

**WHITE PAPER ON  
COURT INTERPRETATION:  
FUNDAMENTAL TO ACCESS TO  
JUSTICE**

**Conference of State Court Administrators**

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# **COURT INTERPRETATION: FUNDAMENTAL TO ACCESS TO JUSTICE**<sup>1</sup>

## **INTRODUCTION AND BACKGROUND**

### **A. INCREASING IMPORTANCE OF QUALITY INTERPRETATION IN COURTS**

Throughout our nation, in every state, individuals look to state court systems to resolve some of the most important issues and controversies in their lives. As criminal defendants, victims, civil litigants, and witnesses, these individuals ask the justice system to protect their rights and resolve their disputes in accord with the constitutional principles upon which this nation was founded. Yet, when language barriers intrude into the process of justice and prevent essential communication and understanding, some of the most basic strengths and values of our justice system are too often negated. An example of the impact of communication barriers in court occurred in a trial during which a Cantonese speaking witness was testifying. Through the interpreter, the witness said, “Oh that iron pear, he fried my squid!” The witness’ statement appears to be nonsensical. In fact, the witness provided a responsive answer, but the interpreter did not understand the colloquial Cantonese context for the statement. He translated the witness’ words literally, without understanding and interpreting the true meaning and intention of the statement: “Oh that bastard, he fired me!”<sup>2</sup>

The United States is a country founded on the process of immigration. One of the great strengths of our country is its acceptance of immigrants. Many of our citizens’ ancestors traveled here without the ability to communicate in English. One of the fundamental rights we have recognized, and an important reason why immigrants continue to come, is our country’s belief in equal justice for all. But, to have equal justice, every litigant, every victim, every witness must understand what is happening in the courtroom. For individuals to be afforded equal justice, and for courts to achieve their mission of providing equal justice accessible to all, court systems must develop viable systems to provide competent interpretation services to limited and non-English speakers. Our promise of justice for all must be

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<sup>2</sup> Excerpt from the video recording, *Working with Interpreters*, written and produced by Joanne Moore, Washington State Administrative Office of the Courts and the National Center for State Courts.

supported by a commitment to provide all individuals accessing our court systems with a means for true communication and understanding, and not through a mere babble of unintelligible voices.

The extent of the need for language interpretation services in courts is staggering. The steadily increasing population of non-English-speaking individuals in the United States presents many challenges, including the states' abilities to provide adequate resources to address these needs. In 1990, there were 6.7 million persons age 5 and over residing in the U.S. who spoke English less than very well (2.9% of the population age 5 and over).<sup>3</sup> By 2000, this figure had increased dramatically to 21.3 million persons (8.1% of the population age 5 and over)<sup>4</sup>, and by 2005, 23.2 million residents of the U.S. (8.65% of the population age 5 and over).<sup>5</sup> This represents a 246% increase in the number of persons who have limited English-speaking abilities in the United States between 1990 and 2005. Similarly, in 1990 there were 19.8 million foreign born persons residing in the United States (7.9% of the total U.S. population)<sup>6</sup>, while by 2000, there were 30.7 million foreign born persons (11.2% of the total U.S. population), and by 2005 there were 35.8 million foreign born individuals (12.7% of the total U.S. population)<sup>7</sup>.

Although Spanish continues to be the non-English language spoken most frequently at home in the United States, the need for court interpretation services extends to hundreds of languages. The 2000 Census identified approximately 380 single languages or language families in the United States.<sup>8</sup> For example, New York courts employ approximately 300 full and part-time court interpreters, and 1,200 interpreters on a per diem basis, to provide services in the over 100 languages for which court interpreters are regularly needed.<sup>9</sup> However, the need for interpreters in a variety of languages is not limited to large cities or certain areas of the country. The 2000 Census showed that substantial numbers of persons who do not speak English at all or do not speak English well are located in all areas

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<sup>3</sup> Source: 1990 Census of Population, CPHL-96, located at [www.census.gov/population/socdemo/language/table1.txt](http://www.census.gov/population/socdemo/language/table1.txt).

<sup>4</sup> Source: U.S. Census Bureau, Census 2000. Table 6 Language Spoken at Home and Ability to Speak English by Nativity for the Population 5 years and over by State: 2000, located at <http://www.census.gov/population/cen2000/phc-t20/tab06.pdf>.

<sup>5</sup> Source: Pew Hispanic Center tabulations of the American Community Survey conducted by the U.S. Census Bureau. Table 19, located at <http://pewhispanic.org/files/other/foreignborn/Table-19.pdf>.

<sup>6</sup> Source: U.S. Census Bureau, Table 1 Nativity of the Population and Place of Birth of the Native Population: 1850 to 1990, located at [www.census.gov/population/www/documentation/twps0029/tab01.html](http://www.census.gov/population/www/documentation/twps0029/tab01.html).

<sup>7</sup> Source for 2000 and 2005 figures on foreign born population: Pew Hispanic Center tabulations of 2000 Census and 2005 American Community Survey, located at <http://pewhispanic.org/files/other/foreignborn/Table-1.pdf>.

<sup>8</sup> *Language Use & English-Speaking Ability: 2000*, Census 2000 brief (October 2003), located at <http://www.census.gov/prod/2003pubs/c2kbr-29.pdf>.

<sup>9</sup> *Court Interpreting in New York: A plan of action*, New York State Unified Court System, at 7 (April 2006).

of the country.<sup>10</sup> Given the range of languages spoken in this country, it is believed that no other nation in this world faces as significant an interpretation challenge as the United States.

Ensuring access to justice and fair treatment for those who speak little or no English is a complex process. Language challenges may be compounded by cultural factors that may not be readily apparent. Foreign born individuals may make assumptions about the United States justice system based upon analogies to the justice systems in their countries of origin which may be completely inaccurate. These individuals may also use nonverbal language cues such as body language and facial expressions which are not aligned with mainstream American interpretations of these cues.<sup>11</sup> Some Native American languages, as well as the languages of other cultures, do not even include words to describe certain justice concepts because those concepts do not exist in those cultures. The multi-faceted nature of communication makes the challenge of interpretation in the courtroom even more difficult.

## B. ELEMENTS OF COMPETENT COURT INTERPRETATION

Besides the important nature of the court proceedings, court interpretation is a highly specialized, and particularly demanding, form of interpreting. Not only are court interactions at a significantly higher level of difficulty than conversational language, but they also require a familiarity with legal terminology and procedures and with the cultural context impacting the parties in the court proceedings. The court interpreter's successful performance of their job is dependent upon their ability to convey the meaning of the speaker's words and presentation style of the speaker in another language in the courtroom setting, without changing the colloquial expressions or the tone of the speech.

Court interpretation is accomplished through three types of interpreting: consecutive, simultaneous and sight.<sup>12</sup> Consecutive interpreting is when the interpreter waits until a speaker has finished speaking a group of words or sentences in one language, and then interprets those words or sentences into another language. Simultaneous interpreting occurs when the interpreter is listening to the speaker and interpreting into another language contemporaneously. In the courtroom, simultaneous interpreting is often demonstrated when the interpreter is seated behind and whispering into the ear of the non-English speaker,

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<sup>10</sup> See 2000 Census, Ability to Speak English, by Language Spoken at Home (PHC-T-37) which includes state by state statistics, located at <http://www.census.gov/population/www/cen2000/phc-t37.html>.

<sup>11</sup> Joanne I. Moore, *Immigrants in Courts*, University of Wash. Press (1999).

<sup>12</sup> Another type of interpretation, summary interpretation, involves the summarization in another language by the interpreter of the statements of the speaker and is not an appropriate for use in court proceedings. See Charles M. Grabau, *Court Interpreting: View from the Bench*, State Court Journal (1996), at 6-7.

or using equipment, such as headphones, through which the non-English speaker hears the interpreter. Sight translation is when the interpreter reads a document in one language, and then translates it aloud into another language.

To be fully competent in all situations as a foreign language court interpreter, an interpreter should possess (1) strong language skills in both English and the foreign language, including a knowledge of legal terminology and idiomatic expressions and slang in both languages; (2) interpreting skills in the three basic modes of interpreting (sight translation, consecutive and simultaneous), including highly developed short-term memory skills to “allow the interpreter to listen, understand, memorize, interpret, and speak all at the same time,”<sup>13</sup> as well as experience in determining the appropriate mode to use in particular courtroom situations; and (3) an understanding of ethical and professional standards and how to apply those standards in a courtroom setting. The high level of skills needed for court interpretation greatly hinders the ability of courts and judicial systems throughout the country to locate and retain the services of qualified court interpreters.

A preliminary step in obtaining qualified court interpreters is for courts to have a standardized process for assessing whether a court interpreter is sufficiently proficient to provide competent court interpreting services. One method for accomplishing this is the use of performance examinations for interpreters. Over the past ten years, the Consortium for State Court Interpreter Certification (“Consortium”) has developed examinations testing court interpreter proficiency and made those examinations available to its member states for use in evaluating court interpreter qualifications. Prior to the availability of testing through the Consortium’s efforts, very few states had ready access to a reliable method of appraising an interpreter’s skills.<sup>14</sup> At that time, so long as an individual was bilingual, appeared on time and, from all appearances, was able to communicate with the non-English speaker, the person was often considered a “qualified” interpreter. The availability of testing enabled courts to implement a standardized, reliable process for qualifying court interpreters.

Using the Consortium’s testing model as an example, Consortium oral foreign language court interpreter examinations use standardized test administration and scoring processes, and include exercises in the three modes of interpretation that court interpreters actually perform: sight translation, consecutive interpreting, and

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<sup>13</sup> Committee to Improve Interpreting & Translation in the Wisconsin Courts, *Improving Interpretation in Wisconsin’s Courts*, Report to the Director of State Courts, at 10 (Oct. 2000).

<sup>14</sup> In 1988, only the federal courts and the courts in California, Massachusetts, New Jersey and New Mexico required the testing and certification of court interpreters. Washington courts developed court interpreter testing programs soon after, and contributed test resources, combined with financial resources from Minnesota and Oregon courts, to support the 1995 creation of the Consortium for State Court Interpreter Certification. Joanne I. Moore, *Immigrants in Courts*, Univ. of Wash. Press, at 30 (1999).

simultaneous interpreting.<sup>15</sup> Consortium examination instruments are constructed, administered, and rated (scored) in the same way.<sup>16</sup> Since its inception, the Consortium has constructed eighteen testing instruments in thirteen different languages: Spanish, Cantonese, Haitian Creole, Hmong, Korean, Laotian, Russian, Vietnamese, Arabic, Mandarin, Portuguese, French and Somali.<sup>17</sup> Forty states are now members of the Consortium with access to those tests and a host of other resources. By the end of 2007, 29 member states using Consortium examination instruments will have tested, or are expected to begin testing, the qualifications of their court interpreters.<sup>18</sup>

In addition to the Consortium examinations, California and New York have in-state testing programs, using examinations that were constructed prior to the existence of the Consortium, and recently, the National Association of Judiciary Interpreters and Translators constructed an oral performance examination for its members. The Administrative Office of the United States Courts administers the Federal Court Interpreter Certification Examination, which consists of both a written and oral test component. A comparison of the standards used in the various testing processes is attached as Appendix A.

All of these performance examinations assess the interpreter's ability to perform and exhibit the unique knowledge and skills required to serve as a court interpreter. State court systems that started testing in the 1990s and early 2000s quickly learned that court interpreters qualified in all the modes of interpreting are scarce.

Passing rates for reliable examinations are low, especially in languages other than Spanish. Consortium examination instruments have been used to test 5,444 persons in foreign language court interpreter skills, with 1,310 passing a test at the qualification level established by the Consortium (achieved a score of 70% or more on each section of the test pertaining to a separate mode of interpreting).<sup>19</sup> Of

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<sup>15</sup> The Consortium has also developed an abbreviated testing model, consisting of simultaneous interpreting and some measure of spoken English proficiency, used for languages that are not broadly tested by Consortium member states.

<sup>16</sup> Supporting documentation for test construction, test administration, and test-rater training are developed or conducted in accordance with the Standards for Educational and Psychological Testing, as directed by the Technical Committee of the Consortium. Item-level data are maintained for all tests to analyze and report validity and reliability statistics, when appropriate, for each test form.

<sup>17</sup> By the end of 2007, the Consortium is expected to have constructed tests in three more languages, Ilocano, Chuukese, and Marshallese, and an additional test in Korean.

<sup>18</sup> Consortium member states with active testing programs are: Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Iowa, Indiana, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. Hawaii and Pennsylvania are expected to begin testing in 2007. California, Massachusetts and New York are member states and administer interpreter screening tests, but do not currently use Consortium examinations.

<sup>19</sup> Statistical information on Consortium interpreter testing passing rates was obtained from the National Center for State Courts, as of September 27, 2007.

those, 1,197 have passed a test in Spanish at the Consortium level, 60 in Russian, 24 in Haitian Creole, six in Mandarin and Portuguese, five in Vietnamese, four in Hmong, three in Arabic and Korean, and two in French.

Low passing rates reflect the high testing standards maintained by the Consortium to ensure court interpreters' competence and the difficulty of the task of court interpretation. However, difficulties arise, particularly in the early years of a state court's interpreter testing program, when the state court has established standards promoting the use of qualified court interpreters, while there are few interpreters who have successfully passed the examination at the Consortium level. To provide the ability to obtain interpreters with established skill levels (even if not up to the Consortium level), a number of state court systems have adopted a tiered approach to qualifying standards and have implemented a "conditionally approved" level, which establishes lower criteria than the Consortium level. The tiered approach is based upon the presumption that it is better to rely on the services of a court interpreter who has achieved an overall score of 55% or higher (with no section score falling below 50%), for example, than on an interpreter who has taken the test and achieved a much lower score. Further, the tiered approach concept supports adopting a "master" level that would recognize a skill level above the Consortium level.<sup>20</sup> Many states with court interpreter programs also recognize a minimal category of "registered" or "eligible" that is used for interpreters who have complied with minimal requirements, such as attending a court-sponsored orientation and/or passing a written language examination (assessing basic English language skills and knowledge of legal terminology). Twenty-one out of 33 (64%) Consortium member states responding to a 2006 survey indicated that they had adopted tiered qualification testing standards, including a "conditional approval" type level below the Consortium level.

Most states, and the federal court system, find that the responsibility for establishing a qualifications process for interpreters providing services in court proceedings falls on the court system as the courts are acutely attuned to the need to promote access to justice through competent court interpreters. There are generally no legal requirements that court interpreter programs be maintained under the auspices of the court system; however, a few states, such as Texas, have a statutorily established regulatory structure placing the qualification of court interpreters under the Executive Branch's administrative authority, similar to other "technical" skills used in the public domain. This distribution of authority runs contrary to the typical structure where the judicial branch oversees administration of those functions, such as the practice of law and court reporters, that directly

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<sup>20</sup> A master level, for example, has been implemented in the New Jersey and Oregon court systems and recognizes interpreters who pass the oral interpreter certification exam with a score of 80% or higher on all portions of the exam.

impact the courts' operations. When the management and testing of court interpreters are performed outside of the court structure, the court system should proceed carefully to ensure that it does not lose its ability to mandate that court interpreters comply with the standards specifically required for court interpretation.

State courts often use a variety of sources to obtain court interpreter resources, including full-time staff court interpreters, free-lance contract interpreters (private interpreters contracted with by courts on an hourly or daily basis to provide interpreter services in court-related proceedings), and private agencies (usually for profit) that contract with courts directly to provide interpreter services through the agency's agreements with individual interpreters.<sup>21</sup> Some state courts have found bilingual staff helpful, particularly related to addressing interpreter needs for unscheduled court proceedings. Good practices, however, support applying the same certification standards to bilingual court staff providing interpreter services in court proceedings as those applied to contract interpreters, and considering the provision of a salary differential as compensation for the bilingual staff's extra work. Another option employed by some states is the use of telephonic interpreter services for non-evidentiary proceedings when a court interpreter is unavailable.

### C. INTERPRETER RESOURCES FOR STATES

The Consortium serves as an important resource for state courts seeking to establish, or improve already established, court interpreter programs. The Consortium is dedicated to developing court interpreter proficiency tests, making those tests available to member states, regulating the use and administration of the tests, developing court interpreter educational programs and standards, and facilitating information sharing among member states and interested entities.

The Consortium was founded in 1995 by four states (Minnesota, New Jersey, Oregon, and Washington) and the National Center for State Courts to address resource shortages by defining and implementing standards for identifying proficient, qualified interpreters. The collaborative partnership allowed for resource sharing and economies of scale in using member states' collective expertise and financial resources to eliminate duplication of efforts and to lower costs of interpreter test development and administration. Today there are 40 member states of the Consortium: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Iowa, Illinois/Cook County, Indiana, Kentucky, Maine, Maryland, Massachusetts,

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<sup>21</sup> Although using an agency to obtain specific interpreter services may transfer the responsibility for locating a specific interpreter from the court to that agency, those agencies often charge higher rates and set their own standards with regard to the qualifications of the interpreters they use.

Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin.

In addition to oral foreign language examinations, the Consortium has supported the development of a written examination, focusing on vocabulary, legal terminology, court procedure and professional ethics, that may be used as a pre-screening tool for assessing court interpreters. With funding received from the Consortium's selection in 2002 as a finalist in the prestigious Innovations in American Government awards (administered by the John F. Kennedy School of Government at Harvard University), the Consortium created a web site ([www.ncsconline.org](http://www.ncsconline.org)) to provide information to those interested in court interpreter issues and in the work of the Consortium. Information sharing among members is further enhanced through a list serve established by the National Center for State Courts for all Consortium members, and an annual meeting at which members discuss business issues, as well as the latest issues and trends in court interpretation. Additional services offered through the Consortium have included the promulgation of a model Disciplinary Policy for Court Interpreters, as well as efforts to develop distance training and learning programs for interpreter skills building, including the development of a Spanish practice test kit for sale to prospective interpreters. In February 2007, the Consortium conducted a needs assessment of its member states. Of those responding, 71% indicated that additional budget dollars were critical for the future of their program, while 40% responded that the need for additional staff was important.

As an underpinning to establishing a viable court interpreter program, courts need to conduct an expansive recruitment initiative, in order to attract persons with substantial bilingual abilities upon which interpreter skills can be built. Recruitment efforts can focus on general public information initiatives, such as California's "One Law. Many Languages" public awareness campaign, as well as outreach to community and religious groups with connections to bilingual individuals. The broader the reach of the recruitment campaign, however, the greater the need for skills building programs to support bilingual individuals' abilities to develop interpreter skills, and for use of a pre-screening tool to assess potential court interpreter test takers.

In an effort to increase professionalism among interpreters, many state court interpreter programs offer mandatory court interpreter orientations, as well as skills building training. In a February 2007 survey of Consortium members, 71% of the

respondents indicated that their state offers interpreter training and education. Typically, orientations conducted by Consortium states range from one to two days in length, and focus on the Interpreters' Code of Conduct (usually accompanied by a test or exercise to ensure participants' comprehension), modes of interpretation (using exercises), courtroom procedure and decorum, trial preparation, the role of the court interpreter, as well as a review of glossaries of legal terms (with an exercise), and a description of the applicable state's court system.

In addition to preliminary requirements established for court interpreters to become qualified, thirteen states have taken the further step of adopting mandatory continuing education requirement for their interpreters. For example, Oregon requires that an interpreter earn 25 continuing education credits every three years, with a minimum of 10 credits in language specific interpreting education, in order to renew their court interpreter certification.<sup>22</sup> Delaware adopted a slightly different approach by requiring interpreters to complete 12 hours of continuing education over a three year period in subjects ranging from ethics to courtroom protocol. Interpreter training, and continuing education, opportunities are either offered under the auspices of the court interpreter program, or sponsored by private vendors, community college or university-based formal training programs. When effective training programs are not readily available through established sources, courts are exploring opportunities to create partnerships with academic institutions, and to promote the use of distance training (on-line) programs.

The foundation for ensuring standards in the provision of court interpreting services is the promulgation of a code of conduct or other ethical standard governing a court interpreter's actions in court proceedings. A model code of professional responsibility for interpreters in the Judiciary was developed and published through a State Justice Institute grant,<sup>23</sup> and serves as the basis for many states' ethical mandates for court interpreters.

Recognizing that the use of on-site court interpreters will never address all of courts' interpreting needs, efforts have been made to develop alternative sources for interpreter services. One alternate source currently being used is telephonic interpreting when staff or contract interpreters are not available.<sup>24</sup> Telephonic interpreting has been used by courts for many years and enables court systems to

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<sup>22</sup> Or. R. Cert. Ct. Interpreter Prog. §8.

<sup>23</sup> William E. Hewitt, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, National Center for State Courts, at 215 - 234 (1995).

<sup>24</sup> In the February 2007 survey of Consortium members on court interpreter issues, 62% of the respondents stated that their courts currently use telephonic interpreting services, with 45% obtaining services from private telephone interpreting agencies, 19% through free-lance interpreter programs, 16% through state interpreting programs, 14% through interpreting agencies, and 12% from other.

access competent interpreters in a variety of languages, regardless of their location. Many states contract with private companies, such as Language Line, to obtain interpreter services for short non-evidentiary proceedings. Similar to agency services, telephonic services provided through private vendors do not ensure compliance with the same interpreter qualification standards, including the interpreter's understanding of legal terminology and court process, as those provided through court programs. The costs for private telephonic interpreter services are charged per minute, depending upon the time of day services are being used, as well as commonality of language being interpreted. The cost-effectiveness of those services, as compared to on-site interpreting (which is paid by the hour typically), depends upon the length of the proceeding. Some state courts have developed in-house telephone interpreting programs using their staff attorneys and/or their roster of qualified interpreters. Although a court-sponsored telephonic interpreter program has serious limitations because of its potential to adversely impact court proceedings,<sup>25</sup> it can be a method to deliver effective interpreter services, when on-site interpreting is not possible, under limited circumstances.<sup>26</sup>

Another initiative being explored to strengthen state courts' ability to access qualified court interpreters is the establishment of regional "pools" of interpreters, particularly for less frequently-used languages, that participating states will support through shared resources and coordinated testing and administration. A variation of that concept involves community-based interpreter testing programs, partnering state courts with other government entities, as well as community organizations (such as hospitals, for example) seeking access to competent interpreters. Although interpreting needs differ for community organizations (legal interpreting requirements vary from interpreting related to medical services), resource sharing provides a good starting point for obtaining access to more competent interpreters generally.

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<sup>25</sup> Telephone interpretation typically slows court proceedings because of additional requests for clarification by the interpreter, as a result of the diminished capacity of the interpreter to understand the context of the proceeding without access to visual cues, and the need to ensure clarity by preventing participants from speaking at the same time. It requires the use of proper equipment in the courtroom and for the interpreter, as well as the appropriate environment for the interpreter, to support the interpreter's ability to provide services in a more demanding situation than if the interpreter was physically in court. Robert Joe Lee *et al.*, *The Final Report of the Pilot Test of Telephone Court Interpreting in Atlantic/Cape May-Essex-Hudson in New Jersey*, Court Interpreting, Legal Translating, and Bilingual Services Section, Office of Trial Court Support Services, New Jersey Administrative Office of the Courts (July 1998).

<sup>26</sup> Robert Joe Lee *et al.*, *The Final Report of the Pilot Test of Telephone Court Interpreting in Atlantic/Cape May-Essex-Hudson in New Jersey*, *supra* (finding that telephonic interpreting services can be effective, when on-site interpreting is not possible, under the following circumstances: (1) proper equipment is used at both ends of the "link-up" (so the interpreter can properly hear the parties); (2) the process includes controls to compensate for the interpreter's physical absence (court provides background information to the interpreter and instructs the parties about telephone interpreting before the proceeding begins and exercises appropriate judicial control throughout the process to intervene if the process breaks down); (3) proceedings are relatively short (under fifteen minutes for most situations), and (4) provision is made to allow for confidential attorney-client communications).

#### D. PROMISING POTENTIAL USES OF TECHNOLOGY TO PROVIDE INTERPRETER SERVICES

The most promising technology to advance language interpretation services is remote video interpreting services. Remote video interpreting is an enhancement from telephonic interpreting and offers a combination of video and audio connections, which will continue to improve with the wider implementation of HD (high definition) video.

Video conferencing cameras are now being built into many laptop computers along with the ability to conference with multiple persons at multiple sites. This capability has become possible with the transition of video conferencing equipment to IP (Internet Protocol) network connection capability. An additional advantage of video interpreting is its applicability to remote American Sign Language interpreting services, which are not accessed successfully through telephonic interpreting. Currently, there are a variety of remote video interpreting services available on-line, providing on-demand access to interpreters so long as the person seeking the interpreting services has high-speed broadband internet access and a computer with television videoconferencing equipment and related software.<sup>27</sup>

The ability to facilitate communication between persons speaking different languages through automated interpreter software programs has been a goal since the earlier implementation of computer technology. Although there has been much progress in this technology, current programs do not reliably automate translations between languages with sufficient accuracy to be used effectively in court interpretation.

Major translation software includes machine translation (MT), computer-assisted translation (CAT),<sup>28</sup> and electronic dictionaries and voice response translators.<sup>29</sup> MT is a computer program that analyzes text in one language and produces the equivalent text in another language without the services of a human interpreter. Many improvements have been made in MT technology in recent years, particularly through the efforts of defense initiatives. After 9/11 and the resulting

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<sup>27</sup> For example, companies, such as MEJ Personal Business Services, Inc., available at [http://www.mejpbs.com/video\\_remote\\_interpreting.php](http://www.mejpbs.com/video_remote_interpreting.php) provide access to Registry for the Deaf certified ASL and Spanish interpreters.

<sup>28</sup> CAT refers to a process by which human translators use CAT software to support and facilitate the translation process, allowing for the expansion of the CAT database by the human translator and for consistency in CAT terminology. Allen A. Boraiko, *Translation 101 for Safety Professionals*, Session No. 630, available at [www.safetycouncil.com/pdf/630Boraido.pdf](http://www.safetycouncil.com/pdf/630Boraido.pdf).

<sup>29</sup> This technology offers multi-directional language translational capabilities, with text-to-speech and speech-to-speech recognition technology usable on a handheld device, such as a PDA.

realization concerning the lack of Arabic interpreters, the Pentagon provided more than \$20 million to support improvements in MT technologies, focusing on Arabic-English communications to assist soldiers, medical personnel and others in Iraq.<sup>30</sup>

The first technology produced through this initiative was Phraselator, a small handheld device loaded with phrases, from which the user selects a phrase and the device provides a translation of the phrase. Phraselator P2 was developed from the original Phraselator, and is a commercially available handheld device that has speech recognition and phrase databases contained within Phraselator modules, which focus on particular uses, such as military, medical, and law enforcement.<sup>31</sup> For example, Phraselator P2 offers modules on law enforcement interview and patrol activities (including basic witness questions, field sobriety test and Miranda rights) in Arabic, Cantonese, Mandarin, Spanish, English and Vietnamese.

Deficiencies experienced with the Phraselator technology, including its limited number of phrases and failure to translate from Arabic into English, led to the development of IraqComm, advanced translation software loaded onto Windows XP laptops. To use IraqComm, the person speaks into a microphone or types into the computer and the words are analyzed by speech-recognition software, which converts the spoken words into text, and other software that performs a statistical analysis determining the likely equivalent phrase in the Arabic language, and provides that phrase to the person either textually or orally. IraqComm draws on a vocabulary of 40,000 words in English and 50,000 words in Iraqi Arabic.<sup>32</sup> An example of new MT technology, called “Meadan” (or “town hall” in Arabic), was created by IBM, and gives English and Arabic speakers the ability to communicate through a website focusing on news articles, broadcasts and other events. Reviews claim that Meadan is “84 percent accurate” and transmutes Arabic to English and back again at a “blistering 500 words per second,” relying on “roughly 100 million words and more than 10 million phrases” in searching for equivalent text.<sup>33</sup>

Even given the tremendous strides in improving automated interpreter technology, the difficulties associated with competent interpreting, such as the handling of slang and colloquialisms, limit the current usefulness of this technology for court interpreting in the near future. As reported in a 2006 Washington Post article, the goal of “having a machine replace a human interpreter remains elusive.”<sup>34</sup>

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<sup>30</sup> Renae Merle, *First Ears, Then Hearts and Minds*, available at [washingtonpost.com](http://www.washingtonpost.com) (November 1, 2006).

<sup>31</sup> Phraselator P2 is a product of Voxtec, with a cost (as of 5/23/07) of approximately \$3,200. See <http://www.voxtec.com/p2.aspx> for more information.

<sup>32</sup> Kate Greene, *How to Talk Like an Iraqi*, Technology Review (August 23, 2006).

<sup>33</sup> Shereen El Feki, *Found in Translation*, Technology Review (February 7, 2007).

<sup>34</sup> Merle, *First Ears, Then Hearts and Minds*, *supra*.

## E. COURT DOCUMENT TRANSLATION

Although often commingled with court interpretation in concept, translation requires distinct, although overlapping, skill sets from court interpretation. Translation is generally defined as “the replacement of textual materials in one language by the equivalent textual material in another language,” while interpretation represents the “oral form of the translation process.”<sup>35</sup> Although both translators and court interpreters need strong language skills, as well as a knowledge of legal terminology, interpreters are required to process the language conveyance on an immediate basis and do not have the opportunity to reflect on their work. This differentiation between interpreting and translation is confirmed by the separate certification process for translators administered under the auspices of the American Translators Association.

In addition, it is important to note the complexities associated with continually maintaining accurate translations of court documents. A number of state courts have attempted to translate court documents into common foreign languages, such as Spanish, and have been hindered in that process by difficulties in conveying the correct meaning of legal terms in documentation, so that uneducated non-English speaking persons can understand the purpose of the documents. Moreover, words may have different meanings depending upon the setting (whether social or formal) and the cultural and language context of the foreign language speaker.<sup>36</sup> There are administrative obstacles and significant costs associated with obtaining accurate translations originally, as well as with updating translated documents concurrently with changes to the English version of a court document. A critical aspect of the court process, involving the translation of documents and interpretation of court proceedings, is the defendant’s ability to understand, and ultimately comply with, the judge’s sentencing order.

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<sup>35</sup> Hon. Lynn W. Davis, Michael McKell, Jayson Oldroyd, and Brian Steed, *The Changing Face of Justice: A Survey of Recent Cases Involving Courtroom Interpretation*, 7 *Harvard Latino L. Rev.* 1, 6 (2004).

<sup>36</sup> Examples of bad translations from the commercial world include: Coors’ advertising slogan of “Turn it loose” became “Suffer from diarrhea”; and Frank Perdue’s “It takes a tough man to make a tender chicken” became “It takes a sexually stimulated man to make a chicken affectionate.” Patricia Griffin, *Beyond State v. Diaz: How to Interpret “Access to Justice” for non-English speaking Defendants*, 5:2 *Del. L. Rev.*, at 132 (2002), quoting Robert Joe Lee, *Examples of Cases That Present Questions of Language Policy to the Administration of Justice*, New Jersey Administrative Office of the Courts, at 6.

## LEGAL REQUIREMENTS GOVERNING WHEN COURTS SHOULD PROVIDE INTERPRETERS

### A. RIGHT TO AN INTERPRETER GENERALLY

Although the United States Constitution does not specifically guarantee the right to an interpreter, this right has been established through case law interpreting the Sixth Amendment's right for a defendant to confront adverse witnesses and participate in his own defense, including the right to effective assistance of counsel, as well as through the fundamental fairness required by the Fifth Amendment's due process clause, as applied to the states through the Fourteenth Amendment.<sup>37</sup>

Early federal precedent was set by *United States ex rel Negron v. State of New York*.<sup>38</sup> In *Negron*, the Second Circuit held that the failure to provide an interpreter to an indigent criminal defendant violated the confrontation clause. It found that, similar to the considerations of fairness and ensuring the integrity of the fact-finding process which anchor the defendant's right to be present at his trial, "it is equally imperative that every criminal defendant – if the right to be present is to have meaning – possess sufficient present ability [through the services of an interpreter] to consult with his lawyer with a reasonable degree of rational understanding."<sup>39</sup>

Whenever a court is put on notice concerning a criminal defendant's potential language difficulty, an obligation arises for the court to conduct an assessment to determine whether an interpreter is needed.<sup>40</sup> The court's decision on the need for an interpreter is based upon the defendant's knowledge of English as well as the relative complexity of the legal proceedings.<sup>41</sup>

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<sup>37</sup> *Chao v. State*, 604 A.2d 1351, 1362 (Del. 1992); *State v. Calderon*, 13 P.3d 871, 879 (Kan. 2000); *State v. Rodriguez*, 682 A.2d 764, 766 (N.J. Super. 1996); *State v. Guzman*, 712 A.2d 1233, 1241 (N.J. Super. 1998), *cert. denied*, 719 A. 2d 1022 (N.J. 1998); *People v. Avila*, 797 P.2d 804, 805 (Colo. Ct. App. 1990). In addition, at least one state, California, has incorporated the defendant's right to an interpreter throughout the criminal proceedings in its Constitution. *People v. Mata Aguilar*, 677 P.2d 1198, 1201 (Cal. 1984)(interpreting Art. I, sect. 14 of the California Constitution).

<sup>38</sup> *United States ex. rel. Negron v. State of New York*, 434 F.2d 386 (2d Cir. 1970).

<sup>39</sup> *Id.*

<sup>40</sup> *U.S. v. Si*, 333 F.3<sup>rd</sup> 1041, 1044 (9<sup>th</sup> Cir. 2003); *U.S. v. Cirrincione*, 780 F.2d 620, 633 (7<sup>th</sup> Cir. 1985).

<sup>41</sup> *U.S. v. Febus*, 218 F.3<sup>rd</sup> 784 (7<sup>th</sup> Cir. 2000) *cert. denied*, *Santos v. U.S.*, 531 U.S. 1021, 121 S. Ct. 587, 148 L. Ed. 2d 503 (U.S. 2000); *but see U.S. v. Nevelo Nostratis*, 321 F.3<sup>rd</sup> 1206, 1209-12 (9<sup>th</sup> Cir. 2003) (holding that the defendant's coherent responses at trial precluded his later assertions of his failure to understand English sufficiently to comprehend his plea agreement). *See also* The Model Judges' Guide to Standards for Interpreted Proceedings, *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, National Center for State Courts, at 125-126 (1995) (recommending that a judge presume "a *bona fide* need for an interpreter" when a limited English proficiency litigant requests an interpreter).

In addition to constitutional mandates for state court interpreters applied through case law, Title VI of the Civil Rights Act of 1964 contains requirements impacting the provision of foreign language interpreters in court proceedings. Under United States Department of Justice (DOJ) regulations implementing Title VI, recipients of federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP).<sup>42</sup> Executive Order 13166, reprinted at 65 CFR 50121 (August 16, 2000), directed each federal agency that extends assistance subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. DOJ published guidance to recipients of its funding programs, including the courts, on June 18, 2002, and provided that recipients of DOJ funds take reasonable steps to

ensure “meaningful access” to their programs and activities by LEP persons. Access can be achieved through oral language services (i.e., interpreters) or written services (i.e., translation). DOJ guidance further requires recipients to develop an implementation plan to address the identified needs of the LEP populations they serve. The four-factor analysis used by DOJ to determine whether recipients have taken “reasonable steps to ensure meaningful access” focuses on:

1. The number or proportion of LEP persons served or encountered in the eligible service population
2. The frequency with which LEP individuals come into contact with the program
3. The nature and importance of the program, activity, or service provided by the program, and
4. The resources available to the recipient.

Other federal laws impacting the provision of interpreter services include the Court Interpreters Act, 28 U.S.C.A. §1827 (1978), which requires federal courts to appoint an interpreter in criminal and civil actions commenced by the federal government in U.S. District Courts. The right to an interpreter in federal courts under this Act is extensive, encompassing pretrial and grand jury proceedings.

Although the provision of court interpreters under the Americans with Disabilities Act (ADA)<sup>43</sup> is outside of the scope of this paper, there are similar policy considerations in the legal authority interpreting the ADA and foreign language interpretation and it has been stated that:

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<sup>42</sup> See 28 CFR 42.104(b) (2).

<sup>43</sup> 42 U.S.C. §§ 12101-12213 (1997). The ADA controls the provision of interpreters for disabled persons, including hearing-impaired defendants.

A defendant who cannot hear is analogous to a defendant who cannot understand English, and a severely hearing-impaired defendant cannot be tried without adopting reasonable measures to accommodate his or her disability.<sup>44</sup>

Thus, the ADA and use of interpreters raise similar policy issues, such as the scope of coverage, responsibility for payment, and what type of accommodation or service must the court provide.

## B. INTERPRETATION IN CRIMINAL CASES

As discussed above, states must ensure interpreters are provided in criminal trials, based upon the defendant's right to an interpreter through the Fifth Amendment's right to due process, Sixth Amendment's confrontation clause and effective assistance of counsel, and Fourteenth Amendment's incorporation of these to the states. Case law has provided that a criminal defendant has the right to an interpreter at every crucial stage of the criminal proceedings.<sup>45</sup> This has been held to cover jury instructions<sup>46</sup> and sentencing,<sup>47</sup> as well as arraignment, entry of a guilty plea,<sup>48</sup> and hearings such as those to change a plea<sup>49</sup> or to withdraw a guilty plea,<sup>50</sup> although not necessarily to the defendant's probation interview, or to the defendant's out-of-court discussions with privately retained counsel.<sup>51</sup>

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<sup>44</sup> *State v Schaim*, 600 N.E. 2d 661, 672 (Ohio 1992).

<sup>45</sup> See, e.g., *People v. Aguilar*, 677 P. 2d 1198, 1201 (Cal. 1984) (“[A]t moments crucial to the defense – when evidentiary rulings and jury instructions are given by the court, when damaging testimony is being introduced – the non-English speaking defendant who is denied the assistance of an interpreter, is unable to communicate with the court or with counsel and is unable to understand and participate in the proceedings which hold the key to freedom); *People v. Robles*, 655 N.E. 2d 172, 173 (1995) (“No one quarrels with...the unquestioned right of any defendant, upon request, to the assistance of an interpreter at any stage of a criminal proceeding.”); *Thanh Ton v. State*, 878 P. 2d 986, 987 (Nev. 1994).

<sup>46</sup> *People v. Aguilar*, 677 P. 2d at 1201; See also *People v. Chavez*, 231 Cal. App. 3d 1471, 1477 (Cal. App. 1991) (“[A] defendant has a right to an individual interpreter throughout all stages of the criminal proceedings, including jury instructions.”)

<sup>47</sup> *State v. Hansen*, Ariz., 705 P. 2d 466, 472 (1985); *Quintana v. State*, 520 So. 2d 313, 314 (1988) (finding that trial court erred in sentencing the appellant without an interpreter).

<sup>48</sup> *Landeros v. State*, 480 P. 2d 273, 274 (Okla. Crim. 1971) (finding that guilty plea at arraignment was not valid where no interpreter had been provided); *People v. Alfaro*, 592 N.E. 2d 1117, 1120 (Ill. App. 1992) as modified on appeal of rehearing (May 1992), *appeal denied*, 602 N.E. 2d 458 (Ill. 1992) (“[I]n cases where defendant does not understand the English language, due process requires some further showing that he comprehends the meaning and effect of his plea.”); *Aleman v. State*, 957 S.W. 2d 592 (Tex. App. 1997) (through interpreter was available her role was limited to helping defendants fill out plea agreements); *State v. Rabah*, 2006 WL 1764415 (N.J. Super.) (remanding to determine whether defendant who had not had an interpreter at the time of his guilty plea had been able to speak English sufficiently such that the failure to speak English had not violated his right to an interpreter at all critical stages of the proceedings).

<sup>49</sup> *Balderrama v. State*, 433 So. 2d 1311, 1313 (Fla. App. 1983) (use of brother as interpreter for change of plea hearing in which defendant accepted a plea agreement prejudiced defendant such that defendant was entitled to an opportunity to withdraw his guilty plea).

<sup>50</sup> *State v. Pina*, 361 N.E. 2d 262, 266-67 (Ohio App. 1975); *Ton v. State*, 878 P. 2d at 987.

<sup>51</sup> *People v. Cardenas*, 62 P.3d 621, 623 (Colo. 2002), *rehrg denied*, (2003); *U.S. v. Mosquera*, 816 F. Supp. 168, 177 (E.D.N.Y. 1993). *But see State v. Guzman*, 712 A.2d 1233, 1241 (N.J. Super. 1998), *cert. denied*, 719 A. 2d

Interpreters may also be required for persons other than the defendant in criminal proceedings. It is generally held that an interpreter should be provided for a witness at trial who does not speak English so that the defendant's right to cross-examination is not violated.<sup>52</sup> This principle has also been applied to require an interpreter to be provided for a witness at a preliminary hearing,<sup>53</sup> with some states extending that right to the parents or legal guardians of a minor "party in interest" appearing in court.<sup>54</sup> Although most states mandate that jurors must be able to understand English in order to serve on a jury,<sup>55</sup> one state, New Mexico, extends the right to an interpreter to a Spanish-speaking juror.<sup>56</sup>

There are significant differences, however, in who is required to "pay for" the court interpreter. Consistent with the constitutional mandates for the provision of interpreters at trial to ensure access to justice for criminal defendants, if a criminal defendant is indigent and cannot afford to pay for an interpreter, state or other government resources are expended for that purpose. Beyond that requirement, however, the willingness to provide an interpreter paid by the state or other governmental entity depends upon state statutes and court rules and policies. In criminal proceedings involving defendants who are not indigent, state statutes or court rules generally specify whether the expense of the court interpreter shall be paid by the state, or ultimately borne by the party requiring the interpreter's use. Close to one-half of the states provide for the payment of interpreter costs by the state or government in criminal proceedings when reasonably necessary to ensure communication with the defendant, regardless of whether the defendant is indigent. Other states provide for the payment of interpreter costs initially by the state, while permitting or requiring the taxing of interpreter costs to the defendant upon an adjudication of guilt. The remaining states require the defendant to demonstrate their indigency prior to appointing state or government-paid interpreters.

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1022 (N.J. 1998) (holding that the court must determine if defendant, with private counsel, could afford to pay an interpreter for out-of-court discussions with counsel).

<sup>52</sup> *People v. Bragg*, 386 N.E. 2d 485, 491 (Ill. App. 1979) ("An abuse of discretion may be shown where it appears from the record that the witness was not 'understandable,' 'comprehensible' or 'intelligible' such that the lack of an interpreter deprived defendant of a basic right.")

<sup>53</sup> *People v. Johnson*, 46 Cal. App. 3d 701, 704 (Cal. App. 1975) (finding that lack of interpreter for prosecution witness left no opportunity for cross-examination); *People v. Fogel*, 97 A.D. 2d 445, 446 (N.Y. Supr. 1983) (finding that trial court should have granted defendant's request for an interpreter for prosecution's witness); *Miller v. State*, 177 S.W. 3d 1, 6 (Tex. App. 2004) (stating that providing an interpreter to confront a material witness who does not understand English is required by the Confrontation Clause and by Article I, section 10).

<sup>54</sup> *State v. Carlson*, 661 N.W. 2d 51, 59 (Wis. 2003).

<sup>55</sup> *State v. Carlson*, 661 N.W.2d at 60; See also statutes from various states, such as 10 *Del. C.* § 4509(b)(4) (Delaware), *KS ST* § 43-158(a) (Kansas), *Neb. Rev. St.* § 25-160(1) (Nebraska), *C.G.S.A.* § 51-217(a)(3) (Connecticut).

<sup>56</sup> *State v. Rico*, 52 P.3d 942 (N.M. 2002) (interpreting the constitutional mandate contained in Art. VII, Sect. 3 of the New Mexico Constitution that any citizen who speaks English or Spanish may sit on a jury).

Courts have held that interpreter services should be provided at state or other government expense for activities outside of the court proceedings in situations where the statements at issue are instrumental in the protection of the defendant's rights, such as the communication of the Miranda rights to non-English speaking defendants undergoing custodial interrogations by law enforcement officers.<sup>57</sup>

Additionally, there are practical implications supporting the provision of interpreting services during communications between court personnel and the parties outside of the courtroom. For example, the inability of a clerk to convey to the defendant, because of language difficulties, the need to return to the court for a later hearing, or to make payments on court-ordered fees on a certain date, often result in serious consequences to the defendant and negatively impact the court process. Communication difficulties pit the courts' desire to be accessible to litigants against funding and interpreter availability limitations.

### C. INTERPRETATION IN CIVIL CASES

In a number of states, state law requires that the state bear the costs of interpreters in civil proceedings, even though there has not been a finding of constitutionally mandated interpreter services in those cases. It is more typical, however, for states to leave it to the individual court's discretion to determine, on a case-by-case basis, whether the expense of the court interpreter should be paid by the state, or assessed to one party or among the parties. Many states carve out from the general policy for civil proceedings the handling of juvenile delinquency proceedings, as considered analogous to criminal proceedings except involving juveniles, and do provide state-paid interpreters for those proceedings. In addition, there are some states that mandate, by statute, court rule or policy, the payment of interpreter costs in certain types of civil proceedings, such as family-related proceedings occurring after a protective order has been granted or is being sought by one of the parties, child abuse, neglect or termination of parental rights cases, mental commitments, or guardianships.

A compilation of summary information on states' provision and payment of court interpreters in civil and criminal cases, obtained (as of December 1, 2007) is attached as Appendix B.

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<sup>57</sup> *Colorado v. Mejia-Mendoza*, 965 P.2d 777, 781 (Colo. 1998)(court found that a person's constitutional rights are not less meaningful during a police interrogation than in court); *Wisconsin v. Santiago*, 556 N.W.2d 687, 689 (Wis. 1996).

## D. IMPACT OF “ENGLISH ONLY” LAWS ON COURT INTERPRETATION

Another consideration worth mentioning is the impact of “English only” laws, or laws adopting English as the “official language” of that particular state or locality, on requirements for providing court interpreter services. The “English only” movement has been in existence since the 19<sup>th</sup> Century,<sup>58</sup> although the federal government has never established a national official language. Over the past few decades a number of states have enacted laws establishing English as the official language.<sup>59</sup> The effects of having English as an official language of a state depends on the scope of the law, with some arguing that such laws can have the potential to “void almost all state and federal laws that require the government to provide services [including health, education and social welfare services and translation assistance to crime victims and witnesses in court and administrative proceedings] in languages other than English.”<sup>60</sup> Currently, there does not appear to be any case law addressing the interplay of the “English only” state laws and the provision of interpreters in court proceedings. However, the constitutional implications associated with the provision of interpreters in court proceedings, and the fact that the court interpreter plays an important role in achieving the court’s mission, argue against applicability of the “English only” laws in a court context, regardless of the political will.

## E. COURT INTERPRETER ISSUES IN SAMPLE FOREIGN JURISDICTIONS

It is interesting to compare issues associated with the provision of court interpreter services in a few sample foreign jurisdictions, such as the European countries and Australia, with those in the United States.

Almost all European countries guarantee the right to an interpreter for defendants who do not speak the language of the proceedings.<sup>61</sup> Issues arise, however, with

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<sup>58</sup> Jamie B. Draper & Martha Jimenez, *A Chronology of the Official English Movement*, in *Language Loyalties: A Source Book on the Official English Controversy*, at 89 (James A. Crawford ed., 1992).

<sup>59</sup> While there is no federal language requirement, as of June 29, 2007, 30 states have “English-only” laws specifying that English is the official language of that state. States with some form of “English-only” laws are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, Virginia, and Wyoming. U.S. English, Inc., *Towards a United America, Official English: States with Official English Laws*, online at <http://www.us-english.org/inc/official/states.asp>.

<sup>60</sup> ACLU Briefing Paper No. 6. “English Only.” Online at: <http://www.lectlaw.com/files/con09.htm>.

<sup>61</sup> The Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe in 1950, guarantees in Article 6, in part, “that the defendant be informed of the charges ‘in a language which he understands’ and to ‘have the free assistance of an interpreter if he cannot understand or speak the language used in the court.’” See Holly Mikkelsen, *The Court Interpreter as Guarantor of Defendant Rights*, at 4, available online at <http://www.acebo.com/papers/guarantr.htm>.

the type of interpreting services typically used in court proceedings in European civil-law countries. In contrast to court proceedings in common-law countries, there is no trial or single event where all facts are presented to the judge or jury in traditional civil-law proceedings. The civil-law system provides for a series of meetings or communications between the judge and counsel, culminating in a trial involving only unresolved matters. As a result, court interpretation in civil-law countries within the European Union has often been conducted through consecutive summary interpretation of selected parts of the proceedings, rather than the simultaneous interpretation more prevalent in common-law court proceedings.<sup>62</sup> Consecutive summary interpretation can convey an incomplete picture of the proceedings and relegates the defendant to a passive role (as he is not afforded the ability to comprehend what is occurring at the time it occurs).<sup>63</sup>

The courts in Australia also recognize the importance of providing an interpreter for persons appearing in court. According to the interpreter policies of the Australian Federal Magistrates Court and Family Court, “no client of the [Federal Magistrates and Family] Court[s] should be disadvantaged in proceedings before the Court or in understanding the procedures and conduct of court business, because of a language barrier or hearing or speech impairment. The two-way process of communication and understanding between the client and the Court may require that the Court engages an interpreter, or on rare occasions a translator.”<sup>64</sup>

The Australian Federal Magistrates Court policy outlines several instances in which an interpreter may be needed, including during dispute resolution, defended hearings, and, in some cases, for indigenous clients in remote locations. It provides for a range of interpretation sources: from a friend (during an undefended divorce, for example), court staff (at the counter, if no alternatives are available), telephonic interpreters (particularly where the client is in a remote location), or the use of an official interpreter. When the court staff obtains the interpreter, the Policy provides that the Court will pay for interpreters “assessed to be essential” and that minimum interpreter accreditation standards must be met. The Australian Family Court policy specifies the use of the telephonic or in-person services of the Translating and Interpreting Service.<sup>65</sup>

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<sup>62</sup>Mikkelson, *The Court Interpreter as Guarantor of Defendant Rights*, *supra*, at 3-4.

<sup>63</sup> *Id.* at 4.

<sup>64</sup> Federal Magistrates Court Interpreter and Translator Policy is available online at <http://www.fmc.gov.au/services/html/interpreters.html>. The Australian Family Court has a nearly identical policy, available online at [http://www.familycourt.gov.au/presence/connect/www/home/about/business\\_administration/plans\\_policies/plans\\_and\\_policies\\_intpreters\\_policy\\_2006](http://www.familycourt.gov.au/presence/connect/www/home/about/business_administration/plans_policies/plans_and_policies_intpreters_policy_2006).

<sup>65</sup> Additional information on the Translating and Interpreting Service, which is funded by the Department of Immigration and Citizenship, is available online at <http://www.immi.gov.au/>.

## RECOMMENDATIONS

### Policy-related:

1. State courts should recognize the aspirational goal that, as a matter of fundamental fairness, all persons appearing in court as a litigant or witness who do not sufficiently understand English should have access to qualified interpreter services in all court proceedings.
2. State courts should adopt standards for distinguishing qualified court interpreters from non-qualified court interpreters, incorporating a tiered system, if needed.
3. State courts should enact policies supporting the required use of qualified interpreters for LEP and non-English speaking litigants in as many court proceedings as possible, recognizing fiscal and other, limitations.
4. State courts should establish a process for enforcing judicial compliance with those policies.
5. The Conference of State Court Administrators should encourage all states to join the Consortium for State Court Interpreter Certification, in order to:
  - a. Establish nationwide competency standards,
  - b. Use the Consortium's resources to initiate new court interpreter programs or enhance existing programs, and
  - c. Promote efficiencies associated with the "pooling" of limited interpreter and program funding resources.
6. State courts should adopt ethics guidelines for court interpreters. A Model Code of Professional Responsibility for Interpreters in the Judiciary is included in the *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, National Center for State Courts (1995).
7. The Conference of State Court Administrators and the National Center for State Courts should consider further study of important related areas not covered, or not sufficiently addressed, in this paper, such as American Sign Language interpretation, document translation, and the provision of interpreter services in non-court justice system settings – from law enforcement investigation and interrogation to correctional and probationary activities.

Funding-related:

8. State courts should educate and collaborate with their state legislatures to seek adequate funding to provide and pay for interpreting services as well as the costs of managing court interpreter programs.
9. State courts should establish court interpreter program needs as a high budgetary priority.
10. State courts and the National Center for State Courts should support efforts to access federal and other funding to support state court interpreter initiatives, including initiatives like S. 702, “State Court Interpreter Grant Program Act,” introduced by Senator Kohl (Wisconsin) in February 2007, which would authorize \$15 million annually for five years to support state court interpreter programs, if enacted.
11. Representatives of the Conference of State Court Administrators should meet with representatives of the National Center for State Courts and the Consortium to explore long-term funding and governance strategies to assure the future sustainability of the Consortium, including a strategy to achieve participation by all states and possible international partnerships with court systems in foreign countries

Program-related:

12. The National Center for State Courts should examine whether the critical nature of the Consortium’s work needs augmented support from the Center.
13. The National Center for State Courts and/or the Consortium should promote the development of distance learning programs for interpreter skills building training, especially in languages other than Spanish, either through court-sponsored programs or partnerships with the higher education community.
14. State courts should educate and train their judges and court staff on the importance of using competent court interpreters, on cultural diversity and culturally-based behavior differences, and on the importance of following court policies regarding usage of court interpreters.
15. The National Center for State Courts and the States should explore and support methods to better identify and track needs for interpreters – in individual cases and overall, including identification of languages for which

interpretation is needed, frequency of interpreter use, and types of cases in which interpretation is required.

16. The National Center for State Courts should explore potential technology for use in enhancing court interpreter services (including remote video interpreting technology) while ensuring the quality of interpreter services is not compromised.
17. State courts should examine their practices to determine whether increased translations of important and frequently used court documents would be appropriate and provide assistance to non-English speaking litigants.
18. The National Center for State Courts and the Consortium should work with state courts to explore the feasibility of establishing regional or national pools of interpreters, as well as community-based interpreter testing programs, as cost-effective alternatives.
19. The Consortium, with the assistance of the National Center for State Courts, should develop a strategy promoting the recognition of interpreter certification status among the state courts.

## APPENDIX A

### TESTING STANDARDS COMPARISON

Test Segment	Federal Oral Exam	Consortium Oral Exam	California Oral Exam	NAJIT Oral Exam
<b><i>Sight – English to Foreign Language</i></b> Time Allowed  Length of Passage # of Scoring Units Percent of Total Test Description of Passage	5 minutes  230 words 22 10% Police or investigative reports	6 minutes (includes prep time) 200-225 words 25 11.6% Police or investigative reports	6 minutes (includes prep time) 290 words (avg) 25 22% Legal Vocabulary	5 minutes  250 words 27-33 15% Formal language – high register
<b><i>Sight – Foreign Language to English</i></b> Time Allowed  Length of Passage # of Scoring Units Percent of Total Test Description of Passage	5 minutes  230 words 22 10% Correspondence, affidavits (formal language)	6 minutes (includes prep time) 200-225 words 25 11.6% Correspondence, affidavits (relatively formal language)	6 minutes (includes prep time) 280 words (avg) 25 22% Correspondence, affidavits (relatively formal language)	5 minutes  250 words 27-33 15% Formal language – high register
<b><i>Consecutive</i></b> Time Allowed Length of Passage Length of Utterances # of Scoring Units  Percent of Total Test Description of Passage	15 minutes 800 words (approx) 1-50 words 30 (Eng. to F.L.) 46 (F.L. to Eng.) 34.5% Witness Testimony (direct or cross – Federal Court)	22 minutes 850-950 words 1-50 words 40 (Eng. to F.L.) 50 (F.L. to Eng.) 41.9% Witness Testimony (direct or cross – State Court)	20 minutes (approx) 900-1,000 words 1-40 50 33% Witness Testimony (direct or cross- State Court)	15-20 minutes 3 to 5 pages  57-63 30% Civil, financial, medical, criminal
<b><i>Simultaneous – Monologue*</i></b> Time Required Length of Passage Rate of Speech # of Scoring Units Percent of Total Test Description of Passage	7 minutes 840 words 120 wpm 65 29.5% Opening/Closing Argument	7 minutes 800-850 words 120 wpm 75 34.9% Opening/Closing Argument	3 ½ minutes 470 words (avg) 120-140 wpm 50 22% Opening/Closing Argument	(Eng to Spanish and Spanish to Eng) 5 minutes ea. 560 words each 140 wpm 37-43 each 40% Medical, legal, financial
<b><i>Simultaneous- Witness Testimony</i></b> Time Required Length of Passage Rate of Speech   # of Scoring Units Percent of Total Test Description of Passage	4 minutes 600 words Varies – up to 150 words per minute, with pauses between Q&A 35 16% Witness Testimony (in English)			

## APPENDIX B

### LEGAL AND POLICY AUTHORITY FOR THE PROVISION AND PAYMENT OF COURT INTERPRETERS

State	Payment of Interpreters in Criminal Proceedings	Payment of Interpreters in Civil Proceedings
ALABAMA	Ala. Code § 15-1-3 requires the court to provide a qualified interpreter at any stage of a criminal or juvenile proceeding. The interpreter is paid by the State unless otherwise ordered by the court. The law permits the court to order immediate payment or reimbursement by one or more parties.	Ala. R. Civ. P. R. 43(f) allows the court to provide a qualified interpreter in civil actions. The interpreter is paid as provided by law or as ordered by the court.
ALASKA	See civil section.	Interpreters are provided and fees paid in civil and criminal cases by the party who requires interpretation to understand the proceedings or who calls the witness whose testimony must be interpreted. These costs may be taxed and collected in civil cases as other costs, with the prevailing party being entitled to recover interpreter fees as costs. AK R. Admin. R. 6; AK R. Civ. P. R. 79.
ARIZONA	Compensation of interpreters in the prosecution or defense of criminal actions appointed by the court are county charges. Ariz.Rev.Stat.§11-601. County practice rules control when and how an interpreter is provided and compensated, with the general focus on providing interpreters for witnesses in both civil and criminal cases, and for defendants in criminal cases, and interpreter costs may be imposed on non-indigent defendants.	The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court. 16 A.R.S. Rules of Civil Procedure, Rule 43(c); A.R.S. §12-241.
ARKANSAS	Defendant or witness in any criminal action who cannot speak or understand English is entitled to an interpreter. If the defendant is unable to pay for the interpreter, the court shall appoint an interpreter and the fee paid "in any manner determined by the court" except that an acquitted defendant shall not be required to pay. Ark. Code Ann. §16-89-104. <i>See also</i> Ark. Code Ann. § 16-10-127.	Defendant or witness in any civil action who cannot speak or understand English is entitled to an interpreter. If the defendant is unable to pay for the interpreter, the court shall appoint an interpreter and the fee paid "in any manner determined by the court." A.C.A. §16-64-111. The court may appoint an interpreter

		of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court. Ark. R. Civ. P. 43. <i>See also</i> Ark. Code Ann. § 16-10-127.
CALIFORNIA	Defendant unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings. Cal.Const.Art. 1, §14. Interpreters' fees are paid from state funds provided for that purpose.	Interpreter fees are paid, pursuant to a grant program, in certain civil proceedings, such as family matters involving a protective order, in child custody and visitation proceedings, and in elder abuse matters. Otherwise, in civil cases, interpreters' fees are paid by the litigants, in such proportions as the court may direct, to be taxed and collected as other costs. Cal. Gov. Code § 68092.
COLORADO	Pursuant to Chief Justice Directive 06-03, the court shall provide and pay for interpretation in court proceedings relating to the following case types: felony, misdemeanor, and misdemeanor traffic; juvenile delinquency and truancy; protection orders involving domestic abuse; dependency and neglect; paternity and support when covered under Title IV-D of the Social Security Act; relinquishment; mental health, as well as for any party who is deemed indigent according to state guidelines.	Interpreter fees are not paid by the government unless the parties are indigent, per Chief Justice Directive 06-03.
CONNECTICUT	The Judicial Practice Book section 32a-6, related to the rights of parties in various juvenile matters, provides that a judicial authority "shall provide an official interpreter to the parties as necessary to ensure their understanding of, and participation in, the proceedings." In addition, there is a statutory provision for interpreters in certain juvenile proceedings, but that provision is not as broad as the Practice Book provision. Conn. Gen. Stat. §46b-139.	It is generally the responsibility of a party to obtain his or her own interpreter in civil proceedings, but the prevailing party can seek reimbursement (up to \$20 per day) from the opposing party. Conn. Gen. Stat. §52-257 (concerning damages, costs and fees in civil actions).

DELAWARE	Court may appoint interpreter with compensation from funds “provided by law or by State” as court may direct. Del. Super. Ct. Cr. R. 28. Court policy provides for payment from state funds for all indigent defendants.	Interpreter costs in civil cases are paid out of funds provided by law or by one or more parties as court may direct and may be taxed as costs. Del. Super. Ct. Civ. R. 43. Court policy provides for state-paid interpreter costs in certain civil cases, including termination of parental rights and protection for abuse proceedings.
DISTRICT OF COLUMBIA	Interpreters are appointed for any party or witness at any stage of a judicial or quasi-judicial proceeding, including civil and criminal court proceedings, and are paid out of Office of Interpreter Services funds. D.C. Code §2-1901; §2-1912.	Paid by the state – see criminal section.
FLORIDA	Interpreters for non-English-speaking defendants or victims in criminal and juvenile delinquency proceedings are appointed and paid by the state. Fla. R. Jud. Admin. 2.560 (a). Expenditures on these costs shall be recovered from users “who possess the present ability to pay.” §29.0195, Fla. Stat. (2007).	Interpreters are appointed in civil proceedings for non-English-speaking litigants if the litigant’s inability to comprehend English deprives them of an understanding of the court proceedings, if a fundamental interest is at stake (such as in civil commitment, termination of parental rights, paternity, or dependency proceeding), and no alternative to the appointment of an interpreter exists. Fla. R. Jud. Admin. 2.560 (b). Expenditures on these costs shall be recovered from users “who possess the present ability to pay.” §29.0195, Fla. Stat. (2007).
GEORGIA	Costs for interpreters in domestic violence type proceedings are paid from local victim assistance funds. Otherwise there is no statewide, uniform rule for compensating interpreters. Ga. R. P. Interpreters Rule V.	There is no statewide, uniform rule on compensating interpreters. Ga. R. P. Interpreters Rule V.
HAWAI’I	The need for and qualifications of an interpreter are determined based upon the Policies for Interpreted Proceedings in the Courts of the State of Hawai’i (effective June 22, 1995). Whether an interpreter is needed is a decision to be made by the court after conducting a voir dire on the record of the limited English proficient party or witness. The Hawai’i State Judiciary provides interpreters for defendants and	The Hawai’i State Judiciary provides interpreters for specific classes of participants in certain civil and administrative cases. Interpreters are provided for defendants at Administrative Driver’s License Revocation Office Hearings (ADLRO), petitioners and respondents in hearings for Protective Orders Against Physical

	<p>defendant witnesses in criminal cases. Provision for the deaf and hard of hearing is covered under the Americans with Disabilities Act (ADA). The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court. Haw. R. Civ. P. Rule 43(f); Haw. Dist. Ct. R. Civ. P. Rule 43(f); Haw. Fam. Ct. Rule 43(f). When making an appointment, a court may give preference to court interpreters who have been qualified under the Rules for Certification of Spoken and Sign Language Interpreters in Hawai'i State Courts, and shall pay the interpreter in accordance with their tier designation under Appendix A of the Rules. Provision and compensation of interpreters are set forth in the Hawai'i Rules for Certification of Spoken and Sign Language Interpreters (effective July 1, 2007), as well as the Judiciary's Revised Court Interpreter Fee Schedule with Payment Guidelines.</p>	<p>Violence or Threats of Violence (TROs), and for minors, parents and witnesses in certain non-criminal Family Court proceedings such as termination of parental rights. In addition, the Probate Court may appoint an interpreter of its own selection or recommended by a party and may fix the interpreter's reasonable compensation. The court may direct one or more of the parties to pay the compensation or may tax the compensation as costs. Haw. Prob. Rule 15(e).</p>
IDAHO	<p>Court appoints an interpreter in any civil or criminal proceeding in which a witness or party does not understand or speak English. Interpreter fees are paid out of county court funds called the district court fund. Idaho Code §9-205.</p>	<p>See criminal section.</p>
ILLINOIS	<p>Court shall appoint an interpreter in criminal proceedings for defendants incapable of understanding or expressing themselves in English, with fees paid out of county funds. 725 ILCS 140/1 and 140/3.</p>	<p>Interpreters are generally provided by the party needing them, as controlled by circuit court rules.</p>
INDIANA	<p>Non-English speaking, indigent criminal defendants have the right to have court proceedings interpreted for them at court expense, but there is no statutory requirement that the government provide an interpreter for non-indigent defendants. <i>Arrieta v. State</i>, 856 N.E.2d 1286, 1287-88 (Ind. Ct. App. 2006).</p>	<p>Persons incapable of speaking or understanding English are entitled to an interpreter, and costs for the interpreter may be paid out of funds "provided by law or by one or more of the parties as the court may direction, and may be taxed as costs." Ind. Code §34-45-1-3; Ind. R.T.P. R. 43.</p>

IOWA	Sign language interpreters shall be appointed by the court as needed and paid by the county without reimbursement. Iowa Code §622B.7. Oral language interpreters shall be appointed for witnesses and indigent persons in criminal, civil or juvenile legal proceedings; the interpreter fees shall be taxed as costs in criminal cases (Iowa Code §815.9(3)) and in civil cases (Iowa Code §622A.3).	See criminal section.
KANSAS	Interpreters are appointed for a defendant in court proceedings which may result in confinement or imposition of a penal sanction and interpreter fees may not be assessed against the person. Kan. Stat. Ann. §75-4351 and §75-4352.	Interpreters are appointed in any civil proceeding for parties or witnesses and interpreter fees may not be assessed against the person. K.S.A. §75-4351 and §75-4352.
KENTUCKY	Interpreters are appointed and paid out of state funds for parties or witnesses who cannot communicate in English in criminal or civil proceedings. Ky. Rev. Stat. Ann. §30A.410. <i>See also</i> R. Admin. P. A.P. Part IX, as amended by Sup. Ct. Amended Order 2004-3.	See criminal section.
LOUISIANA	Interpreters are appointed in criminal proceedings, and a defendant is liable for costs of prosecution, including interpreter fees, in an adjudication of guilt. <i>State v. Lopez</i> , 805 So.2d 124, 129 (La. 2001). However, interpreter costs for indigent defendants may be paid from public funds in whole or in part. Non-indigent defendants, if they have sufficient means, may be required to pay part of the court costs associated with their defense, including foreign language interpretation costs.	
MAINE	When personal or property interest of a person who does not speak English is the subject of a proceeding before a court, the presiding officer of the proceeding shall either appoint a qualified interpreter or utilize a professional telephone-based interpretation service. Me. Rev. Stat. Ann. tit. 5, §51. Supreme Court Administrative Order JB-06-3 states that interpreters will be provided in all court proceedings for parties, witnesses or parents or minors involved in any type of court case at state expense. The	Court may appoint a disinterested interpreter, who may be paid out of funds “provided by law or by one or more of the parties as the court may direction, and may be taxed as costs.” Me. R. Civ. P. R. 43. Payment by the State for an interpreter in civil matters is within the discretion of the agency or court to the extent that payment by the State is not already required by law. Me. Rev. Stat. Ann. tit. 5, §51.

	court may appoint a disinterested interpreter of its own selection and may determine the reasonable compensation of such interpreter. Me. R. Cr. P. R. 28.	Supreme Court Administrative Order JB-06-3 provides that interpreters will be provided in all court proceedings for parties, witnesses or parents or minors involved in any type of court case at state expense.
MARYLAND	The State pays for all interpreter fees/expenses. Since 1999, the Judiciary's budget includes an authorization to the Administrative Office of the Courts to cover the total amount necessary to provide interpreter services in a circuit court proceeding. Cts & Jud. Proc. § 2-511.	Interpreters are appointed for persons needing an interpreter. Md. Rules of Practice and Procedure 16-819.
MASSACHUSETTS	Non-English speakers have a right to the assistance of a qualified interpreter, appointed by a judge at any stage of a criminal or civil court proceeding. M. G. L. 221C chapter § 2. Court interpreter services are coordinated centrally pursuant to M. G. L. chapter 221C § 7. All interpreters appointed are reimbursed for actual expenses and compensated for their services by the court. M.G. L. chapter 221C § 6. The rates of compensation for certified and screened interpreters are set by the Chief Justice for Administration and Management. Interpreter services are paid out of a central court account of the Administrative Office of the Trial Court.	See criminal section.
MICHIGAN	If it appears to the judge that a defendant does not understand or speak English sufficiently to present their defense or if an interpreter's services are used in court on behalf of the prosecution, the judge shall appoint an interpreter, who will be compensated for their services as ordered by the court (with maximum amounts specified for interpreter services provided in municipal court). Mich. Stat. Ann. §775.19 and §775.19a. <i>See also</i> Mich. C. P. R. 2.507 noted in civil section (which also applies to criminal proceedings).	The court may appoint an interpreter of its own selection and set reasonable compensation for the interpreter, with compensation to be paid out of funds provided by law or by one or more of the parties, as the court directs, or taxed as costs. Mich. C.P.R. 2.507.
MINNESOTA	Defendants and witnesses are entitled to an interpreter in criminal proceedings. Minn. Stat. Ann. §611.32. Interpreter fees and expenses must be paid by the state courts.	Litigants and witnesses are entitled to an interpreter in civil proceedings. Minn. Stat. Ann. §546.43. Interpreter fees and expenses must

	Minn. Stat. Ann. §611.33.	be paid by the state courts. Minn. Stat. Ann §546.44.
MISSISSIPPI	In criminal cases involving an indigent defendant, the court may appoint an interpreter, whose fees are paid out of the county treasury. Miss. Code Ann. §9-21-81; §99-17-7.	Expenses of interpreters in civil proceedings may be assessed by the court as costs. Miss. Code Ann. §9-21-81. The court may appoint an interpreter of its own selection and set reasonable compensation for the interpreter, with compensation to be paid out of funds provided by law or by one or more of the parties, as the court directs, or taxed as costs. Miss. R. Civ. P. R. 43.
MISSOURI	The courts shall appoint qualified interpreters in all legal proceedings in courts of record in which the non-English speaking person is a party or a witness. Mo. Rev. Stat §476.800 and §476.803. 476.806. Interpreters in civil, juvenile, and criminal proceedings shall be allowed a reasonable fee and travel expenses (not travel time). If the person requiring an interpreter or translator during the proceeding is a party or a witness in a criminal proceeding, fees and expenses are paid by the state. Mo. Rev. Stat §476.806.	See criminal section. Fees for interpreters may be taxed as costs by the court to the parties in civil cases and the court may order either party, or both, prior to a proceeding requiring an interpreter, to deposit money with the court in an amount reasonably necessary to cover interpreter fees and expenses (which will be returned if not used for interpreter expenses). Mo. Rev. Stat §476.806.
MONTANA	Interpreters must receive the same fees as witnesses. Mon. Code Ann. §26-2-504. For payment purposes, the Office of Court Administrator has interpreters as expert witnesses who are compensated as provided for by court order.	The court may appoint an interpreter of its own selection and set reasonable compensation for the interpreter, with compensation to be paid out of funds provided by law or by one or more of the parties, as the court directs, or taxed as costs. Mont. R. Civ. P. R. 43.
NEBRASKA	In any court proceeding, the court shall appoint an interpreter to assist any person unable to communicate in the English language for the preparation and trial of their case. Neb. Rev. Stat. §25-2403. Fees for interpreters shall be paid out of state funds appropriated to the Supreme Court for that purpose, including related to probation. Neb. Rev. Stat. §25-2406.	See criminal section.
NEVADA	Interpreters are appointed for persons who cannot readily understand or communicate in the English language or cannot understand the proceedings, with compensation of interpreters in criminal	Interpreters are appointed for persons who cannot readily understand or communicate in the English language or cannot understand the proceedings, with

	<p>proceedings provided at public expense. Nev. Rev. Stat. §50.050. Interpreters shall receive such fees as the court by whom they are employed shall certify to be just. Nev. Rev. Stat. §1.500. In matters involving public safety, child welfare and indigent family court litigants, interpreters may be compensated at public expense.</p>	<p>compensation of interpreters in civil proceedings taxed as costs and “must not be charged as a public expense.” Nev. Rev. Stat. §50.050. The court may appoint an interpreter of its own selection and set reasonable compensation for the interpreter, with compensation to be paid out of funds provided by law or by one or more of the parties, as the court directs, or taxed as costs, in the court’s discretion. Nev. R. Civ. P. R. 43.</p>
NEW HAMPSHIRE	<p>New Hampshire practice is to provide an interpreter in the courtroom and/or in the clerk's office at State expense whenever an interpreter is required to assure a litigant has access to justice.</p>	<p>New Hampshire practice is to provide an interpreter in the courtroom and/or in the clerk's office at State expense whenever an interpreter is required to assure a litigant has access to justice.</p>
NEW JERSEY	<p>The judiciary generally assigns interpreters to interpret all phases of court-connected proceedings 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. Such phases include, most critically, those proceedings for which a transcript may be made but, when necessary, also court-ordered arbitration and mediation and delivery of services involving court personnel, particularly in criminal and quasi-criminal cases.</p> <p>Interpreters should be provided whenever a failure of communication may have significant negative repercussions.</p> <p>Administrative Directive #3-04 (Standards for Delivering Interpreting Services in the New Jersey Judiciary). See also, N. J. S A. §2B:8-1.</p>	<p>See criminal section.</p>
NEW MEXICO	<p>Non-English speaking persons who are principal parties in interest or witnesses and have requested an interpreter shall be provided an interpreter paid for from court funds. N.M. Const. Art. II, § 7; <i>see State v. Cabodi</i>, 138 P. 262, 262 (1914) (finding that under the provisions of section 14, art. II of the State Constitution, the defendant is</p>	<p>See criminal section. Also, costs for interpreter fees may be recoverable from the prevailing party. N.M. R. Civ. P. R. 1-54.</p>

	entitled to have the testimony interpreted to him in a language which he understands); N.M. Stat. §38-10-3; §34-9-11.	
NEW YORK	Interpreters are provided at court system expense in all courts other than town and village (Judiciary Law section 39). In town and village courts, interpreting costs are shared by county and local governments (Judiciary Law section 387).	Pursuant to Policy, the same procedures are followed as are cited in the response for criminal matters.
NORTH CAROLINA	Interpreters are appointed by the court for indigent defendants and for witnesses of indigent defendants or for the State, parties to juvenile proceedings, parents ordered to child custody mediation, domestic violence protective order petitions, and indigent respondents in involuntary commitment proceedings. Indigent criminal defendants may be assessed interpreter fees as court costs, at the court's discretion. N.C. Gen. Stat. §7A-314. See also local court rules, such as 10 Jud.Dist.Ct. R. App. Interp. Part III. Pursuant to court policy, effective 2/1/07, the court assesses a \$10 fee or the actual cost of the services, whichever is greater, to the defendant or other responsible party.	Interpreter costs may be assessed by the court. N.C. Gen. Stat. §7A-305. In civil and domestic cases where an interpreter is necessary, the court may appoint an interpreter on its own motion and require the parties to bear the cost of the interpreter. N.C. R. Evid. 604 and 706. Pursuant to Rule 706(b), an interpreter appointed by the court in this fashion is "entitled to reasonable compensation in whatever sum the court may allow." G.S. 8C-1, Rule 706 (b). Where there are no "funds which may be provided by law" to pay for the services of the interpreter, "the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs." <i>Id.</i>
NORTH DAKOTA	The court may appoint and set the reasonable compensation for an interpreter, with compensation paid from funds "provided by law or as the court directs." N.D. R. Cr. P. R. 28. If a witness does not understand or speak English, an interpreter must be sworn to interpret for the witness and shall be allowed reasonable compensation for their services, which may be collected as court costs (not to exceed \$5/day). N.D. Cent. Code §31-01-11, §31-01-12.	If a witness does not understand or speak English, an interpreter must be sworn to interpret for the witness and shall be allowed reasonable compensation for their services, which may be collected as court costs (not to exceed \$5/day). N.D. Cent. Code §31-01-11; §31-01-12.
OHIO	The court appoints a qualified interpreter whenever a party or witness in a legal proceeding cannot readily understand or communicate. Interpreter fees are paid out of the same funds as witness fees, and shall be collected in criminal cases from the	See criminal section concerning appointment of interpreters. Interpreter fees in civil cases are taxed as costs to the prevailing party. Ohio Civ. R. R. 54(D); see <i>Huebner v. Cervi</i> , 483 N.E.2d 1204

	defendant, if convicted. Ohio Rev. Code §2311.14; Ohio Rev. Code §2335.11.	(Ohio 10 <sup>th</sup> D.C.A. 1984).
OKLAHOMA	Interpreters are appointed in criminal cases and interpreter fees are paid as expenses from funds for the operation of the court. Okla. Stat. tit. 20, §1304. Parties in criminal cases cannot be required to pay for language interpreter services prior to conviction. Okla. Stat. tit. 28, §153 (H). Interpreter fees are collected as costs when defendant is convicted unless the court determines that the person needing the interpreting services is indigent and waives all or part of the costs (or requires costs to be paid in installments). Okla. Stat. tit. 28, §153(J).	Interpreter costs are paid as expenses from funds for the operation. Okla. Stat. tit. 20, §1304; <i>see Al-Mosawi v. State</i> , 942 P.2d 199, 200 (1997)(stating that “the statutory provision for payment of interpreter fees from the Court Fund is broad-covering such events as naturalization proceedings, marriage ceremonies, and the interpretation of foreign laws, decrees, and contracts in criminal as well as purely civil proceedings). Interpreters for the Deaf and Hard of Hearing are appointed pursuant to 63 O.S. § 2409 et seq. Title 63 O.S. § 2415 provides that the interpreter is paid by the Court Fund or the appointing authority.
OREGON	The court appoints an interpreter in any criminal or civil proceeding to interpret the proceedings to a non-English-speaking party or to interpret the testimony of a non-English-speaking party or witness. The state pays and no fees are charged when the interpreter is interpreting testimony of a non-English-speaking party of witness, or to assist the court in performing its duties. If the interpreter is interpreting the proceedings to a non-English-speaking party, no fees are charged to the party if they are unable to pay. Or. Rev. Stat. §45.275. (As a matter of practice, however, court interpreter services are provided without cost to the party or witness regardless of their ability of pay.)	See criminal section.
PENNSYLVANIA	The court appoints an interpreter if the court determines that a principal party in interest or witness has a limited ability to speak or understand English. 42 Pa. Cons. Stat. §4412. Interpreter fees are paid from county funds if the person with limited English proficiency is a defendant, party, victim or witness compelled to appear, in a criminal or juvenile proceeding. 42 Pa. Cons. Stat. §4416.	The court appoints an interpreter if the court determines that a principal party in interest or witness has a limited ability to speak or understand English. 42 Pa. Cons. Stat. §4412. In civil proceedings, the cost of the interpreter is imposed at the discretion of the presiding judicial officer, unless the principal party in interest is indigent, and then

		the cost is the responsibility of the county of the court that has jurisdiction over the proceeding. 42 Pa. Cons. Stat. §4416.
RHODE ISLAND	The court appoints an interpreter when a non-English speaking person is a party in a criminal or juvenile proceeding. R.I. Gen. Laws §8-19-2 and 3. Interpreter fees in criminal and juvenile proceedings are paid by the State. R.I. Gen. Laws §8-19-4.	There is no statutory or policy requirement that the court appoint an interpreter in a civil proceeding.
SOUTH CAROLINA	The court appoints an interpreter whenever a party, witness or victim in a criminal legal proceeding does not sufficiently understand or speak the English language to comprehend the proceeding or testify. Interpreter fees are paid out of state funds. S.C. Code Ann. §17-1-50.	The court appoints an interpreter whenever a party or witness in a civil proceeding does not sufficiently speak the English language to testify. Interpreter fees may be paid out of state funds, paid by one or more parties as the court may direct, or taxed ultimately as costs in the discretion of the court. S.C. Code Ann. §15-27-155; S.C. R. Civ. P. R. 43.
SOUTH DAKOTA	The court may appoint an interpreter and set reasonable compensation in criminal proceedings. S.D. Codified Laws §23A-22-11. When a witness cannot communicate or understand the English Language the court shall appoint a disinterested interpreter, who shall be compensated for those services as the court determines is reasonable to be paid and collected as costs. S.D. Codified Laws §19-3-7.	The procedure for appointing and paying for interpreters in civil proceedings is the same as provided in §19-3-7 (see criminal section).
TENNESSEE	The court appoints an interpreter for Limited English Proficiency criminal defendants, including for a defendant when LEP witnesses or victims are testifying in a criminal case, and parties to juvenile delinquency proceedings. The cost of the interpreter is paid by the state or county when the defendant is indigent, or taxed as court costs if the defendant is not indigent. Tenn. Code Ann. §40-25-132; Tenn. R. Cr. P. R. 28. <i>See also</i> Tenn. Supr. Ct. R. 13 §4 and 42, §7.	Interpreter costs may be included in costs awarded to the prevailing party in a civil proceeding, in the court's discretion. Tenn. R. Civ. P. R. 54.04. <i>See also</i> Tenn. Supr. Ct. R. 42, §7 (providing that costs of interpreter services in civil cases shall be taxed as court costs pursuant to Tenn. R. Civ. R. 54). The court appoints an interpreter for Limited English Proficiency parents and children in dependency and neglect proceedings, and respondents in involuntary commitment proceedings. The cost of the interpreter is paid by the state or county when the party is indigent or

		taxed as court costs if the party is not indigent. Tenn. R. Civ. P. R. 54. <i>See also</i> Tenn. Supr. Ct. R. 13 §4 and 42, §7.
TEXAS	The court appoints an interpreter in any criminal proceeding when it is determined that a defendant or witness does not understand or speak English. Tex. Code Crim. P. Ann. Art. 38.30(a)(Vernon Supp. 1997).	The court may appoint an interpreter and fix compensation, to be paid by one or more parties or taxed as costs. Tex. Rule Civ. Pro. 183.
UTAH	The state is responsible for the payment of interpreter fees in criminal actions in courts of record (with the local government responsible for interpreter fees in cases in which the defendant is indigent for courts that are not of record). Utah Code §78-46-25. Utah R. J. Admin. R. 3-306.	In civil proceedings (with exceptions for specific proceedings involving cohabitant abuse actions, among others), the party engaging the interpreter services is responsible for the interpreter's fees and expenses. Utah R. J. Admin. R. 3-306. The court may also allow interpreter fees to be taxed as costs. Utah Code §78-46-36.
VERMONT	The court appoints interpreters, who shall be paid out of state funds provided for the costs of prosecution. Vt. Stat. Ann. tit. 1, §335; Vt. R. Cr. P. R. 28. The Court Administrator has established a policy that interpreters are appointed by the court and paid out of state funds for parties or witnesses who cannot communicate in English in criminal or civil proceedings. Vt. R. Cr. P. R. 28 states that the court may appoint interpreters who are paid out of state funds as provided by law for prosecution.	In civil proceedings, the court may appoint an interpreter with the costs paid by a party or taxed as costs, in the discretion of the court. Vt. Stat. Ann. tit. 1, §335; Vt. R. Civ. P. R. 43. The Court Administrator has established a policy that interpreters are appointed by the court and paid out of state funds for parties or witnesses who cannot communicate in English in criminal or civil proceedings. Vt. R. Civ. P. R. 43 states that the court may appoint an interpreter with the costs paid by one or more parties or taxed as costs, in the discretion of the court.
VIRGINIA	In any criminal case in which a non-English-speaking person is the accused, an interpreter for the non-English-speaking person shall be appointed. Va. Code § 19.2-164. Compensation of an interpreter appointed by the court is to be fixed by the court, in accordance with guidelines set by the Judicial Council of Virginia. Such fee shall not be assessed as part of the costs unless (i) an interpreter has been appointed for the defendant, (ii) the defendant fails to appear, (iii) the interpreter appears in the	In any trial, hearing or other proceeding before a judge in a civil case in which a non-English-speaking person is a party or witness, an interpreter for the non-English-speaking person may be appointed by the court. Va. Code § 8.01-384.1:1. Compensation of an interpreter appointed by the court is to be fixed by the court, in accordance with guidelines set by the Judicial Council of Virginia. The

	case and no other case on that date, and (iv) the defendant is convicted of a failure to appear on that date the interpreter appeared in the case, then the court, in its discretion, may assess as costs the fee paid to the interpreter.	amount allowed by the court to the interpreter may, in the discretion of the court, be assessed against either party as a part of the cost of the case and, if collected, the same shall be paid to the Commonwealth.
WASHINGTON	In criminal proceedings, interpreters are appointed to assist a non-English-speaking person who has been compelled to appear. Costs of the interpreter are paid by the governmental body initiating the proceedings. Wash. Rev. Code §2.43.030; §2.43.040	In civil proceedings, interpreters are appointed to assist non-English-speaking persons. Interpreter costs are borne by the non-English-speaking person unless that person is determined to be indigent; in those cases, interpreter costs are administrative costs of the governmental body under the authority of which the legal proceeding is conducted. Wash. Rev. Code §2.43.030; §2.43.040
WEST VIRGINIA	The court may appoint an interpreter, with compensation paid out of funds provided by law or by the state, as the court may direct. W. Va. R. Cr. P. R. 28.	In civil proceedings, the court may appoint an interpreter with the costs paid by a party or taxed as costs, in the discretion of the court. W. Va. R. Civ. P. R. 43.
WISCONSIN	If the court determines that a party, victim, witness, or parent/legal guardian of a minor party in interest or legal guardian of a party, has limited English proficiency and that an interpreter is necessary, the court shall advise the person that he or she has the right to a qualified interpreter at the public's expense. Wis. Stat. §885.38. Interpreter fees are initially paid by the county (for interpreters appointed in circuit court proceedings), with the fees reimbursed by the state. Wis. Stat. §758.19.	See criminal section.
WYOMING	The court may appoint an interpreter, with compensation paid out of funds provided by law or by the county, as the court may direct. Wyo. R. Cr. P. R. 28.	In civil proceedings, the court may appoint an interpreter with the costs paid by a party or taxed as costs, in the discretion of the court. Wyo. R. Civ. P. R. 43.