, was able to help them get the proper order.[5]

A wife was unable to get a temporary restraining order against her murderous husband
A Korean woman seeking a protective order against her white, native-born husband testified that he had threatened to kill her and had firearms expertise. The judge denied the restraining order because he could not understand her testimony.[6]

As a rule, state courts have recognized their obligation to provide interpreters to people facing criminal charges, although the quality varies widely, and some states improperly charge at least some criminal defendants for interpreters.[7] Although most state courts also have a constitutional or statutory obligation to provide interpreters in civil proceedings, some states have been faster to comply than others. Some ensure that interpreters are made available, free of cost, to all parties and witnesses in all civil proceedings. Others provide interpreters in only some types of civil proceedings, charge for the interpreters they provide, or provide interpreters whose competence has never been assessed.

The result is that in some states, LEP individuals can participate in court proceedings to seek protection from spousal abuse, defend against eviction from their homes, or seek custody of their children. In other states, however, LEP individuals face enormous barriers to doing so. Some try to get by with a substandard interpreter provided by the court, never knowing whether the judge in their case is receiving an accurate translation of what they are saying. Others bring children or friends, facing the same accuracy problems and also the fear that their loved ones – who may have their own stake in the outcome of the proceeding – will subvert their words. As Maureen Dunn, an interpreter for the deaf, observes, "A family member is the worst person you can use. They have their own side of the story, and they add and omit things."[8] Parents who must use their young children to interpret have the added agony of knowing that the children are hearing the often shocking details of intimate abuse or other highly personal matters.[9] In order to avoid exposing the loved one to such information, parties may omit key information out of a sense of privacy or decorum.

> "Both Kurzban and Greer Wallace, Perez's lawyer, said the transcript shows Perez did not give up custody voluntarily. For one thing, they said, Perez did not have a court interpreter. A relative of Perez's estranged husband, who may have had motives of his own, they said, translated.
>
> The transcript shows Perez appeared confused: 'It's just that I don't understand,' she said at one point."
>
> *Miami Herald, Aug. 27, 2007*

In addition to the individuals unable to participate in the court system, a lack of court interpreter services has dire consequences for states and local communities. Our system of laws depends on people being able to access the courts to enforce those laws. When millions of people are unable to do so, the result is the underenforcement of many of our most cherished laws – governing public safety, wages and other working conditions, and the protection of civil rights, to name just a few. When immigrant workers are unable to access the courts to enforce their rights to earn the minimum wage and to safe working conditions, for example, the result is that wages and working conditions fall not just for them, but for everyone in the community.

Access to the courts for immigrant communities is an essential part of civic education, and of the process of integrating immigrants into their communities.[10] For immigrants to have faith in our democracy, they must know that just like other Americans they can go to court to enforce their legal rights. When they cannot do so, their entire community is vulnerable to exploitation. And when immigrants cannot enforce their rights to the minimum wage, to be free from violence in the home, or not to be evicted illegally, they lack the stability in their lives that they need to become productive members of society.[11]

A Montgomery County judge dismissed charges against Mahamu Kanneh, accused of sexually assaulting a 7-year-old girl, because a Vai interpreter could not be found in time to fulfill his right to a speedy trial.

Daily Record, July 30, 2007

Courts suffer, too, when interpreters are not available. Judges cannot administer justice when litigants in their courtrooms are unable to understand what is going on, or to convey crucial information to the court.[12] U.S. Supreme Court Justice Anthony Kennedy has called the lack of qualified court interpreters a significant threat to our justice system.[13] Wisconsin Court of Appeals Judge Richard S. Brown agrees, characterizing the importance of court interpreters to the courts as "on a scale of 1 to 10, it's a 10." He explains why: "A person who doesn't understand what's going on in the courtroom is not able to participate and justice can't be meted out."[14]

Among the many problems courts suffer because of a lack of interpreters is that without them, parties cannot comply with court orders and timetables.[15] In a case pending before the Nebraska Supreme Court, a mother is challenging the state's removal of her children, in part for just this reason. Apparently, the trial court had provided her with a list of things she needed to do in order to regain custody of her children. The list was written in English, and later explained to her in Spanish. However, she has only "limited skills" in both languages -- her native language is Quiche, which is spoken by many indigenous Guatemalans. Without understanding the list, she was unable to comply.[16]

Not surprisingly, the public image of the courts suffers when interpreters are not available. In California, two-thirds of Asians and Hispanics believe that the courts treat English speakers better than LEP individuals.[17] Such perceptions can lead to a lack of public confidence in the court system.

Fourteen years ago, the National Center for State Courts conducted a national study regarding interpretation in the state courts. It found that judges tended to be unaware of the need for interpreter services and unable to determine whether a particular interpreter was qualified, most states and localities lacked the resources to test interpreters' proficiency, and it was difficult to find qualified interpreters.[18] Following up on the report's recommendations, four states founded the Consortium for State Court Interpreter Certification to pool the states' resources to develop court interpreter testing programs.[19] Today, 40 states are members of the Consortium,[20] and vast improvements in language access have been made in many states.[21] Nonetheless, as this report documents, there is much more that can and must be done.

The challenge of establishing a successful court interpreter program should not be understated. In some states, well over a hundred languages, and many more distinct dialects, are spoken.[22] Court interpreters must be recruited, trained and tested for each language. They must be compensated at a level adequate to attract and retain competent interpreters. They must be appointed in a timely manner. The endeavor requires substantial amounts of funding and administrative time.

Some states have done it, though. Other states can take advantage of their experiences, and of tools such as the Consortium for State Court Interpreter Certification, to implement quality court interpreter programs while keeping costs down. We hope that the information in this report will prompt states to act.

HOW TO USE THIS REPORT

This report sheds light on the uneven nature of states' compliance with their obligation to provide interpreters to LEP individuals in civil proceedings. In it you will find:

A description of the **legal obligation** of state court systems to provide language access in civil proceedings is discussed in Section I.

Guidelines for the provision of court interpreters in civil cases are set forth in Appendix B and discussed in Section II. The guidelines are based on recommendations published by the Department of Justice, National Center for State Courts, Conference of State Court Administrators, and National Asian Pacific American Bar Association, and on our own conversations with court administrators and civil legal aid lawyers.

Our findings regarding **the extent to which states are complying with these guidelines** are discussed in Section II.

Suggested next steps for advocates, court administrators and others are included in the Conclusion. We provide links to websites discussing best practices in court interpretation and in language access to government services. We also provide information about how to file a civil rights complaint with the U.S. Department of Justice, and how to locate other language access advocates.

A **checklist** for advocates, court administrators, legislators and others to use to assess the extent to which their own state complies with its legal obligations is included in Appendix C.

Detailed descriptions of the court interpreter programs of each of the 35 states with the largest LEP populations (measured as a percentage of the state's total population) are available online at www.brennancenter.org.

Our **methodology** is described in Appendix A.

This report does not cover several vitally important topics, each of which merits its own report: the availability of interpreters in criminal proceedings,[23] interpreters for the hearing-impaired,[24] translation of written documents and forms,[25] interpretation outside the courtroom,[26] and the terms and conditions of court interpreters' retention.[27]

I. The Legal Obligations of State Courts

The constitutional rights of access to the courts, counsel (applicable in some but not all civil proceedings), due process, and equal protection require the provision of interpreters in civil cases. Federal courts have held that LEP defendants in criminal and asylum cases have a constitutional right to an interpreter.[28] State courts have held that there is a constitutional right to an interpreter in small claims cases, and in cases concerning child welfare, domestic violence restraining orders, employment, landlord-tenant disputes, and trespassing.[29] Although these rulings were issued in the context of specific types of cases, the reasoning underlying them is applicable to other types of civil cases. For example, the holdings that the denial of an interpreter deprives an individual of a meaningful opportunity to be heard apply to the many situations in which a litigant has a meaningful opportunity to be heard.[30]

> "The need to show progress in providing all LEP persons with meaningful access increases over time . . . We cannot reward past non-compliance with lenient enforcement today."
>
> *Loretta King, Acting Assistant Attorney General for Civil Rights, U.S. Department of Justice (April 20, 2009)*

In addition to these constitutional requirements, an Executive Order and Department of Justice guidance document confirm that Title VI of the Civil Rights Act of 1964 requires most state and county courts to provide language services to LEP persons. According to Title VI, "[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."[31] The United States Supreme Court has interpreted Title VI's prohibition against national origin discrimination as prohibiting recipients of federal funding from denying services to individuals based on their inability to speak English, emphasizing that "[d]iscrimination is barred which has that effect even though no purposeful design is present."[32]

If individual state or county courts receive federal funding to support their operations, Title VI requires them to ensure that LEP persons can participate in or benefit from their programs and activities. They are bound by Title VI whether they get their funding directly from a federal agency, or whether they receive the funding as a subrecipient of a state entity or a non-profit. Moreover, when a state or county court that receives federal funding is part of a unified court system, then all other courts that are part of that system are likewise bound by Title VI.[33]

At least some courts in most states must comply with Title VI because they receive federal funding from the U.S. Department of Health and Human Services, Department of Justice, Department of Transportation's National Highway Traffic Safety Administration, or the State Justice Institute.[34] Types of grants commonly received by state courts include grants to create or improve

drug court programs, Byrne grants, Court Improvement Program funds, Temporary Assistance to Needy Families, and Title IV-D Child Support Enforcement funds.[35]

In 2000, President Clinton added specificity to the Title VI mandate by issuing Executive Order 13166, requiring both federal agencies and the recipients of federal funding to "ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964."[36] A 2002 Department of Justice policy guidance document issued pursuant to the Executive Order reiterated that "failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964…and Title VI regulations against national origin discrimination."[37]

The policy guidance sets out a four-part test for determining whether federal funding recipients must provide interpreters:

> (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
> (2) the frequency with which LEP individuals come in contact with the program;
> (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and
> (4) the resources available to the grantee/recipient and costs.[38]

Although the existence of a four-factor test might imply that there are no hard and fast rules regarding the obligation of state courts to provide interpreter services, that is not the case. Because "America's courts discharge a wide range of important duties and offer critical services both inside and outside the courtroom," and because each encounter with the courts "is a critical encounter to participants in the judicial process," Title VI imposes certain minimal requirements on state court systems that receive federal funding.[39] These include:

A. Interpreters must be provided in criminal and civil matters for "LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present."[40] The mandate applies to critical encounters that occur outside of the courtroom, as well, although not necessarily to less important events, such as purely voluntary courthouse tours.[41]

B. Litigants must not be charged for the services of an interpreter used to interpret courtroom proceedings.[42]

C. States must ensure that the interpreters they provide are competent.[43]

D. Judges and other court personnel who come into contact with LEP litigants or witnesses must know when and how to use interpreters.[44]

E. In all other ways, to the extent possible, LEP individuals must receive the same treatment as other court participants. Courts have an obligation to avoid undue delays in court proceedings because of the need to procure the services of an interpreter.[45]

The DOJ guidance makes clear that a funding recipient may choose to have a more extensive apparatus for the delivery of language access services for languages which are spoken more frequently, and a less extensive apparatus for languages which are spoken less frequently.[46] For example, they may use measures other than a formal credentialing test to determine whether an interpreter is competent.[47] However they choose to provide the services, though, they must comply with each of the minimal requirements described above.

Recently, DOJ has placed two important glosses on the language access obligations of state courts and other federal funding recipients. First, it has made clear that in the nine years since President Clinton's Executive Order was issued, and the eight years since the DOJ guidance was issued, funding recipients' language access obligations have increased:

> [A]s time goes on, the bar of reasonableness is being raised. The need to show progress in providing all LEP persons with meaningful access increases over time. This is not a new concept. We cannot reward past non-compliance with lenient enforcement today.

Second, DOJ emphasizes that budget problems are no more an excuse for violating Title VI than they would be for violating any other legal obligation:

> [E]ven in tough economic times, assertions of lack of resources will not provide carte blanche for failure to provide language access. Language access is essential and is not to be treated as a "frill" when determining what to cut in a budget. We need to be asking hard questions and holding the line when resources are used as a defense to compliance with any civil rights obligations.[48]

The DOJ mandate is clear: state courts receiving federal funding must comply now.

II. Guidelines for Court Interpreter Programs

There are several sources to which states can turn to find legal requirements and "best practices" for the provision of interpreter services in civil cases. These include the Department of Justice guidelines discussed above, recommendations issued by the Conference of State Court Administrators and the National Asian Pacific American Bar Association, and a model statute developed by the National Center for State Courts.[49] From those documents, and from our conversations with court administrators, civil legal aid lawyers, language access advocates, and the New York City-based Justice Speaks coalition, we have extracted the following guidelines.

A. Legal obligation: Provide interpreters to all LEP litigants and witnesses in all civil proceedings.

Practices likely to lead to compliance with this requirement

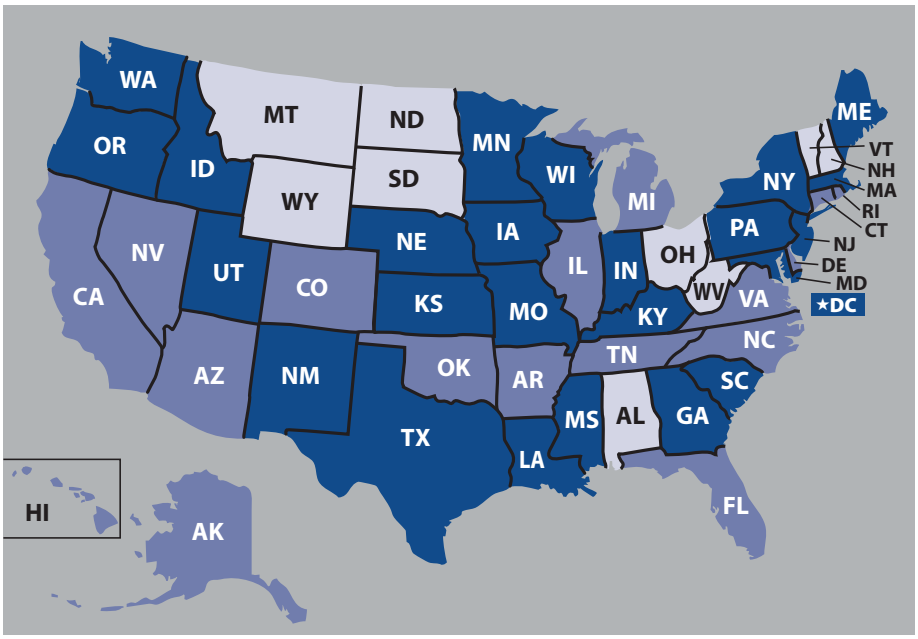
1. Have a written statewide mandate in place covering all parties and witnesses in all civil proceedings.

As discussed above, Title VI clearly requires the provision of interpreters in all civil proceedings. Interpreters should be provided for LEP parties, witnesses, and victims, and for LEP parents and guardians of English proficient minors who are appearing as a litigant, witness or victim.[50] To ensure that all participants in the court system are aware that interpreters must be provided, there should be a written mandate, applicable throughout the state.[51] It can be in the form of a statute, court rule, or administrative order. As Map 1 indicates, 25 of the 42 states whose policies we examined do have such a written mandate in place.[52]

> "There are no statutory requirements nor any constitutional obligations that public funds be expended for appointment of language interpreters in civil cases."
>
> *Website of 18th Judicial Circuit Court, DuPage County, Illinois*

However, as that map also indicates, at least 17 states either lack a statewide mandate or require the provision of interpreters in only some types of civil proceedings. In states without a statewide mandate, the decision whether to provide interpreters usually is left up to individual courts, some of which do provide interpreters in some proceedings and some of which do not provide interpreters at all. For example, there is no statewide mandate in Oklahoma. A Tulsa County court rule requires the provision of an interpreter "in all court proceedings in which any party or witness is unable to clearly understand and/or speak English."[53] In Oklahoma County, on the other hand, interpreters are not provided in civil cases.[54]

Map 1: Mandatory written requirement covering all civil cases



Yes, there is a mandatory written requirement covering all civil cases.
DC, GA, ID, IN, IA, KS, KY, LA, ME, MD MA, MN, MS, MO, NE, NJ, NM, NY, OR, PA, SC, TX, UT, WA, WI

No, there is no mandatory written requirement covering all civil cases.
AK, AZ, AR, CA, CO, CT, DE, FL, HI, IL, MI, NV, NC, OK, RI, TN, VA

Status unknown.

Applicable statutes and rules are listed in Appendix D. For the 35 states about which we conducted extensive research (listed in the Methodology section of this report), we indicate in Appendix D whether the practice adheres to the cited law or rule. For all other states, we do not know what happens in practice.

The author expresses her gratitude to the Washington Coalition of Sexual Assault Programs and ABA Commission on Domestic Violence, which compiled many of these statutes in their table, "State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Cases."

2. Have a clear standard and guidelines for determining eligibility.

In order to ensure that all LEP individuals receive interpreters, all states should have a clear standard for the level of a lack of proficiency in English sufficient to warrant appointment of an interpreter. The standard should include a presumption that anyone requesting an interpreter needs one.[55] Additionally, to ensure that eligibility determinations are made in a uniform manner throughout the state, each state should have guidelines for determining whether the eligibil-

ity standard has been met.[56] A number of existing guidelines instruct judges to ask open-ended questions designed to allow the judge to assess the person's comprehension and ability to communicate.[57] Directly asking about the person's level of comfort in speaking and understanding English is a good idea, too.[58] Additionally, judges should be aware that an ability to speak some English does not mean that an individual can speak or understand enough to proceed without an interpreter, particularly in a complicated, emotionally intense proceeding.[59]

3. Have a clear procedure for appealing denials of interpreters.

One way to ensure that the state's guidelines for appointment of an interpreter are being followed in a uniform manner is to have a clear appeals procedure in place for people denied access to an interpreter. This enables appellate courts to review the denials to ensure that they are based on an appropriate application of the correct criteria.

In order to ensure that appeals are available, all denials of an interpreter should be placed on the record.[60] There should be an established process for appeals. Upon denial of an application for an interpreter, the court should inform the applicant of the right to appeal, and of how to do so.

It is also recommended that litigants denied the appointment of an interpreter be allowed to appeal that denial immediately, instead of having to wait for the conclusion of their legal proceeding. The denial of an interpreter may cause a litigant irreparable harm. For example, the litigant may make "admissions" or enter into a settlement agreement he does not understand. Or, a litigant unable to understand or make himself understood may decide to drop the litigation. Also, jurisdictions may waste their own resources if they go ahead with a proceeding, only to be told on appeal that the failure to appoint an interpreter was erroneous and that, as a result, the entire proceeding must be retried. Although we are not aware of any jurisdiction that clearly allows interlocutory appeals from a denial of an interpreter, there are a number of jurisdictions that allow interlocutory appeals from denials of the appointment of counsel, for many of the same reasons.[61]

4. Deny interpreter waivers if they are not knowingly and voluntarily made, or if the court determines an individual has limited proficiency in English.

Given the importance of an interpreter to an LEP individual involved with the court system, and the potential for misunderstanding on the part of the LEP individual, waivers of the appointment of an interpreter should be granted only if the court finds that the waiver is made knowingly and voluntarily. Many states do have such a requirement.[62]

However, that should not be the only precondition for waiver. The purpose of an interpreter is

not only to assist the LEP individual, but also to assist the court in understanding and communicating with that individual. Consequently, waiver of an interpreter should not be allowed if a court determines that an individual has limited proficiency in speaking or understanding English.[63] For example, in South Carolina a court can allow waiver of an interpreter by a party who "does not sufficiently speak the English language to testify" only if the court finds, on the record, that waiver is both in the best interest of the LEP individual and that waiver "is in the best interest of justice."[64] Likewise, Nebraska sharply curtails waivers of court-appointed interpreters, providing that "[h]earings for parties who appear with their own interpreter may be continued pending the court's determination of language needs of the individual and the qualifications of the intrpreter."[65]

5. Inform all litigants, witnesses and others of their right to an interpreter during their first contact with a judge or court clerk.

Parties, witnesses, and anyone else entitled to an interpreter must be informed of the availability of interpreters, and of the fact that interpreters will be provided free of charge.[66] This information must be provided at the moment of their first contact with the court system.[67] Notice should be provided at each of the entry points into the court system, including by:

A. posting it on the court system's website;

B. prominently placing signs in clerks' offices, courtrooms and other public areas;

C. having the first court employee to come into contact with litigants provide the notice; and

D. including language on documents and forms informing parties of this right.

As a general rule, notice should be provided in each of the languages in which interpreter services are commonly requested, in wording comprehensible to non-lawyers.[68] That means, for example, that even though a form may be provided in English, it should state, in the commonly requested languages, that interpretation services are available.

There are a number of resources available to help court personnel provide the requisite notice:

- **I speak cards:** Court personnel who speak only English can use "I speak" cards – which have the sentence "I speak [whichever language]" translated into commonly used languages – to help individuals identify the language they speak, and then can provide them with written notice of their rights in that language. The Department of Justice's Bureau of Justice Assistance and the Ohio Office of Criminal Justice Services have de-

veloped an "I Speak Language Identification Guide" for law enforcement and criminal justice agencies, which court systems may find useful.[69]

• **You have a right poster:** Massachusetts Legal Services has developed a notice stating, in 32 languages, "You have a right to an interpreter at no cost to you. Please point to your language. An interpreter will be called. Please wait."[70]

Some court systems already use these and other materials to provide at least some notice of interpretation rights:

• **Maine:** The state recently agreed, in response to a federal DOJ investigation, to "post notices in commonly encountered languages notifying LEP persons of language assistance to encourage them to self-identify," and to develop "language identification cards (or 'I speak' cards), which invite LEP persons to identify their language needs to the Judicial Branch staff."[71]

• **Minnesota:** Sherburne County displays a sign in the staging area of its district court stating, in the 11 languages most commonly used in the court system, "You may have the right to a court-appointed interpreter in a court case. Please ask someone at the court information desk."[72]

• **Nebraska:** Parties are informed of their right to an interpreter by the judge at the first court appearance.[73]

• **New York:** The website of the Unified Court System has a page informing individuals of the availability of interpreters, and how to obtain one. The page is available in English and seven other languages.[74]

All too often, however, no such notice is provided. In most of the states we studied, there is no way to determine by looking at the state court system's website the types of parties or cases for which interpreters are available, and whether parties must pay for their own interpreters. Many state court interpreter program websites are geared towards recruiting interpreters and provide no information for litigants.[75] Some court system webpages provide incorrect information about the types of cases in which interpreters are available. For example, the webpage of the Connecticut Judicial Branch states, "Interpreters are provided for limited-English speaking defendants, victims, witnesses, and family members in criminal cases," even though interpreters are, in fact, provided in dependency and termination of parental rights cases too.[76]

The problem is compounded by the fact that, as discussed below, although many states have statutes or court rules purporting to require the provision of interpreters to LEP individuals in all types of cases, some of those states do not in fact provide interpreters free of charge in many types of civil cases.[77]

As a result, even if a litigant is able to find the governing statute or court rule, he or she still may not be able to determine in which types of cases interpreters are, in fact, provided.

Learning this information is not necessarily easier in person. A National Center for State Courts study regarding the availability of interpretation in domestic violence protection order cases nationally found that "[f]ewer than 20 percent of the courts use language identification cards or posted signs informing the public of the availability of free interpretation services."[78] And, American Friends Service Committee researchers visiting small claims courts in five New Jersey counties throughout the summer of 2007 found "no document informing individuals of their right to free language services." The researchers also observed that "while staff members may informally advise clients verbally of language services, there does not seem to be a formalized procedure in place to do so."[79]

B. Legal obligation: Do not charge for interpreters.

As the Department of Justice notes, "Court systems that charge interpreter costs to LEP persons impose an impermissible surcharge on litigants based on their English language proficiency."[80] Consequently, Title VI's ban on even unintentional differential treatment based on ability to speak English bars states from charging litigants for interpreter services.[81] The concern extends beyond the burden of having to shoulder a payment that other litigants need not shoulder: opposing counsel or litigants could use the threat of added interpreter expenses to coerce a settlement. Such a threat could not be used against a litigant who is proficient in English.[82] The Philadelphia Bar Association raises another fairness concern, as well: "Because certified court interpreters are required for the court to operate efficiently and fairly, their costs should be borne by the court system just as other operating costs such as judicial salaries, court staff, security, computers and paper."[83]

> "Gov. Arnold Schwarzenegger has vetoed legislation to pay for court interpreters in civil cases, drawing protests from advocates who said growing numbers of state residents need translations to understand legal proceedings."
>
> *San Francisco Chronicle, Oct. 5, 2006*

Since 2002, the Department of Justice repeatedly has made clear states' obligations in this regard:

- The 2002 Guidance states that "when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person," and that this is particularly true in courtrooms or other settings where health and safety are at stake.[84]

• A 2004 Tips and Tools document recommends that states "[m]ake interpretation and translation services freely available in civil and criminal matters."[85]

• A Memorandum of Understanding with the State of Maine Judicial Branch recites the state's obligation to "provid[e] competent language services at the state's expense."[86]

• Commonly Asked Questions and Answers, posted on the Department of Justice website in October 2008, states that "[t]he agency or recipient should meet its obligations under EO 13166 or Title VI by supplying competent language services free of cost."[87]

• A February 2009 letter to the Indiana Supreme Court states, "DOJ . . . generally considers charging LEP parties for the cost of interpreters to be inappropriate."[88]

In addition to these legal mandates, charging litigants for interpreters causes practical problems for the courts. When states charge litigants for interpreters, many LEP litigants abstain from requesting interpreters, and judges abstain from appointing them. For example, in Indiana, court discretion in assessing the cost of interpreter services means that in many counties, attorneys and litigants avoid requesting court-provided interpreters.[89] In February 2009, the Department of Justice wrote to the Indiana Supreme Court, informing it that Title VI bars charging litigants for interpreters.[90]

> "Court systems that charge interpreter costs to LEP persons impose an impermissible surcharge on litigants based on their English language proficiency."
>
> *Letter from U.S. Department of Justice to Indiana Supreme Court, Feb. 4, 2009*

> "In any civil action, an attorney representing a party or a party, not represented by an attorney, intending to call a witness who will require a foreign language interpreter shall arrange and pay for such interpreter."
>
> *Missouri 9th Judicial Circuit Court Rule 56.1*

Despite the legal and practical problems created when states charge litigants for interpreter services, 33 of the 42 states whose payment policies we examined require or allow courts to charge nonindigent LEP individuals for interpreter services in at least some types of civil cases.[91] A few states require, or provide judges with the discretion to require, that even indigent LEP individuals must reimburse the courts for the cost of their interpreters.[92]

Some states do not even provide consistent funding for interpreters for indigent litigants. For this reason, a number of states that have statutes purporting to allow or require the appointment of an interpreter in civil cases in fact do so rarely, or only in certain types of cases, because there is no funding for interpreters:

• **Arkansas:** The District Judges Benchbook cautions:

> The 2005 Arkansas General Assembly again appropriated funds for the purpose of reimbursing the services of eligible foreign language interpreters who serve during in-court proceedings in the state's circuit and district courts. Because the amount of money available is insufficient to provide for the large number of interpreters providing services in the state, local courts are urged to continue to rely upon available local resources or the resources of the parties involved in the litigation. The Administrative Office of the Courts also employs two full time Spanish interpreters who are available on request and as time permits to provide direct interpreter services to local courts.[93]

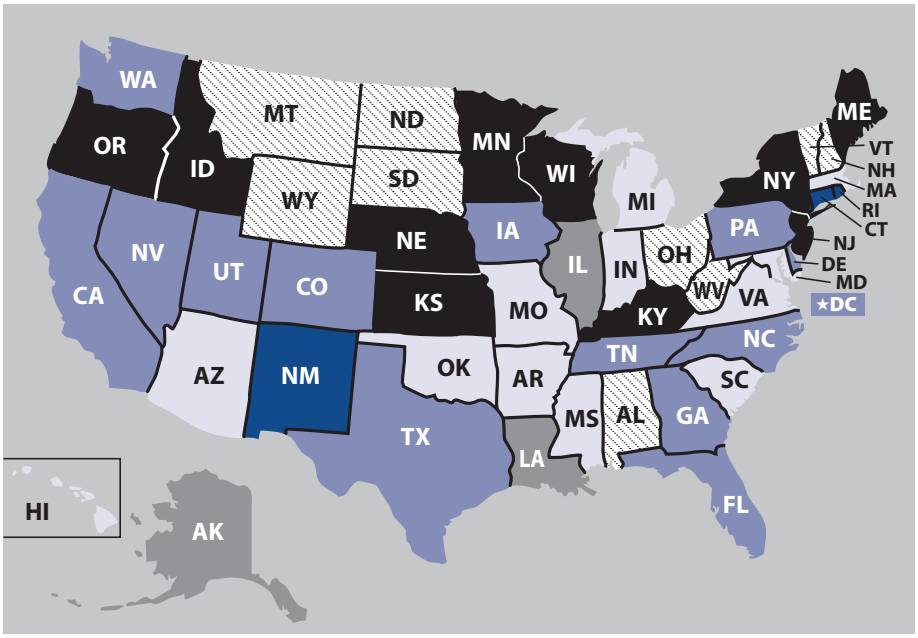
• **California:** In the few types of civil proceedings in which statutes require the appointment of interpreters, the fact that state funds cannot be used to pay for the interpreters means that they are rarely appointed.[94]

• **Utah:** A court rule provides that "[w]hen an interpreter is requested or when the appointing authority determines that a principal party in interest or witness has a limited ability to understand and communicate in English, a certified interpreter shall be appointed."[95] However, the state only pays for interpreters in cases filed on behalf of the state in Juvenile Courts, certain emergency motions, cohabitant abuse cases, stalking injunctions, and child protective orders.[96] As a result, in practice those are the only types of civil cases for which interpreters are appointed.[97]

> "In a civil case, the Court, as a condition of entering an order for the appointment of a qualified interpreter or translator, may order one or more of the parties to deposit funds into the Registry of the Court in a specified amount reasonably necessary to cover the fees and expenses of the qualified interpreter or translator. . . .The Judicial Administrator shall not retain the necessary qualified interpreter or translator for the Court until such funds are deposited as ordered."
>
> *Missouri 21st Judicial Circuit Court Rule 25.1(5)*

The following map provides the information we were able to find regarding state policies with respect to charging litigants for the cost of foreign language interpreters in civil cases.

Map 2: Who pays for interpreters



Government always pays without means test. In all civil cases, government appoints and pays for interpreters, and litigant is not charged for the cost. ID, KS, KY, ME, MN, NE, NJ, NY, OR, WI

Government sometimes pays without means test. In some but not all civil cases, government appoints and pays for interpreters and does not charge the litigant for the cost. CT, NM, RI

Government pays only after applying means test. In some or all civil cases, government appoints and pays for interpreters, and does not charge the litigant for the cost, but only if the litigant cannot afford to pay. CA, CO, DC, DE, FL, GA, IA, NV, NC, PA, TN, TX, UT, WA

Government never pays. Litigants must always pay for interpreters appointed by the court, either by providing their own or by reimbursing government for the cost. AK, IL, LA

Court's discretion. Whether government pays interpreters appointed by the court and/or whether government charges litigant for the cost is within the court's discretion. AZ, AR, HI, IN, MD, MA, MI, MS, MO, OK, SC, VA

Status unknown.

Applicable statutes and rules are listed in Appendix E. For the 35 states about which we conducted extensive research (listed in the Methodology section of this report), we indicate in Appendix E whether the practice adheres to the cited law or rule. For all other states, we do not know what happens in practice.

The author expresses her gratitude to the Washington Coalition of Sexual Assault Programs and ABA Commission on Domestic Violence, which compiled many of these statutes in their table, "State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Cases."

C. Legal obligation: Ensure that interpreters are competent and act appropriately.

Practices likely to lead to compliance with this requirement

1. Assess ability before appointing an interpreter.

When unqualified interpreters are used in court, the consequences can be tragic. An unqualified interpreter can give the impression of rendering the LEP individual's words accurately, while garbling them completely. In a Massachusetts case, a woman seeking a domestic violence restraining testified that her abuser said, "I want you dead." The interpreter, though, stated that she had said, "He scolded me."[98] In Florida, an interpreter was allowed to interpret in more than 5,000 cases, although her competence had not been assessed. In one case, she interpreted so poorly that the defendant pleaded guilty to stealing a dump truck, which is a felony, and was sentenced to 15 years in prison, even though he thought he was pleading guilty to taking a toolbox, which is a misdemeanor for which he would be merely placed on probation.[99]

> "In testimony before the Senate Judiciary Committee last year, Supreme Court Justice Anthony Kennedy said that the current lack of qualified court interpreters poses a significant threat to our judicial system and emphasized the importance of addressing the issue."
>
> *U.S. Federal News, Apr. 24, 2008*

Unqualified interpreters can subvert the proper functioning of the courtroom in other ways, too. For example, interpreters who are unfamiliar with the ethics requirement that they remain neutral may try to persuade an LEP individual to drop her request for an order of protection.[100] A suggestion of this sort can carry an enormous amount of weight, since an LEP individual may not understand whether the interpreter is transmitting his own opinion or a statement from the judge.

In order to interpret effectively from one language to another, an interpreter must possess several abilities:

- fluency in both languages (including the particular dialect spoken by, and slang and idioms used by, the individual);

- ability to maintain the meaning, style and tone of the original source;

- whichever interpretation skill is needed in that particular case: simultaneous interpretation (which is usually used in interpreting the proceedings for an individual), consecutive interpretation (which is usually used in interpreting the testimony of an individual), and/or sight translation of written materials; and

• familiarity with the unique culture of the courtroom, any legal matters the interpreter will need to interpret, and the ethical duties of an interpreter.[101]

Interpreters who interpret in domestic violence, sexual assault, or child abuse cases, or in other matters that are particularly sensitive or complicated, may need additional skills. However, a recent national study conducted by the New York-based Justice Speaks coalition found that while the vast majority of interpreters responding to their study had provided interpretation in order of protection hearings, few had received training regarding domestic violence, sexual assault or child abuse sensitivity.[102]

a. Use only interpreters who have obtained a credential through a process that provides training and tests the requisite abilities.

Requiring interpreters to obtain credentials through a process that provides training and tests the necessary abilities is the best way of ensuring that the interpreter possesses those skills.[103] The Spanish-English Federal Court Interpreter Certification Examination administered by the federal Administrative Office of the Courts is generally viewed as the gold standard.[104] Unfortunately, it can be used only for Spanish language interpreters. However, for 16 languages there are oral interpreting exams available through the Consortium for State Court Interpreter Certification.[105] Some of those exams assess both consecutive and simultaneous interpreting, while some test only the former.[106]

For languages that are rarely used in a given community, or for which oral exams are not yet available, courts may have difficulty finding interpreters who have obtained credentials through a process testing the requisite skills. As discussed below, in such situations, in order to comply with their legal obligations court systems have an obligation to recruit and train interpreters so that they can obtain such a credential. Members of the Consortium for State Court Interpreter Certification have access to a standard core curriculum and training materials that can be used to train interpreters regardless of the language that they will be using.[107]

"'The shortage of qualified interpreters has become a national problem, and it has serious consequences that can unfairly alter legal decisions and affect lives,' [Senator] Kohl said."

U.S. Federal News, Apr. 24, 2008

At least six states – including Alaska, Arizona, Illinois, Kansas, Louisiana, and South Dakota – have no formal mechanism in place to assess the competence of interpreters.[108] Moreover, of the 35 states whose court interpreter programs we examined in detail, 13 do not require that courts use credentialed interpreters even when those interpreters are available.[109]

Among states that require the use of credentialed interpreters whenever possible, many use credentialed inter-

preters only in Spanish.[110] Many states also have difficulty providing credentialed interpreters in rural areas.[111] In California, for example, nearly 20 counties did not have a single certified court interpreter in any language as of 2002.[112] This shortage meant that in 2004–2005, over 15% of cases in languages for which interpreter certification is available, and 30% of cases in other languages, used interpreters whose qualifications had never been tested.[113]

b. Rely on non-credentialed interpreter only after trained, dedicated court staff assess the interpreter's qualifications.

While courts are recruiting and training interpreters, they can rely on non-credentialed interpreters, but, as the Department of Justice warns, they must "consider carefully the qualifications" of such interpreters.[114] That means that courts must verify that the interpreter actually possesses the required capabilities, not just that the interpreter has experience. To ensure that these assessments are performed correctly, they should be conducted by court staff who possess court interpreting expertise, have been trained to perform interpreter assessments, and perform such assessments regularly as part of their job. As the National Center for State Courts warns, "It is inefficient for trial judges to be responsible for the ad hoc determination of interpreter qualifications in the courtroom, and the results of in-court voir dires . . . remain problematic in the best of circumstances."[115] The need to assess the skills of noncredentialed interpreters extends to bilingual court employees, who should not be used to provide interpretation unless their skills have been assessed in the same manner as all other court interpreters.[116]

> "The interpreters on this list have completed a one-day training workshop on court interpreting, have passed an ethics exam, and have completed various other requirements . . . . They have not been tested on their language abilities."
>
> *Utah's list of Approved Court Interpreters*

Courts must also assess the skills of interpreters who have been deemed "certified," "licensed," "provisionally certified," "registered," "qualified" or something else without demonstrating all of the skills necessary for a court interpreter. This occurs all too often, because outside of the federal courts there is no standard definition for any of these terms. For example, California deems interpreters "registered" if they pass a written exam testing English fluency, knowledge of court procedures, and ethics, without requiring those interpreters to demonstrate oral interpretation proficiency or proficiency in the language they will be interpreting.[117] Tulsa County, Oklahoma deems interpreters "certified" if they have observed two court proceedings, agreed to comply by ethics rules, and have a degree from a four-year college in the language to be interpreted.[118]

Here are some techniques courts can use to assess competence in the absence of a test assessing all of the necessary interpreter skills:

• **National Association of Judiciary Interpreters and Translators** advises that, in the absence of test results, courts should look for the following indicia of competence:

1) "experience interpreting in a variety of settings,"
2) "some history of interpretation or translation training,"
3) "a strong foreign language background,"
4) "good command of English,"
5) an ability to engage in "quick and flexible thinking," and
6) membership in a professional association.[119]

• **National Center for State Courts** suggests that courts use some or all of the following techniques:

1) use an interpreter or other language professional to conduct a structured interview that "takes the candidate through four levels of questioning, 'organized so that the content and complexity progress from simple, casual chatting, to a discussion of linguistically and intellectually more complex issues;'"
2) have the interviewee write a description of his background in English, to assess his English language ability;
3) use a standard written test of English and foreign language proficiency;
4) use a tape recorder, head phones and a prerecorded monologue to assess the interviewee's ability to repeat a narrative word for word as it is heard (a technique called "shadowing");
5) read texts to the interviewee and ask the interviewee to repeat them, to test short term memory; and
6) ask an interviewee to translate a passage from the foreign language into English, and then, after at least an hour has elapsed, ask him to translate the passage back into English so that the accuracy of the translation can be assessed (a technique called "back-translation").[120]

• **U.S. Department of Justice** recommends the practice used by the King County Superior Court in Washington State, of requiring all new interpreters to be accompanied on their first job by an experienced interpreter, who will work with the judge "to ensure that the interpretation goes smoothly," and to assess the new interpreter's competence. The King County Superior Court also performs skill screening interviews on all non-certified interpreters before assigning them to a court.[121]

c. Rely on judges or other court personnel to voir dire interpreters only as a matter of last resort.

As a last resort, court personnel or a judge can ask an interpreter a series of questions designed to assess, at a minimum, whether the interpreter can communicate effectively in English and the target language, has court interpreting experience, and is familiar with and able to comply with the applicable ethics code.[122] The National Center for State Courts recommends that the inquiry be made on the record.[123]

To ensure that competence is assessed adequately throughout the state, there should be a uniform, statewide standard for determining competence, and judges and court personnel should be given uniform guidelines regarding how to assess an interpreter's abilities. In Ohio, for example, judges are provided with a benchcard containing guidelines and suggested voir dire questions to ask interpreters.[124]

In practice, in many states and counties judges have sole responsibility for ensuring that non-credentialed interpreters possess the required capabilities. For example, in New Mexico, when a "certified" interpreter is not available, a judge may appoint a non-certified interpreter who he has determined "to be capable of communicating effectively with the officers of the court and the person for whom the interpreting is being done."[125] Likewise, in Tennessee, a court that appoints a "non-credentialed" interpreter is responsible for determining whether the interpreter has "adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court setting," and will abide by the state's ethics rules for interpreters.[126] Tennessee's Administrative Office of the Courts has issued a benchcard suggesting questions for judges to ask in the course of determining whether an interpreter is qualified.[127]

People who speak a language other than Spanish are particularly hard hit by the failure of many states to have trained, dedicated court personnel assess the competence of non-credentialed interpreters. As noted above, in many states, there are no credentialed interpreters for languages other than Spanish. The result is that all LEP individuals who speak a language other than Spanish are compelled to rely on an interpreter whose competence is unknown.

> Tulsa County, Oklahoma deems interpreters "certified" if they have observed two court proceedings, agreed to comply by ethics rules, and have a degree from a four-year college in the language to be interpreted.
>
> *Tulsa County District Court Rule 18A*

2. Ensure that interpreters remain competent.

Interpreters should be provided with the opportunity to obtain continuing education, and required to attend continuing education trainings.[128] When Sakhi for South Asian Women conducted a national survey of court interpreters, more than half expressed a desire for training regarding confi-

dentiality, legal terminology, developing a legal glossary, and the role of an interpreter.[129] Thirteen states require continuing education, at least for some interpreters.[130]

3. Adopt and require adherence to a code of ethics.

Every court system should adopt a code of ethics for interpreters.[131] An ethics code can give interpreters guidance in ethically tricky situations, and can also help interpreters explain to others why they will not engage in certain problematic behavior.[132] An additional function of an ethics policy is to guide court personnel in determining when a conflict of interest prevents an interpreter from performing in a particular case. The need to require rigorous adherence to ethics regimes is particularly great when the LEP individual comes from a small community, so that the likelihood that she knows the interpreter is heightened.[133]

The ethics code should cover topics such as the obligation to interpret accurately, to alert the court if the interpreter is unable to interpret accurately for any reason, to maintain confidentiality, to remain impartial and avoid conflicts of interest, and to honestly portray their credentials. Two good models are the Code of Ethics and Professional Responsibility adopted by the National Association of Judiciary Interpreters and Translators, and the Model Code of Professional Responsibility for Interpreters in the Judiciary developed by the National Center for State Courts.[134] Knowledge of the guidelines should be required of all interpreters, and deviation should be grounds for removal of an interpreter from the case at hand, and in some instances from eligibility to serve as a court interpreter.

Unfortunately, Alaska, Arizona, Illinois, Kansas and South Dakota[135] are among a number of jurisdictions without an ethics code in place.

4. Ensure that there is an adequate supply of competent interpreters in the languages needed.

a. Provide compensation adequate to attract and retain competent interpreters.

Courts should address shortages of qualified interpreters by compensating interpreters at a level sufficient to attract them. Some states and counties pay entry-level interpreters less than $15 an hour, or as little as $300 a week.[136] Given that certified federal court interpreters receive $384 a day and uncertified federal interpreters earn $185 per day,[137] and that the private sector pays interpreters at high rates too, the low levels of compensation prevailing in some states often make it difficult to attract qualified interpreters.[138] To determine what constitutes a competitive salary or hourly wage in their geographic area, courts can turn to resources such as the National Center for State Courts, and the American Translators Association.[139]

b. Recruit interpreters from professional organizations and from the community.

Professional court interpreter organizations are one of the best sources for trained, certified interpreters. Courts in need of interpreters can seek help from the National Association of Judiciary Interpreters and Translators, the American Translators Association, and any court interpreter organizations operating in their state.[140]

Courts should also work with community organizations to identify people who might serve as interpreters, as the Alaska Court System has done by working with the Alaska Immigration Justice Project.[141] Many ethnic communities do not have sufficient access to information about opportunities to work as court interpreters. State court systems will likely find it useful to partner with local organizations to carry out grassroots outreach in order to contact these communities.[142] Remember, however, that it remains the responsibility of the courts to recruit and train interpreters. Although community organizations can perform a helpful role in this regard, most have limited budgets and may be better able to provide help if they are compensated for their time and resources.

And, courts may find that local community colleges or universities are willing to create court interpreter training programs. Examples of schools that have done this already include College of Charleston,[143] San Francisco State University,[144] and the University of Arizona.[145]

c. Establish relationships with other states to create and access a shared pool of interpreters, while limiting the use of telephonic interpretation.

States can also benefit from establishing reciprocity agreements with other states, under which interpreters certified in one state may work in the other. Many members of the Consortium for State Court Interpreter Certification have reciprocity agreements with other members.[146] Coupling such agreements with the establishment of regional pools of interpreters willing to travel between states can expand the group of interpreters available to any participating state, benefiting both interpreters of less common languages and the courts seeking to utilize their services.[147]

When local interpreters are not available for a given language – either because the language is uncommon or the court is in a sparsely populated area – states can allow interpreters to interpret remotely, over the telephone. However, experts caution that the proper equipment must be used and that both the interpreter and court personnel must be trained in telephone interpreting protocols.[148] Otherwise, the result can be miscommunication, caused by poor sound quality, an inability to pick up on visual cues, or the lack of proper interpreting equipment.[149] Some states have arrived at a compromise regarding telephonic interpreting by using such services only for short proceedings or meetings, or only when a local interpreter is unavailable.[150]

An additional concern arises when telephonic interpretation is provided through a telephonic interpretation service that does not provide the court system with information to assess the competence of the individual interpreter.[151] Court systems that use such a service should require in their contracts that the service conduct its own quality control and monitoring. And, courts that do not know what abilities are assessed by the interpretation service should conduct a voir dire before using individual interpreters from the service.[152]

Using a pool of certified interpreters to conduct telephone interpretation instead of using a telephone interpretation agency is another option. New Jersey, for example, requires courts that must use telephone interpreting for short or emergency matters to do so through full-time staff interpreters whenever possible, registered freelance interpreters only when full-time staff interpreters are not available, and an agency only as a last resort.[153] In Florida, Idaho, New Jersey, and Washington State credentialed interpreters in urban areas are available to interpret by phone for courts in rural areas.[154]

d. Maintain records on the need and demand for interpreters, and use those records to plan for future needs.

Court administrators should use census and other available data to track demographic changes that may indicate changes in the need for interpretation in a particular language.[155] Additionally, state courts should keep records regarding:

- the frequency with which interpreters are requested for different languages,
- the extent to which certified interpreters are provided in response to the requests, and
- any delays in providing interpreters.[156]

On an annual basis, court administrators should review the records and create or update a plan for recruiting and training new interpreters where necessary.[157]

Some states keep at least some of these records, and use them for planning purposes:

- **California:** Even though there is no statewide mandate regarding the use of interpreters in most civil cases, there is a law requiring the state's Judicial Council to study the need for and use of interpreters in the state's courts, and to report to the legislature every five years on its findings.[158]

- **Minnesota:** The state court interpreter program and individual counties track interpreter usage by language.[159] Every county has in place a plan for the provision of LEP services by the district courts.[160] Those plans are reviewed annually by the statewide court interpreter program and the county interpreter liaison.[161]

• **New Jersey:** The state judiciary tracks how often interpreters are used in each language in each county.[162]

• **Wisconsin:** The state judiciary has in place a language access plan. Every two years it tracks the number of LEP people receiving interpreters and the need for additional services or translated materials, assesses whether court staff are familiar with applicable language access policies, and solicits feedback from community groups and individuals. Additionally, individual circuit courts are required to create their own language access plans.[163]

In far too many states, however, such records are not maintained.[164]

5. Allow litigants and court personnel to challenge the appointment of interpreters on competence and ethics grounds, and implement a disciplinary procedure.

States should implement two safeguards to ensure that interpreters not only are qualified but actually perform competently and ethically: a procedure for litigants and court personnel to challenge the appointment of a specific interpreter in that specific case, and a disciplinary procedure allowing the interpreter program to disqualify an interpreter from interpreting in any case.[165]

The ability to object to the appointment of a particular interpreter is essential to protect litigants' due process rights because, as discussed above, all too often interpreters appointed by the courts have not been screened for competence. Additionally, there are a number of reasons that an interpreter might not be qualified to interpret in a specific case, even though he is qualified in general. For example, an interpreter may not speak or understand the particular language or dialect for which interpretation is needed. In one particularly egregious case, a Spanish-speaking interpreter was appointed to interpret in a case in which the defendant and several witnesses spoke Mixtec. Only after the defendant had served four years in prison was it discovered that he had not understood the interpreter.[166] Alternatively, an interpreter may have a conflict of interest with one of the parties in the case, in violation of the state's interpreter ethics code.

Litigants should be informed of the procedure for objecting to the appointment of an interpreter under such circumstances, and for obtaining the appointment of another interpreter. Kentucky has such a procedure, as does Oregon.[167]

Of course, an individual who does not understand English cannot be expected to know whether his interpreter's English words accurately reflect the testimony he gave in his native language, or whether the interpreter's rendering of the judge's English words is accurate. For this reason, LEP individuals must be told whether anyone has assessed the interpreter's legal interpreting skills and proficiency in English and the target language. This should include not only a statement of

whether an interpreter possesses a particular credential, but also what abilities he was required to demonstrate in order to obtain that credential. As we explain above, given the lack of a national standard for court interpreter certification, the name of a particular credential conveys very little information.[168] Just as court systems should explain on their websites, and in all other initial encounters with a litigant, that interpreters are available free of charge, they should explain what abilities those interpreters have.

When non-credentialed interpreters are assigned, courts also should tell litigants whatever is known about the interpreter's abilities. In practice, information about the abilities of non-credentialed interpreters is extremely hard to find. A few admirably honest state court interpreter programs post a warning on their rosters that certain categories of interpreters have not had various skills assessed:

- **Iowa:** The interpreter roster warns that "Non-certified oral language interpreters have not passed an oral interpretation performance exam to verify interpreter competence in their respective languages."[169]

- **Minnesota:** The interpreter roster warns that "non-certified" interpreters included on the roster "have not had their interpreting proficiency or fluency in English or any other language evaluated."[170]

It is extremely difficult, however, to find information about the types of screening that court interpreter programs and judges apply to non-credentialed interpreters. Most of the court interpreter programs that informed us that they use court interpreter program personnel to screen non-credentialed interpreters do not describe that screening on their website, in court rules, or on their interpreter rosters.[171] This lack of transparency can pose a problem for judges and litigants forced to rely on interpreters although they do not know what level of competence the interpreter has.

In addition to allowing litigants to challenge the appointment of individual interpreters, there should be in place a procedure for judges, court personnel, litigants and attorneys to complain anonymously about interpreters' behavior.[172] This procedure is necessary to deal with instances in which an interpreter who was initially qualified should no longer be used to interpret in any case, either temporarily or permanently. For example, an interpreter might commit a serious breach of the applicable code of ethics.

In order for the complaints procedure to be effective, all litigants and witnesses should be informed of how they may file a complaint, and complaints should be accepted in any language. There should be an individual responsible for following up on the complaints, and there should be clear timetables for the response.[173] Interpreters should be informed, at the commencement

of their employment, about the expectations for their performance and about the sanctions they may incur if they violate those expectations. At the same time, any disciplinary procedure should protect the due process rights of the interpreters.[174]
Although the vast majority of states do not have a disciplinary procedure,[175] several states do:

- **Minnesota:** Complaints regarding ethics violations by interpreters on the statewide roster can be submitted to the Court Interpreter Program. Complaints are accepted in writing, in whatever language the complainant speaks, and video or audio documentation are accepted from complainants who are illiterate or who speak a language that has no written format. A court rule sets out deadlines for investigation and resolution of the complaint, and outlines interpreters' due process rights.[176]

- **North Carolina:** Complaints regarding specific interpreters may be filed with the Manager of Interpreter Services in the Administrative Office of the Courts. Court guidelines set specific deadlines for resolution of the complaint, describe a procedure for complainants to appeal an adverse determination, and set forth interpreters' rights. Penalties for substantiated complaints can include suspension or revocation of an interpreter's status as a certified or registered interpreter.[177]

6. Vest a single office or individual within the court system with responsibility for implementing and overseeing the court interpreter program.

Some sort of statewide oversight is necessary to ensure that the state and county courts are meeting their legal obligation to provide interpreters to all LEP individuals who need them.[178] Statewide coordination is also cost-effective, because it is far more efficient to centralize the function of recruiting, training and testing interpreters than to require each county to do it on its own.[179] A statewide interpreter office can also minimize delays and assist with the efficient use of interpreters by deploying interpreters to the courts that need them, when they are needed.

> "Non-certified ORAL language interpreters have not passed an oral interpretation performance exam to verify interpreter competency in their respective languages."
>
> Website of Iowa Judicial Branch

For these reasons, many states have centralized responsibility for these functions. New York, for example, has an Office of Court Interpreting Services, which develops standards for court interpreters, assesses the court interpreting needs of the various courts in the state, maintains an interpreter registry, and recruits, trains and tests new interpreters.[180]

Centralized responsibility for at least some interpreter coordination functions is possible even in a non-unified court system. Here are some examples:

• **Washington State**: The State Administrative Office of the Courts recruits, trains and certifies interpreters. It also allocates interpreter funding to the trial courts based in part "on the court's commitment to improve the quality of interpreter services (for example, by using certified and registered interpreters)." And, it is helping trial courts create their own language assistance plans.[181]

• **Wisconsin:** While the circuit courts are responsible for scheduling and paying interpreters, the director of state courts is responsible for recruiting, training and certifying interpreters, and for reimbursing the counties for interpreter services. Additionally, the director of state courts develops a statewide language access plan, and individual circuit courts are responsible for creating their own language access plans, too.[182]

D. Legal obligation: Ensure that judges and court personnel who come into contact with LEP litigants or witnesses act appropriately.

Judges and other court personnel who have contact with the public need training in the skills necessary to ensure that court interpretation functions properly.[183] They must know how to determine whether a party or witness needs the assistance of an interpreter, whether a particular interpreter is competent, and how to use interpreters effectively.[184] They must also be able to run courtrooms in wich simultaneous or consecutive interpreting of testimony or proceedings is occurring.

In King County, Washington, the manager or assistant manager of its Office of Interpreter Services is assigned to a new judge or defender's first interpreted proceeding in order to help the interpreter and court personnel.

States should teach these skills to judges and other court personnel both at orientations and at regular ongoing trainings.[185] Judges may be more inclined to exercise care in their handling of interpreters if their skill in using interpreters is reflected in performance evaluations, and if a formal feedback process is developed to process complaints from litigants and interpreters about how court interpretation is handled.

A few jurisdictions do provide such training:

• **Minnesota:** Included in the mandatory Judicial Branch Orientation attended by all new judicial branch employees is training on how to use interpreters and how to serve LEP individuals. Additionally, all new judges receive similar training as part of the New Judge Orientation.[186]

• **New York:** Judges are taught how to voir dire an interpreter to ensure that the interpreter is competent and aware of his obligations as an interpreter.[187] New York also trains all new court employees about court interpreting issues.[188]

• **King County, Washington:** The King County Superior Court provides an orientation to new judges and public defenders on the appropriate use of interpreters. Additionally, the manager or assistant manager of its Office of Interpreter Services is assigned to a new judge or defender's first interpreted proceeding in order to help the interpreter and court personnel.[189]

Many states and counties, however, provide judges with little or no guidance as to when and how to use interpreters, and offer few incentives for judges to learn to use interpreters properly. In Cochise County, Arizona, for example, judges and court staff are not provided with any training regarding interpreters.[190] Not surprisingly, in response to Sakhi for South Asian Women's survey of court interpreters, most of the responses stated that judges and attorneys need more training about how to use interpreters.[191]

E. Legal obligation: To the extent possible, ensure that LEP individuals receive the same treatment as other court participants.

One challenge facing every court system – regardless of the extent of its interpreter program – is the need to minimize delays in court proceedings due to the unavailability of interpreters.[192] The worst problems involve cases in which the LEP individual speaks a language other than Spanish.[193] For example, there have been reports that in Milwaukee County, Wisconsin there are few Hmong interpreters, so that Hmong individuals seeking domestic violence restraining orders are subjected to delays.[194]

> "Staff shortages sometimes translate into short shrift for some who come to court. On one day in early June, it even led to complaints from dozens who were camped out in the courthouse hallway after a judge asked Spanish speakers to leave her courtroom. With nearly 300 cases on the docket that day, the judge said people would have to wait outside until an interpreter could be found to help move their cases along."
>
> *St. Petersburg Times, Sept. 19, 2005*

The National Center for State Courts lists several practices that states can use to try to minimize the need to delay court proceedings, while using interpreter time efficiently, including:

• marking case files and scheduling documents with "interpreter needed" designations;
• including advisements on notice and summons documents issued to lawyers and pro se litigants that they must notify court personnel immediately if an interpreter is needed, and providing simple instructions for notifications;
• including data elements in case management systems to indicate whether litigants or witnesses need interpreters;

• keeping track of interpreter usage, by language;
• concentrating interpreting work with as few individuals as possible;
• calling interpreter cases promptly so the interpreter can move on to other courtrooms;
• scheduling interpreter cases in the same courtroom on specific days of the week or at specific times of the day; and
• implementing mechanisms for improved statistical reporting, including both data collection and its analysis for management purposes.[195]

CONCLUSION

Across the nation, as documented in our study of 35 states, state court systems are failing to provide essential, legally required language assistance to people who need it. Many fail to provide interpreters in all civil cases. Many charge civil litigants for interpreter services. And when states do provide interpreters, far too many provide interpreters whose competence is unknown.

This must change. Federal law, principles of fundamental fairness, and our need for equal access to the justice system all demand it. We recommend the following steps:

Determine whether your state complies: Advocates, court administrators, judges, and legislators in each state must familiarize themselves with the extent to which their state does and does not provide access to interpreters in civil proceedings. We provide some information in this report. Additionally, we have posted on our website – www.brennancenter.org – descriptions of the extent to which court interpreters are provided in 35 states.[196] If your state is not included, or if you want to track your state's progress over time, we urge you to use the checklist included in Appendix C. On the checklist, we have listed the legal obligations of state court interpreter programs, and things to look for to determine whether your state is meeting those obligations.

Additionally, court administrators should ensure that litigants and other court participants in their state are informed about the extent to which court interpreter services are available, and the screening (if any) conducted regarding the interpreters the court provides. Across the country, court interpreter program managers are doing extraordinary work recruiting, training, and screening court interpreters, and making their services available to judges and litigants. Far too often, however, there is little or no information about that work in the courts' brochures, forms and websites, or even in the courthouses themselves. This information must be made available so LEP individuals can access court interpreter services, and so advocates and others can push for the resources court interpreter programs need.

Adopt best practices: Throughout this report, we list a number of practices that states are using to provide access to competent court interpreters in a cost-effective manner. These include using the Department of Justice's "I speak" cards, to identify people who need interpreters, having experienced interpreters accompany all new interpreters to their first job, and working with community organizations to identify people who might serve as interpreters. Other sources regarding the practices of successful court interpreter programs include:

> Conference of State Court Administrators, White Paper on Court Interpretation: Fundamental Access to Justice (2007), available at http://cosca.ncsc.dni.us/WhitePapers/CourtInterpretation-FundamentalToAccessToJustice.pdf

Empire Justice Center's Language Access Resource Center, http://onlineresources.wnylc.net/pb/orcdocs/language_access.asp

Federal Interagency Working Group on Limited English Proficiency, www.lep.gov.

Migration Policy Institute's Language Portal, http://www.migrationinformation.org/integration/language_portal

National Asian Pacific American Bar Association, Increasing Access to Justice for Limited English Proficient Asian Pacific Americans: Report for Action (2007), available at http://www.migrationinformation.org/integration/language_portal/files/NAPABA%20IncreasingAccessMay07.pdf

National Association of Judiciary Interpreters and Translators, http://www.najit.org/

National Center for State Courts, http://www.ncsconline.org/

U.S. Department of Justice, Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools From the Field (2004), available at http://www.lep.gov/resources/tips_and_tools-9-21-04.htm#49

Educate state legislatures and courts: While federal law requires states courts receiving funding to provide LEP individuals with interpreters, implementing and fully funding this mandate requires action by state legislatures and state courts. Advocates should educate both their state legislature – particularly its judiciary committee – and their state and county courts – particularly their administrative arms – about the language access obligations imposed by Title VI. Those obligations are described in detail in section I of this report.

The importance of such education is evident from the many state court websites and state court opinions stating that state courts are under no obligation to provide

"Federal funding is necessary to--

(A) encourage State courts that do not have court interpreter programs to develop them;

(B) assist State courts with nascent court interpreter programs to implement them;

(C) assist State courts with limited court interpreter programs to enhance them; and

(D) assist State courts with robust court interpreter programs to make further improvements and share successful programs with other States."

This language is from the federal State Court Interpreter Grant Program Act, passed by the Senate Judiciary Committee in 2008.

interpreters in various types of civil proceedings. For example, the website of DuPage County, Illinois states, "There are no statutory requirements nor any constitutional obligations that public funds be expended for appointment of language interpreters in civil cases."[197]

Partner with the U.S. Department of Justice: Advocates should report violations of Title VI to the Coordination and Review Section (COR) of the U.S. Department of Justice's Civil Rights Division, which enforces Title VI. There is every indication that COR, and the Department of Justice generally, are committed to ensuring that state courts receiving federal funding comply with Title VI. In April 2009, Loretta King, the Acting Attorney General for Civil Rights, spoke of the Civil Rights Division's dedication to "reinvigorating traditional Title VI enforcement." Also, in February 2009, after the Indiana Supreme Court ruled that non-indigent criminal defendants need not be provided with free interpreters, COR wrote to that court informing it of Title VI's requirements.[198] And, in September 2008, COR entered into a Memorandum of Understanding with Maine's judicial branch, in which Maine obligated itself to provide interpreters free of charge. That agreement was reached after a complaint was filed and COR launched an investigation.

A complaint form, information about where to send complaints, and COR's telephone number are available on COR's website at http://www.usdoj.gov/crt/cor/complaint.php.

Join the national network: Advocates should consider joining the National Language Access Advocates Network (N-LAAN). N-LAAN is a national network of advocates supporting and engaging in effective advocacy to eradicate language discrimination and promote language rights. The courts are one of the many public arenas in which N-LAAN members engage in language access advocacy. Additional information about N-LAAN, including how to join, is available at http://www.probono.net/nlaan/.

ENDNOTES

1 *State v. Natividad*, 526 P.2d 730, 733 (Ariz. 1974).

2 Conference of State Court Administrators, White Paper on Court Interpretation: Fundamental to Access to Justice 4 (Nov. 2007), available at http://cosca.ncsc.dni.us/WhitePapers/Court Interpretation-FundamentalToAccessToJustice.pdf.

3 Elena M. deJongh, *Court Interpreting: Linguistic Presence v. Linguistic Absence*, Fla. Bar J. (July-Aug. 2008), p. 20.

4 In 2000, less than one-third of all Californians who had entered the country when they were older than 25 were able to speak English "very well," even after living there for 20 years. Calif. Jud. Council, 2005 Language Need and Interpreter Use Study: Report to the Legislature (Feb. 2006), p. 3, available at http://www.courtinfo.ca.gov/programs/courtinterpreters/documents/2005languageneed.pdf. *See also* David L.E. Watt et al., Benchmarking Adult Rates of Second Language Acquisition and Integration: How Long and How Fast? Final Report 2004, available at http://www.language.ca/pdfs/Benchmarking%20Adult%20Rates%20of%20Second%20Language%20Acquisition%20and%20Integration1.pdf (reporting that adults with a lower level of education learned a second language more slowly and achieved a lower level of proficiency than people with a higher level of education; working in an English language environment leads to faster language acquisition); Grantmakers Concerned With Immigrants and Refugees, Investing in Our Communities: Strategies for Immigrant Integration; A Toolkit for Grantmakers, p. 61, available at http://www.gcir.org/publications/toolkit.

5 Calif. Comm'n on Access to Justice, Language Barriers to Access to Justice in California (2005), p. 13, available at http://www.calbar.ca.gov/calbar/pdfs/reports/2005_Language-Barriers_Report.pdf.

6 Pa. S. Ct. Comm. on Racial & Gender Bias in the Justice System, Final Report (2001), pp. 33-34, available at http://www.friendsfw.org/PA_Courts/Race_Gender_Committee.pdf.

7 Those states include at least Alaska, Arkansas, Indiana, Florida, Louisiana, Nevada, Oklahoma, Tennessee and Utah. Alaska R. Governing Admin. of All Courts 6(b)(2) (criminal defendants who need an interpreter because they are LEP must pay for that interpreter); Ark. Code Ann. 16-89-104(b)(2) (permitting court to decide how fee for services of interpreter for defendant shall be paid, but exempting acquitted defendants from obligation to pay); Ark. Admin. Office of the Cts., Dist. J. Benchbook, Form Misc. 11 (listing "Interpreter Fees" as a category of "Criminal and Traffic Fees, Restitution and Forfeitures" to be collected by the district courts), available at http://courts.state.ar.us/judicial_education/documents/District_Judges_Benchbook_v2.pdf; *Arrieta v. State*, 878 N.E.2d 1238 (Ind. 2008) (holding that the courts can charge non-indigent criminal defendants for the cost of interpreters who interpret only for them, not for the entire courtroom); Fla. Stat. § 29.0195 (requiring trial courts to recover the cost of an interpreter from parties with the present ability to pay); Fla. 6th Jud. Cir., Interpreters, available at http://www.jud6.org/LegalCommunity/Interpreters.html ("If you are not indigent, the Trial Court Administrator is required by law to recover interpreter costs on behalf of the state. If you are found to have the ability to pay, you will be billed after your hearing for the costs of the service provided to you, which are normally $35 to $68 an hour with a two hour minimum, plus travel costs."); Baton Rouge City Court, En Banc Order Regarding Interpreter Appointment Procedure (July 1, 2003) ("Pursuant to C. Cr. P. Art. 887, a defendant found guilty or who pleads guilty to a criminal/traffic matter, and who requires the need of a foreign language interpreter, shall be cast for all costs associated with the appointment of the foreign language interpreter . . . ."); Nev. 8th Jud. Dist. R. Prac. 7.80(a) (providing that interpreter costs will be paid for indigent criminal defendants, but that in other cases the party requesting the interpreter must pay before interpreter services are provided); 28 Okla. Stat. Ann. § 153.A.10 (requiring the court clerk to collect from all convicted defendants the actual cost of all interpreters for LEP individuals): *id.* § 153.H (providing that prior to conviction parties cannot be required to pay, advance or post security for interpreter services); *id.* § 153.K (providing that for indigent defendants the court "may" waive all or part of the interpreter services costs, or require the payment of

those costs in installments); Tenn. R. Crim. Proc. 28 (requiring the cost of an interpreter to be taxed to non-indigent criminal defendants); Utah Code Ann. sec. 7B-1-146(3) (allowing judges to impose the cost of an interpreter on non-indigent criminal defendants); Utah R. Jud. Admin. 3-306(12)(B)(1) (stating that justice courts need only pay for interpreters for indigent criminal defendants).

8 Alain L. Sanders, *Libertad and Justicia for All*, Time (May 29, 1989), available at http://www.time.com/time/magazine/article/0,9171,957830,00.html.

9 The National Asian Pacific American Bar Association has documented the case of a mother forced to use her oldest daughter to translate testimony regarding the rape of her younger daughter. National Asian Pacific American Bar Ass'n, Increasing Access to Justice for Limited English Proficient Asian Pacific Americans: Report for Action (2007), p. 21, available at http://www.napaba.org/uploads/napaba/IncreasingAccessMay07.pdf. In a film titled Childhood in Translation, documentary filmmaker Robert Winn chronicles the ways children are harmed when they must act as interpreters for their parents. One interviewee says, "When children are language brokers for their families, I think it takes them out of childhood . . . ." *See also* U.S. Dept. of Justice, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affected Limited English Proficient Persons, 67 Fed. Reg. 41455, 41462 (June 18, 2002) (cautioning against the use of children and other family members as interpreters).

10 *See* Mexican American Legal Defense and Educational Fund & Asian American Justice Center, Language Rights: An Integration Agenda for Immigrant Communities (2007), p. 15 (warning that if we do not remove barriers to immigrant access to the courts, including lack of language access, "we could soon face a situation where immigrants become completely disconnected from one of America's lasting institutions, which could impact civic engagement by immigrants and LEPs"), available at http://www.migrationinformation.org/integration/language_portal/files/Language_Rights_Briefing_Book.pdf.

11 *See* Grantmakers Concerned With Immigrants & Refugees, Investing in Our Communities: Strategies for Immigrant Integration; A Toolkit for Grantmakers, p. 61 ("The integration of immigrants into local communities can be strengthened when newcomers, including those with limited English proficiency, have access to government services that help them meet basic needs and become self-sufficient.").

12 One study found that in California, judges believe that the availability of interpreters in domestic violence and family proceedings is a "fundamental factor contributing to the quality of justice in their courts." Calif. Comm'n on Access to Justice, Language Barriers to Access to Justice in California (2005), p. 32.

13 *Sen. Kohl Bill to Establish Court Interpreters Grant Program Approved by Senate Panel*, U.S. Fed. News (April 24, 2008).

14 Jack Zemlicka, *Interview with Judge Richard S. Brown, Wisconsin Court of Appeals,* Wis. L.J. (Mar. 3, 2008).

15 Nancy K.D. Lemon, *Access to Justice: Can Domestic Violence Courts Better Address the Needs of Non-English Speaking Victims of Domestic Violence?* 21 Berkeley J. of Gender, Law & Justice 38, 55 (2006) (describing a California study finding that a majority of judicial officers thought interpreting would improve the ability of litigants to understand and comply with orders, and would reduce case backlogs).

16 Jean Ortiz, *Guatemalan Mom Says Neb. Court Wrongly Took Kids*, Fremont Tribune (April 28, 2009).

17 Calif. Comm'n on Access to Justice, Language Barriers to Access to Justice in California (2005), p. 31. A Pennsylvania study noted a similar perception of bias in that state. Pa. S. Ct. Comm. on Racial & Gender Bias in the Justice System, Final Report (2001), p. 26. And a recent study found a similar perception of bias among Hispanics nationally. Mark Hugo Lopez & Gretchen Livingston, Hispanics and the Criminal Justice System: Low Confidence, High Exposure (Pew Hispanic Center 2009), p. i, available at http://pewhispanic.org/files/reports/106.pdf.

18 National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts 4-5 (1995), available at http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuidePub.pdf.

19 National Center for State Courts, Consortium for State Court Interpreter Certification: Frequently Asked Questions (April 23, 2008), available at http://www.ncsconline.org/D_RESEARCH/CourtInterp/1Consort-FAQ.pdf.

20 Consortium for State Court Interpreter Certification, Member States, available at http://www.ncsconline.org/D_RESEARCH/CourtInterp/Res_CtInte_ConsortMemberStatesPubNove07.doc.

21 Paul Uyehara & Laura Abel, *Language Access in the Courts and Law Enforcement*, 27 Management Information Exchange J. 36-38 (winter 2008).

22 *See, e.g.*, Calif. Comm'n on Access to Justice, Language Barriers to Access to Justice in California (2005), p. 1 (stating that Californians speak more than 220 languages); N.Y. State Unif. Ct. System, Court Interpreting in New York: A Plan of Action (2006), p. 1 (stating that in New York, 168 languages and many more distinct dialects are spoken), available at http://www.nycourts.gov/courtinterpreter/pdfs/action_plan_040506.pdf.

23 The shortage of certified interpreters in some languages in some jurisdictions suggests that at least some states are having difficulty providing interpreters in criminal cases, too. *See* discussion *infra* § II.C.1.a. And as we note above, a number of the states we have identified as charging litigants for interpreters in civil cases charge at least some criminal defendants for them too.

24 Ideally, a state will have a single system for providing interpreters, regardless of whether the person needing interpretation has limited proficiency in English or is hearing impaired. However, because different sources of law govern the provision of interpreters for the two groups of people, and because many courts have distinct systems for providing interpreters to each group, this report deals only with interpreters for LEP individuals. *See, e.g.*, Utah R. J. Admin. 3-306 ("This rule shall apply to interpretation for non-English speaking persons and not to interpretation for the hearing impaired.").

25 Courts must translate "vital" documents into the languages commonly spoken by litigants or other LEP court users. 67 Fed. Reg. at 41463. Anecdotal evidence exists that many courts do not do this. *See, e.g.*, American Friends Service Committee, Language of Inclusion: A Critical Look at Equal Access in the N.J. Courts System (2007), pp. 5-6, available at http://www.usdiversitydynamics.com/id13.html (discussing lack of translated forms in New Jersey's small claims courts).

26 Courts have a legal obligation to provide interpreter services for critical encounters outside the courtroom, including during conversations with clerks and other court personnel. *See* discussion *infra* § I. Nonetheless, many jurisdictions do not require the provision of interpreters outside of the courtroom. *See, e.g.*, Fla. 15th Jud. Cir., Admin. Order No. 2.506-9/08, available at http://15thcircuit.co.palm-beach.fl.us/c/document_library/get_file?folderId=147&name=DLFE-1719.pdf (providing that only "individuals appearing before the court" are eligible for interpreter services, and stating that interpreters "shall not" accompany LEP individuals to the clerk's office, probation office, or anywhere else). Wisconsin goes farther towards complying with that obligation than many other states do, by explicitly giving courts the discretion to provide interpreters for interactions outside of the courtroom. However, even in Wisconsin the provision of interpreters for interactions outside of the courtroom is discretionary. Wis. Stat. 885.38(d), (e).

27 When we sent a draft of this report to experts on language access in the courts, some stated that court interpreters should be court employees. They argued that this is a necessary measure to make court interpreting attractive enough to potential interpreters, and in this way to alleviate the national shortage of court interpreters. On the other hand, one expert opposed treating court interpreters as civil service employees.

28 *See, e.g.*, *U.S. ex rel Negron v. N.Y.*, 434 F.2d 386, 387 (2d Cir. 1970) (criminal case); *Agustin v. Sava*, 735 F.2d 32, 37-38 (2d Cir. 1984) (asylum case).

29 *Gardiana v. Small Claims Court*, 59 Cal. App. 3d 412 (1976) (small claims); *In re Doe,* 57 P.3d 447, 457, 459 (Haw. 2002) (child welfare); *Figueroa v. Doherty,* 303 Ill. App. 3d 46, 50 (Ill. App. 1999) (employment); *Sabuda v. Kim,* 2006 WL 2382461 (Mich. App. Aug. 17, 2006) (restraining order); *Daoud v. Mohammad,* 952 A.2d 1091 (N.J. Super. 2008) (landlord-tenant dispute); *Caballero v. Seventh Judicial Dist. Court ex rel. County of White Pine,* 167 P.3d 415 (Nev. 2007) (small claims); *Yellen v. Baez,* 676 N.Y.S.2d 724, 727 (N.Y. Civ. Ct. 1997) (landlord-tenant dispute); *Strook v. Kedinger*, 2009 WL 385410, ¶ 17 (Wis. Ct. App. Feb. 18, 2009) (action for trespassing).

30 *See, e.g.*, *Sabuda,* 2006 WL 2382461 at *2-3 (in a case involving a personal protection order, holding that the lack of an interpreter could violate due process if it is shown that the individual "was deprived of the opportunity to meaningfully participate in the hearing due to an inability to understand and respond to the evidence presented against her"); *Daoud,* 952 A.2d at 1093 (in a landlord-tenant dispute, holding that the defendant "was deprived of a full and fair opportunity to be heard as a result of not having had a court-approved interpreter from the outset"); *Lizotte v. Johnson,* 777 N.Y.S.2d 580, 586 (N.Y. Sup. 2004) (in a child welfare case, holding that the "failure to provide adequate translation services here deprived petitioner of fundamental due process"); *In re Doe,* 99 Hawai'i at 534 (in a child custody case, holding that parents must be provided "an interpreter at family court proceedings where their parental rights are substantially affected").

31 42 U.S.C. § 2000d.

32 *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974). The Court was interpreting the Title VI regulations promulgated by the federal Department of Health, Education and Welfare. However, the Court's construction of Title VI as barring actions that have the unintentional effect of treating people differently because they do not speak English is generally interpreted as applying to recipients of funding from other federal agencies, too. *See, e.g.*, 67 Fed. Reg. 41455, 41458 (June 18, 2002) (interpreting *Lau v. Nichols* as applying to recipients of funding from the U.S. Department of Justice); 67 Fed. Reg. 35602 (June 25, 2004) (interpreting *Lau v. Nichols* as applying to recipients of funding from the U.S. Department of Environmental Protection).

33 42 U.S.C. § 2000d (prohibiting discrimination in any "program or activity" of the funding recipient); *id.* § 2000d-4a (defining "program or activity" as "a department, agency, special purpose district, or other instrumentality of a State or of a local government…any part of which is extended Federal financial assistance"). For tips on how to determine if a court system is unified, see Appendix C.

34 For example, courts in every state receive Court Improvement Program funding from the U.S. Department of Health and Human Services. HHS, The National Evaluation of the Court Improvement Program: Synthesis of 2005 Court Improvement Program Reform and Activities (2007), p. 3, available at http://www.pal-tech.com/cip/files/FirstSynthesis.pdf. Many court systems also receive Violence Against Women Act and Byrne grant funding from the Department of Justice. *See* U.S. Department of Justice, Recovery Act: Edward Byrne Memorial Competitive Grant Program, Frequently Asked Questions (April 13, 2009) (describing funding for problem-solving courts), available at http://www.ojp.gov/BJA/recovery/RecoveryByrneFAQ.pdf; National Center for State Courts, Violence Against Women Act Court-Specific Funding: Listserv Survey Responses (2002), available at http://www.ncsconline.org/WC/Publications/KIS_VAWAcourtfundingPub.pdf. Some traffic and drug courts receive funding from the National Highway Traffic Safety Administration of the Department of Transportation. *See* National Drug Court Initiative, DWI Courts and DWI/Drug Courts: Reducing Recidivism and Saving Lives, available at http://www.ndci.org/dwi_drug_court.htm (stating that the "Maricopa County DUI Court (Phoenix, Arizona) is funded by the National Highway Traffic Safety Administration, U.S. Department of Justice and the National Institute on Alcohol Abuse and Alcoholism"). *See generally* National Center for State Courts, Federal Funding Report (April 17, 2009) (listing federal funding opportunities for state courts), available at http://www.ncsconline.org/D_Gov/govfederalfundreport.html.

35 For a more complete list of federal funding allocated to state courts, see Appendix C.

36 Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 16, 2000).

37 67 Fed. Reg. 41455, 41457 (June 18, 2002).

38 *Id.* at 41459.

39 Ltr. From Loretta King, Deputy Assistant Attorney General, to Director of State Court and/or State Court Administrator, Dec. 1, 2003, available at http://www.usdoj.gov/crt/cor/courtsletter_generic.php.

40 67 Fed. Reg. 41455, 41471 (June 18, 2002).

41 *Id.* at 41472.

42 *Id.* at 41462 (stating that "when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person"). The obligation to provide interpreters free of charge is discussed in more detail in section II.B below.

43 *Id.* at 41461, 41471.

44 *Id.* at 41471.

45 The Department of Justice makes clear that "when interpretation is needed and is reasonable, it should be provided in a timely manner," and that "the language assistance should be provided at a time and place that avoids . . . the imposition of an undue burden on or delay in important rights, benefits or services to the LEP person." *Id.* at 41461.

46 *Id.* at 41471.

47 *Id.*

48 Prepared Remarks of Acting Assistant Attorney General for Civil Rights Loretta King, at the April 20th, 2009 Meeting of the Federal Interagency Working Group on Limited English Proficiency, available at www.lep.gov (quoting Letter from Merrily A. Friedlander, Chief, Dep't of Justice Civil Rights Div'n Coordination & Review Section, to Lilia G. Judson, Executive Director, Ind. Sup. Ct. Div'n of State Ct. Admin. (Feb. 4, 2009)).

49 Conference of State Court Administrators, White Paper on Court Interpretation: Fundamental to Access to Justice (2007), pp. 23-25, available at http://cosca.ncsc.dni.us/WhitePapers/CourtInterpretation-FundamentalToAccessToJustice.pdf; National Asian Pacific American Bar Association, Increasing Access to Justice for Limited English Proficient Asian Pacific Americans: Report for Action (2007), p. 2, available at http://www.migrationinformation.org/integration/language_portal/files/NAPABA%20IncreasingAccessMay07.pdf; National Center for State Courts, Model Court Interpreter Act, available at http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter10Pub.pdf.

50 Memorandum of Understanding Between the U.S. and the State of Maine Judicial Branch, DOJ No. 171-34-8 (Sep. 2008), p. 3 (reciting Maine's obligation to provide interpretation for "all LEP individuals who are parties or witnesses in any type of court case, parents of minors involved in juvenile actions, or court customers seeking information or other assistance from court clerks"), available at http://www.usdoj.gov/crt/lep/guidance/Maine_MOA.pdf. *See, e.g.*, N.J. Jud., Dir. #3-04, Standard 1.2, From Richard J. Williams to Assignment Judges, Stds. for Delivering Interpreting Services in the New Jersey Judiciary, available at http://www.judiciary.state.nj.us/directive/personnel/dir_03_04.pdf (requiring appointment of an interpreter "for any person with limited proficiency in English who is a named party in the proceeding or who, in Family Part, is a parent or guardian of a juvenile who is a named party, as well as for witnesses during their testimony"); Colo. S. Ct., Office of the Chief Justice, Dir. 06-03 Concerning Language Interpreters and Access to the Courts by Persons With Limited English Proficiency, § II.C (requiring courts to pay for interpreters "[d]uring court proceedings when a defendant, one of the parties, a victim, a witness, or the parent and/or legal guardian of a minor charged as a juvenile is a non-English speaker"), available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/06-03.pdf.

51 *See* Memorandum of Understanding Between the U.S. and the State of Maine Judicial Branch, DOJ No. 171-34-8 (Sep. 2008), pp. 3-4 (describing how, in response to a federal DOJ investigation,

Maine's Judicial Branch developed an Administrative Order governing who would receive interpretation services, and had agreed to "draft, finalize and distribute instructions and procedures to all court personnel on implementation of the Administrative Order").

52 *See also* Appendix D.

53 Tulsa Cty. Dist. Ct. R. 18, available at http://www.tulsadistrictcourt.com/.

54 In a recent newspaper article, the Oklahoma County Court Administrator was quoted as saying that interpreters are provided only in criminal cases, and that "'[t]hey can bring someone with them and have their own interpreter, but we don't expend funds to do that.'" Marie Price, *Rising Diverse Population Causes Need for Immigrant Services,* The J. Record, Dec. 1, 2008, available at http://www.journalrecord.com/article.cfm?recID=94105.

55 Ohio has such a presumption. *See* Ohio S. Ct., Working With Foreign Language Interpreters in the Courtroom: A Bench Card for Judges (2007), p. 1, available at http://www.supremecourt.ohio.gov/JCS/interpreterSvcs/benchcard.pdf. The National Center for State Courts recommends that states adopt such a presumption. National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts 4-5 (1995), p. 126.

56 Memorandum of Understanding Between the U.S. & the State of Maine Judicial Branch, DOJ No. 171-34-8 (Sep. 2008), p. 4 (reciting Maine's obligation to provide "specific information for judges on how to identify LEP witnesses and parties appearing before them").

57 *See, e.g.*, National Ass'n of Judiciary Interpreters & Translators, Position Paper: Preparing Interpreters in Rare Languages (Nov. 3, 2005), p. 6, available at http://www.najit.org/documents/Rare Languages200609.pdf; National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), pp. 126, 147; S. Ct. Ga., Order: Use of Interpreters for Non-English Speaking Persons (Jan. 13, 2003), App. A, available at http://www.georgiacourts.org/agencies/Interpreters/interpreterrule.pdf.

58 *See, e.g.*, National Association of Judiciary Interpreters & Translators, Position Paper: Preparing Interpreters in Rare Languages (Nov. 3, 2005), p. 6.

59 67 C.F.R. at 41471. Georgia has a good instruction in this respect: "The fact that a person for whom English is a second language knows some English should not prohibit that individual from being allowed to have an interpreter." *See, e.g.*, S. Ct. Ga., Order: Use of Interpreters for Non-English Speaking Persons (Jan. 13, 2003), App. A, available at http://www.georgiacourts.org/agencies/Interpreters/interpreterrule.pdf.

60 This appears to be the practice in many states. *See, e.g.*, Cal. Std. of Jud. Admin. 2.10(c); Ga. S. Ct., Use of Interpreters for Non-English Speaking Persons, App. A, § I(D), available at http://www.gasupreme.us/amended_rules/interpreters_11_5.pdf; Haw. S. Ct., Policies for Interpreted Proceedings in the Courts of the State of Hawai'i, § I(B).

61 *See, e.g.*, *Slaughter v. City of Maplewood*, 731 F.2d 587, 588 (8th Cir. 1984) (holding that civil rights plaintiffs may file an interlocutory appeal from the denial of appointed counsel because "[s]uch an individual likely has little hope of successfully prosecuting his case to a final resolution of the merits"); *Bradshaw v. Zoological Soc'y of San Diego*, 662 F.2d 1301, 1310-11 (9th Cir. 1981) (allowing interlocutory appeal from denial of appointed counsel because "[a] civil rights litigant, untrained in the law, may well decide he is incapable of handling the trial and drop his claim, commence trial but be compelled to abandon his efforts prior to final judgment, fail on a technicality in any attempt to appeal should an adverse final judgment on the merits ever be reached, or fail, for lack of legal knowledge, to make the requisite showing to obtain reversal").

62 *See, e.g.*, Mass. Office of Court Interpreter Services, Stds. & Procedures, § 14.06, available at http://www.mass.gov/courts/admin/interpreters/finalstanproc.pdf (permitting an LEP individual to waive appointment of an interpreter "only when approved by the judge after the LEP individual has consulted with counsel and had explained to him, through an interpreter, in open court by the judge the nature and effect of such waiver. The judge may approve a waiver only upon finding that it is

knowingly and voluntarily made."); N.M. Code § 38-10-6(A) (permitting a "non-English speaking person who is a principal party in interest or a witness" to waive appointment of an interpreter "only when such waiver is: (1) approved by the appointing authority after he has explained the nature and effect of the waiver to the non-English speaking person through an interpreter; and (2) made on the record after the non-English speaking person has consulted with his attorney."); Utah R. Jud. Admin. R. 3-306(7) (permitting a "non-English speaking person" to waive appointment "only when: (i) the waiver is approved by the appointing authority after explaining on the record to the non-English speaking person through an interpreter the nature and effect of the waiver; (ii) the appointing authority determines on the record that the waiver has been made knowingly, intelligently, and voluntarily; and (iii) the non-English speaking person has been afforded the opportunity to consult with his or her attorney").

63 *See* Phila. Bar Assn., Language Access Task Force, Comments on Proposed Rules of Judicial Administration on Court Interpreting (June 2008), p. 7. *See also* 67 Fed. Reg. at 41462-63 (cautioning that "[w]here precise, complete, and accurate interpretations or translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, . . . a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well").

64 S.C. Code Ann. § 15-27-155(A). Similarly, commentary to a proposed court rule in Pennsylvania cautions judges to refuse to permit a waiver if "the interpreter is necessary for the presiding judicial officer or others involved in the proceedings to accurately understand the person with limited English proficiency or person who is deaf." Pa., Proposed R. Jud. Admin. Governing Court Interpreters for Persons With Limited English Proficiency and Persons Who Are Deaf, Comment to R. 3007 (2008), available at http://www.aopc.org/NR/rdonlyres/0741FF4C-E52C-4565-9987-8D68744B65F3/0/ProposedRulesForPublication.pdf. *See also* Fla. R. Jud. Admin. 2.560(a) (requiring that in criminal or juvenile delinquency proceedings where a "non-English-speaking person" is the accused an interpreter "shall be appointed," and where a "non-English-speaking person" is a victim, an interpreter "shall be appointed unless the court finds that the victim does not require the services of court-appointed interpreter").

65 Neb. Ct. R. § 6-703(C).

66 *See* 67 Fed. Reg. 41455, 41465 (June 18, 2002).

67 *Id.*

68 *Id.*

69 The card is available at http://www.ocjs.ohio.gov/Publications/Pocket%20Card.pdf.

70 The poster, which is a modified version of a poster developed by the Massachusetts Department of Public Health, is available at http://www.masslegalservices.org/docs/5948_You_have_a_right_to_an_interpreter_poster_20060130.pdf.

71 Memorandum of Understanding Between the U.S. & the State of Maine Jud. Branch, DOJ No. 171-34-8 (Sep. 2008), p. 4.

72 Sherburne County Dist. Ct., Limited English Proficiency Plan (2008), pp. 2-3, available at http://www.mncourts.gov/Documents/0/Public/Interpreter_Program/Sherburne_2008_LEP_Plan.pdf.

73 Interview with Sheryl Connolly, Trial Court Services Director, Neb. J. Branch (Feb. 26, 2008).

74 N.Y. State Unif. Ct. Sys., FAQ's About Getting an Interpreter, available at http://www.nycourts.gov/courtinterpreter/faqs.shtml.

75 *See, e.g.*, Utah State Cts., Interpreter Information, available at http://www.utcourts.gov/resources/interp/ (providing information for interpreters about how to apply to become an interpreter, but not identifying the types of parties or cases interpreters in which are available, and not stating whether parties must pay for their own interpreters).

76 *Compare* Conn. Jud. Branch, Court Interpreter and Translator Services, available at http://www.jud.ct.gov/external/news/jobs/interpreter.htm, with Conn. Super. Ct. Juv. R. 32a-6 (providing that in dependency and termination of parental rights cases the court "shall provide an official interpreter to the parties as necessary to ensure their understanding of, and participation in, the proceedings").

77 *See* discussion *infra* § II.B.

78 Brenda K. Uekert et al., Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity to Provide Protection Orders (2006), p. 55, available at http://www.ncjrs.gov/pdffiles1/nij/grants/216072.pdf.

79 American Friends Service Committee, Language of Inclusion: A Critical Look at Equal Access in the N.J. Courts System (2007), p. 4, available at http://usdiversitydynamics.com/sitebuildercontent/sitebuilderfiles/afsccourtstudy.doc.

80 Letter from Merrily A. Friedlander, Chief, Dep't of Justice Civil Rights Div'n Coordination & Review Section, to Lilia G. Judson, Executive Director, Ind. Sup. Ct. Div'n of State Ct. Admin. (Feb. 4, 2009), p. 2, available at http://www.lep.gov/whats_new/IndianaCourtsLetterfromMAF2009.pdf. *See also* Philadelphia Bar Assn., Language Access Task Force, Comments on Proposed Rules of Judicial Administration on Court Interpreting (June 2008), p. 11 (warning that that charging litigants for interpreter services "will separate cases into two categories – one for those involving foreign born parties or witnesses needing language assistance, the other for cases in which the parties and witnesses speak English well. By allowing a surcharge on the first group, [a fee regime] will have the effect of discriminating on the basis of national origin.") (on file with the author).

81 Letter from Merrily A. Friedlander, Chief, Dep't of Justice Civil Rights Div'n Coordination & Review Section, to Lilia G. Judson, Executive Director, Ind. Sup. Ct. Div'n of State Ct. Admin (Feb. 4, 2009), pp. 1-2.

82 Phila. Bar Assn., Language Access Task Force, Comments on Proposed Rules of Judicial Administration on Court Interpreting (June 2008), p. 11.

83 *Id.*

84 67 Fed. Reg. 41455, 41462 (June 18, 2002).

85 U.S. Dep't of Justice, Exec. Order 13166 Limited English Proficiency Resource Document: Tips and Tools From the Field, chapter 5 (2004), available at http://www.lep.gov/resources/tips_and_tools-9-21-04.htm#49.

86 Memorandum of Understanding Between the U.S. & the State of Maine Jud. Branch, DOJ No. 171-34-8 (Sep. 2008), p. 3.

87 U.S. Dep't of Justice, Coordination & Review Section, Commonly Asked Questions About Executive Order 13166, available at http://www.usdoj.gov/crt/cor/Pubs/lepqa.php.

88 Ltr. from Merrily A. Friedlander, Chief, Dep't of Justice Civil Rights Div'n Coordination & Review Section, to Lilia G. Judson, Executive Director, Ind. Sup. Ct. Div'n of State Ct. Admin (Feb. 4, 2009).

89 Interviews with Angelika Mueller, Managing Attorney, Indiana Legal Services (Apr. 30, 2008; June 24, 2008).

90 Ltr. from Merrily A. Friedlander, Chief, Dep't of Justice Civil Rights Div'n Coordination & Review Section, to Lilia G. Judson, Executive Director, Ind. Sup. Ct. Div'n of State Ct. Admin. (Feb. 4, 2009).

91 *See* Map 2 and Appendix E, *infra*.

92 In Louisiana, the cost of reimbursing a court-appointed interpreter "shall be taxed by the court as costs of court." La. Civ. Code Ann. art. 192.2. In Arkansas, the courts will provide interpreters in certain types of civil cases for "indigent" litigants. Ark. Code §§ 16-10-127, 16-64-111(b). However, in the court's discretion the cost of providing an interpreter can be taxed as a cost payable to

the court at the end of the case. Ark. Code 16-64-111(b) (providing that an interpreter "may" be appointed for people unable to pay for one, and that "the fee for the services of the interpreter shall be set by the court and shall be paid in such manner as the court may determine"); Ark. Admin. Office of the Cts., Dist. J. Benchbook, Form Misc. 11 (listing "Interpreter Fees" as a category of "Criminal and Traffic Fees, Restitution and Forfeitures" to be collected by the district courts), available at http://courts.state.ar.us/judicial_education/documents/District_Judges_Benchbook_v2.pdf.

93 Ark. Admin. Office of the Cts., Dist. J. Benchbook, Form Misc. Admin. 01: AOC Foreign Language Interpreter Compensation Policy. *See also* Adam Wallworth, *Courts Confront Need for Extra Interpreters*, Ark. Democrat Gazette (Jan. 5, 2009) (stating that the state usually runs out of interpreters in mid-May, at which point counties and lawyers are responsible for paying for interpreters).

94 Calif. Comm'n on Access to Justice, Language Barriers to Access to Justice in California (2005), pp. 12-13.

95 Utah R. Jud. Admin. § 3-306. *See also* Utah Code Ann. § 78B-1-146 (requiring appointment of an interpreter for LEP witnesses in civil proceedings).

96 Utah Code Ann. § 78B-1-146; Utah R. Jud. Admin. § 3-306(12).

97 Email from Eric Mittelstadt, Director of Advocacy and Personnel, Utah Legal Services (Feb. 27, 2008); Telephone Interview with Rosa P. Oakes, Utah Admin. Office of the Cts. (Feb. 26, 2008).

98 Nancy K.D. Lemon, *Access to Justice: Can Domestic Violence Courts Better Address the Needs of Non-English Speaking Victims of Domestic Violence?* 21 Berkeley J. of Gender, Law & Justice 38, 45-46 (2006).

99 Elena M. deJongh, *Court Interpreting: Linguistic Presence v. Linguistic Absence*, Fla. Bar J. (July-Aug. 2008), p. 20.

100 Brenda K. Uekert et al., Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity to Provide Protection Orders (2006), p. 76.

101 *See* National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), p. 16; National Ass'n of Judiciary Interpreters & Translators, Position Paper: Information for Court Administrators (2002), pp. 2-3, available at http://www.najit.org/documents/Court%20AdministratorFINAL.pdf; National Ass'n of Judiciary Interpreters and Translators, Position Paper: Preparing Interpreters in Rare Languages (Nov. 3, 2005), pp. 2-3; Conference of State Court Administrators, White Paper on Court Interpretation: Fundamental to Access to Justice (Nov. 2007), p. 6.

102 Sakhi for South Asian Women, Talking the Talk: A National Study of Court Interpreters; Preliminary Data and Recommendations on Language Access in NYS Courts (2008), p. 3, available at http://www.sakhi.org/CIP/NationalCourtInterpreterSurveyPreliminaryReport.pdf.

103 It is essential to ensure that the testing process does in fact test all of the necessary skills. A recent national survey of court interpreters found that two-thirds of "certified" interpreters had not been tested on their proficiency in reading and writing English. *Id.*, p. 4.

104 For information about this test see Federal Court Interpreter Certification Examination Program, available at http://www.ncsconline.org/d_research/fcice_exam/index.htm.

105 Consortium for State Court Interpreter Certification, Consortium Oral Examinations Ready for Administration, available at http://www.ncsconline.org/D_Research/CourtInterp/OralExamReadyforAdministration.pdf. The Consortium, established under the auspices of the National Center for State Courts, grew out of the recognition that individual states lacked the resources to develop such tests on their own.

106 *Id.*

107 Consortium for State Court Interpreter Certification, Frequently Asked Questions (April 23, 2008), p. 3.

108 *See, e.g.*, Cassandra L. McKeown & Michael G. Miller, *Say What? South Dakota's Unsettling Indifference to Linguistic Minorities in the Classroom*, 54 S.D. L. Rev. 33, 86-87 (2009) (documenting South Dakota's lack of a credentialing procedure for court interpreters). Some counties in some of those states do have a credentialing procedure. However, a national study of the ability of state courts to provide interpretation in domestic violence protection order cases found that "[f]rom 15 to 30 percent of the courts, depending on population, had no formal means to determine the qualifications of their interpreters and translators." Brenda K. Uekert et al., Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity to Provide Protection Orders (2006), p. 55.

109 *See* Map 2 and Appendix E.

110 *See, e.g.*, Iowa's Roster of State Court Interpreters (April 15, 2009), available at http://www.judicial.state.ia.us/wfdata/frame8131-1521/File1.pdf (listing only Spanish and American Sign Language interpreters as being "certified"); Office of the Executive Secretary, Va. S. Ct., Serving Non-English Speakers in the Virginia Court System: Guidelines for Policy and Best Practice (2003), available at http://www.courts.state.va.us/interpreters/guidelines.pdf (stating that for languages other than Spanish, Virginia does not currently offer a credentialing process).

111 *See, e.g.*, Iowa Ch. J. Marsha Ternus, The State of the Judiciary 2009, p. 6, available at http://www.iowacourts.gov/wfdata/files/StateofJudiciary/SOJ2009web.pdf (stating that the Iowa courts "struggle to provide interpreters to litigants and witnesses in civil cases, interpreters in rural parts of the State, and interpreters for languages other than Spanish").

112 Kristina Horton Flaherty, *Dearth of Courtroom Interpreters Raises the Language Barrier*, Cal. Bar J., Apr. 2002, *available at* http://www.calbar.ca.gov/calbar/2cbj/02apr/index.htm.

113 Calif. Jud. Council, 2005 Language Need and Interpreter Use Study: Report to the Legislature (Feb. 2006), p. 4.

114 67 Fed. Reg. 41455, 41471 (June 18, 2002).

115 National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), p. 127. *See also Arrieta v. State*, 878 N.E.2d 1238, 1241 (Ind. 2008) (noting that in a 2001 survey, Indiana trial judges reported that "they were often unable to determine whether" a given interpreter was "genuinely qualified").

116 Conference of State Court Administrators, White Paper on Court Interpretation: Fundamental to Access to Justice (Nov. 2007), p. 9.

117 Calif. Jud. Council, 2005 Language Need and Interpreter Use Study: Report to the Legislature (Feb. 2006), p. 4. Registered interpreters must also attend an ethics workshop, engage in continuing education, and attend an orientation workshop. *Id.*

118 The rule also deems interpreters "certified" if they have been certified by the federal courts, the State Consortium for Interpreter Certification, or "any state court of equivalent jurisdiction having a certification program approved by the Presiding Judge," or if they are "determined to be proficient in the language for which certification is requested ... by a majority vote of the District and Associate District Court Judges." Tulsa County Dist. Ct. R. 18.A, available at http://www.tulsadistrictcourt.com/.

119 National Ass'n of Judiciary Interpreters & Translators, Position Paper: Preparing Interpreters in Rare Languages (Nov. 3, 2005).

120 National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), pp. 115-17 (quoting Roseann Gonzalez et al., Fundamentals of Court Interpretation (1992), p. 193).

121 U.S. Dep't of Justice, Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools From the Field, chapter 5.D (2004); Interview with Martha Cohen, King County Superior Court Office of Interpreter Services, Manager (Nov. 5, 2008). New York also uses interpreters to evaluate each other. N.Y. State Unif. Ct. Sys., Court Interpreting in New York: A Plan of Action (2006), pp. 21-22.

122 Questions court personnel can use to assess interpreters' abilities can be found in the following documents: National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), p. 128; Ohio S. Ct., Working With Foreign Language Interpreters: A Bench Card for Judges (Feb. 2007), p. 1; Office of the State Ct. Administrator, Ct. Programs & Services Div'n , Or. Jud. Dep't., Oregon Judges Criminal Benchbook (2005), ch. 19, pp. 1032-33, available at http://www.ojd.state.or.us/osca/cpsd/documents/CrimLawBenchBook%2011.06.pdf; N.J. Jud., Manual for Judges and Other Court Officials Who Use Interpreting Services Delivered by Telephone (2001), App. A, available at http://www.judiciary.state.nj.us/directive/vicops/timan2.pdf.

123 National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), p. 128.

124 *See* Ohio S. Ct., Working With Foreign Language Interpreters: A Bench Card for Judges (Feb. 2007).

125 N.M. Admin. Office of the Cts., New Mexico Court Interpreter Fee Guidelines, § III(B) *in* New Mexico Court Interpreter Resource Guide (2008), available at http://www.nmcourts.gov/newface/court-interp/NM%20Court%20Interpreter%20Resource%20Guide%2009%2008-3.pdf. *See also* N.M. Stat. Ann. § 38-10-3(B).

126 Tenn. S. Ct. R. 42, §§ 3(d), (e).

127 Tenn. Admin. Office of the Cts., Tennessee Judge's Bench Card for Qualifying Court Interpreters for Limited English Proficiency Cases (Feb. 2009).

128 National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts 224 (1995); N.Y. State Unified Court System, Court Interpreting in New York: A Plan of Action (2006), p. 9 ("Like all professionals, court interpreters require ongoing training to build skills.").

129 Sakhi for South Asian Women, Talking the Talk: A National Study of Court Interpreters; Preliminary Data and Recommendations on Language Access in NYS Courts (2008), p. 3.

130 Conference of State Court Administrators, White Paper on Court Interpretation: Fundamental to Access to Justice (Nov. 2007), p. 11. Among those states are California, Florida, Washington, Tennessee, and Oregon.

131 *Id.*, p. 23; National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), pp. 237-38.

132 *See* Madelynn Herman & Wanda Romberger, *Court Interpreter Ethics Programs: Where We Are and Where We Should Be Going*, *in* Future Trends in State Courts (2005), p. 108, available at http://www.ncsconline.org/WC/Publications/Trends/2005/CtInteEthicsTrends2005.pdf.

133 Brenda K. Uekert et al., Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity to Provide Protection Orders (2006), p. 76.

134 National Center for State Courts, Model Code of Professional Responsibility for Interpreters in the Judiciary, available at http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter9Pub.pdf; National Association of Judiciary Interpreters and Translators, Code of Ethics and Professional Responsibility, available at http://www.najit.org/ethics.html.

135 *See* Cassandra L. McKeown & Michael G. Miller, *Say What? South Dakota's Unsettling Indifference to Linguistic Minorities in the Classroom*, 54 S.D. L. Rev. 33, 87 (2009).

136 Consortium for State Court Interpreter Certification, Survey: Compensation - Salaried Interpreters – 2007 (May 3, 2007), available at http://www.ncsconline.org/D_Research/CourtInterp/Res_CtInte_ConsortCertCompSurvey2007SalaryPub.pdf.

137 U.S. Courts, Current Fees for Contract Interpreters (April 1, 2009), available at http://www.uscourts.gov/interpretprog/rates.html.

138 N.Y. State Unif. Ct. Sys., Court Interpreting in New York: A Plan of Action (2006), p. 13 (attributing New York's difficulty recruiting per diem interpreters to the fact that New York paid its interpreters significantly less than the federal courts, and neighboring states, did, and stating an intention to raise New York's rate significantly).

139 *See* National Ass'n of Judiciary Interpreters and Translators, Position Paper: Equal Access as It Relates to Interpretation and Translation Services (2006), p.3, available at http://www.najit.org/documents/Equal%20Access200609.pdf (compiling sources).

140 The website of the National Association of Judiciary Interpreters and Translators is www.najit.org. The website of the American Translators Association is www.atanet.org.

141 Conference of State Court Administrators, White Paper on Court Interpretation: Fundamental to Access to Justice (Nov. 2007), p. 10; Alaska Immigrant Justice Project, The Language Interpreter Center, available at http://akijp.org/interpreter.html; Suzanne DiPietro & Brenda Aiken, *Courts Report Shortage of Interpreters*, Alaska Bar Rag (July-Sep. 2005), available at http://www.alaskabar.org/servlet/content/courts_confront_interpreter_shortage.html.

142 *See* South Asian Americans Living Together, Recommendations Around Assisting South Asians Facing Linguistic and Cultural Barriers, p. 8, available at http://www.saalt.org/attachments/1/Linguistic%20Barriers.SAALT%20NJ%20Issue%20Briefs.pdf.

143 *College of Charleston Battles Court Interpreter Shortage*, Carolina Newswire (Dec. 12, 2008), available at http://carolinanewswire.com/news/News.cgi?database=001news.db&command=viewone&id=4084&op=t.

144 S.F. State, Spanish/English Interpretation, available at http://www.cel.sfsu.edu/interpretation/.

145 Univ. of Ariz., Nat'l Ctr. for Interpretation, About Us, available at http://nci.arizona.edu/index.php?option=com_content&view=article&id=63&Itemid=77.

146 *See* Consortium for State Court Interpreter Certification, Frequently Asked Questions (April 23, 2008), p. 2.

147 Conference of State Court Administrators, White Paper on Court Interpretation: Fundamental to Access to Justice (Nov. 2007), p. 12.

148 According to the National Association of Judiciary Interpreters and Translators, interpreters must have a high-quality headset with a mute button, separate dual volume control, and an amplifier; and everyone expected to hear the interpretation or to have their speech interpreted should have their own headset, handset, or microphone. National Ass'n of Judiciary Interpreters & Translators, Position Paper: Telephone Interpreting in Legal Settings (Feb. 27, 2009), available at http://najit.org/Publications/Telephone%20Interpreting%20Position%20Paper.pdf.

149 National Asian Pacific American Bar Association, National Asian Pacific American Bar Ass'n, Increasing Access to Justice for Limited English Proficient Asian Pacific Americans: Report for Action (2007); National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), pp. 181-85.

150 For example, New Jersey permits the use of telephonic interpretation when no local interpreter is reasonably available, but only when the use of a telephonic interpreter is fiscally responsible and will not compromise the quality of the interpretation. *See* N.J. Jud., Manual for Judges and Other Court Officials Who Use Interpreting Services Delivered by Telephone (2001). *See also* U.S. Dep't of Justice, Executive Order 13166 Limited English Proficiency Resource Document: Tips and Tools From the Field, chapter 5.D (2004).

151 *See* Ch. J. Randall T. Shepard, *Access to Justice for People Who Do Not Speak English*, 40 Ind. L. Rev. 643, 656 (2007) (noting that "Language-Line interpreters may not be trained in the three forms of interpretation and may not be intimately familiar with courtroom language or processes"); Conference of State Court Administrators, White Paper on Court Interpretation: Fundamental to Access to Justice (Nov. 2007), p. 12; N.J. Jud., Manual for Judges and Other Court Officials Who Use

Interpreting Services Delivered by Telephone (2001), p. 1 (warning that "[a]gencies are the last option because . . . they cannot guarantee they will provide qualified interpreters, which raises concerns regarding the quality of the interpreting delivered"); National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), pp. 179-183.

152 National Ass'n of Judiciary Interpreters & Translators, Position Paper: Telephone Interpreting in Legal Settings (Feb. 27, 2009).

153 *See* N.J. Jud., Manual for Judges and Other Court Officials Who Use Interpreting Services Delivered by Telephone (2001), p. 1.

154 National Asian Pacific American Bar Ass'n, Increasing Access to Justice for Limited English Proficient Asian Pacific Americans: Report for Action (2007), p. 40.

155 67 Fed. Reg. 41455, 41460, 41464-41465 (June 18, 2002) (instructing Title VI recipients to "assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance").
For help finding and using census data see Hyon B. Shin, Accessing and Using Language Data From the Census Bureau: Handout from the 2008 Federal Interagency Conference on Limited English Proficiency (Sep. 3, 2008), available at http://www.lep.gov/resources/2008_Conference_Materials/CensusAssessingandUsingLangData.pdf.

156 67 Fed. Reg. 41455, 41460, 41464-41465 (June 18, 2002); National Asian Pacific American Bar Ass'n, Increasing Access to Justice for Limited English Proficient Asian Pacific Americans: Report for Action 55 (2007) ("States with dramatically increasing immigrant populations, regardless of the level of English proficiency, should study whether the lack of certified and/or qualified interpreters in judicial proceedings is a problem. . . . States and communities with significant LEP populations, regardless of how fast those populations are growing, should engage in studies to assess the availability of certified and qualified interpreters.").

157 *See* 67 Fed. Reg. at 41464-65 (describing obligation of DOJ funding recipients to "develop an implementation plan to address the identified needs of the LEP populations they serve" and to monitor and update the plans); National Asian Pacific American Bar Ass'n, Increasing Access to Justice for Limited English Proficient Asian Pacific Americans: Report for Action 55 (2007) ("States, especially those with the largest anticipated gap between supply and demand of certified and qualified interpreters, should create a specific plan and program to evaluate how they are serving LEP clients, find ways to improve their services, and ensure they are meeting the demand for interpreter services.").

158 Cal. Gov. Code § 68563.

159 *See* Sherburne County Dist. Ct., Limited English Proficiency Plan (2008), p. 1, available at http://www.mncourts.gov/Documents/0/Public/Interpreter_Program/Sherburne_2008_LEP_Plan.pdf.

160 Minn. J. Branch, Limited English Proficiency Plans, available at http://www.mncourts.gov/?page=444.

161 *See* Sherburne County Dist. Ct., Limited English Proficiency Plan (2008), pp. 5-6.

162 N.J. Jud., Interpreting Statistics FY 1996-2005, available at http://www.judiciary.state.nj.us/interpreters/statistics.htm.

163 Wis. Dir. of State Courts, Language Access Plan (Jan. 26, 2004), available at http://www.wicourts.gov/services/judge/docs/lapstate.pdf.

164 *See, e.g.*, Idaho State Ct., Court Interpreter Site – Frequently Asked Questions, available at http://www.isc.idaho.gov/int_faq.htm (stating that "counties don't track statewide the number of court cases requiring an interpreter").

165 The Consortium for State Court Interpreter Certification makes a model disciplinary procedure available to its members. *See* Madelynn Herman & Wanda Romberger, *Court Interpreter Ethics Programs: Where We Are and Where We Should Be Going*, *in* Future Trends in State Courts (2005).

166 Elena M. deJongh, *Court Interpreting: Linguistic Presence v. Linguistic Absence*, Fla. Bar J. (July-Aug. 2008), p. 20 (describing the facts of *State of Oregon v. Morales*, No. 86-630, 1988 Ore. App. LEXIS 1627 (Or. Ct. App. Aug. 30, 1988)).

167 *See* Ky. Rev. Stat. Ann. § 30A.410 (providing that "[u]pon request of the person for whom the interpreter is appointed, or on the court's own motion, an interpreter may be removed for inability to communicate with the person, or if for reasonable cause another interpreter is so desired by the person for whom the interpreter is appointed, or because the services of an interpreter are not desired by the person."); Or. Rev. Stat. § 45.275(5) (providing a party or witness "dissatisfied" with the interpreter appointed can request that a different interpreter be appointed).

168 *See* discussion *supra* § II.C.1.b.

169 Iowa Jud. Branch, Court Interpreters, available at http://www.judicial.state.ia.us/District_Courts/Court_Interpreters/Roster/.

170 Minn. Jud. Branch, Non-Certified Interpreters, available at http://www.mncourts.gov/FindInterpreters/Default.aspx.

171 *See, e.g.*, Md. R., App. on Ct. Interp. Questions, available at http://www.michie.com/maryland/lpext.dll/mdrules/8/1290?fn=document-frame.htm&f=templates&2.0 (listing "voir dire" questions for judges to ask non-certified interpreters, but not mentioning that the voir dire is carried out by interpreter program personnel); Policies & Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System (Feb. 2007), § 2.2, *available at* http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf (describing the criteria for interpreters to be deemed "registered," without mentioning that all "registered" interpreters are examined on their interpreting skills by Administrative Office of the Courts staff on site visits and during interpreter evaluations).

172 *See* Madelynn Herman & Wanda Romberger, *Court Interpreter Ethics Programs: Where We Are and Where We Should Be Going*, *in* Future Trends in State Courts (2005), p. 109.

173 *Id.*

174 *See, e.g.*, Comment to Minn. Dist. Ct. R. 8.08(b) (cautioning that when the disciplinary process is used, "consideration will be given to the appropriate procedure and the giving of notice and an opportunity to be heard if such process is due the interpreter").

175 *See* Madelynn Herman & Wanda Romberger, *Court Interpreter Ethics Programs: Where We Are and Where We Should Be Going*, *in* Future Trends in State Courts (2005), p. 108 ("While most courts have codes of conduct for interpreters, many lack the provisions for handling ethics complaints.").

176 Minn. S. Ct., State Ct. Administrator's Office, Enforcement Procedures for the Code of Professional Responsibility for Court Interpreters, available at http://www.mncourts.gov/documents/0/Public/Interpreter_Program/Enforcement_Procedures_final.doc.

177 Policies and Best Practices in the North Carolina Court System (Feb. 2007), §§ 9.3, 9.4.

178 National Asian Pacific American Bar Ass'n, Increasing Access to Justice for Limited English Proficient Asian Pacific Americans: Report for Action 58 (2007) ("LEP programs should have a coordinator of interpreter services who will ensure that the program operates effectively"); National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts 222-223 (1995) ("the administrative office of the courts shall administer and manage the operations of the State Court Interpreter Program").

179 National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), pp. 89-90.

180 N.Y. State Unif. Ct. Sys., Court Interpreting in New York: A Plan of Action (2006), p. 8.

181 Wash. Cts., Washington State Court Interpreter Program, available at http://www.courts.wa.gov/programs_orgs/pos_interpret/.

182 Wis. S. Ct., Dir. of State Cts., Language Assistance Plan (Oct. 2008), available at http://www.wicourts.gov/services/judge/docs/lapstate.pdf.

183 Conference of State Court Administrators, White Paper on Court Interpretation: Fundamental to Access to Justice 24 (2007).

184 Calif. Comm'n on Access to Justice, Language Barriers to Access to Justice in California (2005), pp. 28-29.

185 *See* Memorandum of Understanding Between U.S. & State of Maine Judicial Branch, DOJ No. 171-34-8 (Sep. 2008), p. 5 (reciting agreement by Maine's Judicial Branch, in response to federal DOJ investigation, to ensure that "all new employees will receive LEP training as part of new employee orientation," and to "devise an intranet training program, concerning its [language access] Administrative Order and language access measures, which will be mandatory for all judges and court personnel to complete").

186 Sherburne County Dist. Ct., Limited English Proficiency Plan (2008), p. 5, available at http://www.mncourts.gov/Documents/0/Public/Interpreter_Program/Sherburne_2008_LEP_Plan.pdf

187 N.Y. State Unif. Ct. Sys., Court Interpreting in New York: A Plan of Action (2006), p. 18.

188 *Id.* at 18-19.

189 Interview with Martha Cohen, King County Superior Court Office of Interpreter Services, Manager (Nov. 5, 2008).

190 *Profile: Lucia Ventura*, InterPress (Summer 2007), p. 7, available at http://www.aciaonline.org/InterPress/InterPRESS-Summer_2007.pdf.

191 Sakhi for South Asian Women, Talking the Talk: A National Study of Court Interpreters; Preliminary Data and Recommendations on Language Access in NYS Courts (2008), p. 4.

192 *See* discussion *supra* § II.E regarding the legal obligation to provide interpreter services without undue delay.

193 Brenda K. Uekert et al., Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity to Provide Protection Orders (2006), pp. 75, 92.

194 *Id.*, p. 76.

195 National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), pp. 243-44.

196 The states are listed in Appendix A of this report.

197 18th Jud. Cir. Ct., DuPage County, Illinois, Court Interpreters, available at http://www.19thcircuitcourt.state.il.us/crtadmin/court_interpreters.htm. The court apparently receives federal Juvenile Accountability Block Grant funding through the Illinois Criminal Justice Information Authority, and federal child support enforcement funding through the Illinois Department of Healthcare and Family Services. *See* DuPage County, Resolution JPp-030-09 (April 28, 2009), available at http://www.dupageco.org/agendas/2009-04-28/JPp03009.pdf; State of Illinois Intergovernmental Agreement between Illinois Dep't of Healthcare & Family Services & DuPage County Circuit Court Chief Judge (June 12, 2007), § 3.1 available at http://www.dupageco.org/agendas/2008-04-22/fi005108.pdf ("Funding for the implementation of this Agreement consists of both Federal and State funds . . . ."); State of Illinois First Renewal of the Intergovernmental Agreement between Illinois Dep't of Healthcare & Family Services & DuPage County Circuit Court Chief Judge (March 31, 2008).

198 Letter from Merrily A. Friedlander, Chief, Dep't of Justice Civil Rights Div'n Coordination & Review Section, to Lilia G. Judson, Executive Director, Ind. Sup. Ct. Div'n of State Ct. Admin. (Feb. 4, 2009).

APPENDIX A: METHODOLOGY

This report analyzes in depth the extent to which court interpreters are provided in civil cases by the courts of the 35 states with the largest proportion of LEP individuals (measured as a percentage of the total population). It also provides less extensive information about court interpreter policies and programs in the other 15 states and Washington, D.C.

The 35 states we examined in detail are those in which the U.S. Census Bureau's 2005 American Community Survey reported that there was at least one county in which more than 2% of the total population spoke English less than "very well": Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

Many states have no statewide court interpreter program, requiring us to examine the policies and practices of individual counties. For each of the 35 states, we used 2005 American Community Survey data to identify two counties on which we would focus our analysis in case of significant state-wide variation: (1) the county in which the proportion of the population speaking English less than "very well" constituted the greatest proportion of the total population, and (2) the county with the largest recent percentage increase in people speaking English less than "very well." We considered only counties in which the total population was at least 65,000 and the population speaking English less than "very well" was at least 5% of the total population. In some states, only one county fit these criteria.

We compiled profiles of the court interpreter systems in each of the 35 states by consulting the following publicly available resources:

A. various national and state-specific reports on language access in the courts;

B. the website of the governmental entity responsible for the court interpreter program in each state (if any existed);

C. the websites of the relevant state and county governments and court systems;

D. relevant state and county statutes, regulations, and court rules; and

E. the websites of the National Center for State Courts,[1] National Association of Judiciary Interpreters and Translators,[2] state Access to Justice commissions, state and county bar associations, and minority bar associations.

Unfortunately, in most states there is little information publicly available regarding the extent to which civil litigants are able to obtain court interpreters, and the quality of those interpreters. Where the infor-

mation is available, it often requires careful parsing of multiple websites, statutes, court rules, and policy manuals. And, that written information is often wrong or incomplete.[3]

For that reason, for each of the 35 states, in addition to consulting publicly available resources we conducted telephone interviews regarding how the court interpreter system works in practice. In each state, we contacted at least one court employee (preferably one administering the court interpreter program), and at least one civil legal aid attorney possessing experience working with court interpreters in civil proceedings. We conducted interviews with 25 court interpreter managers, and 31 legal aid attorneys.

In our interviews, we led the court personnel through a questionnaire that included questions on the appointment of court interpreters, quality control regarding interpreters, the administration of the court interpreter program, and the funding of court interpreter programs. We asked the legal aid attorneys a subset of questions from the court personnel questionnaire and some more open-ended questions, as well.

Based on our research, we compiled a set of legal requirements for state court interpreter programs, and a set of best practices calculated to help states satisfy those legal requirements. The body of our report describes the extent to which the states do and do not adhere to the legal requirements and make use of the best practices. We also include, on our website (www.brennancenter.org), a more detailed description of the extent to which the 35 states do and do not:

A. ensure a written mandate is in place to provide interpreters all civil proceedings,

B. provide interpreters free of charge,

C. ensure that all LEP individuals receive interpreters, either through clear guidelines for appointment or by providing an interpreter whenever one is requested, and

D. ensure that interpreters are competent by testing them before appointing them.

In fall 2008, we shared a draft of the report with a group of individuals who generously agreed to serve as an "advisory board." The names of those individuals are listed in the "Acknowledgements" section of this report. We revised the report extensively, based on their suggestions. In spring 2009, we shared the summaries of each state with, and sought feedback from, everyone we had interviewed or sought to interview in that state. We received feedback from 15 court interpreter managers, and 20 civil legal aid attorneys. In the end, either through the interviewing process, or through the process of seeking feedback in the spring of 2009, we spoke with court administrators in each of the 35 states except Florida, Illinois, Louisiana, Oklahoma, and Texas, and in each of those states we were able to at least interview a practitioner.

1 National Center for State Courts, www.ncsconline.org.
2 National Ass'n of Judiciary Interpreters and Translators, www.najit.org.
3 See discussion supra § II.A.5.

APPENDIX B: STATE COURT LANGUAGE ACCESS GUIDELINES

A. Legal obligation: Provide interpreters to all LEP litigants and witnesses in all civil proceedings.

Practices likely to lead to compliance with this requirement:

1. Have a written statewide mandate in place covering all parties and witnesses in all civil proceedings.

2. Have a clear standard and guidelines for determining eligibility.

3. Have a clear procedure for appealing denials of interpreters.

4. Deny interpreter waivers if they are not knowingly and voluntarily made, or if the court determines an individual has limited proficiency in English.

5. Inform all litigants, witnesses and others of their right to an interpreter during their first contact with a judge or court clerk.

B. Legal obligation: Do not charge for interpreters.

C. Legal obligation: Ensure that interpreters are competent and act appropriately.

Practices likely to lead to compliance with this requirement:

1. Assess ability before appointing an interpreter.

    a. Use only interpreters who have obtained a credential through a process that provides training and tests the requisite abilities.

    b. Rely on a non-credentialed interpreter only after trained, dedicated court staff assess the interpreter's qualifications.

    c. Rely on judges or other court personnel to voir dire interpreters only as a matter of last resort.

2. Ensure that interpreters remain competent.

3. Adopt and require adherence to a code of ethics.

4. Ensure that there is an adequate supply of competent interpreters in the languages needed.

a. Provide compensation adequate to attract and retain competent interpreters.

b. Recruit interpreters from professional organizations and from the community.

c. Establish relationships with other states to create and access a shared pool of interpreters, while limiting the use of telephonic interpretation.

d. Maintain records on the need and demand for interpreters, and use those records to plan for future needs.

5. Allow litigants and court personnel to challenge the appointment of interpreters on competence and ethics grounds, and implement a disciplinary procedure.

6. Vest a single office or individual within the court system with responsibility for implementing and overseeing the court interpreter program.

D. Legal obligation: Ensure that judges and court personnel who come into contact with LEP litigants or witnesses act appropriately.

E. Legal obligation: To the extent possible, ensure that LEP individuals receive the same treatment as other court participants.

APPENDIX C: STATE COURT LANGUAGE ACCESS CHECKLIST

A. Legal obligation: Provide interpreters to all LEP litigants and witnesses in all civil proceedings.

The state likely complies with this legal obligation if it:

_____ 1. Has a law, court rule, or other written statewide mandate requiring the appointment of an interpreter for all LEP parties and witnesses in all civil proceedings;[1]

_____ 2. Has a clear standard and guidelines for determining who is eligible for a court interpreter, including a presumption that anyone requesting an interpreter is eligible for one;

_____ 3. Has a clear procedure for appealing denials of interpreters;

_____ 4. Denies interpreter waivers if they are not knowingly and voluntarily made, or if a court determines an individual has limited proficiency in English; and

_____ 5. In each of the languages in which interpreter services are commonly requested, in wording comprehensible to non-lawyers, informs all litigants, witnesses and others of their right to an interpreter, by:

_____ a. posting notice on the court system's website;

_____ b. prominently placing signs in clerks' offices, courtrooms, and all other public areas;

_____ c ensuring that the first court employee to come into contact with litigants informs them of their right to an interpreter; and

_____ d. placing language on court documents and forms informing litigants of the right to an interpreter.

B. Legal obligation: Do not charge for interpreters, regardless of whether litigants can pay.

The state likely complies with this legal obligation if it:

_____ 1. Has a law, court rule or other written mandate requiring that when an interpreter is appointed, the court system or some other governmental entity – not the LEP individual – is responsible for paying;[2] and

_____ 2. Has a clear source of funding for interpreters.

C. Legal obligation: Ensure that interpreters are competent and act appropriately.

The state likely complies with this legal obligation if it:

_____ 1. Assesses ability before appointing an interpreter by:

_____ a. requiring court interpreters to possess a credential requiring them to demonstrate:

i) fluency in both languages;

ii) ability to maintain the legal meaning of the original source;

iii) facility in the particular interpretation skill needed in that particular case (ie. simultaneous interpretation, consecutive interpretation, or sight translation of written materials);

iv) familiarity with the unique culture of the courtroom, any legal matters the interpreter will need to interpret, and the ethical duties of an interpreter; and

v) training in any special issues likely to arise in the case that require special legal knowledge or additional skills (such as domestic violence);

_____ b. relying on a non-credentialed interpreter only after trained, dedicated court staff assess the interpreter's qualifications; and

_____ c. relying on judges or other court personnel to voir dire interpreters only as a matter of last resort;

_____ 2. Ensures that interpreters remain competent by making continuing education available, and requiring interpreters to attend such trainings;

_____ 3. Adopts and requires adherence to an interpreter ethics code;

_____ 4. Maintains a pool of interpreters sufficient to meet the need;

If the pool of interpreters is insufficient to meet the need, the state tries to attract interpreters by:

_____ a. Providing compensation at a rate similar to that provided by neighboring states,[3] and by other employers in your state;[4]

_____ b. Recruiting interpreters from professional organizations and from the community; and

_____ c. Establishing relationships with other states to create and access a shared pool of interpreters.

_____ 5. Uses telephonic interpretation only:

_____ a. For short proceedings or meetings, or instances in which a local interpreter is unavailable;

_____ b. With proper equipment:[5]

i) interpreters must have a high-quality headset with a mute button, separate dual volume control, and an amplifier; and

ii) everyone expected to hear the interpretation or to have their speech interpreted should have their own headset, handset, or microphone; and

_____ c. After interpreter and court personnel are trained on telephone interpreting protocols;

_____ 6. Maintains records on the need and demand for interpreters;

_____ 7. Uses census data and the court's records on the need and demand for interpreters to plan for future needs;

_____ 8. Tells litigants whether their interpreters are credentialed, and when non-credentialed interpreters are assigned tells litigants whatever is known about the interpreter's interpreting abilities;

_____ 9. Allows litigants and court personnel to challenge the appointment of interpreters on competence and ethics grounds;

_____ 10. Has a disciplinary procedure for court interpreters which protects interpreters' due process rights; and

_____ 11. Has a single office or individual within the court system with responsibility for implementing and overseeing the court interpreter program.

D. Legal obligation: Ensure that judges and court personnel who come into contact with LEP litigants or witnesses act appropriately.

The state likely complies with this legal obligation if it:

_____ 1. Trains judges in how to:

_____ a. Determine whether a party or witness needs the assistance of an interpreter,

_____ b. Determine whether a particular interpreter is competent,

_____ c. Use interpreters effectively, and

_____ d. Run courtrooms in which simultaneous or consecutive interpreting of testimony or proceedings is occurring;

_____ 2. Trains other court personnel who come into contact with the public in how to:

_____ a. Determine whether a party or witness needs the assistance of an interpreter,

_____ b. Determine whether a particular interpreter is competent, and

_____ c. Use interpreters effectively;

_____ 3. Bases performance evaluations of judges and other court personnel who come into contact with the public in part on skill in using interpreters; and

_____ 4. Has is a formal feedback process to process complaints from litigants and interpreters about how court interpretation is handled.

E. Legal obligation: To the extent possible, ensure that LEP individuals receive the same treatment as other court participants, including by minimizing delays in their cases.

The state likely complies with this legal obligation if it:[6]

_____ 1. Marks case files and scheduling documents with "interpreter needed" designations;

_____ 2. Includes on notice and summons documents issued to lawyers and pro se litigants language stating that they must notify court personnel immediately if an interpreter is needed;

_____ 3. Includes data elements in case management systems to indicate whether litigants or witnesses need interpreters;

_____ 4. Concentrates interpreting work among as few individuals as possible;

_____ 5. Calls interpreter cases promptly so the interpreter can move on to other courtrooms; and

_____ 6. Schedules interpreter cases in the same courtroom on specific days of the week or at specific times of the day.

Note on how to determine if a state court is covered by Title VI: Pursuant to Title VI of the Civil Rights Act, the legal obligations detailed above apply to all state, county and municipal courts receiving federal funding.

A court is covered by Title VI if it:

_____ 1. Is a direct recipient of federal funding;

_____ 2. Receives federal funding as a subrecipient from another state agency or nonprofit; or

_____ 3. Is part of a unified court system, any part of which receives federal funding.[7]

Types of federal funding commonly directed to state, county and municipal courts:

1. **Department of Health and Human Services** grants including:
   a) Adult Treatment Drug Assistance;
   b) Children's Justice Act;
   c) Court Improvement Program;
   d) Promoting Safe and Stable Families Act;
   e) Substance Abuse and Mental Health Services Administration funds
   f) Targeted Grant to Increase the Well-Being of, and to Improve the Permanency Outcomes for Children Affected by Methamphetamine or Other Substance Abuse;
   g) Temporary Assistance to Needy Families; and
   h) Title IV-D Child Support Enforcement funds.

2. **Department of Justice** grants including:
   a) Drug Court Discretionary Grant Program;
   b) Edward Byrne Memorial Justice Assistance Grant Program;
   c) Juvenile Accountability Block Grant;

d) National Criminal History Improvement Program;
e) NICS Act Record Improvement Program; and
f) Violence Against Women Act;

3. **Department of Transportation** grants including: National Highway Traffic Safety Administration funding; or

4. **State Justice Institute** grants.

Remember that even if a court is not covered by Title VI, it may be obligated to provide interpreters under a variety of federal and state constitutional guarantees.[8]

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1 For our list of states that do and do not fulfill this criterion, see map 1 and Appendix D.

2 For our list of states that do and do not fulfill this criterion, see map 2 and Appendix E.

3 To find information about how neighboring states compensate their interpreters, you can refer to the compensation surveys conducted by the National Center for State Courts' Consortium for State Court Interpreter Certification. The 2007 version is available at http://www.ncsconline.org/D_RESEARCH/CISurveyResults.html.

4 To find information about how other employers in your state compensate their interpreters, you can refer to the compensation surveys conducted by the American Translators Association. The 2007 version can be ordered online at http://www.atanet.org/publications/compensation_survey.php.

5 The list of proper equipment, and additional information about telephone interpreting, can be found in National Ass'n of Judiciary Interpreters & Translators, Position Paper: Telephone Interpreting in Legal Settings (Feb. 27, 2009), available at http://najit.org/Publications/Telephone%20Interpreting%20Position%20Paper.pdf.

6 These criteria are taken from National Center for State Courts, Court Interpretation: Model Guides for Policy and Practice in the State Courts (1995), pp. 243-44.

7 Many states make clear on their websites that they are unified. See, e.g., Ky. Ct. of Justice, History of the Kentucky Unified Court System, available at http://courts.ky.gov/research/history.htm; N.Y. Unified Court System, N.Y. Unified Court System, available at http://www.courts.state.ny.us/. The National Center for State Courts' Court Statistics Project also maintains a list of unified court systems. National Center for State Courts, Court Unification FAQ's, available at http://www.ncsconline.org/wc/courtopics/FAQs.asp?topic=CtUnif#FAQ327 (noting that the Court Statistics Project characterizes the state court systems of the following states as unified: California, Connecticut, District of Columbia, Illinois, Iowa, Kansas, Minnesota, Missouri, North Dakota, Puerto Rico, South Dakota, and Wisconsin). And, court systems that neither self-identify nor appear on the National Center for State Courts list should be considered unified for purposes of Title VI if a single entity exercises authority over court administration and rulemaking. See Ass'n of Mexican-American Educators v. State of Calif., 195 F.3d 465, 478 (9th Cir. 1999) (holding that in determining whether individual schools are part of a school system such that receipt of funding by one will bring all under the purview of Title VI, "[t]he critical issue is whether the schools are managed in relevant respects as a connected unit"), rev'd on other grounds, 231 F.3d 572 (9th Cir. 2000) (en banc).

8 See Report, § I, infra.

APPENDIX D: CITATIONS FOR AND COMMENTS ON MAP 1 MANDATORY WRITTEN REQUIREMENT COVERING ALL CIVIL CASES

For the 35 states about which we conducted extensive research (listed in the Methodology section of this report), we indicate here whether the practice adheres to the cited law or rule. For all other states, we provide the statutes or rules we were able to find, but do not know what happens in practice.

Yes, there is a mandatory written requirement that interpreters be appointed in all civil cases.

D.C. Note, however, that the website of the Superior Court warns that the court system does not provide interpreters for civil cases in which the litigant is not deemed indigent.

D.C. Code § 2-1902(a); D.C. Super. Ct., Office of Court Interpreting Services, Services Provided, available at http://www.dccourts.gov/dccourts/superior/special_ops/ocis.jsp

Georgia Ga. S. Ct., Uniform R. for Interpreter Programs I(A), App. A

Idaho Idaho Code Ann. § 9-205

Indiana Ind. Code § 34-45-1-3

Iowa Iowa Code 622A.2

Kansas Although there is a clear statutory mandate, we were told that in Sedgwick County interpreters are appointed only in family cases, and that in other types of cases litigants must bring their own interpreters.

Kan. Stat. Ann. § 75-4351 et seq.

Kentucky Ky. Rev. Stat. Ann. § 30A.410

Louisiana Although there is a clear statutory mandate, we were told that there is not yet a procedure in place to ensure that interpreters are in fact appointed statewide.

La. Code Civ. Proc. § 192.2(A)

Maine Me. S. Jud. Ct., Admin. Order JB-06-3 (Oct. 11, 2006), available at http://www.courts.state.me.us/court_info/opinions/adminorders/%20JB_06_3%20LEP.htm

Maryland Md. Rules for Courts, Judges and Attorneys, Rule 16-819

Massachusetts Mass. Gen. Laws Ch. 221C § 2

Minnesota Minn. Stat. §§ 546.42, 546.43

Mississippi Miss. Code Ann. §§ 9-21-71, 9-21-79

Missouri Mo. Rev. Stat. 476.803.1

Nebraska Neb. Rev. Stat. § 25-2403

New Jersey N.J. Jud., Dir. #3-04, Std. 1.2, From Richard J. Williams to Assignment Judges, Standards for Delivering Interpreting Services In the New Jersey Judiciary, available at http://www.judiciary.state.nj.us/directive/personnel/dir_03_04.pdf (requiring assignment of interpreters in all types of cases)

New Mexico By statute, whenever a non-English speaking principal party in interest or witness in a "judicial proceeding" requests an interpreter, the court must appoint one. The statute does not, on its face, limit its scope to criminal proceedings, or to any particular category of civil proceedings. However, in practice interpreters are provided only for indigents, as well as for anyone in domestic violence and Children's Court cases

N.M. Stat. Ann. §§ 38-10-2(D) (defining "principal party in interest" as "a person in a judicial proceeding who is a named party or who will or may be bound by the decision or action or foreclosed from pursuing his rights by the decision or action which may be taken in the proceeding," and defining "witness" as "a witness in any judicial proceeding"), 38-10-3(A) (providing that upon request by a "non-English speaking" principal party in interest or witness, court "shall appoint" a certified interpreter). *See also State of N.M. ex rel. CYFD v. William M.*, 161 P.3d 262 (N.M. Ct. App. 2007) (noting that father in termination of parental rights case "was provided with a certified court interpreter, consistent with Section 38-10-3").

New York Note that practitioners state that many judges and attorneys remain unaware of the relevant court rule.

Administrative Order of the Chief Administrative Judge of the Courts, Part 217 (Oct. 16, 2007); Interview with Dimple Abichandani, Director of Program Development, Legal Services NYC (May 16, 2008)

Oregon Or. Rev. Stat. § 45.275

Pennsylvania 42 Pa. Cons. Stat. § 4401

South Carolina The governing statute provides that courts "may" appoint interpreters. However, the South Carolina Court of Appeals has held that where a party requests an interpreter in a civil matter, it is legal error for court to proceed without an interpreter unless the court finds on the record that proceeding is in the best interest of the party or of justice.

S.C. Code of Laws § 15-27-155(A); Melton v. Olenik, 664 S.E.2d 487, 490 (S.C. Ct. App. 2008)

Texas Tex. Gov. Code § 57.002

Utah Note that although a statute and court rule require the appointment of an interpreter whenever a litigant or witness cannot speak or understand English, it does not seem to be followed. A court rule provides that except in juvenile court proceedings initiated by the State, cohabitant abuse cases, stalking injunctions, child protective orders, and any other cases in which the court determines that the state is obligated to pay, "the party engaging the services of the interpreter shall pay the interpreter fees and expenses." A Utah legal services lawyer told us that interpreters usually are not provided in civil cases.

Utah Code Ann. § 78B-1-146; Utah R. Jud. Admin. § 3-306(6)(A); Utah R. Jud. Admin. § 3-306(12)(A)(ii); Interview with Eric Mittelstadt, Director of Advocacy and Personnel, Utah Legal Services' Community Legal Center (Feb. 2008)

Washington Wash. Rev. Code § 2.43.030

Wisconsin Statute mandates appointment of counsel in all civil cases except those appearing in municipal court, which handle "traffic and ordinance matters, including first-time drunken driving offenses… [and] juvenile matters, such as truancy, underage drinking, drug offenses and curfew violations"

Wis. Stat. Ann. §§ 885.37, 885.38

No, there is no mandatory written requirement that interpreters be appointed in all civil cases.

Alaska Parties who need an interpreter because they or a witness are LEP must provide their own interpreter.

Alaska R. Governing Admin. of All Courts 6(b)(2)

Arizona Appointment is discretionary.

Az. Rev. Stat. § 12-241; Az. R. Civ. Proc. 43(c)

Arkansas Appointment is discretionary. A court "may" appoint an interpreter for a person who is unable to pay for one.

Ark. Code Ann. § 16-64-111(b)(1)

California Interpreters must be appointed only in small claims, divorce and custody cases.

Cal. Fam. Code § 3032 (divorce & custody); Cal. R. Ct. 3.61(5) (small claims)

Colorado Interpreters must be provided only in cases concerning juvenile delinquency, truancy, protection orders involving domestic abuse, dependency and neglect, paternity and support when covered under Title VI-D of the Social Security Act, relinquishment of parental rights and mental health.

Colo. Chief Justice Directive 06-03, available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/06-03.pdf

Connecticut Pursuant to court rule, interpreters must be provided in dependency and termination of parental rights cases when needed. However, there is no statute or court rule requiring the provision of interpreters in other types of civil cases. "Interpreters are provided for limited-English speaking defendants, victims, witnesses, and family members in criminal cases."

Conn. Super. Ct. Juv. R. 32a-6; See State of Connecticut Judicial Branch, Court Interpreter and Translator Services, available at http://www.jud.state.ct.us/EXTERNAL/NEWS/jobs/interpreter.htm#FAQs

Delaware Appointment is discretionary.

Del. Super. Ct. R. Civ. Proc. 43(e); Del. Just. Peace Ct. R. Civ. Proc. 43(e); Del. Fam. Ct. R. Civ. Proc. 43(f); Del. Ct. Com. Pls. R. Civ. Proc. 43(e)

Florida Interpreters must be provided only in those civil cases in which "a fundamental right is at stake."

Fla. R. Jud. Admin. 2.560(b)

Hawaii Appointment is discretionary. In practice, interpreters are provided by the prosecutor in domestic violence restraining order matters, and by the court in termination of parental rights cases and as ordered by the court

Haw. R. Civ. P. 43(f); Haw. R. Prob. 15(e); Haw. R. Fam. Ct. 43(f); Interview with Philip M. Liu, Hawaii Court Interpreting Services Coordinator (Feb. 25, 2008)

Illinois There is no governing state statute or rule.

See 18th Jud. Cir. Ct., DuPage County, Illinois, Court Interpreters, available at http://www.dupageco.org/courts/generic.cfm?doc_id=2215 ("There are no statutory requirements nor any constitutional obligations that public funds be expended for appointment of language interpreters in civil cases."); 19th Jud. Cir. Ct., Lake County, Court Interpreters, available at http://www.19thcircuitcourt.state.il.us/crtadmin/court_interpreters.htm (same)

Michigan Appointment is discretionary.

Mich. Ct. R. § 2.507(D)

Nevada Appointment is discretionary.

Nev. R. Civ. P. 43(d)

North Carolina The decision whether to appoint an interpreter "rests within the sound discretion of the court."

State v. Torres, 322 N.C. 440, 443-44 (N.C. 1988). *See also* Policies and Best Practices in the North Carolina Court System (Feb. 2007), §§ 3.1, 7.3

Oklahoma There is no governing state statute or court rule requiring appointment of interpreters in civil cases.

Rhode Island There is no governing state statute or court rule requiring appointment of interpreters in civil cases.

Tennessee Appointment is discretionary.

Tenn. S. Ct. Rule 42 § 3(a)

Virginia Appointment is discretionary.

Va. Code Ann. § 8.01-384.1:1(A)

APPENDIX E: CITATIONS FOR AND COMMENTS ON MAP 2 WHO PAYS FOR INTERPRETERS

For the 35 states about which we conducted extensive research (listed in the Methodology section of this report), we indicate here whether the practice adheres to the cited law or rule. For all other states, we provide the statutes or rules we were able to find, but do not know what happens in practice.

The author expresses her gratitude to the Washington Coalition of Sexual Assault Programs and ABA Commission on Domestic Violence, which compiled many of these statutes in their table, "State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Cases."

Government always pays without means test. In other words, in all civil cases, government appoints and pays for interpreters, and litigant is not charged for the cost.

Idaho Idaho Code Ann. §§ 9-205, 9-1603; Idaho Ct. Admin. R. 52 (g), available at http://www.isc.idaho.gov/ICAR_52_110508.pdf

Kansas Kan. Stat. Ann. § 75-4352(a)

Kentucky Ky. Rev. Stat. Ann. §§ 30A.410 & 420

Maine 5 Me. Rev. Stat. Ann. § 51; Me. S. Jud. Ct., Admin. Order JB-06-3 (Oct. 11, 2006), available at http://www.courts.state.me.us/court_info/opinions/adminorders/%20JB_06_3%20LEP.htm

Minnesota Minn. Stat. § 546.44, subdiv. 3; Minn. R. Civ. P. 43.07

Nebraska Neb. Rev. Stat. § 25-2406

New Jersey N.J. Jud., Dir. #3-04, Std. 1.2

New York Interview with N.Y. State Office of Court Administration, Office of Court Interpreting Services (July 31, 2007)

Oregon Although a statute permits courts to charge parties for interpreters when the party cannot demonstrate a financial inability to pay, as a matter of practice, Oregon's courts do not charge for interpreters.

Or. Rev. Stat. § 45.275(2)-(3); E-mail from Kelly Mills, Program Manager, Court Interpreter Services, Oregon Judicial Department (May 26, 2009).

Wisconsin Wis. Stat. Ann. § 885.38(a); Wis. Att'y Gen'l, Press Release: Circuit Courts Must Absorb Costs for Necessary Interpreter Services (Oct. 14, 2008), available at

http://www.doj.state.wi.us/news/2008/nr101408_03.asp

Government sometimes pays without means test. In other words, in some but not all civil cases, government appoints and pays for interpreters and does not charge the litigant for the cost.

Connecticut The court pays when interpreters are provided in dependency and termination of parental rights cases.

Conn. Gen. Stat. Ann. § 46b-139

New Mexico Courts cover the costs of interpreters for non-English speaking principal parties in interest or witnesses in domestic violence and Children's Court cases regardless of cost, as well as in all other civil proceedings if the party is indigent.

N.M. Stat. Ann. § 38-10-3(C); N.M. Admin. Office of the Cts., New Mexico Court Interpreter Fee Guidelines, §§ II(C)(3), II(C)(4), in New Mexico Court Interpreter Resource Guide (2008), available at http://www.nmcourts.gov/newface/court-interp/NM%20Court%20Interpreter%20Resource%20Guide%2009%2008-3.pdf

Rhode Island In juvenile matters, but not in any other civil proceedings, the state appoints and pays for interpreters.

R.I. Gen. Laws §§ 8-19-2(4), 8-19-4

Government pays only after applying means test. In other words, in some or all civil cases, government appoints and pays for interpreters, and does not charge the litigant for the cost, but only if the litigant cannot afford to pay.

California Interpreters are provided for indigents in small claims and certain custody and divorce proceedings.

Cal. Govt. Code § 68092; Cal. R. Ct. 3.61(5); Cal. R. Evid. 755

Colorado Interpreters are provided for indigents in all civil cases.

Colo. Chief Justice Directive 06-03, available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/06-03.pdf

D.C. Litigants "must bear the cost" of interpreters "for civil cases in which the litigants are not deemed indigent."

D.C. Code § 2-1912(c). See also D.C. Super. Ct., Office of Court Interpreting Services, Services Provided, available at http://www.dccourts.gov/dccourts/superior/special_ops/ocis.jsp

Delaware The courts provide interpreters in some civil cases, including those in family court concerning custody, as well as child support proceedings. In such cases, interpreters are provided free of charge for indigents, but people who are not indigent will be assessed interpreter costs.

E-mail from Maria Perez-Chambers, Coordinator, Interpreter Program, Administrative Office of the Courts (April 8, 2009); Del. Super. Ct. R. Civ. Proc. 43(e).

Florida Trial courts are required to recover the cost of providing an interpreter to any party with the present ability to pay. "If you are not indigent, the Trial Court Administrator is required by law to recover interpreter costs on behalf of the state. If you are found to have the ability to pay, you will be billed after your hearing for the costs of the service provided to you, which are normally $35 to $68 an hour with a two hour minimum, plus travel costs."

Fla. Stat. § 29.0195; See also Fla. 6th Jud. Cir., Interpreters, available at http://www.jud6.org/LegalCommunity/Interpreters.html

Georgia Interpreters are provided for indigents in all civil cases.

S. Ct. Ga., Order: Use of Interpreters for Non-English Speaking Persons (Jan. 13, 2003), p. A-3, available at http://www.georgiacourts.org/agencies/Interpreters/interpreterrule.pdf

Iowa Interpreters are provided for indigents and witnesses.

44 Iowa Code Ann. §§ 622A.3, 622A.4

Nevada Courts may (but are not required to) pay for interpreters only when a determination of indigency has been made, and in all other cases parties must pay interpreter costs before an interpreter is provided.

See Nev. 8th Jud. Dist. Ct. R. Prac. 7.80(a); Caballero v. Seventh Judicial Dist. Court ex rel. County of White Pine, 167 P.3d 415, 421 (Nev. 2007); see also Nev. Dist. Ct. R. Civ. Proc. 43(d)

North Carolina It appears that the only civil cases in which North Carolina will provide an interpreter at state expense and without recouping costs are for a domestic violence petitioner seeking a protective order and court-ordered child custody mediation sessions. The Administrative Office of the Courts will pay for interpreters for parties represented by court-appointed counsel, and for their witnesses. Falling within this mandate are juvenile proceedings; abuse, neglect and termination of parental rights proceedings; adult protective services proceedings; and respondents in involuntary commitment and incompetency proceedings. In these types of cases, parties deemed able to pay at least part of the expenses of their representation and interpreter services, and parties under 18 who have a parent or guardian financially able to pay, must pay the greater of $10 or the cost of the services provided.

Additionally, courts are permitted to appoint and authorize the payment of interpreters for domestic violence restraining order petitioners and for parties ordered into child custody mediation. In domestic violence cases, the state does not assess a fee for interpreter costs on the party seeking the restraining order.

In all other cases, parties must pay for their own interpreters. If a party needs, but does not provide, an interpreter, or if the interpreter provided by the party is not competent, the court is authorized to appoint an interpreter and charge the party for the cost.

N.C. Gen. Stat. §§ 7A-314(f), 7A-450.1, 7A-455, 7A-451; N.C. Admin. Office of the Cts., Policies & Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System (Feb. 2007), §§ 7.2, 7.4, 7.6, available at http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf

Pennsylvania Counties pay for interpreters for indigent parties in all civil cases.

42 Pa. Cons. Stat. § 4416

Tennessee The Administrative Office of the Courts compensates interpreters in cases in which the party is indigent and entitled to the appointment of counsel. In other words, the courts pay for interpreters for indigent parties in cases concerning

mental health commitment or guardianship, waivers of parental consent for abortion, abuse, neglect or termination of parental rights, or juvenile delinquency. In all other proceedings, the costs of interpreter services in civil cases must be taxed as court costs against non-indigent litigants. For people who are not entitled to the appointment of counsel, there is no formal waiver or repayment program for court interpreter costs, although some counties do assist in covering interpreter costs for those who cannot afford them.

Admin. Office of the Cts., Interpreter Manual: Candidates Beginning the Credentialing Process November 2005-Present (last revised Sep. 2007), pp. 10-11, available at http://www.tsc.state.tn.us/geninfo/Publications/Forms/Interpreters/Interp%20Manual%20January%202009%20Revised.pdf; Tenn. S. Ct. R. 13, § 4(d); id. 42, § 7(a); Tenn. R. Civ. P. 54; Interview with Sheila Morris, Court Programs Specialist, Tenn. S. Ct., Admin. Office of the Courts (Sep. 9, 2007)

Texas

The general rule in civil proceedings is that courts are not required to pay for the services of spoken language interpreters. Rather, courts may pay, may require one of the parties to pay, or may assess the cost of the interpreter's compensation as costs at the end of the case. Although costs may not be assessed against parties who are unable to pay at the end of a case, it does not appear that courts are required to pay up front for the services of an interpreter for such parties. The requirements are slightly different in certain categories of civil cases. In guardianship proceedings, the proposed ward is required to pay for the interpreter's services, although if the ward cannot pay the county must. In proceedings regarding civil commitment, the person who is the subject of the proceeding must reimburse the county for the cost of providing an interpreter unless that person is unable to pay.

Tex. Att'y Gen. Op. JC-0584 (2002); Tex. R. Civ. Proc. 145, 183; Tex. Prob. Code Ann. § 665A; Tex. Hlth. & Safety Code § 571.017

Utah

Government pays interpreter costs for juvenile court proceedings initiated by the State, cohabitant abuse cases, stalking injunctions, and child protective orders. In such cases, the cost of an interpreter for a witness may be assessed, in part or in whole, against the litigant, unless the litigant requiring the interpreter is "impecunious." In all other civil and small claims cases, the litigant must provide his or her own interpreter, regardless of ability to pay.

Utah R. Jud. Admin. § 3-306(12)(A); Utah Code Ann. § 78B-1-146

Washington

Government will pay only when the litigant either is compelled to appear, or is indigent.

Wash. Rev. Code § 2.43.040

Government never pays. In other words, litigants must always pay for interpreters appointed by the court in civil cases, either by providing their own or by reimbursing government for the cost.

Alaska Alaska R. Governing Admin. of All Courts 6(b)(2)

Illinois "There are no statutory requirements nor any constitutional obligations that public funds be expended for appointment of language interpreters in civil cases."

See, e.g. 18th Jud. Cir. Ct., DuPage County, Illinois, Court Interpreters, available at http://www.dupageco.org/courts/generic.cfm?doc_id=2215

Louisiana All civil litigants are liable for interpreter costs. Although indigent parties may be allowed to litigate without prepayment, they are still liable for the costs at the end of a proceeding.

La. Code Civ. P. §§ 192.2(B), 5181, 5186, 5188

Court's discretion. In other words, whether government pays interpreters appointed by the court and/or whether government charges litigant for the cost is within the court's discretion in civil cases.

Arizona Ariz. R. Civ. Proc. 43(c).

Arkansas The Arkansas Code provides that "[t]he fee for the services of the interpreter shall be set by the court and shall be paid in such manner as the court may determine." The Administrative Office of the Courts "may" pay for the services of "certified" interpreters.

Ark. Code Ann. §§ 16-64-111(b)(1), 16-64-111(b)(2), 16-10-127(e)(2)

Hawaii Haw. R. Civ. P. 43(f)

Indiana Ind. Code § 34-45-1-4(b)

Maryland Although a statute allows interpreter fees to be charged to nonindigent parties, the statewide Court Interpreter Program Administrator assured us that costs are assessed only in rare cases.

Md. Code, Cts. & Jud. Proceedings, § 9-114(b); Md. R. 2-603(c)

Massachusetts The Office of Court Interpreter Services ("OCIS") instructs judges to "consider assigning the cost of the interpreter services" to one of the parties.

Office of the Trial Ct., Support Services Department, Interpreter Services, Standards and Procedures of the Office of Court Interpreter Services, § 8.01(B), available at http://www.mass.gov/courts/admin/interpreters/finalstanproc.pdf. *See also* Mass. R. Civ. P. 43(f); Mass. Admin.

Michigan Mich. Ct. R. § 2.507(D)

Mississippi A state statute provides that even volunteer interpreters shall be paid reasonable expenses, but that the expenses of providing an interpreter may be assessed as costs. Interpreter expenses may be paid by the court or a party, and may be taxed as costs.

Miss. Code Ann. § 9-21-81; Miss. R. Civ. P. 43(f)

Missouri A state statute provides that prior to any proceeding requiring an interpreter, the court "may" require one or both parties to deposit an amount of money "reasonably necessary" to cover interpreter costs, and that the court can require payment of the interpreter costs from that deposit. In at least some counties, parties to civil cases who call a witness needing an interpreter must "arrange and pay for such interpreter." In at least one other county, the court will arrange for an interpreter but not until after the requisite deposit has been made.

Mo. Ann. Stat. § 476.806.3; See 9th Jud. Cir. Ct. R. 56.1; See 21st Jud. Cir. Ct. R. 25.1

Oklahoma There is no governing state statute or rule. Counties generally do not pay for interpreters in civil cases, although they have discretion to do so.

See Marie Price, Rising Diverse Population Causes Need for Immigrant Services, J. Record (Dec. 1, 2008), available at http://www.journalrecord.com/article.cfm?recID=94105

South Carolina S.C. Code of Laws § 15-27-155(C)(2); S.C. R. Civ. Proc. 43(f).

Virginia Va. Code Ann. § 8.01-384.1:1(B).

SELECTED BRENNAN CENTER PUBLICATIONS

Maryland's Parole Supervision Fee: A Barrier to Reentry
REBEKAH DILLER, JUDITH GREENE, AND MICHELLE JACOBS

Executive Privilege: A Legislative Remedy
EMILY BERMAN

Eligible for Justice: Guidelines for Appointing Defense Counsel
THE ACCESS TO JUSTICE PROJECT

Access to Justice: Opening the Courthouse Door
DAVID UDELL AND REBEKAH DILLER

Better Ballots
LAWRENCE NORDEN

A Citizens' Guide to Redistricting
JUSTIN LEVITT

A Return to Common Sense: Seven Bold Ways to Revitalize Democracy
MICHAEL WALDMAN
(Sourcebooks)

Fair Courts: Setting Recusal Standards
JAMES SAMPLE

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DAVID PEDULLA

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ERIKA WOOD

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LAWRENCE NORDEN AND ERIC LAZARUS
(Academy Chicago Publishers)

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