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The National Asian Pacific American Bar Association

Increasing Access to Justice for Limited English Proficient Asian Pacific Americans



Report for Action

May 2007

NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

The National Asian Pacific American Bar Association (NAPABA) is the national association of Asian Pacific American (APA) attorneys, judges, law professors, and law students, providing a national network for its members and affiliates. Its mission states:

- We are the national voice for the Asian Pacific American legal profession.
- We promote justice, equity and opportunity for Asian Pacific Americans.
- We foster professional development, legal scholarship, advocacy and community involvement.

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Vinineath Nuon Gopal, *Associate Counsel*

Andrea Wang, *Associate Counsel*

Les Jin, *Executive Director*

National Asian Pacific American Bar Association
910 17th Street, NW, Suite 315
Washington, DC 20006

Phone: (202) 775-9555, Fax: (202) 775-9333,
www.napaba.org

Acknowledgments

The National Asian Pacific American Bar Association (NAPABA) is the national association of Asian Pacific American (APA) judges, law professors, law students, and lawyers who work in the full range of legal practice, from large firms and corporations to solo practices, government agencies, not-for-profits organizations, and legal services. Consisting of 50 local APA bar associations throughout the country and representing the interests of over 40,000 APA attorneys, NAPABA provides a national network for its members and affiliates.

Since its inception in 1988, NAPABA has engaged in and supported national and local activities in advancing professional development, protecting civil rights, combating anti-immigrant backlash, stopping hate crimes, and increasing diversity of the federal and state judiciaries. NAPABA has particularly looked for ways to make a unique contribution as a national bar association of primarily APA lawyers.

The purpose of this report is to provide a valuable service to the APA community, especially the portion underserved and often without a voice. By so doing, NAPABA also endeavors to advance the administration of justice in America.

This report is the result of the vision and efforts of many within NAPABA and beyond. First and foremost, NAPABA gratefully acknowledges the highly capable and dedicated work of Peter Nadimi. Peter came to NAPABA through the AmeriCorps VISTA program to work primarily on this project. He did the research, additional fact-finding, and writing of this report. Without Mr. Nadimi, this project would not have gotten off the ground. NAPABA also thanks AmeriCorps VISTA for its partnership and support. Jiny Kim, former NAPABA policy director, helped conceptualize the project, and former NAPABA President Amy Lin Meyerson began NAPABA down the road of dealing with the challenges facing APAs with limited English proficiency in judicial and administrative proceedings. Ms. Kim's research and strategizing also helped lay the foundation for the project. Ms. Kim's successor as policy director, Christine Epres, also contributed to the project. Legal interns Meredith Higashi and Caryn Lai provided valuable legal research. Indispensable contributors to the project—through their advice, input, and editing—are the seven members of the project's advisory committee. Their biographies are provided in the appendix.

Les Jin, *Executive Director*
National Asian Pacific American Bar Association

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Executive Summary

The American judicial system is a cornerstone of our democracy. The legitimacy of the judiciary is dependent upon its ability to deliver justice and to do so in a manner that appears just. But court and administrative agencies have faced increased challenges because of their difficulties in providing equal access to parties and witnesses who lack proficiency in English. Fundamental notions of fairness in the context of dramatic demographic change require that the judicial system do a better job in hearing the voices of all.

Data shows that the growth of the population with limited English proficiency (LEP) is increasing sharply throughout our country and, moreover, the greatest rates of change are found in areas that do not have substantial existing immigrant communities. The Asian Pacific American (APA) population in the United States was at 0.5% in 1960; 1.5% in 1980; 3.7% in 2000; and is at 4.5% now. It is projected to reach 9.3% by 2050. The reasons for the increasing APA populations are many. For example, many arrived in America as refugees resulting from the war in Vietnam and the rest of the South East Asian region in the 1970s and 80s. Large numbers of those arriving under these circumstances had no or limited English proficiency upon arrival and many still lack proficiency in English. Other recent APA immigrants are also likely not to have mastered the English language yet. On the other hand, many APAs, especially those of the third, fourth and fifth generations, are not only fluent in English, but it is the only language in which they are proficient. Nevertheless, a large number of APAs need language help to navigate the judicial process.

This report elaborates on the challenges facing Asian Americans and Pacific Islanders with LEP and documents the scope of the problem. It also discusses the state of the law regarding the rights of individuals with LEP in judicial proceedings. Additionally, it surveys the efforts made in various states to address the issue of access to the courts for those with LEP.

However, the core of the report, and the driving purpose behind it, is not an academic study on language access issues generally or even specific problems facing APAs who try to use our courts and administrative proceedings. This report is designed to do three things: (1) identify successful efforts that have improved access to judicial and administrative proceedings for APAs with LEP; (2) provide recommendations on how we can use these records of success, or "best practices", to improve access to judicial and administrative proceedings nationwide for LEP APAs; and (3) identify individuals, both program managers and advocates, who have played a role in creating and improving these successful efforts, and thus serve as resources.

A number of states have demonstrated that it is possible to establish mandatory programs that provide adequate access to judicial proceedings for individuals with LEP. All states, but especially those with large or rapidly growing APA populations, should aggressively work toward achieving similar results. In this report, we have identified many program managers and advocates, by name and contact information, who can help. States, and advocates from those states, should draw upon the proven experiences of others to find their own paths to success.

Depending on the state, either the state legislature or the state Supreme Court may be the appropriate initiating entity.¹ In addition to this general recommendation, we recommend these states do the following:

1. If not already done, conduct a formal study to determine whether the lack of qualified interpreters is a problem and recommend solutions;
2. Devise action plans and programs to evaluate how courts and administrative agencies are serving their LEP constituents, find ways to improve their services, and ensure they are meeting the demand for interpreter services;
 - o Plans should include a clear policy and protocols to implement the policy, in conjunction with training, notice, and monitoring; and
3. Mandate the appointment of interpreters for LEP individuals in all court and administrative proceedings;
 - o Provide adequate budgetary support to implement the mandate.

There is a high correlation between APAs with limited English proficiency and poverty. Thus, even if courts in every state have unlimited outstanding interpreters or otherwise provide excellent services to individuals with LEP, it would be insufficient unless low-income LEP APAs are able to obtain counsel. Thus, it often falls upon local legal aid programs to provide legal services. Too often, these legal aid programs are ill-equipped to serve LEP clients due either to insufficient money or lack of understanding of the APA LEP communities, or both.

Legal aid programs can be divided broadly into two categories. One consists of programs that receive funding from the Legal Services Corporation (LSC). Congress funds LSC and imposes significant restrictions on its spending. The rest of the programs, ranging from non-LSC legal services, local mainstream bar initiatives, local APA bar efforts, adjuncts to social services programs, and various clinics, receive their monies from a range of sources, including other federal funds, bar dues, Interest on Lawyers Trust Accounts (IOLTA) funding, grants, and state and local governments. First, we provide recommendations for all legal aid programs and then we will add several recommendations applicable only to LSC-funded programs. All legal aid programs should:

1. Increase the number of Asian language speaking lawyers, paralegals, and clerical support on their staffs and among their volunteers;
2. Utilize interpreters and other efforts to help meet the needs of APA LEP clients;
3. Engage in effective partnerships with APA community organizations to better understand the APA LEP local communities;
 - o This can be part of efforts to effectively reach out to local APA communities, especially those where the LEP populations are most prevalent;
 - o In appropriate targeted situations, use these partnerships to help interpret and translate for the LEP APA clients;
4. Apply for grants and otherwise seek monies that can be targeted to increasing the number of Asian language lawyers and paralegals and interpreters;

¹ While our recommendations focus on states, note that in many instances they are equally applicable to federal courts and federal administrative proceedings.

5. Effectively recruit, train, test, and utilize Asian-language-speaking law students, interns, and AmeriCorps VISTA volunteers to improve the organization's ability to provide bilingual services to the APA LEP community;
6. Utilize multilingual hotlines when appropriate;
7. When the local demographics warrant, create separate LEP outreach units that focus strictly on LEP populations; and
8. Engage in legal community workshops.

In addition to the above, LSC grantees should also do the following:

1. Faithfully adhere to the spirit and letter of all LSC regulations, contractual obligations, and guidance that relate to providing service access to LEP populations;
2. Review "best practices" used by other LSC grantees and view those practices as the floor upon which to build a better program;
3. Effectively utilize LSC expertise and resources, and partner with LSC, to attempt to expand monies available for better serving LEP populations, the number of Asian language speaking lawyers and paralegals, and to more effectively serve the LEP communities; and
4. Create a board committee that includes partners in the APA LEP communities to improve services to the APA LEP populations.

LSC also should play a more effective role in improving access to legal aid for LEP populations. Among things it should do are the following:

1. Ensure that all LSC grantees are adhering to its rules, contractual obligations, and program letter, as well as all other federal laws, on service access to the LEP populations; and
2. Provide technical support, either by direct service or through contracts, to its grantees to facilitate their abilities to fully and effectively implement LSC rules and regulations.

The federal government can play a stronger role in improving access for APAs with LEP. In addition to ensuring that all federal laws are complied with, it should:

1. Provide more funding for LSC that is targeted for increasing service access to the LEP populations; and
2. Review to ensure that Executive Order 13166 (Improving Access to Services for Persons With Limited English Proficiency) is complied with as it pertains to federal administrative hearings;
 - o The White House Initiative on Asian Americans and Pacific Islanders should play a lead role in ensuring compliance and otherwise advocating for implementation of the recommendations identified in this report.

Finally, APA and other community advocates that are committed to the best interests of LEP APAs must play a special role to ensure that these recommendations are fully implemented. In many ways, local APA bar associations, local APA advocacy and community groups, and national APA organizations are crucial to improving access to judicial and administrative proceedings for LEP APAs. These organizations must:

1. Play a role in providing direct legal services to the APA LEP community;
2. Work with and advocate to state legislatures and state Supreme Courts, local legal aid programs, LSC, and the federal government to implement the recommendations in this report; and
3. Work with all organizations that are potential allies to increase access for APAs with LEP. These organizations include the American Bar Association, local mainstream bar associations, local pro bono programs, and state IOLTA programs.

As these APA groups engage in the above work, they should examine the best practices identified in this report to determine which ones work best for their communities and advance those programs. Also, they should rely heavily on the support and expertise of “experts” and other advocates identified in the report to facilitate their work.

I. Introduction

“Justice denied anywhere diminishes justice everywhere.”

– Dr. Martin Luther King Jr.

The United States is seen as a symbol of freedom and democracy throughout the world. As part of this image, the country reflects the fundamental principle that the law is the creation of the people and designed to shield citizens from both tyranny and lawlessness, to protect freedom, and to enable society to conduct its affairs for the welfare of all.¹ In order to do this, the legal system must be accessible to all individuals. Today, there is a growing concern that judicial and administrative proceedings are becoming increasingly difficult to access, especially for limited English proficient (LEP) individuals.

The issue of language access concerns the ability of individuals, regardless of their proficiency in English, to be able to access important services. Language access in the courts is not an issue solely for individuals who do not speak English. Because of the complexity of the court system and judicial proceedings, adequate access is often difficult even for individuals who speak some English. LEP individuals are increasingly unable to access judicial proceedings because they cannot adequately express themselves in or understand the language of the court. The first question we must ask is: “Is it fair for an individual to be denied a fair judicial proceeding because he or she does not speak English?” When people are unable to participate fully in judicial proceedings in which they are parties, notions of justice and equality are called into question. A second question we must ask regards the administration of justice: “Does the language barrier in judicial proceedings for LEP individuals undermine the American judicial system?” The facts of each case cannot be ascertained if a party is unable to accurately present his or her argument or understand the judge. The expected growth in the number of foreign-born U.S. residents suggests that linguistic diversity will continue to challenge the courts.

The National Asian Pacific American Bar Association (NAPABA) issues this report with the goal of increasing access to judicial and administrative proceedings for LEP individuals. The findings are intended to serve as a resource for stakeholders, who include any person with an interest in the accessibility of the court system, such as judges, court administrators, lawmakers, legal aid organizations, and advocacy groups. Whether it is a judicial staff member, legislator, policy analyst, or advocate, NAPABA’s report is a tool to help break down the language barrier in our nation’s court system.

The Language Barrier

Today, more than 33 million U.S. residents are foreign born, accounting for nearly 12% of the total population.² More than one-fourth of foreign-born residents in the United States are

¹ U.S. Department of State, <http://usinfo.state.gov/dhr/democracy/u.s._legal_system.html>.

² Center for Policy Alternatives, “Language Access to Public Services,” <www.stateaction.org/issues/issue.cfm/issue/languageaccess.xml>.

Asian Pacific American (APA).³ One of the major difficulties of being a foreign-born individual is learning and understanding the English language. The influx of foreign-born individuals, along with the difficulty of learning English, has resulted in a large and growing LEP population. According to one source, over 22.3 million (8.4% of U.S. residents) individuals have limited English proficiency, speaking English less than “very well,” according to self-ratings.⁴ In regard to the APA population, census data taken from major cities around the country indicates that the LEP percentage of this population is much larger than the LEP percentage of U.S. residents as a whole. For example, nearly 30% of the APA population in the District of Columbia is LEP.⁵

Language Access to the Courts

Language has become an increasingly important issue throughout the country. Without the ability to speak English proficiently, accessing any type of service, whether public or private, is difficult. With that note, the difficulty faced by an LEP individual trying to navigate the U.S. court system is far greater.

Every day LEP individuals participate as parties or witnesses in judicial proceedings. These individuals may be unable to read or comprehend the court papers given to them. They may struggle to present their claims or defenses without a sensible understanding of the English language. The language barriers lead to poor communication, omitted testimony, incomplete records, and a violation of ethical standards.

While interpreters are usually provided to LEP individuals in criminal proceedings due to rights granted by the Fifth, Sixth and Fourteen Amendments of the U.S. Constitution, many of the appointed interpreters are not qualified to interpret court proceedings.⁶ In civil cases, although case law is weak, due process and equal protection issues are presented in cases that proceed without qualified interpreters. LEP parties often must either present their case alone or rely on friends or family who struggle to understand and explain what is being said. For courts to provide fair hearings, qualified interpreters must be appointed to interpret for LEP parties and witnesses during all judicial proceedings.

Access to justice is surely diminished when courts use interpreters who are not qualified. Many people who interpret in court are not qualified because of their own lack of language proficiency (English or the second language), bad interpreting technique, or difficulty understanding technical legal terminology. An individual may be more than able to speak fluently in another language and perform basic interpreting, but that does not mean he or she is able to interpret in court. When courts use unqualified interpreters, it often leads to misinterpretation that can be detrimental to a party’s case and compromise justice and the goal of the justice system. Additionally, the lack of good interpreting services discourages people with

³ 2005 U.S. Census Bureau, <http://www.imdiversity.com/Villages/Asian/reference/census_apia_heritage_stats_2005.asp>.

⁴ Flores, Glenn, “Language Barriers to Health Care in the United States,” *The New England Journal of Medicine*, vol. 355 (2006), pp. 229–31.

⁵ “2000 Census Profile: Asians in the District of Columbia,” <<http://apia.dc.gov/apia/lib/apia/pdf/pdf/dcasianpopulationprofile.pdf>>.

⁶ Some courts continue to permit the use of untrained interpreters, even in criminal proceedings.

limited English proficiency from using the judicial process to meet their obligations and resolve their disputes.⁷ While some states have created a system for certifying qualified interpreters, others have no standards for testing interpreter qualifications.

A Nationally Recognized Issue

The importance of language access in the United States is evident. Two recent U.S. Presidents (President Bill Clinton and President George W. Bush) have promulgated Executive Order 13166 requiring federal agencies to provide meaningful access for LEP people to federally conducted or funded programs and activities.⁸ Some states have passed legislation increasing access for LEP individuals to public services, while many have created standing committees to investigate language access in the courts.

Independent organizations are also doing their own investigations. The Asian American Justice Center (AAJC, formerly known as the National Asian Pacific American Legal Consortium) published a report in 2005 on this issue. The AAJC's report, *Equal Justice, Unequal Access: Immigrants & American's Legal System*, presents a number of recommendations and actions to increase access to the courts. With this report, NAPABA hopes to take AAJC's work a step further to increase access for LEP APAs.

NAPABA's Language Access Project

NAPABA has been concerned with language access to legal services for APAs for many years. As a minority bar association advocating on behalf of the APA community, NAPABA has tackled the many barriers in judicial proceedings for LEP APAs. For example, NAPABA's awareness of the difficulty for LEP APAs to access private and public resources and the courts led to its sponsorship of two legal clinics in New Orleans following Hurricane Katrina, which were conducted with interpreter services, as well as Vietnamese language proficient attorneys. NAPABA's understanding of language access issues and its relationship with affiliates, bar associations, and advocacy organizations, puts it in a position to help advance the effort to increase access to judicial and administrative proceedings.

NAPABA created this report as the first step in efforts to increase access to judicial and administrative proceedings. With the recommendations from the report, NAPABA will work directly with its affiliates, advocacy organizations, and other stakeholders to increase access to justice. The report will also provide valuable information to stakeholders, which will allow them to independently implement our recommendations and work to increase access to the courts.

NAPABA's Report and Increasing Access to Judicial and Administrative Proceedings

Based on research compiled from articles, reports, surveys, and other gathering efforts, NAPABA offers this report with recommendations to diminish language barriers in judicial and administrative proceedings for LEP APAs. Following the introduction is a chapter providing information on the increasing number of foreign-born and LEP individuals in the United States.

⁷ Vermont Supreme Court's Committee on Fairness and Equal Access to Justice: Sub-Committee on Court Interpreters, *A Report on Interpreter Services in Vermont Courts*, June 2004.

⁸ The U.S. Commission on Civil Rights issued a staff report evaluating compliance with E.O. 13166.

This section focuses specifically on the APA population. The report continues by discussing the current state of language access in the courts for LEP individuals. A number of “best practices” and models will then be presented that demonstrate effective approaches to increasing access to the court system for those with limited English proficiency. Finally, with the analysis of the background information, current state of affairs, and best practices, the report will conclude with a set of recommendations to increase access to judicial and administrative proceedings for LEP individuals and specific roles stakeholders can take. The following are a few key points from each chapter:

- *Background Information*

1. The number of LEP individuals is growing.
2. LEP population growth is occurring in nearly every state.
3. The highest LEP population growth percentages are occurring in states not known for having large immigrant or LEP populations.
4. The need to increase access to the courts is recognized by communities around the country.

- *Current State of Affairs*

1. There is a high demand for court interpreters and this demand is increasing.
2. Asian and Pacific languages are among the most interpreted languages in court proceedings and their use is also increasing.
3. Under federal law and most state laws, the right to an interpreter in civil cases does not exist.
4. One major problem leading to injustice is the lack of qualified interpreters available in the court system.

- *Best Practices*

1. Many states have implemented programs that increase access for those with limited English proficiency, which can be used as models for other states to follow.
2. In addition to increasing the number of interpreters in court, there are alternate ways to improve access to the court system.
3. Legal aid organizations are creating programs to increase the ability of LEP individuals to receive linguistically accessible legal services.
4. Advocacy organizations are working to increase access to the courts for LEP individuals in their communities.

II. Background Information

“Change is the law of life. And those who look only to the past or present are certain to miss the future.”

– John F. Kennedy

The ability to speak English proficiently is becoming a mounting concern for many Americans. The number of LEP individuals, including APAs, in the United States is continuously growing, and in recent years at an accelerated rate. This increase can be attributed to a number of factors, one of which is the increasing number of foreign-born persons within the U.S. population. This growing LEP population is not only occurring in states traditionally known to have higher immigrant LEP populations, but also in the heartland of America and other areas where large LEP populations traditionally have not resided. As the LEP population swells, more and more APA individuals are being denied access to private and public services, including fair judicial and administrative proceedings.

LEP Population

Approximately 49.6 million Americans (18.7% of U.S. residents) speak a language other than English at home. A large number of these Americans are not proficient in English. Of the nearly 50 million Americans who spoke a language other than English at home, 22.3 million (8.4% of U.S. residents) had limited English proficiency, speaking English less than “very well,” according to self-ratings.¹ The states with the highest LEP percentages of population include California (20%); Texas (13.9%); New York (13%); Hawaii (12.7%); and New Mexico (11.9%), which are states that traditionally have large immigrant and LEP populations. However, there are a few states with high LEP percentages of population that are not traditionally viewed as such. These states include Rhode Island (8.5%), Connecticut (7.4%), and Colorado (6.7%).²

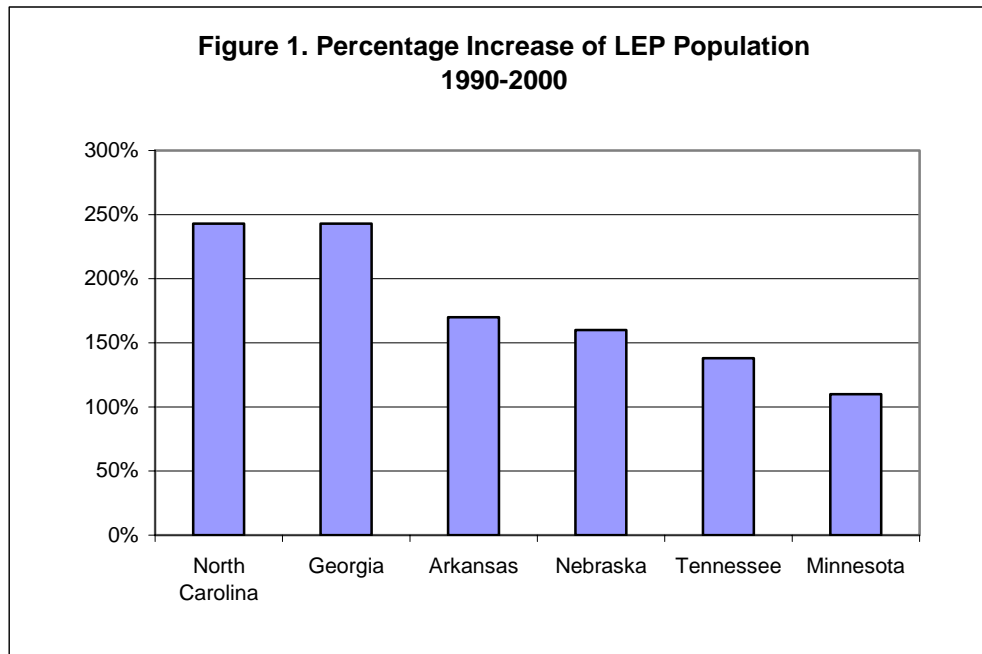
The number of LEP individuals in the United States continues to grow and the growth rates continue to increase. The increase in the LEP population is occurring in nearly every state in the country. Between 1990 and 2000, the number of LEP individuals in the United States grew by 7.3 million (a 53% increase).³ Additionally, from 1990 to 2000, 46 states and the District of Columbia increased their percentage of the LEP population. Most of these increases are significant. States with increases include Texas (51%), California (42%), and New York (31%), which traditionally have higher LEP populations and are generally expected to have such increases. However, states that are not traditionally seen as having high LEP populations, such as

¹ Flores, Glenn, “Language Barriers to Health Care in the United States,” *The New England Journal of Medicine*, vol. 355 (2006). pp. 229–31.

² National Asian Pacific American Legal Consortium, *Equal Justice, Unequal Access: Immigrants & America’s Legal System* (2005), p. 34.

³ Flores, Glenn, “Language Barriers to Health Care in the United States,” *The New England Journal of Medicine*, vol. 355 (2006), pp. 229–231.

North Carolina, Georgia, Arkansas, Nebraska, Tennessee, and Minnesota, have had even more significant increases in LEP population.



The increasing LEP population is partly due to the increase in foreign-born individuals. More than 33 million U.S. residents are foreign born, accounting for nearly 12% of the total population.⁴ In the United States, the foreign-born population increased from 19.8 million in 1990 to 31.1 million in 2000.⁵ Of the 31.1 million foreign-born individuals in 2000, 8.2 million (26%) were from Asia.⁶ From 2000 to 2005, immigrants living in U.S. households increased by 16%.⁷ With the increase in foreign-born population, APA individuals are one of the fastest growing racial groups in the United States.⁸

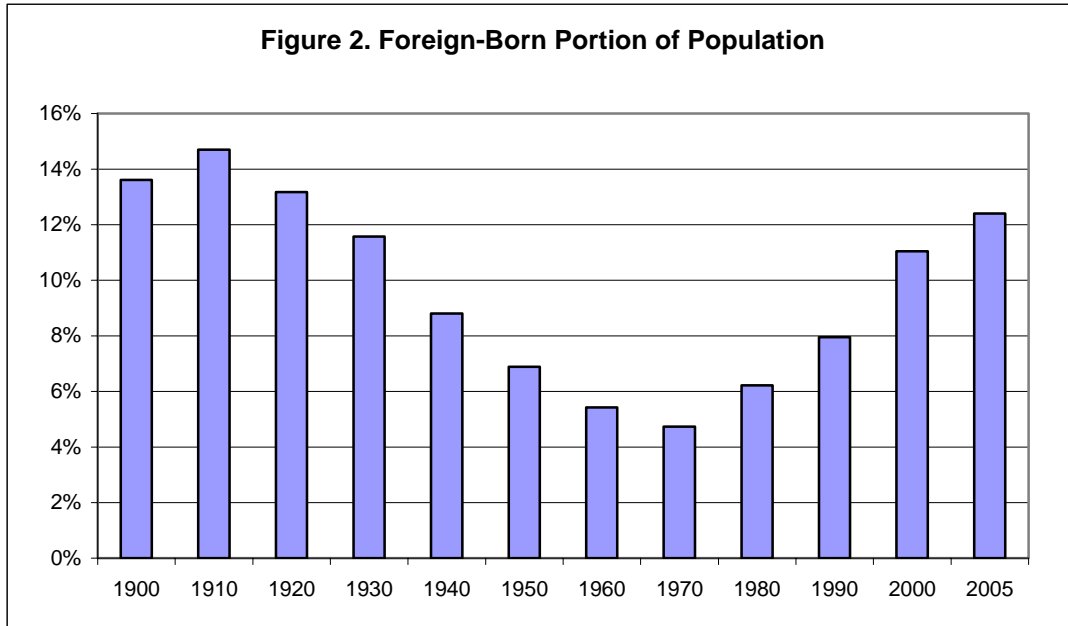
⁴ Center for Policy Alternatives, "Language Access to Public Services," <www.stateaction.org/issues/issue.cfm/issue/langaugeaccess.xml>.

⁵ Grieco, Elizabeth, "English Abilities of the US Foreign-Born Population," *Migration Information Source* (2003), <<http://www.migrationinformation.org/USfocus/display.cfm?ID=84>>.

⁶ 2000 U.S. Census Brief, <<http://www.census.gov/prod/2003pubs/c2kbr-34.pdf>>.

⁷ WorkPermit.com, "U.S. Census Data Reveals 16% Immigration Increase in 5 Years," <www.workpermit.com/news/2006_08_17/us/census_data_increase.htm>.

⁸ FedStats, <<http://www.fedstats.gov/qf/states/00000.html>>.



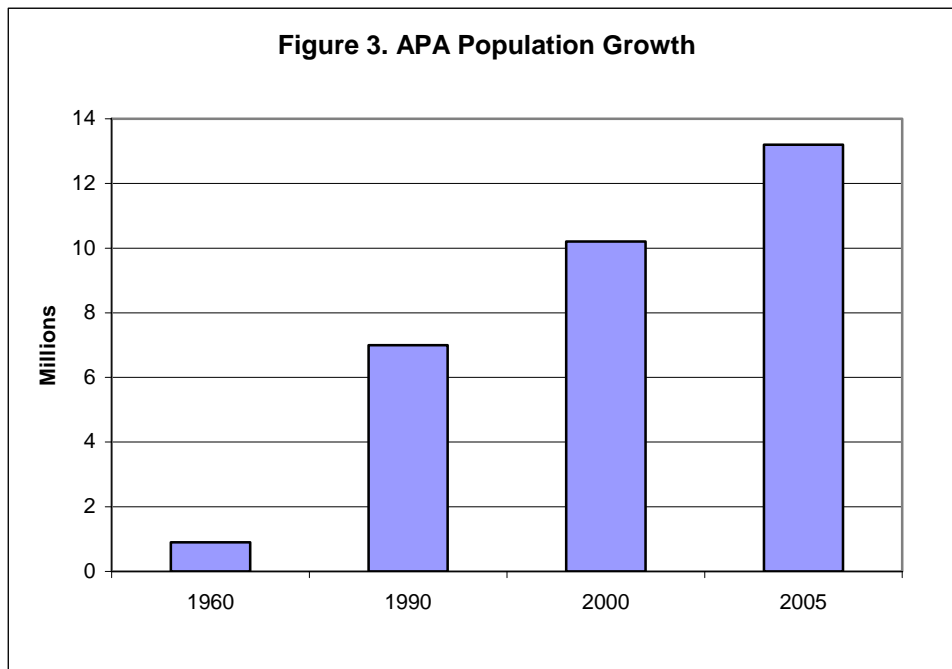
Asian Pacific American (APA) Population

The APA population in the United States has grown from fewer than 1 million (0.5% of the total U.S. population) in 1960 to 10.2 million (3.7%) in 2000.⁹ In 2005, the Asian Pacific Islander population was nearly 13.2 million (4.5%).¹⁰ The APA population is projected to continue growing dramatically. A recent census projects that Asians/Pacific Islanders will account for 6.5% of the nation's population by the year 2025, and by 2050 they will account for 9.3%. By 2050 about one of every 10 Americans will have Asian/Pacific Islander roots.¹¹

⁹ *Asian-Nation*, "Population Statistics & Demographics," (2007), <<http://www.asian-nation.org/population.shtml>>.

¹⁰ FedStats, <<http://www.fedstats.gov/qf/states/00000.html>>.

¹¹ Population Resource Center, <<http://www.prcdc.org/summaries/asians/asians.html>>.



APAs are not only one of the largest racial groups in the United States, but they are also among the most diverse. They include at least 43 different ethnic groups who speak more than 100 languages and dialects.¹² Over 7 million Americans speak an APA language. In addition, most APAs are foreign born (over 8.5 million or 65%).¹³ Considering these facts, they face a difficult task of learning the English language. The large foreign-born population among other factors has left many APAs with limited English proficiency and linguistically isolated.

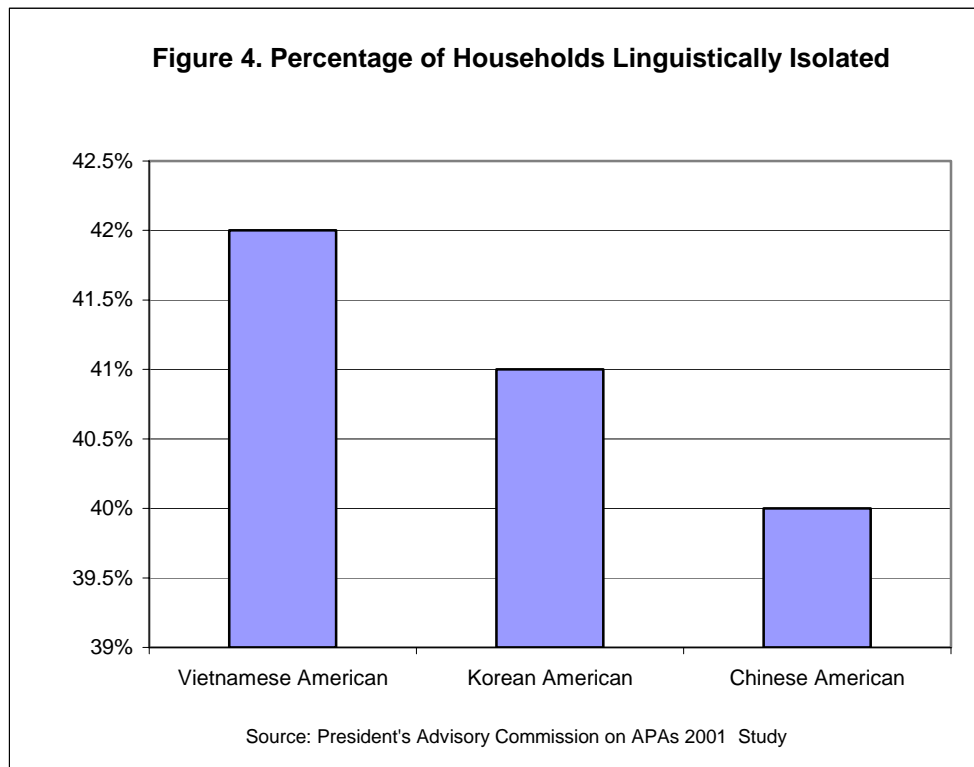
In a 2001 supplementary survey by the U.S. Census Bureau, 22.4% of all Asian or Pacific Island language speakers aged 18–64 reported that they spoke English either “not well” or “not at all.”¹⁴ The rates of English proficiency vary greatly by ethnicity within the APA population. In addition, the President’s Advisory Commission on Asian Americans and Pacific Islanders found that nearly half of Vietnamese American, Korean American, and Chinese American households are “linguistically isolated.” This designation means that no one in the household aged 14 years or older speaks English “very well.”¹⁵

¹² “Cultural Factors Influencing the Mental Health of Asian Americans,” *Western Journal of Medicine*, vol. 176(4), (2002), pp. 227–31.

¹³ 2005 U.S. Census Bureau, <http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/004522.html>.

¹⁴ U.S. Department of Transportation, Departmental Office of Civil Rights, “Limited English Proficiency,” <<http://www.dotcr.ost.dot.gov/asp/lep.asp>>.

¹⁵ “Cultural Factors Influencing the Mental Health of Asian Americans,” *Western Journal of Medicine*, vol. 176(4), (2002), pp. 227–31.



Reports have also found Asian Pacific Americans in Los Angeles and New York City encountering similar problems. According to a 2000 U.S. census, 43% of Asians in Los Angeles County speak English less than “very well.” The same census found that 63% of both Vietnamese and Taiwanese individuals in Los Angeles County are LEP.¹⁶ Of all racial groups in New York City, APA individuals were found to have the highest percentage (28%) to speak English “not well” or “not at all.”¹⁷

California and New York are not the only states where large numbers of APAs are not proficiently speaking English. In Connecticut, nearly 20% of APA individuals speak English either “not well” or “not at all.”¹⁸ In Hawaii, among those whose primary language at home is an Asian or Pacific language, 20.2% do not speak English well or at all.¹⁹ In a study on Hmong parents in Minnesota (Minnesota has the second biggest Hmong population in the United States), a university professor found that 40% of the total participants said they could not speak English

¹⁶ Asian Pacific American Legal Center, “Expanding Legal Services: Serving Limited English Proficient Asians and Pacific Islanders,” <http://www.apalc.org/pdffiles/ELS_Web.pdf>.

¹⁷ Center for Policy Alternatives, “Language Access to Public Services,” <www.stateaction.org/issues/issue.cfm/issue/languageaccess.xml>.

¹⁸ University of Connecticut: Asian American Studies Institute, “Asian Americans in Connecticut Census 2000: Citizenship, Income, Poverty, Employment, and Education,” Fall 2004.

¹⁹ Hawaii Department of Labor and Industrial Relations, “Governor Lingle Signs Language Access Bill,” <http://www.workforceatm.org/articles/template.cfm?results_art_filename=hi_langaccess.htm>.

at all.²⁰ In Pennsylvania, the state's Supreme Court Committee on Racial and Gender Bias in the Justice System conducted a survey that asked local community agencies with LEP clients to describe the languages spoken by their clients that needed the most frequent interpretation. Vietnamese was among the top three for which interpreter services were most frequently requested.²¹

The lack of English proficiency can make life very difficult in the United States. Some individuals, whether at the local pharmacy, the Department of Motor Vehicles, or the courthouse, will not be able to access services because of their inability to speak English.

²⁰ San, Bob, "First of its Kind Report Examines Language Barrier and Limited Parental Education," University of Minnesota, Nov. 4, 2005, <http://www1.umn.edu/umnnews/Feature_Stories/Hmong_parents_and_children_lack_support_for_early_learning.html>.

²¹ Pennsylvania's Unified Judicial System, *Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System*.

III. Current State of Affairs

"It is from numberless diverse acts of courage and belief that human history is shaped. Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope."

– Robert Francis Kennedy

Increasing numbers of persons with LEP are unable to obtain meaningful access to the court system and administrative proceedings. The accessibility of the court system and state and federal agencies varies throughout the United States, but most LEP individuals are having some sort of difficulty accessing judicial and administrative proceedings. One major factor is the use of court interpreters. There are not enough interpreters available and many of those that are available are not qualified to interpret in court. The scarcity and quality of interpreters are a result of the lack of federal and state laws and court rules mandating proficient court interpreters.

The Rising Demand for Interpreters

A review of court statistics across the country on interpreter usage reveals a few major developments regarding language access. One development is that there is a high demand for interpreters and that this demand is rapidly increasing. The number of times federal courts used court interpreters jumped to 223,996 in fiscal year 2004, which is 18% more than fiscal year 2003.¹ The increase in the use of interpreters is also evident in state courts. In Arizona, during a three-month period in 2001, the Phoenix Municipal Court and Maricopa County Superior Court had over 17,000 interpreter requests.² The use of court interpreters in the Southern District of Texas increased by more than 2,000 in felony cases disposed of by magistrate judges in 2004.³ The *Report on the Use of Interpreters in the Courts of Ohio* by the Supreme Court of Ohio found an upward trend in the number of cases that required a court interpreter. In addition, between August 2003 and August 2004 alone, Ohio courts performed at least 18,465 interpretations. The report in Ohio also suggests that the use of interpreters may have increased as much as 200% from 2001 to 2004.⁴ In another case, of 247 judges interviewed by Indiana's Commission on Racial and Gender Fairness, 90.3% reported having used interpreters for non-English speakers in their courtrooms in the past five years. In New Jersey, between July 2004 and July 2005, the Superior Court needed interpreters for over 85,000 cases.⁵ During California's 1998–1999 fiscal year, court interpreters were used over 194,000 times.⁶

¹ The Third Branch, "Court Interpreters Feel Impact of Illegal Immigration Caseload," February 2005. <<http://www.uscourts.gov/ttb/feb05ttb/interpreters/index.html>>.

² Arizona Minority Judges Caucus Interpreter Issues Committee, *State of Arizona: Access to the Courts*, 2001–2002.

³ The Third Branch, "Court Interpreters Feel Impact of Illegal Immigration Caseload," <www.uscourts.gov/ttb/feb05ttb/interpreters/index.html>.

⁴ Supreme Court of Ohio, *Report on the Use of Interpreters in the Courts of Ohio*, 2004.

⁵ Indiana Supreme Court, *Commission on Race and Gender Fairness Executive Report and Recommendations*, 2002.

⁶ Judicial Council of California, *Remote Court Interpreting: Development of a Pilot Project in California*, 2001.

The Demand for Asian or Pacific Language Interpreters

Asian and Pacific languages are among the most used languages in court proceedings after Spanish. In fiscal year 2004, Mandarin and Vietnamese were two of the top five languages used in federal courts. In a Manhattan federal court, 30% of cases needing interpreters used Asian language interpreters.⁷ State courts also have a high demand for Asian or Pacific language interpreters. In the study by the Indiana Commission on Racial and Gender Fairness, 10% of judges reported they had used Vietnamese interpreters and 10% reported they had used Chinese interpreters.⁸ In Minnesota courts, Hmong was the third most interpreted language between September 2005 and September 2006.⁹ In Nevada, according to David Gordon, coordinator of the Nevada Certified Court Interpreters Program, Tongan and Tagalog interpreters are in high demand.¹⁰ The demand for Asian and Pacific language interpreters in court is increasing. In one example, a review of the use of Vietnamese, Korean, Cantonese, and Mandarin in California court proceedings between the 1994–1995 fiscal year and the 1998–1999 fiscal year found that each language increased by 41%, 36%, 57%, and 91%, respectively.

Problem: Lack of Laws and Court Rules Mandating the Right to an Interpreter

Without the existence of laws or rules that mandate the appointment of qualified interpreters in judicial and administrative proceedings, LEP individuals are simply unable to access proceedings in a meaningful way. Although some laws are designed to provide LEP persons with court interpreters, most states fail to mandate federal and state courts and agencies to fund and appoint interpreters in judicial and administrative proceedings, and frequently fail to address the issue of qualification or certification for interpreters who are being used.

Federal Law

Right to a Court Interpreter

In 1970, the U.S. Court of Appeals for the Second Circuit held in *Negron v. New York* that the Sixth Amendment right to confront an adverse witness guarantees criminal defendants and witnesses the right to use an interpreter in court proceedings. The court also found that Negron's trial lacked the basic fairness required by the Due Process Clause of the Fourteenth Amendment.¹¹

Several years after *Negron*, Congress addressed the issue of language access at the federal court level by passing the Court Interpreters Act of 1978, 28 U.S.C. §1827. Under the Act, criminal defendants have the right to an interpreter at trial.¹² In civil cases, however, that

⁷ National Association of Judiciary Interpreters and Translators, "FAQs about Court Interpreting," <www.najit.org/faq.html>.

⁸ Indiana Supreme Court, *Commission on Race and Gender Fairness Executive Report and Recommendations*, 2002.

⁹ Minnesota Court Interpreter Program, *Jurisdiction Totals Report*, <<http://www.courts.state.mn.us/>>.

¹⁰ Maher, Kris, "A Career in Languages Translates into Success."

¹¹ *Negron v. New York*. 434 F.2d 386, 388 (2d Cir. 1970).

¹² Court Interpreters Act of 1978, 28 U.S.C. §1827.

right exists only when the defendant is being sued by the government.¹³ Furthermore, under the Act, the official court record is kept only in English.¹⁴ This may present a problem as there is no documentation of the party's native language, and therefore, no way of knowing of interpreter error. Without such documentation, there is little or no opportunity for most non-English speakers to appeal based on inaccurate trial interpreting.

Under the Court Interpreters Act, neither plaintiffs nor defendants have any right to an interpreter in suits between private parties.¹⁵ It is axiomatic that many cases between private parties involve a myriad of fundamental constitutional, statutory, and personal rights. Such issues include a party's loss of property. If an LEP individual was evicted from his home by the landlord, for example, he would not have the right to an interpreter in a civil proceeding to contest the eviction.

Improving Language Access in Administrative Agencies and Court Proceedings

Executive Order (E.O.) 13166 (Improving Access to Services for Persons With Limited English Proficiency), issued by President Bill Clinton and later re-issued by President George W. Bush, clarifies the requirements of Title VI of the Civil Rights Act of 1964 that all federal agencies and other entities receiving federal assistance ensure that LEP persons have meaningful access to their benefits and services.¹⁶ Title VI prohibits denial of benefits or discrimination under federally assisted programs based on race, color, or national origin.¹⁷ National origin can be argued as a proxy for language, and therefore LEP persons who are denied benefits due to a lack of language assistance must be afforded the protections granted by Title VI.¹⁸ According to a policy brief by the National Coalition for Asian Pacific American Community Development, several agencies have complied with the executive order, while others have not.¹⁹

Although the executive order provides little in the way of support for a cause of action for a suit, it can provide a point of leverage for advocating change by noncompliant agencies. The executive order mandates that federal agencies and other recipients of federal funding implement LEP plans to address language and interpreter services, based on an analysis of the following factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service

¹³ Pub. L. No. 95-539, 92 Stat. 2040.

¹⁴ 28 U.S.C. § 1827(d)(1)(A).

¹⁵ Pub. L. No. 95-539, 92 Stat. 2040.

¹⁶ Executive Order 13166 of August 11, 2000.

¹⁷ Title VI of the 1964 Civil Rights Act, 42 U.S.C. §§2000d.

¹⁸ *Lau Et Al. v. Nichols Et Al.*, 414 U.S. 563, 570 (1974).

¹⁹ National Coalition for Asian Pacific American Community Development, *Access for LEP Persons Needing Community and Economic Development Assistance*.

provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs.²⁰

Acting in response to E.O. 13166, federal agencies have issued guidance to recipients of federal funds to ensure that LEP individuals are protected by Title VI. According to the LEP Guidance Document issued by the Department of Justice, application of the four-factor analysis requires that courts that receive federal funding must ensure that LEP parties and witnesses have meaningful access to their services. The document states, "At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. When a recipient court appoints an attorney to represent an LEP defendant, the court should ensure that either the attorney is proficient in the LEP person's language or that a competent interpreter is provided during consultations between the attorney and the LEP person."²¹ Therefore, courts that receive federal funding must provide LEP individuals with court interpreter services.

Interpreter Certification

The Court Interpreters Act requires the Director of the Administrative Office of the United States Courts to prescribe, determine, and certify the qualifications of persons who serve as certified interpreters in federal courts when the Director considers such certification to be merited for persons who speak only or primarily a language other than English.²²

Currently, there are federal interpreter certification programs for Spanish, Haitian Creole, and Navaho, which is fewer than those offered by the Consortium for State Court Interpreter Certification.²³

Finally, the decision to provide an interpreter is left to the discretion of the judge, who must decide whether a party or witness "speaks only or primarily a language other than English."²⁴ Judges are rarely qualified to make such determinations, and it has been well documented that their decisions on such matters are often poor.²⁵ The current system is flawed and must be corrected to ensure that such determinations are made by well-qualified individuals, whether it is judges who receive adequate training in making such determinations or other individuals who have been trained to determine when a party or witness is in need of court interpreting.

²⁰ U.S. Department of Justice, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, Federal Register: June 18, 2002 (Volume 67, Number 117).

²¹ Ibid.

²² Court Interpreters Act of 1978, 28 U.S.C. §1827 (b)(1).

²³ Pantoga, Heather, *Injustice in Any Language: The Need for Improved Standards Governing Courtroom Interpretation in Wisconsin*, 82 Marq. L. Rev. 601, 629 (1999).

²⁴ 28 U.S.C. § 1827(d)(1)(A).

²⁵ Rearick, Daniel J. *Reaching Out to the Most Insular Minorities: a Proposal for Improving Latino Access to the American Legal System* citing Timothy Dunnigan and Bruce T. Downing, "Legal Interpreting on Trial: A Case Study," in 8 Translation and the Law 93 (Marshall Morris ed., 1995).

State Law

Right to a Court Interpreter

The state constitutions of California and New Mexico guarantee the right to an interpreter in criminal proceedings.²⁶ As for civil proceedings, however, no court has found that a litigant has a state or federal constitutional right to interpreters.

This section will focus on a sample of interpreter laws from a cross section of five states in the United States with significant LEP populations: California, Texas, Illinois, New York, and Pennsylvania.

California

California state laws guarantee equal access for limited English speakers to a wide range of public and private health and social service programs and activities. The Dymally-Alatorre Bilingual Services Act recognizes the large numbers of limited English speakers who are denied rights and benefits to which they would otherwise be entitled and seeks to prevent them from being unable to utilize public services.²⁷ However, it appears that the state doesn't have the same commitment to language access in all court proceedings.

The California Constitution provides the right to an interpreter only in criminal proceedings and a limited subset of civil proceedings, including those involving small claims, domestic violence, parental rights, dissolution of marriage or legal separations involving a protective order, and court-related medical examinations. The statutory right given in these particular civil proceedings, however, is subject to whether there are adequate funds to pay for the interpreters. In turn, litigants in all other types of ordinary civil proceedings have no such right.²⁸

In *Jara v. Municipal Court*, 21 Cal. 3d 181 (1978), the California Supreme Court held that non-English-speaking indigent civil litigants do not have the right to a court interpreter appointed at public expense. Instead, the litigants must rely on the court's inherent authority to appoint an interpreter if justice so requires. The court held that this standard does not grant civil litigants with a constitutional right to an interpreter.²⁹ In contrast, California law explicitly mandates the appointment of interpreters for the hearing impaired in all proceedings, criminal or civil. It also mandates language assistance in adjudicative proceedings before state agencies, boards and commissions, including the Labor Commissioner and Unemployment Insurance Appeals Board.

²⁶ N.M. Const. art. II, § 7; Cal. Const. art. I, § 14.

²⁷ Cal. Gov't Code §§ 7290.

²⁸ Cal. Const. art. I, § 14.

²⁹ *Jara v. Municipal Court*, 21 Cal. 3d 181 (1978).

Texas

Article 38.30(a) of the Code of Criminal Procedure ensures that the rights of confrontation and competency are afforded to criminal defendants in Texas, pursuant to the United States and Texas Constitutions (US Const. amend. VI and Tex. Const. art. I, §10). It states:

“When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person charged or a witness does not understand and speak the English language, an *interpreter must be sworn to interpret* for him ... In the event that the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or the interpreter is not familiar with use of slang, the person charged or witness may be permitted by the court to nominate another person to act as intermediary between himself and the appointed interpreter during the proceedings.”³⁰

Rule 183 of Texas Rules of Civil Procedure addresses the appointment of interpreters in civil cases. It states:

“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.”

Rule 183 does not specify the type of interpreter and is thus applicable to both spoken-language interpreters and interpreters for the deaf.³¹ It leaves the issue of compensation up to the discretion of the court.

In contrast, the Texas Civil Practice and Remedies Code provides far greater protections to hearing-impaired individuals by “requiring” the appointment of interpreters for the deaf in civil cases and specifying that interpreter fees and expenses be paid with county funds.³²

Illinois

According to the Criminal Proceeding Interpreter Act (Section 725 of the Illinois Criminal Procedure) in the state of Illinois, if the court finds the accused in a criminal trial is incapable of understanding or expressing himself in the English language, the court *shall* appoint an interpreter for the accused whom he can understand and who can understand him.³³ Here, it is up to the discretion of the court to appoint an interpreter for the accused in a criminal proceeding.

³⁰ Tex. Code Crim. Proc. Art. 38.30(a).

³¹ Tex. Rules of Civ. Proc. Rule 183.

³² See Tex. Civ. Prac. & Rem. Code Ann. § 21.002(a) (Vernon 1997).

³³ Criminal Proceeding Interpreter Act (Section 725 of the Illinois Criminal Procedure).

LEP individuals in Illinois do not have the guaranteed right to a court interpreter in civil proceedings. Section 735 of the Illinois State Code of Civil Procedure indicates that interpreters *may* be sworn to interpret in these proceedings, when necessary.³⁴

New York

In the state of New York, the county judge and district attorney of the county *may* appoint one interpreter, who shall act as and be the court interpreter for such county.³⁵ Similar to the other states, the court system in New York leaves it up to the discretion of the judge and district attorney as to whether a court interpreter will be appointed for an LEP individual.

Pennsylvania

In Pennsylvania, a law was passed in 2006 that mandated the appointment of interpreters to LEP individuals in administrative and judicial proceedings.³⁶ Known as the Court and Administrative Proceedings Interpreters Act of November 29, 2006, P.L. 1538, No. 172, the Act enables the presiding officer to appoint a certified interpreter in the event that LEP persons are involved in the proceeding. Furthermore, according to the Act, the Department of Labor and Industry of the Commonwealth shall create a program to appoint and use certified interpreters, which would include the establishment of a comprehensive testing and certification program for interpreters, as well as standards and a professional code of conduct for interpreting. However, Section 4437 of the statute indicates that the implementation of a program to facilitate the use of interpreters is contingent upon the availability of funding. Under the law, an LEP person may be responsible for paying the costs associated with appointing an interpreter to his case.³⁷

NAPABA's survey of the state laws demonstrates that even where legislated, state laws are inadequate as they fail to provide LEP litigants, whether they are involved in a criminal or civil proceeding, with the right to an interpreter. The statutory framework in the states mentioned above merely provides state courts with the discretion to appoint a court interpreter and to occasionally provide the funding to certify and hire interpreters. Furthermore, some of these statutes offer greater protections to people with hearing impairments, but meanwhile fail to afford similar interpretation or access to LEP individuals who are just as vulnerable in the courtroom.

Problem: Lack of Qualified Interpreters

The inadequate supply of qualified interpreters is another major reason our judicial system has failed to afford equal access to courts. The foretelling of this shortage is evident in the lack of certification programs to ensure qualified interpreters for court use. Because of the wide variety of languages needing interpreting in the courts, there is a greater need today for qualified interpreters than ever before.

³⁴ Section 735 of the Illinois State Code of Civil Procedure.

³⁵ NY CLS Jud § 386 (2006).

³⁶ P.L. 1538, No. 172, Court and Administrative Proceedings Interpreters Act of Nov. 29, 2006.

³⁷ Ibid.

The lack of certified court interpreters is evident all over the country, even in places where a certification process exists. Arkansas has no certified interpreters in Asian or Pacific languages.³⁸ In California, there are only three certified Tagalog court interpreters and only 12 certified Japanese court interpreters.³⁹ The demand in California for interpreter services in recent years has grown steadily while the number of interpreters available has dropped by more than 35%.⁴⁰ As of 2002, nearly 20 counties in California did not have a single certified court interpreter living within the county.⁴¹ In Nevada, there are only nine certified interpreters in Asian or Pacific languages.⁴² Ngoc Nguyen, former President of NAPABA's Minnesota chapter, believes that the legal access needs of LEP individuals in the Twin Cities community are not being met. She states, "There are interpreters for some languages, but very limited."

The lack of qualified interpreters has led to many cases in which unqualified interpreters are being used. For example, in California's fiscal year 1998–1999, over 30% of the cases with interpreters used unqualified interpreters.⁴³ Geoffrey Robinson, chairman of the language access committee of the California Commission on Access to Justice, states, "Untrained interpreters, even though fluent in both languages, are not capable of maintaining the communications link in a court proceeding."⁴⁴

Reasons for the Shortage of Qualified Interpreters

There are a variety of reasons why courts are lacking high-quality interpreting. First, the availability of court interpreter certification systems is far from universal and, even in jurisdictions with a certification system, the availability of oral exams in Asian languages is limited. Although 36 states belong to the Consortium for State Court Interpreter Certification, many do not have an operational certification system. In addition, the Consortium has thus far devised oral exams in only six Asian languages: Cantonese, Hmong, Korean, Laotian, Mandarin, and Vietnamese.⁴⁵ The federal court interpreter certification program has exams available only in three languages: Spanish, Haitian Creole, and Navajo. In regard to state certification, a survey of states shows many differences in the availability of certification. In Alaska, Illinois, and Ohio there is no state legal interpreter certification program.⁴⁶ In the state of Washington, certification examinations are only available for Cantonese, Korean, Laotian, and Vietnamese.⁴⁷ In Maryland, the only certified Asian languages are Vietnamese, Korean, and Cantonese.⁴⁸ In Michigan,

³⁸ Arkansas Supreme Court, "Registry of Foreign Language Interpreters," <<http://courts.state.ar.us/courts/ci.html>>.

³⁹ California Commission on Access to Justice, *Language Barriers to Justice in California*, September 2005.

⁴⁰ *Ibid.*, p. 6.

⁴¹ "Dearth of Courtroom Interpreters Raises the Language Barrier," *California Bar Journal*, April 2002.

⁴² Nevada Supreme Court, "Certified Registered Interpreter List," <http://www.nvsupremecourt.us/documents/misc/Master_Court_Interpreter_List.doc>

⁴³ Judicial Council of California, *Remote Court Interpreting: Development of a Pilot Project in California*, 2001.

⁴⁴ Simmons, Ann M., "Non-English Speakers Want Their Say in Court," *Los Angeles Times*, Apr. 3, 2006.

⁴⁵ National Center for State Courts, <http://www.ncsconline.org/wc/publications/Res_CtInte_ConsortCertTestsPub.pdf>.

⁴⁶ National Center for State Courts, "Certification Requirements Survey–2004," <http://www.ncsconline.org/wc/publications/Res_CtInte_ConsortCertRqmmtsSurvey2004Pub.pdf>.

⁴⁷ Washington Courts, <http://www.courts.wa.gov/programs_orgs/pos_interpret/>.

⁴⁸ Bykowicz, Julie, "Lifting Language Barrier in Court," *Baltimore Sun*, Aug. 5, 2005.

Vietnamese is the only Asian language that is certified by the state.⁴⁹ Even when states have certification programs for APA languages, most do not require an appointed interpreter to be certified. For instance, in Texas, Article 38.30 does not require an appointed interpreter to be “licensed.”

The lack of court interpreting certification systems means fewer interpreters will receive the proper training for court interpreting. Interpreter training covers the fundamentals of court interpreting and is designed to give participants an overview of the needs and expectations of the court, with emphasis on ethical conduct, legal terminology, court procedure, and basic legal interpreting skills.⁵⁰ Interpreter skills training is essential as methods used by professional interpreters are acquired skills that are independent of the language skills required of an interpreter. Many states have significant numbers of untrained court interpreters. As one example, 30% of court interpreters in Ohio have not received any training related to interpretation. In addition, 23% of interpreters in Ohio have received less than 40 hours of interpreter-related training.⁵¹

Another factor that makes it difficult for state courts to retain a sufficient supply of qualified interpreters is the low pay rate for contract interpreters. The lack of full-time staff interpreter positions, especially for APA languages, has left most court interpreters to rely on contract positions.⁵² These interpreters are independent contractors who receive hourly or daily pay without benefits. Contract interpreters face a bigger financial burden than full-time interpreters because they have to pay expenses such as health care and travel without the help of employer benefits, which makes the pay rate even more important. In Idaho, some interpreters receive less than \$8 an hour. In Connecticut, interpreters only receive slightly over \$15 an hour. In Minnesota, some interpreters make less than \$25 an hour.⁵³ In addition to the low wage, nearly all state court interpreters receive substantially less than a federal interpreter for a day’s work. For example, California state court interpreters receive \$265 a day, but federal court interpreters receive \$355 a day.⁵⁴ In New York, the pay rate for interpreters was increased in 2006 to \$250, which is still over \$100 less than the federal pay rate.⁵⁵ As a result, low pay rates in state courts lead many certified interpreters to take their skills to either federal court or freelance interpreting (private lawyers outside of court, international business, health care, etc.), which leaves state courts with even fewer qualified interpreters.⁵⁶

⁴⁹ Michigan Court Interpreter Testing and Certification Program, <www.courts.michigan.gov/scao/services/access/inter.htm>.

⁵⁰ “Wisconsin Court Interpreter Training and Certification Program 2005 Schedule,” <www.dwd.state.wi.us/dws/programs/refugees/pdf_files/2005_interpreter_training_schedule.pdf>.

⁵¹ Supreme Court of Ohio, *Report on the Use of Interpreters in the Courts of Ohio*, 2004.

⁵² “FAQs about Court Interpreting,” <<http://www.najit.org/faq.html>>.

⁵³ Consortium for State Court Interpreter Certification, “Survey: Compensation—Contract Interpreters, 2006,” <www.ncsconline.org/d_research/CourtInterp/Res_CtInte_ConsortCertCompSurvey2006_Contract.pdf>.

⁵⁴ “Population, Students,” *Migration News*, vol. 13, no. 2, April 2006.

⁵⁵ New York State Unified Court System, “New York Courts Implement Action Plan to Lessen Language Barriers for Non-English-Speaking Litigants,” <http://www.courts.state.ny.us/press/pr2006_10.shtml>.

⁵⁶ Judicial Council of California: Court Interpreters Advisory Panel Meeting, <<http://www.courtinfo.ca.gov/programs/courtinterpreters/documents/ci031105min.pdf>>.

A third reason for the lack of qualified interpreters is the high cost of certification. Isabel Frammer, a board member of the National Association of Judiciary Interpreters and Translators, states, "Many people cannot afford the specialized training that is needed to pass the two-part test for certification, since it can cost upward of \$3,000."⁵⁷ In Minnesota, it costs \$350 just to take the court certification exam.⁵⁸ In Georgia, the orientation workshop for interpreters costs up to \$250. Interpreters must also pay \$400 for a skills-building workshop and \$275 to take the oral and written certification exam. In Utah, a Vietnamese interpreter would have to pay over \$325 to attend an orientation workshop, skills-building course, and take the certification exam. An interpreter in Maryland would have to pay nearly \$700 to attend an orientation, skills-building session, and certification exam.⁵⁹ Since many interpreters are independent contractors who must pay their own expenses and do not receive employment benefits, the high costs of certification are a deterrent for them to get properly trained and qualified. In addition, many of the APA languages in need of qualified interpreters are from Southeast Asian ethnic groups, mostly recent immigrants that are historically known to be struggling economically, some of which claim a 25–50% poverty rate.⁶⁰ As a result of financial difficulties, many individuals from these ethnic groups have low educational attainment and cannot afford to receive higher education. The economic backgrounds of individuals who usually perform contract interpreting explain why exam and training costs, that are otherwise probably reasonable for other professionals (lawyers, bankers, etc.), are too expensive.

The fact that some courts do not verify a potential interpreter's credentials could be another reason for the shortage of qualified interpreters. Many states do not verify the training or experience interpreters claim to possess during the hiring process, which can result in the use of individuals as court interpreters who are not qualified or competent to interpret. In most states, there is no clear policy to guide court administrators or judges in the exercise of their discretion in appointing a court interpreter when needed and in assessing the qualifications of a proposed court interpreter. Yet it is the responsibility of the trial judge to determine whether a bilingual individual presented to assist in court proceedings is qualified.⁶¹ In a report by the Race and Gender Fairness Commission in Indiana, 66.4% of judges indicated they lacked minimum standards to verify credentials of interpreters.⁶² In one example of this problem, an interpreter in Reno, Nevada, was found to be a convicted sex offender. Not only did he neglect to mention his criminal background when applying to work in the courthouse, but he lied about his qualifications and falsified his credentials, according to Nevada officials.⁶³ The lack of attention

⁵⁷ Reeves, Jay, "Courtroom Interpreters in Short Supply," Fox News, <www.foxnews.com/wires/2006sept26/0,4670,rovinginterpreters,00.html>, Sept. 26, 2006.

⁵⁸ Minnesota Judicial Branch, "Interpreter Training and Testing," <www.courts.state.mn.us/?page=447>.

⁵⁹ Consortium for State Court Interpreter Certification, "Survey: Test and Education Fees—2004," <www.ncsconline.org/wc/publications/Res_CtInte_ConsortiumTest&EdFeeSurveyPub04.pdf>.

⁶⁰ "28 Asian Pacific American Groups File Support for Affirmative Action at the U.S. Supreme Court," *In Motion Magazine*, <<http://www.inmotionmagazine.com/idaa/veng.html>>, April 2003.

⁶¹ National Center for State Courts, "Court Interpretation: Model Guides for Policy and Practice in the State Courts," <http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuidePub.pdf>.

⁶² Indiana Supreme Court, *Commission on Race and Gender Fairness Executive Report and Recommendations*, 2002.

⁶³ Callahan, Bill, "Reno Court Interpreter Held; His S.D. Sex Offense Turns Up," Jan. 31, 1996, <www.theinterpretersfriend.com/terpsnew/19.html>.

to detail resulting from the absence of standards for verification leads to the use of many unqualified interpreters around the country.

A final reason for the lack of qualified interpreters is that some courts just have too low a standard for who can be appointed as a court interpreter. Judge E. Leo Milonas from New York states, "In Spanish, the standards for interpreters are generally good, but in dozens of others, they're miserable. We almost have no standards. When I was a judge, sometimes the interpreters would give a summary of what was said, and that's not interpreting."⁶⁴ This problem has been documented outside New York as well. For example, in Iowa, court interpreters only have to be 18 years old, have a high school degree, complete an application, sign an oath, and pass a criminal history check.⁶⁵

Consequences of this Problem

Without a supply of qualified court interpreters, family members, friends, and other unqualified persons are called upon to act as interpreters. This can be troubling because it results in incorrect interpretation by untrained and unknowledgeable individuals that can be detrimental to the case. The use of a family member or friend, in particular, can also lead to a biased presentation of the case. "A family member is the worst person you can use," says Maureen Dunn, an interpreter for the deaf. "They have their own side of the story, and they add and omit things."⁶⁶

Another potential problem can arise if children are used to interpret or translate for their parents. Depending on the nature of the case, a child could suffer psychological trauma; for example, in cases involving child custody, divorce, and domestic violence. In one case, a mother in Philadelphia was forced to have her oldest daughter translate for her to discuss the rape of her youngest daughter in front of judge. Imagine the trauma the oldest daughter is faced with after hearing her mother discuss the rape of her younger sister.⁶⁷ Parents may also not convey all of the necessary details in their testimony in order to spare the child having to interpret the worst of the facts. It is easy to see that litigants are not necessarily going to be willing to expose everything through a family member or friend acting as an interpreter. A litigant's own sense of privacy and decorum may well subvert the necessary process of providing detailed testimony about the events.

Administrative Proceedings

The troubles faced by LEP individuals in judicial proceedings also apply to administrative proceedings. Many federal agencies lack the ability to provide adequate access for the LEP population. These agencies often lack rules mandating the right to an interpreter and an

⁶⁴ Hoffman, Jan, "Pay, Training and Standards for Interpreters in Courts are to Be Raised," *New York Times*, Nov. 29, 2006.

⁶⁵ Iowa Judicial Branch, "Introduction to Court Interpreting in Iowa," <www.judicial.state.ia.us/district_courts/court_interpreters/>.

⁶⁶ Sanders, Alaine, "Libertad and Justicia for All," 1989, <<http://jcgi.pathfinder.com/time/magazine/article/0,9171,957830,00.html>>.

⁶⁷ Shaw, Julie, "Man Who Raped Girl in Bed Gets 10 Years," *Philadelphia Inquirer*, Oct. 4, 2006.

adequate supply of qualified interpreters.⁶⁸ For example, the Social Security Administration does not mandate the right to an interpreter for LEP individuals during administrative hearings in its regulations.⁶⁹ While agencies like the Social Security Administration may address access for LEP individuals in a separate plan, they fail to explicitly mandate the right to an interpreter in their regulations.

⁶⁸ U.S. Commission on Civil Rights "Toward Equal Access: Eliminating Language Barriers from Federal Programs," Staff Report, 2004.

⁶⁹ Social Security Administration, <<http://www.socialsecurity.gov/multilanguage/LEPPlan2.htm>>.

IV. Best Practices

“Efficiency is doing better than what is already being done.”

– Peter Drucker

The “best practices” chapter of NAPABA’s report is intended to highlight laws, programs, and initiatives around the country that are increasing the ability of LEP individuals to access judicial and administrative proceedings. These practices might not be perfect models, but nevertheless serve as an example for many states, especially those doing little, that the possibility for improvement exists. By examining best practices, advocates may discover workable ways to break down the language barrier in judicial and administrative proceedings. These best practices are evidence that progress can be made and that other advocates can advance the effort to increase access to judicial proceedings.

Throughout the country, there have been a myriad of programs to improve language access for LEP persons. Many of these efforts have increased the ability of LEP APA individuals to access the court system. While some efforts are not directly aimed at improving access to the court system, nearly every best practice is a notable step in the direction of diminishing the language barrier in the courts for LEP individuals. These best practices have come in the form of laws, court rules, proposed legislation, programs, degrees and certificates, committees and commissions, and plans and outlines.

The use of qualified interpreters in the court system can have a profound effect on the ability of LEP individuals to access judicial proceedings. There must be an increase in the number of qualified court interpreters to improve the ability of LEP individuals to access the courts. There are two components of court interpreting that must be improved to increase the use of qualified interpreters in judicial and administrative proceedings. These components are availability and quality.

While mandating the appointment of qualified interpreters for LEP individuals is the most effective way to increase access, there are other practices in place that increase access to the legal system. These practices, many of which are carried out outside the courtroom by community organizations, advocacy groups, and legal aid providers, are helping LEP individuals access legal services and as a result, increase their access to the judicial process.

Increasing the Use of Qualified Interpreters

1) Availability (Mandating the Right to an Interpreter)

By far, the most effective way to bring justice for LEP individuals is to mandate the courts and state and federal agencies to provide qualified court interpreters when needed in all judicial and administrative proceedings. Laws, court rules, and administrative policies should guarantee the right to an interpreter for all LEP individuals.

Earlier in the report, it was established that individuals have the right to a court interpreter in criminal proceedings under the Sixth and Fourteenth Amendments of the U.S. Constitution. The right to an interpreter in civil proceedings has not yet been viewed as a constitutional right. LEP individuals must have interpreters appointed to them by the court to increase access to judicial and administrative proceedings. In this section, "best practice" legislation, statutes, ordinances, and orders that are increasing access or attempting to increase access for LEP individuals in civil proceedings will be presented.

A) State Laws in Effect for Civil Proceedings

- *Minnesota*

Minnesota Court Statutes 546.42 and 546.43 direct a judge to appoint a qualified interpreter for an LEP individual in a civil proceeding. The statutes state:

546.42 Persons handicapped in communication; interpreters.

For the purposes of sections 546.42 to 546.44 a person handicapped in communication is one who, because of a hearing, speech or other communication disorder, or because of difficulty in speaking or comprehending the English language, is unable to fully understand the proceedings in which the person is required to participate, or when named as a party to a legal proceeding, is unable by reason of the deficiency to obtain due process of law.

546.43 Proceedings where interpreter appointed.

Subdivision 1. Qualified interpreter. In a civil action in which a handicapped person is a litigant or witness, the presiding judicial officer shall appoint a qualified interpreter to serve throughout the proceedings.

Subdivision 2. Interpreter required. In a proceeding before a board, commission, agency, or licensing authority of the state, or of a political subdivision of the state, where a witness or the principal party in interest is a handicapped person, all of the proceedings that are pertinent shall be interpreted in a language the handicapped person understands by a qualified interpreter appointed by the board, commission, agency, or licensing authority.

- *Oregon*

In Oregon, ORS 40.275 also directs a judge to appoint a qualified interpreter in a civil proceeding. The statute states:

(1) The court shall appoint a qualified interpreter in a civil or criminal proceeding, and a hearing officer or the designee of a hearing officer shall appoint a qualified interpreter in an adjudicatory proceeding, whenever it is necessary:

- (a) To interpret the proceedings to a non-English-speaking party;
- (b) To interpret the testimony of a non-English-party or witness; or

- (c) To assist the court, agency or hearing officer in performing the duties and responsibilities of the court, agency or hearing officer.

The statute also states that no fee shall be charged to any person for the appointment of an interpreter to interpret testimony of a non-English-speaking party or witness, or to assist the court, agency, or hearing officer in performing the duties and responsibilities of the court, agency, or hearing officer.¹

- *Massachusetts*

In Massachusetts, Section 2 of Chapter 221C gives an LEP individual the right to a qualified interpreter throughout a civil proceeding. The provision states:

A non-English speaker, throughout a legal proceeding, shall have a right to the assistance of a qualified interpreter who shall be appointed by the judge, unless the judge finds that no qualified interpreter of the non-English speaker's language is reasonably available, in which event the non-English speaker shall have the right to a certified interpreter, who shall be appointed by the judge. The court shall report to the coordinator of interpreter services every instance in which a qualified interpreter was found not to be reasonably available.²

- *Pennsylvania*

In Pennsylvania, P.L 1538, No. 172 addresses the appointment of an interpreter in all judicial proceedings. Section 4401 states:

It is the intent of this chapter to provide for the certification, appointment and use of interpreters to secure the rights of persons with limited English proficiency and persons who are deaf or hearing impaired in all judicial proceedings.³

- *Texas*

H.B. 2735 directs the Texas Department of Licensing and Regulation to administer the licensed court interpreter program and enforce the provisions of Texas Government Code Chapter 57 pertaining to licensed court interpreters. The bill also authorizes the courts to appoint licensed court interpreters if a motion for appointment of an interpreter is filed by a party, if requested by a witness, or on their own motion or in a civil or criminal proceeding in the court.⁴

- *Maine*

The Supreme Court in Maine presented Administrative Order JB-06-3, which became effective in October 2006. The order directs the courts to provide an LEP individual with an interpreter in any court proceeding. JB-06-3 states:

¹ ORS 40.275.

² Mass.Gen.Laws. Ch. 221C. Sect.2.

³ P.L 1538, No. 172.

⁴ Texas Department of Licensing and Regulation, <<http://www.license.state.tx.us/court/presentation.htm>>.

Maine's state courts will provide all LEP individuals who are parties or witnesses in any type of court case, or parents of minors involved in juvenile actions, with an interpreter in all court proceedings related to that case, at the State's expense. "All court proceedings" includes case management conferences, CADRES and judicially-assisted mediations, motion hearings, arraignments, commitment hearings, competency hearings, jury selection, trials, sentencing, appellate arguments, and any other court events or proceedings authorized by the presiding judge or justice.⁵

B) Proposed Legislation

- *California*

In California, AB 2302 was proposed during the 2005–2006 Regular Session. Introduced by the Committee on Judiciary (Jones (Chair), Evans, Laird, Levine, Lieber, and Montanez), the bill indicates that an interpreter be appointed by the court to interpret for an LEP individual during any civil action or proceeding. AB 2302 does the following:

1. It specifies that in any civil action or proceeding, including, but not limited to, any family court proceeding or service, any juvenile court proceeding, any action involving a traffic or other infraction, any small claims court proceeding, any proceeding to determine the mental competency of a person, or any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, in which a party does not proficiently speak or understand the English language, an interpreter be present to interpret the proceedings, as specified.
2. The bill also requires a court to provide the interpreter, unless a party has notified the court that he or she has made arrangements for a private interpreter. The bill would also make related changes to that provision of law and would set forth findings and declarations of the Legislature.⁶

AB 2302 passed the Senate floor with a vote of 25 to 13 on August 30, 2006, and the Assembly floor with a vote of 53 to 26 on August 31, 2006. The bill was vetoed by Governor Arnold Schwarzenegger on September 30, 2006.⁷

C) City Ordinances

While states are increasing access by law or court order, local officials are also making a difference. Some cities are creating ordinances to increase access for LEP individuals. While these ordinances focus on access to public services, the goal of increasing access for LEP individuals is the same as the statutes increasing access to the courts. These "best practice" city ordinances have been created in both San Francisco and Oakland.

⁵ Administrative Order JB-06-3, State of Maine Supreme Judicial Court, <www.courts.state.me.us/opinions/adminorders/%20jb_06_3%20lep.htm>.

⁶ Bill Summary, <<http://www.cdrc.net/pg57.cfm>>.

⁷ California Immigrant Policy Center, "Governor Finishes Bill Review for 2006," <<http://www.caimmigrant.org/source/2006LegislationFinalCIPC.pdf>>.

Chapter 89 of San Francisco's Administrative Code makes it the policy of the City and County of San Francisco to provide equal access to city services to all San Franciscans, including those with limited proficiency in English.⁸ Chapter 2.30 of the Oakland Municipal Code requires city departments to offer bilingual services and materials if a substantial portion of the public using the city services does not speak English effectively.⁹ Community advocates played a large role in the passage of language access ordinances in both San Francisco and Oakland. San Francisco's Chinese for Affirmative Action organized a coalition of immigrant groups, policy advocates, and legal services organizations to promote the ordinance.

The laws, statutes, and orders presented above all direct their respective state courts to appoint an interpreter for an LEP individual during a civil proceeding. These practices should be used as examples by other states to increase availability of interpreters and ultimately increase access to judicial proceedings.

2) Quality (Better Interpreting)

Many court interpreters available today are simply not qualified to interpret. Misinterpretation of questions or testimony can be detrimental to a party's case in a judicial proceeding. For justice to be dispensed, our government must provide interpretation services by qualified court interpreters. In order to do justice, courts must be able to receive testimony accurately from LEP litigants and witnesses, and permit them to participate fully in proceedings. Interpreter quality is defined by a number of components, which include but are not limited to, a validated certification process for court interpreters, a course of study or degree program relating to interpretation, adequate compensation for interpreters, and establishment of standards for court interpretation.

A) Independent Resources for State Court Interpreter Certification Programs

A major resource for court interpreter certification programs is the Consortium for State Court Interpreter Certification. The Consortium is a multi-state partnership dedicated to developing court interpreter proficiency tests, making tests available to member states, and regulating the use of the tests. The Consortium addresses resource shortages by defining and implementing standards for identifying proficient, qualified interpreters. Without those standards, state courts risk employing unqualified interpreters, leaving equal access to justice for linguistic minorities an unfulfilled obligation. There are many advantages for states to join the Consortium. These reasons include:

1. *Published test documentation enhances the credibility and legitimacy of the testing program* – The Consortium has prepared and maintains manuals for test construction, test administration, and test-rater training.
2. *Maintenance and publication of test validity and reliability statistics* – Item-level data are maintained for tests to analyze and report validity and reliability statistics for each test form.

⁸ Chapter 89, San Francisco Administrative Code.

⁹ Chapter 2.30, Oakland Municipal Code.

3. *Participation in a standardized testing program permits interstate reciprocity* – In most cases, interpreters tested or qualified in other Consortium member states do not need to be retested in the home member state.
4. *Test administration innovations* – The Consortium reviews their test administration and makes specific recommendations to improve testing and save money and time.
5. *Training* – Consortium members have established a standard core curriculum and training materials for basic orientation workshops for all interpreters employed in the courts, which most member states offer.
6. *Comprehensive networking resource* – Members maintain communication, share problems, and solutions to improve the quality of interpreter services.¹⁰

The Consortium has proven to be successful since its inception in 1995 and by the end of 2005, there were 34 member states representing over two-thirds of the nation's non-English-speaking population.

Katrin Johnson, Minnesota's Court Interpreter Program Coordinator, commented on the need for states to join the Consortium for State Court Interpreter Certification. She states, "I think it's an absolute necessity for the creation of court certification exams in spoken languages. The far majority of state court systems simply aren't equipped to prepare valid and reliable interpreter certification tests, so the process of pooling state courts' resources for a center to provide this need is crucial. Apart from testing, the Consortium provides many services to state courts, so that they can effectively create and run court interpreter certification programs."

B) State Certification Programs

Many states have their own certification programs in which they have implemented tests, training, and standards for court interpreters. State legislatures may pass legislation to direct the courts or a state government agency to create a certification program. This program will then be housed under that agency, which will be responsible for the direction of the program. The Supreme Court of the state can also create a certification program and mandate its use as part of its inherent authority to manage the court system.

In Pennsylvania, Act 172 of 2006 was passed late in 2006 which created a state certification system for court interpreters. It will be based on the best practice model established by the National Center for State Courts' Consortium for State Court Interpreter Certification, which Pennsylvania joined in September of 2004. The legislation directs the Court Administrator and the Department of Labor and Industry to establish a program for identifying certified and otherwise qualified interpreters for persons with limited English proficiency and persons who are deaf. The legislation will also ensure that a listing of qualified and certified foreign language interpreters be available and will mandate their appointment in all court and nearly all state and local administrative hearings involving LEP parties or witnesses.¹¹

¹⁰ National Center for State Courts, <http://www.ncsconline.org/D_Research/CourtInterp/CICourtConsort.html>.

¹¹ "Post Session Report," <http://www.pasenate.com/postsessionreport/Post_Session.htm>.

The establishment of more court interpreter certification programs will increase opportunities for interpreters to become certified. As a result, these opportunities will increase the number of qualified interpreters in state courts around the country.

C) College and University Degree and Certification Programs

Degree and certificate programs offer individuals an intense curriculum that prepares them to provide accurate interpretation. This education is intended for those who have mastered both English and a second language, but have not learned the skills required to interpret during legal proceedings. Programs are often devoted to consecutive interpretation, memory-building exercises, and note-taking techniques. Near the end of most programs, interpreters are required to pass both written and oral exams to ensure they are qualified to interpret in court. Today, the number of degree and certificate programs is low; however, the programs are becoming increasingly popular.

Colleges and universities around the country are beginning to offer court interpreting curriculums that award individuals a degree or certificate in court interpreting. Most of these degree and certificate programs work similarly to any other college degree programs by requiring that a student achieve a minimum number of credits in the court interpreting department with a minimum grade point average. Degree and certificate programs offered at colleges and universities include:

1. *California State Northridge* – Interpretation and Translation Certificate program.
2. *California State Long Beach* – Bachelor of Arts degree in Translating and Interpreting.¹²
3. *College of Charleston* – Master of Arts in Bilingual Legal Interpreting.¹³
4. *Boston University* – Legal, Medical, and Community Interpreting Certificate program.¹⁴

D) Overseeing Court Procedure

Another factor contributing to the use of unqualified court interpreters arises from a lack of standards in the appointment and use of interpreters. Many courts are using interpreters who are unqualified, and often do not have proper credentials to interpret in court. As explained in a previous chapter, many courts do not properly verify court interpreter credentials. This problem stems from either the lack of written court standards or the lack of oversight by those responsible for appointing interpreters to judicial proceedings. Fortunately, some states have created or assigned committees, commissions, task forces, or government agencies to investigate court interpreting problems. The groups often make recommendations or oversee existing court policies. The creation of many of these committees, commissions, or task forces often leads to standards, programs, or other products that increase the use of qualified interpreters in judicial proceedings.

¹² National Association of Judiciary Interpreters and Translators, <http://www.najit.org/proteus/v8n3-4/rainof_v8n3-4.htm>.

¹³ Graduate School, College of Charleston, <<http://www.cofc.edu/~legalint/>>.

¹⁴ Boston University, <<http://www.butrain.com/cpe/interpreter-translator-ovrview.asp>>.

- *Indiana*

In Indiana, the Commission on Race and Gender Fairness created the Court Interpreter Certification Advisory Board. The Board is charged with proposing court interpreting standards, which the Commission recommends the Supreme Court adopt. The Board will work on a code of ethics for court interpreters; disciplinary rules; the most practical format for certification (orientation, written exam, skills building, oral exam); fees that should be charged; location of the certification processes; dates of certification; and many other administrative and policy issues.¹⁵

In 2000, the Commission investigated ways to improve race and gender fairness in the courts. In the initial stages of investigation, the Commission held focus groups where specific individuals and members of the public were invited to discuss issues facing the court. The forums were held in six cities throughout Indiana. From these forums, the Commission learned that the lack of a court interpreter program was the biggest problem facing the courts. From its investigation, the Commission made a number of recommendations to improve fairness in the courts.¹⁶ These recommendations include the following:

1. The Supreme Court should join the State Court Interpreter Certification Consortium through the National Center for State Courts.
2. The Supreme Court should initially implement a court interpreter system testing only in Spanish. Once that system is established, the Court could proceed to test and certify interpreters in other foreign languages.
3. The Supreme Court should hire a full-time administrator for the court interpreter program.
4. The Supreme Court should adopt the Consortium's certification standards, a 70% passing score on the tests provided by the Consortium.
5. The Supreme Court should approve a standard pay scale for all certified interpreters.¹⁷

The report and recommendations were not only due to the efforts of the Commission, but also the work of other organizations, including the Women in the Law Committee of the Indiana State Bar Association, the Citizens' Commission for the Future of the Indiana Courts, and the Judicial Administration Commission of the Indiana Judicial Conference (Juries for the 21st Century).¹⁸

As a result of the interim recommendations by the Commission, the Supreme Court created the Indiana Court Interpreter Program.¹⁹ For more information, please contact Indiana Court Interpreter Program Coordinator Adrian Meiring at (317) 232-2542.

¹⁵ Indiana Supreme Court: Commission on Race and Gender Bias, <<http://www.in.gov/judiciary/fairness/>>.

¹⁶ Indiana Court Interpreter Certification Program, <www.in.gov/judiciary/interpreter/about.html>.

¹⁷ Indiana Supreme Court Commission on Race and Gender Bias, *Interim Recommendation of the Indiana Supreme Court Commission on Race and Gender Bias*, <http://www.in.gov/judiciary/fairness/pubs/int_rec.pdf>.

¹⁸ Women in the Law Committee, <<http://www.inbar.org/content/committees/standing/womenlaw.asp>>; Judicial Administration Commission of the Indiana Judicial Conference (Juries for the 21st Century) <<http://www.in.gov/judiciary/committees/>>.

¹⁹ Indiana Court Interpreter Certification Program, <www.in.gov/judiciary/interpreter/about.html>.

- *New York*

In April 2006, at a forum hosted by the New York City Bar, the New York State Unified Court System in response to the needs of its immensely large immigrant population announced an Action Plan entitled *Court Interpreting in New York: A Plan of Action*. The paper summarizes a thorough analysis of existing court interpretation services in New York and lays out an Action Plan of new resources and initiatives for the future. Key components of the Action Plan include:

1. Expand recruitment and improve retention of interpreters.
2. Enhance testing and assessment of prospective interpreters.
3. Improve training for interpreters, judges and court personnel on interpreting issues including ethics.
4. Implement team interpreting.
5. Deployment of database and remote communication technologies state wide.

These initiatives have already shown signs of success. For example, as a result of the testing and certification initiative, New York's Unified Court System is now taking the following steps to expand and bolster its testing program to ensure all interpreters are qualified:

1. Require all per diem interpreters to pass the written English exam.
2. Develop additional oral examinations for interpreters, both court-employed and per diem.
3. Standardize, centralize, and strengthen credential review.
4. Recognize certification from other states.^[1]

Since 2004 the New York City Bar's Women in the Courts Task Force has played a major role in bringing the court interpreter issue to the forefront to ensure equal access to justice. Through the Task Force's initiatives, the Chief Administrative Judge Jonathan Lippman formed an Advisory Committee which has since 2005, held monthly meetings with the Office of Court Administration to discuss the progress of these initiatives and to make further recommendations to improve services for those with limited English proficiency. The Task Force and the Advisory Committee continue to recommend reforms to address the need for a standardized complaint procedure, to collect and analyze data on population and usage of court interpreters statewide to forecast trends and needs of the state, and more training for those individuals who have direct or first point of contact for those needing court interpreter's services.

For more information on the New York State Unified Court System's Action Plan, please contact Sandra Bryan at sbryan@courts.state.ny.us or (646) 386-5670.

- *California*

The California Commission on Access to Justice was created in 1997 to pursue significant improvements in access to justice for low and moderate income Californians. The 24-member commission of lawyers and judges, as well as academic, business, labor and community

^[1] New York Unified Court System. *Court Interpreting in New York: A Plan of Action*. 2006. <http://www.courts.state.ny.us/courtinterpreter/action_plan.pdf>.

leaders was instrumental in establishing the \$10 million Equal Access Fund for civil legal services to the indigent. In addition, the Commission works closely with the Judicial Council to improve access to the courts. In 2005, the Commission released *Language Barriers to Justice in California*, a report that highlights the current problems faced by LEP individuals in the court system and presents a set of recommendations to increase access to justice. The recommendations include the following:

1. *Adopt a comprehensive language access policy for courts* – California should explicitly recognize a right to equal access without regard to language proficiency. This policy should be accompanied by specific plans designed to achieve the goal.
2. *Develop specific recommendations for court officials and staff to implement the language access policy* – The Judicial Council should ensure that adequate training packages and model protocols exist for court staff and judicial officers to address language access issues.
3. *Reevaluate the systems for training and certifying interpreters* – Existing test approaches should be analyzed, different models of training should be evaluated and considered, and ongoing efforts to recruit, train, and retain interpreters should be expanded.
4. *Evaluate the role of lawyers and bar associations, legal services programs, law schools, and law libraries* – Lawyers should be better prepared to assist LEP parties, legal services programs must continue to improve services to serve communities that speak languages other than English, and law school curricula should prepare students for situations involving LEP parties.
5. *Compile existing data and conduct additional research* – More research should be done that focuses on the use of the courts by people speaking languages other than English and the rate at which non-certified and non-registered interpreters are being used.²⁰

The Language Access Committee of the California Commission on Access to Justice played a key role in the creation of this report. Many of the committee members work for advocacy organizations and legal services organizations. Committee members include Stephanie L. Choy (Executive Director of the Public Interest Clearinghouse); Gary Phillips (Communications Director at the Legal Aid Foundation of Los Angeles); and Karin Wang (Vice President of Programs at the Asian Pacific American Legal Center).

For more information on the California Commission on Access to Justice, please contact Staff Director Mary Lavery Flynn at (415) 538-2251.

- *New Jersey*

In New Jersey, the Supreme Court Task Force on Interpreter and Translation Services has helped the court system's dedication to increasing access to the courts. In 1985, acting on the recommendations of the Task Force, the Supreme Court adopted the principle of "equal access to courts for linguistic minorities." The recommendations of the Task Force led to the following:

1. The Court adopting a Code of Professional Conduct for Interpreters and Translators.

²⁰ California Commission on Access to Justice, *Language Barriers to Justice in California*, September 2005.

2. The development of minimum standards for court interpreters and bilingual support personnel.
3. The creation of resources for professional development.
4. Numerous administrative efforts to create a solid and comprehensive underpinning of the interpreter program.²¹

While the Supreme Court Task Force is no longer a standing body, New Jersey has created the Supreme Court Committee on Minority Concerns that deals with much of the court interpreting work. For more information, please contact Court Executive Robert Joe Lee at (609) 984-5024.

- *Wisconsin*

In Wisconsin, the Committee to Improve Interpreting and Translation in the Wisconsin Courts created a report for the Director of State Courts in October 2000. The report revealed inadequacies in Wisconsin state courts regarding interpreter usage and made a number of recommendations to resolve the problems. The Committee recommended a program to improve the quality of the court interpreters available that would follow a model developed by the National Center for State Courts. The five components of the program include:

1. Interpreter training programs covering court terminology and procedure, ethics, and interpreting skills.
2. Certification tests in the most-needed languages, paired with a requirement that judges use a certified interpreter whenever available.
3. A statewide interpreter roster of interpreter agencies and individual interpreter names, phone numbers, languages, and qualifications, to assist courts in locating and appointing interpreters.
4. A code of ethics for interpreters to provide guidance on the proper role of the interpreter and avoidance of common problems.
5. Education for judges, court staff, and attorneys on best practices for appointing and using interpreters in court and communication with non-English speakers.

The Committee outlined the steps needed to implement these recommendations and improve interpreter services.²² For more information, please contact the Office of Court Operations staff member Marcia Vandercook at marcia.vandercook@wicourts.gov or (608) 267-7335.

- *Arizona*

The Committee to Study Interpreter Issues in Arizona Courts was created in March 2002 with specific objectives: (1) review the interpreter need and study recommendations prepared by the Arizona Minority Judges Caucus' Interpreter Issues Committee; (2) consider how to increase

²¹ "Ensuring Equal Access for Linguistic Minorities," *New Jersey Judiciary*, <www.judiciary.state.nj.us/interpreters/background.htm>.

²² Committee to Improve Interpreting and Translation in the Wisconsin Courts, *Improving Interpretation in Wisconsin's Courts...and Justice For All*, October 2000.

both the availability and the quality of language interpreters in Arizona courts; (3) develop a strategy and recommendations for the Arizona Judicial Council to consider to secure needed funding for this initiative; and (4) develop recommendations for additional legislative, policy, and court rule changes for Arizona Judicial Council consideration. In October 2002, the Committee presented the *Report to the Arizona Judicial Council on Interpreter Issues in Arizona Courts*. The report presented four recommendations:

1. A court interpreter certification program should be created and funded by seed money provided by the Court, but would become partially self-sustaining through fees paid by interpreters.
2. Training for court interpreters should be coordinated and required by the Supreme Court.
3. Changes or additions to the Arizona Revised Statutes, the Code of Judicial Administration, and the Rules of Court must be made for the new court interpreter certification program.
4. A Judicial Interpreters Commission should be established to develop operating policies and provide oversight management to the court interpreter certification program.

For more information, please contact Administrative Officer Theresa Barrett at tbarrett@courts.az.gov or (602) 542-9364.²³

- *Colorado*

In Colorado, the Supreme Court created the Colorado Judicial Branch Court Interpreter Oversight Committee in December 1998. The Committee's goal is to create and oversee statewide rules and regulations for court interpreting, to review appeals brought by any language interpreter, to hear complaints regarding interpreter services, determine appropriate courses of action, to administer the statewide court testing and certification program, and to oversee and enforce continuing education requirements for those individuals certified as court interpreters by the state courts or employed by the courts as interpreters.²⁴ For more information, please contact Court Interpreter Program Administrator Emy Lopez at (303) 837-2330.

- *Vermont*

In Vermont, the Sub-Committee on Court Interpreters of the Committee on Fairness and Equal Access to Justice was created in 1995 with the purpose of ensuring fairness, equal access to justice, and effective implementation of stated policies in the judicial branch against discrimination on the basis of race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. The Sub-Committee was charged with: (1) monitoring fairness, access to justice, and the existence of bias in the Vermont judicial branch and making appropriate recommendations to the Supreme Court, including recommendations for a readily accessible grievance system to address concerns; (2) advising management on programs and protocols for education and training efforts to ensure equal access to the courts and to promote

²³ Committee to Study Interpreter Issues in Arizona Courts, *Report to the Arizona Judicial Council on Interpreter Issues in Arizona Courts*, October 2002.

²⁴ Supreme Court of Colorado: Office of the Chief Justice, <http://www.courts.state.co.us/chs/hr/interpreters/cico_order.pdf>.

cultural diversity in the judicial branch; and (3) making other appropriate recommendations from time to time to the Supreme Court and Court Administrator for actions to ensure fairness and equal access to justice in the courts. In June 2004, the Sub-Committee presented *A Report on Interpreter Services in the Vermont Courts*. The Sub-Committee found that the lack of written standards for identifying and hiring foreign language interpreters is problematic when attempting to find qualified court interpreters. Its recommendations include:

1. Establish policies that clarify that all court users, either with limited English proficiency or who are deaf and/or hard of hearing, have effective communication with the court.
2. Amend court rules to ensure that court users with limited English proficiency have access to qualified court interpreters.
3. Ensure that all LEP and deaf and/or hard of hearing parties, witnesses, jurors and other court users have access to qualified spoken language and/or sign interpreters, telephone interpretation services or auxiliary aids at state expense while in the courtroom.
4. Implement a basic program to improve the qualifications of spoken language interpreters.

The program has four components:

- Interpreter training programs covering court terminology and procedure, ethics, and interpreting skills.
- A statewide registry of interpreter services and individual interpreters, telephone numbers, languages, and qualifications, to assist courts in locating and appointing interpreters.
- A code of professional responsibility for interpreters to provide guidance on the proper role of the interpreter and avoidance of common problems.
- Education for judges, court staff, and attorneys on best practices for appointing and using interpreters in court and communicating with non-English speakers.²⁵

Members of the Sub-Committee include Karen Richards (Poverty Law Project Director, Vermont Legal Aid) and Tracey Tsugawa (Investigator, Vermont Human Rights Commission). For more information, please contact Program Coordinator Chris Zupanovich at (415) 538-2534.

- *Pennsylvania*

The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System examined the abilities of LEP clients to access the Pennsylvania court system. The final report of the Committee dedicated a chapter to problems faced by litigants with limited English proficiency. Some of the report's general findings include:

1. Some courts are allowing cases involving LEP parties, including criminal defendants, to proceed without interpreters.
2. Some courts routinely allow untrained, nonprofessional individuals, including relatives and friends and friends, to act as interpreters.
3. Paid court interpreters are permitted to interpret without any demonstrated competency, especially when they are working under contract.

²⁵ Vermont Supreme Court's Committee on Fairness and Equal Access to Justice: Sub-Committee on Court Interpreters, *A Report on Interpreter Services in Vermont Courts*, June 2004.

4. The lack of standards in Pennsylvania for the use of interpreters and for determining interpreter competency compounds the problem of improving access to justice for LEP persons.

From these findings, the Committee recommended that the Court:

1. Establish a policy that all LEP persons in Pennsylvania courts shall have equal access to justice in the judicial system without regard to their English language proficiency.
2. Require that all courts provide qualified interpreters to litigants at no charge, in order that LEP parties and witnesses may fully and fairly participate in court proceedings and obtain reasonable access to the court system.
3. Require that the courts translate all forms and other documents to the extent necessary to provide access to the court system to those unable to read English.
4. Require that all court interpreters obtain certification pursuant to a recognized statewide certification program, maintain their proficiency throughout education, and adhere to standards of professional conduct.
5. Require the adoption of a code of professional responsibility for judicial interpreters together with mechanisms to assure that all interpreters are familiar with the code and are subject to discipline for any violation.
6. Establish within the Administrative Office of the Pennsylvania Courts a Language Services Office, staffed by professional administrative personnel experienced with issues related to court interpretation and translation, and funded sufficiently to carry out its mission.²⁶

The Committee consisted of 11 individuals, who include the Honorable Ida K. Chen (Court of Common Pleas, Philadelphia) and Lynn A. Marks (Executive Director, Pennsylvanians for Modern Courts). During investigation, the Committee had much contribution from work groups within the Racial and Ethnic Bias and Gender Bias Subcommittees. Contributing individuals from these groups include Paul Uyehara (Staff Attorney/Community Legal Services of Philadelphia) and Osvaldo R. Aviles (Court Administrator of Pennsylvania). For more information on the Committee, please contact Executive Director Lisette McCormick at (215) 560-6300.

Paul Uyehara, a member of the work group that advised the Supreme Court Committee on LEP issues, commented on court oversight and investigation committees in general. He states, "Committees appointed by a state Supreme Court or a bar association to study court language access problems can be very useful. Although advocates may already know the problem and the remedies, officially sanctioned committees bring other benefits in the process of studying the problem and making recommendations for change. Because the committee is apparently neutral, the appointees broad based, often including judges, and acting under a charge from the court or bar, the resulting report will have greater credibility and impact on decision makers."

E) Interpreter Compensation

²⁶ Pennsylvania's Unified Judicial System, *Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System*.

Interpreter compensation can have a profound impact on the number of qualified court interpreters. As discussed earlier in the report, the cost of getting trained and taking certification exams is a deterrent for individuals to become certified, especially those who historically are most likely to perform court interpreting. As with many other professions, certified court interpreters must be compensated commensurate with the difficulty, responsibilities, training, and importance of their work. The compensation for certified state court interpreters is quite low and well below the federal pay rate for certified court interpreters.

The federal rate for certified and professionally qualified interpreters set by the Federal Court Interpreter Program should be an example for most state court interpreter programs. As of January 1, 2006, certified and professionally qualified interpreters in federal courts received \$355 per day.²⁷ This amount is easily higher than the amount most state court interpreters receive around the country. In 2006, the Consortium for State Court Interpreter Certification carried out a survey on interpreter compensation in 33 states. According to the survey, after calculating the average compensation per day of a certified court interpreter in each respective state, the federal court's pay rate per day was more than the pay rate of over 75% of the states surveyed. For example, the high end of compensation in California per day is \$265. In Florida, the high end of interpreter pay is \$150 per day. An interpreter in a Connecticut state court would get less than \$130 for a full day.²⁸ These are just a few examples of the comparatively low compensation afforded to interpreters in state courts. When examining pay rates for contract court interpreters, one must take into account that these individuals are independent contractors who do not receive any benefits and must pay all of their own expenses (health care, travel, etc.). Once evaluated in this context, it is evident why the pay rate is so important.

F) Limited English Proficiency Plans or Language Assistance Plans

Limited English Proficiency Plans are another approach to address language access issues in the court system, which can be utilized with or without accompanying legislation or court orders. Limited English Proficiency Plans provide a framework for timely and reasonable language assistance to LEP people who come in contact with the courts and may include a management outline to implementation. In addition, these plans are a good way for state courts to evaluate how they are serving LEP clients since they should include monitoring provisions with which they may discover flaws in the system and create ways to improve their services.

The judicial branch in the state of Minnesota has developed Limited English Proficiency Plans to address the needs of LEP individuals in court. With over 90 plans, each of Minnesota's judicial districts has written a plan that describes how the district courts provide services to people with limited English proficiency.²⁹ Limited English Proficiency Plans cover a number of points, which include:

1. *Legal Basis and Purpose* – What is the legal basis behind the plan? What is the overall purpose of the plan?
2. *Needs Assessment* – What languages are most in need to improve LEP services?

²⁷ Federal Court Interpreter Program, <www.uscourts.gov/interpretprog/rates.html>.

²⁸ Consortium for State Court Interpreter Certification, <www.ncsconline.org/D_Research/CISurveyResults.html>.

²⁹ Minnesota Judicial Branch, "Limited English Proficiency Plans," <<http://www.mncourts.gov/?page=444>>.

3. *Language Assistance Resources* – How is the current use of interpreters in the courtroom? How are spoken language services outside the courtroom? Are translated forms and documents available?
4. *Training* – What types of training are provided by the court?
5. *Public Notification and Evaluation of LEP Plan* – When and by who was the plan approved? How often will the plan be evaluated?³⁰

The Wisconsin Director of State Courts has also developed a statewide plan to ensure access to court services for persons with limited English proficiency and deaf and hard of hearing persons. The Director has created a model Language Assistance Plan for Circuit Courts in each county throughout the state. The model consists of two parts: first, a county information section asking for county demographics, service information, federally funded programs in the county, and local language and cultural resources; and second, a section covering the legal basis and purpose, needs assessment, language assistance resources, training, and the public notification and evaluation of the plan.

Minnesota Court Interpreter Program Coordinator Katrin Johnson commented on the benefits of LEP plans. She states, “Our local district courts have to fill many, many functions, and court staff have to become experts on far too many issues. It’s impossible to assume that court staff around the state have an innate ability to best serve LEP individuals. LEP plans are a necessary reference tool for court staff in serving LEP customers, and also provide the standard for which we should be held accountable. Writing and updating the plans also provides us a good method for evaluating what we’re doing, whether it’s working, and how we can take steps to improve our LEP customer services.” To learn more about Minnesota’s LEP plans, please contact Minnesota Court Interpreter Program Coordinator Katrin Johnson at (612) 215-0046.

Other Ways to Break Down the Language Barrier

While mandating the appointment of an interpreter is the most effective method to break down the language barrier in court, there are other approaches that increase access to judicial proceedings. Many practices are breaking down the language barrier without directly increasing the use of qualified interpreters. Whether these actions involve interpreting programs, direct legal services, or community programs, LEP individuals are better able to access the courts as a result of these practices.

1) Telephonic Interpreting

Most court interpreting around the country takes place with an interpreter being present in the courtroom during a proceeding, however, among several efforts to find effective means of responsibly using scarce dollars, the delivery of interpreting services by telephone has been used to increase access to qualified interpreters. Less desirable than face-to-face interpretation, it is useful in situations where it would be too expensive or inconvenient to provide an interpreter in person. Given the high degree of skill needed to accurately interpret in court proceedings, the number of languages for which interpreters are needed, and the logistical difficulties of providing interpreting services to courts in both urban and rural areas, the operation of court interpreting

³⁰ Ibid.

services is not a simple task. Telephonic interpreting offers a partial solution to these problems, however, the optimal solution would be in-person court interpreting.

Telephonic interpreting is regarded positively by some judges. "It has been a major cost-savings to this court," reports Betty Griess, clerk of court for the District of Wyoming. "Our cases are moved in a more efficient and faster manner than when we were looking for interpreters to come to Cheyenne for all court hearings." Chief Judge George Singal of the District of Maine cites "considerable cost-saving," and adds: "Telephone interpreting is especially useful when you have a need for the more esoteric languages. You're not going to find, for example, someone in Bangor who is qualified to interpret Croatian."³¹

While some judges regard telephonic interpreting positively, it remains a controversial method of interpreting. Drawbacks of telephonic interpreting include the subject and interpreter missing the visual cues that aid in clear communication, distractions at remote locations, poor telephone quality, and other noise interruptions that could cause confusion between parties.³² Doua Thor, Executive Director of the Southeast Asian Resource Action Center, commented on telephonic interpreting in the courts. She states, "From my experience, we do not have overall better court translation services because entities can say, 'We use telephonic interpreting.'"

Whether one is an advocate or an opponent of telephonic interpreting, there is no denying that it is being used more and more in judicial proceedings. The following are some points on what is needed and how one type of telephonic interpreting works:

- Special equipment is required at both the interpreter and court location. Two telephone lines are also required. After connecting with the interpreter on both phone lines, the judge conducts court as usual.
- The interpreter listens to the judge on line 1, and simultaneously interprets into line 2, which the litigant is listening to.
- Speech by the litigant is interpreted into English and broadcast over the speakerphone through line 1 by the interpreter.
- Using proprietary equipment, the interpreter controls the two phone lines, broadcasting interpretation from English into one line and into English into another line.

Using telephonic interpreting, in some cases, up to three litigants (such as co-defendants, or a juvenile and parents) can be interpreted for at a time. In addition, judges can conduct court as usual, having to take only minimal notice of the fact that the proceedings are being interpreted.³³ Despite these positive aspects, the quality of telephonic interpreting is often found to be uneven. Additionally, depending on who needs the interpreter, interpreting over the phone can take much more time than in-person interpreting. Some states have attempted pilot programs using telephonic interpreting to find out for themselves. Two examples of these programs took place in Oregon and Idaho.

³¹ Court Tech Forum, "Telephone Interpreting: A Long-Distance Success in Saving Money," <www.courtechforum.com/modules.php?name=news&file=article&sid=15>.

³² AboutLanguage Inc., <<http://www.aboutlanguage.net/interpretation.htm>>.

³³ National Center for State Courts, "Future Trends in State Courts," <<http://www.ncsconline.org/WC/Publications/Trends/2000/CtInteTrends2000.pdf>>.

- *Oregon Telephone Interpreting Project* – In 2002, Oregon’s Certified Court Interpreter Program started its telephone interpreting program. Oregon began by having interpreters from Salem deliver interpreting services to courtrooms in Lincoln County and Tillamook County. From April 2002 to November 2002, telephonic interpreting was used in over 160 hearings. As a result of the success, the Oregon Judicial Department expanded the telephone interpreting program by purchasing 25 new courtroom conference systems.³⁴ For more information, please contact the Certified Court Interpreter Program at (503) 986-5695.
- *Idaho Pilot Project* – Idaho installed telephonic interpreting systems in four rural counties (Teton, Fremont, Butte, and Power) to provide access to interpretation for non-English-speaking litigants in a plethora of hearings and conferences. Previously, many counties were in need of qualified interpreters but lacked access to one because of their small populations, rural location, or lack of a qualified service provider. They were unable to bring in outside interpreters because of economic and time constraints. The telephonic interpreting allowed judges to access a certified interpreter without paying travel costs, and it allowed interpreters to serve a greater number of counties than would normally be possible.³⁵ For more information, please call Trial Court Administrator Burt Butler at (208) 529-1350.

Today, telephonic interpreting programs are being offered in Florida, Idaho, New Jersey, and Washington. These states sponsor programs where qualified interpreters in metropolitan counties are made available to rural counties by telephone.

2) Legal Aid Programs Increasing Access to Judicial Proceedings

The Legal Services Corporation (LSC) is a private, nonprofit corporation established by Congress to seek to ensure equal access to justice for all Americans by providing civil legal assistance to those unable to afford it. Legal aid organizations that receive funds from LSC directly provide this civil legal assistance. While not all legal aid programs receive funding from LSC, many of them do. In fact, LSC funds 138 legal aid programs to help poor Americans gain equal access to the judicial system. All LSC funded legal services programs must comply with laws enacted by Congress and the implementing regulations promulgated by LSC.³⁶

Advocacy organizations and legal services organizations both possess the ability to increase access for LEP persons to the court system. However, they differ because not only can legal services organizations use advocacy to improve conditions, but they may also directly provide legal services to LEP individuals, which most advocacy organizations cannot. This gives legal services organizations the extra ability to increase access for LEP individuals.

Legal aid organizations receiving funds from LSC are obligated by law to attempt to provide legal services to LEP individuals in their native language. According to the Legal

³⁴ “Expansion of Oregon’s Judicial Department’s Interpreting Project,” <<http://www.rauchcom.com/oregonexpansion.html>>.

³⁵ Comstock, James, *Idaho Grant Report*, <<http://www.rauchcom.com/idgrantreport.html>>.

³⁶ Legal Services Corporation, <<http://www.lsc.gov/about/lsc.php>>.

Services Corporation Act, which created LSC in 1974, LSC has a responsibility to serve eligible clients in their own language. Section 1006(a) states:

(6) In areas where significant numbers of eligible clients speak a language other than English as their principal language, the Corporation shall, to the extent feasible, provide that their principal language is used in the provision of legal assistance to such clients under this title.³⁷

In the Legal Services Corporation's *Strategic Direction: 2006–2010*, which was adopted by the LSC Board of Directors on January 28, 2006, LSC's commitment to serving LEP individuals is affirmed. In Objective 3 under Goal 2, the directions state:

- *Work to improve support for hard to serve areas and populations, e.g., rural areas, migrants, Native Americans, limited English proficiency clients.*

Programs serving hard-to-serve populations face difficult challenges in reaching potential clients, in building trust with potential clients, and in being able to follow through on identified problems. To improve quality and compliance in these programs, LSC will focus attention on innovative ways to serve such populations and will examine the special needs of programs serving such populations.³⁸

In December 2004, LSC issued a program letter and guidance to all grantees. Despite LSC's written commitment to providing legal services to LEP individuals, many of the organizations it funds are not providing legal services to LEP clients in their primary languages. However, there are some organizations creating "best practice" programs that are effectively serving LEP clients and increasing access to justice.

A) Language Assistance Plans and Policies

Many legal aid programs lack internal standards or structure when it comes to serving LEP individuals. LEP plans or policies that effectively utilize language resources, both bilingual staff and contractors, coupled with appropriate staff training and ongoing monitoring can greatly improve a program's accessibility to LEP communities.³⁹ Some legal services organizations around the country have adopted these plans and policies.

The Legal Aid Society of Mid-New York (LASMNY) adopted the "Language Assistance Policy for LEP Individuals" to ensure that its clients, irrespective of English language ability, can communicate with staff and receive high-quality legal assistance. LASMNY implemented this policy in 2002 and trained all staff members to ensure they are familiar with the policy, know how to access phone-based translator services, and can identify situations when interpretation services are needed. LASMNY's policy includes sections devoted to oral language interpretation as well as the translation of written materials. These sections feature the steps that will be taken

³⁷ Legal Services Corporation Act.

³⁸ Legal Services Corporation, *Strategic Direction: 2006–2010*.

³⁹ LSC Resource Library, "Clearinghouse Review: March/April 2003," <<http://www.lri.lsc.gov/abstracts/abstract.asp?level1=Diversity&level2=LEP&AbstractID=030099>>.

to ensure clients receive services through the use of interpreters.⁴⁰ For more information, please contact Cindy Domingue-Hendrickson at (315) 732-2131.

In Portland, Maine, Pine Tree Legal Assistance (PTLA) implemented a "Policy Regarding Clients with Limited English Proficiency" to ensure LEP clients are receiving high-quality legal services irrespective of their English abilities. PTLA's policy provides guidelines for how PLTA serves LEP persons during intake and how staff should follow up with clients after intake. If language assistance is unavailable from PLTA staff, employees will use either a phone-based interpreter service or arrange to have an interpreter provide assistance.⁴¹ For more information, please contact Executive Director Nan Heald at (207) 774-4753.

In Toledo, Ohio, Advocates for Basic Legal Equality (ABLE) and Legal Services of Northwest Ohio (LSNO) adopted and implemented a policy on how staff should communicate with LEP, hearing impaired, and visually impaired individuals. The policy is intended to ensure that regardless of English language abilities, or hearing and visual impairments, eligible clients receive high-quality legal services from ABLE and LSNO. Some important points of the new policy include:

- A needs assessment will be conducted to determine the various languages spoken as well as the approximate number of LEP, hearing impaired, and visually impaired clients who are eligible for services.
- A set of procedures will be created for staff to follow to accommodate clients' needs.
- ABLE and LSNO will provide a trained interpreter for any client who would like one.
- Adult family members and friends may only be used to interpret after the client has refused services from an ABLE or LSNO provided interpreter and the attorney does not believe that the family or friend will either compromise the effectiveness of services or violate the client's confidentiality.
- Community Legal Education materials will be translated into languages spoken by 10% of the population. Other applicable documents will be translated into languages spoken by 5% of the population.⁴²

For more information, please contact Executive Director Joseph Tafelski at (419) 255-0814.

Legal Services of Eastern Missouri (LSEM) has created a Language Assistance Plan to ensure it is delivering quality legal services to clients regardless of language or cultural background. Through the plan, LSEM has adopted a number of procedures and resources to use

⁴⁰ Legal Services Corporation, "Legal Aid Society of New York Language Assistance Policy for Limited English Proficient (LEP) Individuals and Individuals with Hearing or Visual Impairments," <www.lri.lsc.gov/abstracts/abstract.asp?level1=Diversity&level2=LEP&abstractid=030176&ImageId=2>.

⁴¹ Legal Services Corporation, "Pine Tree Legal Assistance Policy Regarding Clients with Limited English Proficiency," <www.lri.lsc.gov/abstracts/abstract.asp?level1=Diversity&level2=LEP&abstractid=030083&ImageId=2>.

⁴² Legal Services Corporation, "Advocates for Basic Legal Equality and Legal Services of Northwest Ohio Policy on Communication with Non-English or Limited-English Proficient, Hearing Impaired, and Visually Impaired Individuals," <www.lri.lsc.gov/abstracts/abstract.asp?level1=Diversity&level2=LEP&abstractid=030081&ImageId=2>.

when communicating with LEP clients and other potential clients. These procedures and resources include:

- *Telephone communications with LEP clients* – LSEM will adopt a six-step procedure on how to communicate with LEP clients.
- *In-person communications with LEP clients* – Meetings or conferences with clients will be scheduled in advance, in which an interpreter will be provided by LSEM.
- *Translations* – LSEM will provide site translation of important documents through interpreters, free of charge to LEP clients.
- *Use of forms with LEP clients* – LSEM staff will schedule in-person meetings with LEP clients and an interpreter to review forms and obtain necessary information.
- *Court and administrative hearings* – LSEM staff should contact court or administrative officials to verify that an interpreter for LEP clients will be provided for any hearings or official proceedings.
- *Outreach* – LSEM will identify LEP groups who may be eligible and benefit from their services. They will begin community education and intake sessions for these LEP groups.
- *Oversight* – LSEM's Human Resources Director will oversee the LEP plan.⁴³

For more information, please contact Human Resources Director Beth Roper at (314) 534-4200.

B) Creating Partnerships to Expand Resources

Working with other service providers, organizations and groups can increase the effectiveness of a project if the circumstances are right. These entities have different strengths and can often complement each other if a true partnership exists. For example, while legal service providers can offer legal expertise, certain community groups can offer the language capabilities to serve LEP individuals that the legal service provider could not contribute. In a case like that, this certain legal service provider and certain community group could partner. The legal service organization would be able to better serve clients while the community group would help individuals from their community receive free legal assistance. While projects can benefit from language assistance provided by community organizations, legal aid organizations must not rely on other organizations and should continue hiring bilingual staff and engaging contract interpreters to increase LEP persons' access to legal services. Some partnerships work and some do not, with success depending on the many variables involved in the project. Despite the uncertainty, legal service providers have partnered with other organizations to create successful projects that have increased the ability of LEP individuals to access the judicial process.

Queens Legal Services Corporation (QLSC) in New York City has developed a partnership with local immigrant advocacy organizations. These organizations have provided QLSC with caseworkers who double as interpreters and translators. QLSC effectively used its resources to reach out to the LEP community by training staff members at partner advocacy organizations about basic legal rights and resources for immigrants. As a result, these organizations are able to use their language skills to work with LEP individuals and refer eligible

⁴³ Legal Services of Eastern Missouri, "Language Assistance Plan," <www.lsc.gov/pdf/03/030200/_lepplan.pdf>.

constituents to QLSC.⁴⁴ For more information, please contact Family Law Unit Director Lisa Isaacs at (718) 657-8611.

Legal Services of New York City (LSNY) in New York City has partnered with Asian Americans for Equality (AAFE) in New York City to help LEP APA people with tenant/landlord housing issues. AAFE provides counseling and intake on an individual's case either by walk-in or by telephone. Following counseling and intake, AAFE refers clients to LSNY, the largest provider of civil legal services to low-income persons in the United States, to receive legal services for their case. For more information, please contact Deputy Executive Director Margaret Chin at (212) 979-8988.⁴⁵

The SeniorLaw Center in Philadelphia, Pennsylvania, has created a program for elderly LEP APAs. The Asian Elderly Legal Project is a partnership with the Pennsylvania Chinese Senior Citizen Association in Chinatown and other Asian community organizations in Philadelphia, which often provide Asian language interpreters for the project. In November 2000, the SeniorLaw Center launched the Project to focus on the legal needs of Asian elders. The Project is coordinated by the SeniorLaw Center's Legal Advocate for Asians, Marcus Luk, who speaks Cantonese and Mandarin. Marcus not only helps coordinate the Project, but he also serves as liaison to the Asian community. For more information, please contact Project Coordinator Marcus Luk at (215) 988-1244.⁴⁶

Greater Boston Legal Services' Asian Outreach Unit (AOU) provides legal services to LEP APA individuals from around the Boston metro area in several different languages. Working with community groups such as the Asian Task Force Against Domestic Violence, Chinese Progressive Association, and the Vietnamese American Initiative for Development, the AOU provides legal services in a client's desired language. These partner organizations refer clients to AOU in order to receive linguistically accessible legal services. If AOU staff is unable to provide services in the desired language, they will hire an interpreter.⁴⁷ For more information, please contact Supervising Attorney Cynthia Mark at (617) 371-1234.

C) Using Grant Money to Create Projects Helping LEP Individuals

Grant money can be used to increase access to the courts for LEP persons. The funds received can be used for number of things, such as hiring interpreters, creating legal clinics, or starting hotlines. A few legal aid programs are working with grant foundations to start outreach projects that increase the ability of LEP individuals to receive legal services in their principal language.

The Cambodian Outreach Project of Merrimack Valley Legal Services in Lowell, Massachusetts, has become an integral link between Merrimack and the Cambodian LEP community. The Cambodian Outreach Project, an organization initiated by Greater Boston Legal

⁴⁴ "Communication Crucible," *Equal Justice Magazine*. <www.ejm.lsc.gov/winter2004/Ourview.htm>.

⁴⁵ Asian Americans for Equality, <http://216.147.28.223/pgs/services_social.html>.

⁴⁶ SeniorLaw Center, "Asian Elderly Legal Project," <www.seniorlawcenter.org/projects/asianelderly.shtml>.

⁴⁷ Legal Services Corporation, "Greater Boston Legal Services Asian Outreach Unit," <www.lri.lsc.gov/abstracts/abstract.asp?level1=Diversity&level2=LEP&abstractid=030078&ImageId=2>.

Services under a grant from Boston's Harry Dow foundation, is a collaboration to reach out to the linguistically and culturally isolated Cambodian community in Lowell. After major community outreach, the Project received calls from agencies on behalf of their clients. As a result, the number of client walk-ins and of cases involving Cambodian clients increased. Because of the initial success of the Project, Merrimack added two attorneys to work on community legal education, outreach, and casework. More than a year later, the Project is still doing well. The increase in Cambodian clients prompted the hiring of a part-time receptionist who speaks English, Khmer, and Vietnamese.⁴⁸ For more information, please contact Project Coordinator Samnang Man at (978) 458-1465.

In 2003, Community Legal Services of Philadelphia (CLS) used a \$35,000 grant from the Pennsylvania Interest on Lawyers Trust Accounts (IOLTA) Board to enable its Language Access Project to provide training and consultations to its staff as well as to other Pennsylvania legal services programs in language access. With the grant, CLS of Philadelphia created a formal language access policy that is serving as a model for other programs. In addition, the IOLTA grant also supports CLS's advocacy work on language issues that benefit LEP clients throughout the state. For example, CLS of Philadelphia pushes for change in how the state court system serves LEP recipients, and is advocating for more language assistance for LEP litigants.⁴⁹ For more information, please contact Staff Attorney Paul Uyehara at (215) 981-3718.

Connecticut Legal Services (CLS) will be using a \$15,000 grant from the Community Foundation of Southeastern Connecticut to assist low-income immigrants and people with limited English proficiency who have urgent life problems. The goal of the Immigrant and LEP Outreach Project is to educate, empower, and represent immigrants and non-English-speaking people so they can enforce their rights and receive necessary services. The Project is run by quadrilingual attorney Natalia Planell and will include all attorneys from the CLS New London office. The Project will also make Connecticut Legal Services more available to immigrants and non-English speakers who have urgent civil legal problems, providing services currently unavailable to the New London area. Attorney John Spilka, regional director of the New London office, states, "As CLS is the only law firm in southeastern Connecticut that provides a range of free civil services to low-income clients, we are unique position to provide these services to the immigrant/non-English speaking population living in poverty."⁵⁰ For more information, please contact the lead attorney Natalia Planell at (860) 344-0447.

D) Community Outreach

Legal service providers can better advance the effort to increase access to the courts by reaching out to the LEP community and establishing relationships with LEP individuals. Some foreign-born individuals are not as open to the idea of sharing personal details that go along with certain legal issues that arise. By reaching out to community members and gaining their trust,

⁴⁸ Nguyen, Tran, "Working with Linguistically and Culturally Isolated Communities: The Cambodian Outreach Project of Merrimack Valley Legal Services," *Clearinghouse Review*, May-June (2003), pp. 79-83.

⁴⁹ Uyehara, Paul, "Funding the Mandate for Language Access," 2004, <http://www.abanet.org/legalservices/dialogue/04winter/dial_04winteriolta.html#article2>.

⁵⁰ Connecticut Legal Services, "New Grant for New London Area to Establish the Immigrant and LEP Outreach Project," <www.connlegalservices.org/news.html>.

legal service providers make LEP individuals more inclined to turn to the legal system to solve their problems. Some organizations have been very successful in reaching out to their LEP communities and increasing their LEP clients.

In Philadelphia, Community Legal Services' Language Access Project is working to improve legal services for LEP individuals. The Project significantly increased the number of LEP clients served by reaching out to the LEP community. As part of its outreach, Philadelphia CLS hired more bilingual staff and contracted with professional language services. While increasing its language capacity, CLS created relationships with many community organizations that serve LEP clients. It also reached out to the LEP community by providing information about services on its website in several languages, including Cambodian, Chinese, Korean, Laotian, and Vietnamese. As a result of the Project, intake from LEP clients increased more than 50% in three years.⁵¹ For more information, please contact Staff Attorney Paul Uyehara at (215) 981-3718.

Philadelphia Legal Assistance Center (PLA) created a domestic violence project for Latinas and Asian women who are victims of domestic violence in Philadelphia. PLA devoted most of the project's resources to conducting outreach to ensure Philadelphia's Asian community was aware of the services PLA provides. To increase outreach PLA built networks with community organizations, especially those that work with immigrant populations. PLA uses translators and interpreters to meet the language needs of their LEP clients. It provides legal representation in all domestic relations areas, including protection, custody, support, and divorce.⁵² For more information, please call Supervising Attorney Susan Pearlstein at (215) 981-3800.

E) Increasing Awareness of Services in LEP Communities

The ability to spread information to LEP populations is not an easy task. Many legal service providers have difficulty serving LEP clients because these clients are not able to obtain information because of language and cultural barriers. By providing information on services in an LEP person's language, through a variety of formats, the likelihood that a service provider will increase the numbers of LEP clients it serves is significantly increased.

The Legal Aid Foundation of Los Angeles (LAFLA) created the Asian and Pacific Islander Community Outreach Unit (API Unit), a full-fledged unit within LAFLA. The API Unit runs a language line and hosts legal clinics around the Los Angeles area. To maximize success of the API Unit, LAFLA had to ensure it was serving the community's and clients' needs. To do this, LAFLA conducted targeted outreach by finding and contacting various ethnic press entities to distribute information. API Unit staff wrote columns in newspapers and contacted reporters to publish success stories on LAFLA clients. LAFLA worked on public service announcements and did interviews on radio shows about the API Unit. As a result, LAFLA's API Unit has had

⁵¹ Uyehara, Paul, "Making Legal Services Accessible to Limited English Proficient Clients," 2004. <www.clsphila.org/pdf%20folder/making_legal_services_accessible_to_ltd_to_ltd_english_proficient_clients.pdf>.

⁵² Legal Services Corporation, "Philadelphia Legal Assistance Center Domestic Violence Project for Latinas and Asian Women," <<http://www.lri.lsc.gov/abstracts/abstract.asp?level1=Diversity&level2=LEP&abstractid=030075&ImageId=2>>.

success meeting the cultural and linguistic needs of the APA community in Los Angeles.⁵³ For more information, please call Staff Attorney Joann Lee at (323) 801-7976.

The Massachusetts Legal Services Diversity Coalition has created a Language Access section of the Massachusetts Legal Services website. The section includes resources and legal, demographic, and other materials to help improve and increase the access of people with limited English proficiency to the legal system, including to courts, administrative agencies, to other public systems, and to lawyers, other advocates, and legal services programs. In addition, the section includes a statewide interpreter list, important guidance policies, and other valuable information.⁵⁴ To contact Massachusetts Legal Services Diversity Coalition about the Language Access section, please visit www.masslegalservices.org/page/90285.

The Legal Aid Bureau and the Maryland Legal Assistance Network (MLAN) partnered to create a multilingual gateway for LEP community members seeking to access legal information through Maryland's online Peoples Law Library. The multilingual gateway is modeled after the Social Security Administration's website at <http://www.ssa.gov/multiLanguage/index.htm>. Recognizing that many clients will be directed by advocates, social workers, and others, MLAN designed the multilingual gateway to ensure that English speakers can locate the appropriate material in English and then confidently refer the client to the desired content in the client's preferred language. The Peoples Law Library currently has content in Chinese, Korean, and Tagalog.⁵⁵ For more information, please contact Ayn Crawley at (410) 576-9494.

3) Advocacy Organizations and Community Groups Breaking Down the Language Barrier

A) Legal Hotlines

Legal hotlines are an innovative way to provide legal services by phone. One of the major benefits of hotlines is that individuals do not have to travel to the sponsoring organization's site to receive legal advice. In most hotlines, staff and/or volunteer attorneys answer questions immediately if they know the answer. If not able to immediately answer the question, attorneys may arrange to call the client back or they may make an appointment for the client to speak with another attorney who's an expert on the topic.

The Asian Pacific American Legal Resource Center (APALRC) operates a multilingual legal referral hotline that serves LEP APAs in the Washington, DC metropolitan area. The hotline is staffed by volunteer law students who speak a variety of Asian languages such as Mandarin, Korean, Hindi, Urdu, Cantonese, and Bengali. Upon receiving a call, intake staff members identify the caller's legal problem and make a referral to a local legal service provider or pro bono program. After a referral is made, APALRC provides follow-up translation services through its Legal Interpreter Project to ensure that the client does not encounter further language barriers while receiving legal assistance.

⁵³ Lee, Joann. H., "A Case Study: Lawyering to Meet the Needs of Monolingual Asian and Pacific Islander Communities in Los Angeles," *Clearinghouse Review*, May-June (2002), pp. 172-84.

⁵⁴ Massachusetts Legal Services Diversity Coalition, *The Massachusetts Legal Services Diversity Action Plan First Year Progress Report*, January 2005.

⁵⁵ Legal Services Corporation, "Maryland Multilingual Gateway," <www.lri.lsc.gov/abstracts/abstract.asp?level1=diversity&level2=lep&abstracted=030197&ImageId=2>.

George Wu, a former manager, volunteer, student supervisor, recruiter, and board member of the APALRC hotline, commented on the importance of the hotline in reaching out to the LEP community. He states, "The hotline is a tremendous asset to the DC Metro community. Not only does it provide much needed access to justice for many community members, including many who are LEP, the hotline also trains law students to become better attorneys. APALRC has also focused the scope of the hotline to better address the unmet needs of the APA community and manage the expectations of everyone involved in the referral process. The hotline is truly a unique access point for community members seeking legal assistance, legal entities outreaching to language minority populations, and law students seeking substantive legal training."

In Los Angeles, the Asian Pacific American Legal Center of Southern California has formed the Asian Language Legal Intake Program (ALLIP). In collaboration with the Legal Aid Foundation of Los Angeles, Neighborhood Legal Services, and Legal Aid Society of Orange County, the program devised an intake system where an individual can call a central, toll-free number and receive legal assistance and advice in Korean, Chinese, Cambodian, or Vietnamese. In addition to providing counsel and advice over the phone, the program also refers callers to APALC and other partnering agencies for extended service and representation if it is necessary. This partnership developed to provide legal services, advice, and community education to monolingual APAs who live in Los Angeles County and Orange County in southern California.⁵⁶ For more information on the hotline, please contact the Asian Pacific American Legal Center of Southern California Staff Attorney Anita Le at (213) 977-7500.

The Asian Task Force Against Domestic Violence has created the Asian Shelter and Advocacy Project (ASAP), which provides a 24-hour hotline to help women on domestic violence cases. It is the first program of its kind in Massachusetts and only one of a few across the United States. The project is able to provide services, advocacy, and outreach to woman in 12 Asian languages, including Cantonese, Mandarin, Toisanese, Hindi, Japanese, Khmer, Korean, Nepali, Urdu, and Vietnamese. All direct services staff members are bilingual/bicultural women who help clients bridge language and cultural gaps in seeking safety and rebuilding their lives. After consultation with individuals regarding their respective case, ASAP provides legal advocacy (restraining orders, immigration, divorce, child custody, etc.) with the help of its bilingual staff and pool of volunteer interpreters.⁵⁷ For more information, please call Executive Director Shirley Fan at (617) 338-2350 or send e-mails to asiandv@atask.org.

B) Pro Bono Legal Clinics

Some organizations have created legal clinics to effectively provide direct legal services supplied by volunteer private attorneys. In many cases, these clinics have bilingual staff or volunteers to provide intake for LEP clients. Following intake, the client's cases are distributed to volunteer attorneys to provide legal advice. If further assistance is needed after this consultation, some attorneys refer these cases to legal service providers for follow up. The ability to have bilingual law students and/or attorneys provide legal services to LEP individuals makes the creation of legal clinics another step to increase access.

⁵⁶ Legal Services Corporation, "Asian Language Legal Intake Project," <www.lri.lsc.gov/abstracts/abstract.asp?level1=Diversity&level2=LEP&abstractid=020036&ImageId=2>.

⁵⁷ Asian Task Force Against Domestic Violence, <www.atask.org/needhelp_asap.htm>.

In addition to the legal referral hotline, APALRC has developed and implemented issue-specific legal rights workshops and walk-in clinics in different communities around the DC metropolitan area. APALRC works closely with and receives referrals from community-based organizations in the APA community. APALRC coordinates attorneys and legal aid partner program staff to provide legal advice to clients, while volunteers and trained interpreters conduct intake and interpret on their behalf.⁵⁸ For more information on APALRC's hotline and walk-in clinics, contact Executive Director Jayne Park at (202) 393-0996.

Legal Aid Foundation of Los Angeles (LAFLA) staff is on site at two courthouses and seven community-based organizations in Los Angeles County to provide immediate assistance and limited representation to API clients who are LEP individuals. These clinics assist clients with filling out necessary court paperwork and forms, and retain clients for further representation. If LAFLA is unable to provide representation, they help clients understand how to proceed through the court process unrepresented.⁵⁹ The community based organizations with which LAFLA collaborates include: Asian Youth Center, Chinatown Service Center, Chinatown Senior Citizens Service Center, Korean American Family Service Center, Korean American Coalition, Korean Resource Center, Koreatown Youth and Community Center, Little Tokyo Service Center, Long Beach Police Department Anaheim St. Community Station, Cambodian Association of America, and the Center for Pacific-Asian Family. The API Unit holds fourteen regular clinics per month at different community-based organizations throughout Los Angeles County.⁶⁰ To staff the legal clinics, LAFLA provides bilingual law students to perform legal intake and bilingual attorneys for legal consultation. These law students are paid part-time employees. Before hiring these law students, LAFLA tests their language proficiency to make sure they are proficient enough in their Asian language to do interpretation. While the API Unit has been very successful, it has faced difficulty making progress with the clinics because local community organizations lack the language capacity to help clients that the API Unit refers to them. As a result, API Unit staff has had to do much more work by increasing follow up on many cases. For more information on the API Unit, please contact Directing Attorney Joann Lee at (323) 801-7976.

The New Jersey-Asian American Legal Project (NJ-AALP) was founded by students at the Rutgers School of Law-Newark. In a joint effort with the United Community Development Corporation of New Jersey and the Asian American Legal Defense and Education Fund (AALDEF), the Project addresses the unmet legal needs of the APA community in New Jersey. NJ-AALP has launched a series of multilingual legal clinics in Jersey City, New Jersey, staffed by bilingual law students with the supervision of licensed attorneys. NJ-AALP started as an independent volunteer project, but it is now a project under the supervision of AALDEF. The focus of the legal clinic is primarily immigration law, but it plans to expand to other areas of the law and other APA communities. Currently, the clinic offers the following services:

⁵⁸ Legal Services Corporation, "APALRC Multilingual Referral Hotline," <www.lri.lsc.gov/abstracts/abstract.asp?level1=Diversity&level2=LEP&abstractid=030089&ImageId=2>.

⁵⁹ Asian Pacific American Legal Center. *Expanding Legal Services: Serving Limited English Proficient Asians and Pacific Islanders*. November 2003.

⁶⁰ Lee, Joann. H., "A Case Study: Lawyering to Meet the Needs of Monolingual Asian and Pacific Islander Communities in Los Angeles," *Clearinghouse Review*, May-June (2002), pp. 172-84.

- An Immigrants Rights Seminar conducted by law students.
- A free half-hour immigration consultation with an attorney.
- Referral assistance to an appropriate attorney if long-term legal help is needed.⁶¹

During the development of the Project, the students at Rutgers and other volunteers had difficulty gaining support from the local community, particularly from local legal organizations who had malpractice concerns. The Project also had difficulty finding enough volunteer attorneys. In response to adversity, the students and other volunteers began spreading word of the Project to local legal organizations. Project staffers contacted the American Immigration Lawyers Association (AILA) and asked them to place a "volunteers wanted" post for the Project on the AILA website. As a result of the post, NJ-AALP received numerous calls from attorneys willing to volunteer at local clinics. In addition, AALDEF became a partnering organization in the Project and agreed to provide malpractice insurance. The sponsorship and addition of malpractice insurance quelled earlier concerns from local organizations and led to overall support of the Project.

The ability of these law students and volunteer attorneys to overcome obstacles led to the creation of this successful project that provides seminars, consultations, and referrals to LEP clients in their native language. For more information, please e-mail info@aalegalproject.org or contact Equal Justice Works Fellow Alex Saingchin at (201) 988-1881.

C) APA Bar Associations Increasing Access

NAPABA's affiliates are also making a contribution in the effort to increase access for LEP individuals. NAPABA affiliate attorneys are donating their time to educate and provide legal services for LEP APA communities. By contributing with both their linguistic abilities and legal skills, NAPABA affiliates can make a major impact on LEP access to judicial proceedings.

The Arizona Asian American Bar Association cosponsors a health and legal clinic five times a year in Phoenix. The Bar Association teams up with the Asian Pacific Community in Action to hold clinics that provide free health care and legal advice for five hours five times a year. More than half of the clients attending these clinics are LEP, so the Asian Pacific Community in Action provides interpreters which allow these clients to receive accurate legal advice. The Arizona Asian Bar Association provides between six and ten attorneys for each clinic, which in turn allows many more clients to receive legal help. According to the Arizona Asian American Bar Association 2006 President Patrick Black, the number of individuals using the clinic is steadily increasing. For more information, please contact President Patrick Black at (602) 916-5400.

The Asian Pacific American Bar Association of Maryland (APABA-MD) is in the process of creating a directory on its website to assist individuals seeking pro bono legal help. The directory will include information on all APABA-MD attorneys. This information includes a complete biography of the attorney, along with the attorney's legal expertise, non-English-language capabilities, and his or her willingness to take on pro bono or reduced-fee cases. From this directory, LEP APA individuals seeking legal help will be able to find an attorney's contact

⁶¹ Asian American Legal Project, <<http://www.aalegalproject.org/index.html>>.

information and possibly receive free legal help on their case. For more information, please contact APABA-MD President Paul W. Kim at (410) 347-7344.

The Orange County Korean American Bar Association (OC KABA), a NAPABA affiliate located in Irvine, California, is the lead organization in a pro bono program called Community Law School. With the help of over 20 sponsors, OC KABA has reached out to the Orange County Korean American community by providing sessions where LEP individuals can receive basic information regarding legal issues in their own language. The program is largely conducted in Korean, and presentations made in English are translated and interpreted into English.⁶² The ability for LEP APA people to learn more about legal issues in their own language is a big step in the direction to equal justice. If these individuals are more knowledgeable of their rights in certain legal issues, they will be able to better access the court system. For more information, please contact OC KABA President Kenneth Chung at *kchung@kringandchung.com*.

The Korean American Lawyers Association of Greater New York (KALAGNY) provides biannual clinics for the Korean American community in the greater New York area. Twice a year KALAGNY rents out the entire YWCA in Flushing, New York, to host a pro bono legal clinic. Clients seeking advice are paired with KALAGNY attorneys according to the legal issue at hand. Many of the clinic's clients are LEP individuals. KALAGNY has responded to this fact by providing a number of bilingual attorneys to act as interpreters for these clients. KALAGNY is the sole sponsor of these clinics and did all of the community outreach and clinic coordination. For more information, please contact President Joon H. Park at (212) 869-3200.

For over 10 years, the Korean American Bar Association of Southern California (KABA) has been sponsoring a monthly pro bono clinic at the Legal Aid Foundation's (LAFLA) office in Los Angeles. In a partnership with LAFLA, KABA provides about 5–10 bilingual volunteer lawyers while LAFLA loans its office for the clinic. In addition to providing bilingual lawyers, KABA provides a number of volunteer interpreters to serve nearly 20–30 LEP clients at each clinic.⁶³ For more information, please go to *www.kabasocal.com*. Click on "Contact Us" and send a message to KABA.

The Asian Pacific American Bar Association of Colorado (APABA-CO) has created the "Naturalization Drive" to assist immigrants in the citizenship process. In conjunction with Catholic Charities and a Buddhist Temple in Denver, APABA-CO helps LEP immigrants file necessary documents and prepare for examinations to become a U.S. citizen. APABA-CO provides a number of bilingual attorneys and recruits law students from local law schools to act as interpreters and translators for the LEP clients. The Buddhist Temple in Denver provides the space for the drive to take place, while Catholic Charities provides additional funding and volunteers for the drive. For more information, please contact APABA-CO President Cindy Ha Dang at (303) 742-0080.

The Ventura County Asian-American Bar Association (VCAABA) has been working with the Ventura County Bar Association on the Volunteer Lawyer Services Program (VLSP).

⁶² Orange County Korean American Bar Association, <www.ockaba.com>.

⁶³ Korean American Bar Association of Southern California, <www.kabasocal.org/>.

VLSP provides free legal help for low-income individuals. The program has 13 retired attorneys do initial screening on clients seeking legal help. If these clients are eligible to receive assistance, the attorneys will refer the client to a pro bono attorney to handle the case. VCAABA provides attorneys to take on many of the cases referred from the program, mostly cases with LEP clients. VCAABA attorneys are able to use their bilingual language skills to interpret for LEP APA clients. VLSP takes cases five days a week at the Ventura County Bar Association office in Ventura. For more information, please contact Tina Rasnow at (805) 654-3879.

Currently, a legal clinic is in the works with the help of the Asian Pacific American Bar Association of the Greater Washington, DC Area (APABA-DC) and the Asian Pacific American Legal Resource Center (APALRC) in Washington, DC. APABA-DC, a founding organization of APALRC, is set to work with APALRC to launch monthly legal walk-in clinics. APABA-DC has coordinated with the legal center to supply volunteer attorneys, especially those with Asian language ability. In addition to volunteer attorneys, APABA-DC will provide volunteer law students to help with intake, many of whom speak Asian or Pacific languages. The combination of bilingual attorneys and law students will surely improve legal services for LEP APA individuals in the DC metro area. For more information, please contact Vice-President for Community Affairs Marita Etcubanez at marita@apalrc.org.

D) Educating the Community on Their Legal Rights

LEP individuals can greatly increase their ability to access the judicial process with an understanding of their legal rights. A number of organizations are beginning to create workshops and presentations that educate LEP individuals. By teaching individuals their legal rights, they are more inclined to access the judicial process to resolve disputes. This benefits society in many ways.

The Refugee Women's Alliance (ReWA) in Seattle has a range of services for LEP individuals, which include community outreach/education on domestic violence, sexual assault, and human trafficking in areas with significant LEP populations; consultation and training to law enforcement agencies and other service providers likely to encounter LEP victims; and specialized services to help LEP women understand and navigate the legal system. ReWA also uses constructive liaisons with police departments and other organizations as a means of providing services in a broad range of languages for victims of violence. Legal services include referrals to pro bono representation, as well as weekly sessions/workshops with on-site and volunteer attorneys on family law and other issues. Staff interpreters are available to work with attorneys on these sessions.⁶⁴ ReWA's ability to both educate and make referrals to LEP individuals in 15 languages distinguishes its organization from many others. For more information, please call Executive Director Soneireh Amirfaiz (206) 721-0243.

In 1995, Sakhi for South Asian Woman, a community-based organization in the New York metropolitan area committed to ending violence against women of South Asian origin, initiated the Court Interpreters Campaign after seeing the need for trained interpreters in the courts. In recent years, Sakhi has had many accomplishments as a result of the project:

⁶⁴ Washington States Human Rights Commission, "Refugee Women's Alliance (ReWA) in Seattle, Washington: Working Collaboratively Across Disciplines to Assist LEP Victims of Violence," <www.hum.wa.gov/lep/index.html>.

- In 1995, Sakhi wrote about the campaign in its newsletters and got the article “Silence! The Court is in Session” reproduced and disseminated to judges through the National Organization for Women Legal Defense and Education Fund judicial education curriculum.
- In October 2002, Sakhi produced a documentary film entitled *Creating Community Change* to increase awareness about the issue of interpreting in courts.
- In 2003, the Office of Court Administration hired three South Asian interpreters as employees of the Court, thus requiring them to attend an orientation and training.
- In April 2006, Sakhi was a key member fostering the Office of Court Administration to release a work plan to address improving the court interpreter system.⁶⁵

For more information, contact Executive Director Purvi Shah Sakhi at (212) 714-9153.

The best practices described above all increase access to the courts for LEP individuals. Whether it be a state or city statute, court interpreting program, or pro bono legal clinic, these best practices serve as examples for others to increase access to justice. From these best practices, NAPABA will follow with a set of recommendations for implementation in order to break down the language barrier and increase access to the courts for LEP people.⁶⁶

⁶⁵ Sakhi for South Asian Women, “Does Sakhi Promote Change Through Policy Work?” <www.sakhi.org/learn/policy.php>.

⁶⁶ While not listed as a best practice, LEP.gov is a useful site for advocates. The site acts as a clearinghouse, providing and linking to information, tools, and technical assistance regarding limited English proficiency and language services for federal agencies, recipients of federal funds, users of federal programs and federally assisted programs, and other stakeholders. <www.lep.gov>.

V. Recommendations

Significantly improving access to judicial proceedings for Asian Pacific Americans with limited English proficiency—and thereby advancing justice—will take time and concerted efforts of many, each fulfilling their unique roles and making their important contributions. At the same time, things can be done now to produce immediate positive results. Based on NAPABA’s examination of the issues, problems, and barriers, and observations on what has worked and talking with those who have made them work, NAPABA provides the following list of recommendations. NAPABA is convinced that through sincere efforts and committed hard work, these recommendations can be implemented. If implemented, they will significantly break down barriers to justice for APAs with LEP—and in the process help build a stronger judicial system and country.

1. States Should Mandate the Appointment of Interpreters for LEP Individuals in All Court and Administrative Proceedings

- A. By law or court rule, each state, the federal courts, and federal agencies should mandate that certified and/or qualified interpreters be provided at no charge in all court and court-related proceedings as well as administrative hearings.
 - i. *A number of states have “best practice” statutes that recognize proceedings in which an interpreter shall be appointed. See pages 24 to 26.*
- B. Similarly, court operations outside the courtroom should be required to provide language services to LEP persons.
 - i. Courts should provide language assistance for LEP individuals trying to obtain information, obtain records, file court papers, etc.
- C. States should provide needed budgetary support.
 - i. *A fundamental component of passing legislation or implementing rules that require usage of interpreters is to fund the service, or else the law or rule has no real meaning. This has been a problem in some jurisdictions and special attention must be paid by states to ensure that worthwhile and necessary interpreter programs are adequately and fully funded.*
- D. For those yet to mandate that qualified interpreters be provided for LEP individuals at no charge in all court and administrative proceedings, standards used by states regarding the appointment of an interpreter during judicial proceedings for those with speech or hearing impairments should also be used for those with limited English proficiency.
 - i. *Some states have found it prudent to start with a presumption that programs and standards used for those with speech or hearing impairments should also*

be used for those who are LEP. For example, Minnesota has a state statute requiring this. See page 24 for more information.

2. State Legislatures, State Supreme Courts, State and Federal Agencies, and Other Entities Responsible for Improving Judicial Proceedings and Access to Justice Should Study the Problem of the Lack of Qualified Interpreters for Judicial Proceedings and Develop Plans to Address Any Shortages

- A. States with dramatically increasing immigrant populations, regardless of the level of English proficiency, should study whether the lack of certified and/or qualified interpreters in judicial proceedings is a problem.
- B. States and communities with significant LEP populations, regardless of how fast those populations are growing, should engage in studies to assess the availability of certified and qualified interpreters.
 - i. A formal report with analysis, recommendations, implementation plan, and a post-implementation evaluation to determine whether implementation was successful are essential components to a good study.
- C. States, especially those with the largest anticipated gap between supply and demand of certified and qualified interpreters, should create a specific plan and program to evaluate how they are serving LEP clients, find ways to improve their services, and ensure they are meeting the demand for interpreter services.
 - i. In many cases, the creation of an effective plan involves the creation of a task force to examine the issues and devise a plan with critical components.
 - The makeup of the task force should include not only the appropriate policy makers such as judges, court administrators, and bar leaders, but also a cross section of the advocacy community as well as service providers and the user community.
 - ii. These LEP plans should consider the program set by the judicial branch in Minnesota as a possible model. Each county court system should create an LEP plan. Each plan could cover the following points:
 - Legal Basis and Purpose
 - Needs Assessment
 - Language Assistance Resources
 - Training
 - Public Notification and Evaluation of LEP Plan
 - iii. *These points allow the court to assess the quality of its services to LEP persons. From this assessment, the court is able to distinguish problem areas and make changes for improvement. See page 37 for more information.*

- iv. *Many states have made good faith and thoughtful efforts to achieve these goals and can be useful resources for states that will embark on this endeavor. Descriptions of these efforts can be found on pages 29 to 36.*

3. States Should Create a Court Interpreting Program to Oversee the Use of Interpreters in the Court System

- A. States that have not yet created a court interpreting certification program should establish interpreter certification programs to ensure that interpreters are qualified to interpret in court.
 - i. *For example, Pennsylvania recently passed a law that will create a state certification system for court interpreters. See page 28 for more information.*
- B. States that have not already done so should join the Consortium for State Court Interpreter Certification and use its resources to either create a court interpreting certification program (if not already done so) or improve their existing court interpreting certification program.
 - i. *The Consortium addresses resource shortages and implements standards for identifying qualified interpreters. Without those standards, state courts risk employing unqualified interpreters, leaving equal access to justice for linguistic minorities an unfulfilled obligation.*
 - ii. *The Consortium provides training, tests, and test administration innovations for court interpreting programs.*
- C. While each state should make its own assessment of what is needed to serve its LEP population, many experts have found the following to be key components of a highly effective program. See page 27 for more information.
 - i. Passing written and oral tests to receive certification.
 - ii. Proper training not only regarding interpreter skills but to ensure understanding of interpretive skills required that are unique to work effectively in court or other kinds of proceedings.
 - iii. A program that is not only well designed but addresses implementation issues as well as contains mechanisms to measure success.
 - For example, the best plan will be undermined if there is no mechanism to ensure that the credentials and qualifications of interpreters are checked, a process to monitor performance of interpreters, or a way to ensure that inadequate interpreters do not continue to serve.

- D. All examinations of language access programs should include participation by advocates, personnel who will be using interpreters, experts in the field of legal interpreting and translation, and those from the LEP community.
 - E. States and communities should consult with policy makers, experts, and advocates from states that have established successful programs to take advantage of best practices.
 - F. State courts should increase filing fees or request more annual funds from their state legislature to improve court interpreting programs and hire more certified and qualified interpreters.
 - G. While generally it is more effective for LEP issues to be addressed by state legislatures and agencies, there may be circumstances when city and county governments may effectively promote access to justice through action.
 - i. *For example, San Francisco and Oakland (page 27) have addressed the issue of increasing opportunities for those with LEP to access government programs.*
4. State Legislatures, State Supreme Courts, State and Federal Agencies, and Other Entities Responsible for Improving Judicial Proceedings and Access to Justice Need to Work to Increase the Number of Qualified APA Interpreters
- A. States with large APA populations, and especially those with significantly increasing APA populations, need to urgently increase their numbers of qualified APA interpreters in a large array of Asian languages.
 - i. *As documented in this report (see pages 17 and 18), the existing shortage of interpreters will only worsen and the need for interpreters will only grow.*
 - B. Entities working to develop or improve programs to address the problems faced by LEP APAs should aggressively recruit potential interpreters to be trained from the most underserved APA communities.
 - i. These entities should work closely with advocacy organizations from these ethnic groups to seek their input on how to best recruit effectively.
5. Interpreter Compensation Should be Increased to Reflect the Essential Role Interpreters Play in the American Judicial System
- A. State courts should raise compensation and increase benefits for state court interpreters to attract more applicants to state court interpreter positions.
 - i. The Federal Court Interpreter Program should be looked at as a possible model.

6. Entities Should be Created by States to Oversee the Use of Interpreters for LEP Individuals in Court

- A. If a study is not mandated by the legislature, state Supreme Courts that have not already done so should create independent committees to investigate and oversee court interpreter standards if it is within their authorities.
- i. *Many states have created oversight and investigation committees that are helping in the fight for access to justice. As explained in the previous chapter, investigation or oversight committees are often responsible for creating standards that relate to all aspects of court interpreting, which the committee will recommend the Supreme Court adopt. These committees are also often used to review appeals brought by language interpreters, to hear complaints regarding interpreter services, to oversee the state court interpreter testing and certification program, and to oversee and enforce continuing education requirements for those individuals certified as court interpreters by the state courts or employed by the courts as interpreters.*
 - ii. *These committees, commissions, and task forces have revealed many inadequacies in their respective state court systems when it comes to working with LEP individuals. From their findings, many of these committees, commissions, and task forces have made recommendations that their respective state Supreme Courts adopt. In many cases, state Supreme Courts have adopted the recommendations.*
- B. LEP programs should have a coordinator of interpreter services who will ensure that the program operates effectively.
- i. *Massachusetts (page 25) and Minnesota (page 24) are examples of states that have utilized coordinators.*

7. Colleges and Universities Around the Country Should Create More Court Interpreting Degree and Certification Programs

- A. Higher education institutions, especially in states with high LEP populations, should consider creating certificate and degree programs and/or curriculums to educate individuals in court interpreting.
- i. *Degree and certificate programs increase the number of opportunities interpreters have to become certified and/or qualified, which ultimately increases the number of qualified court interpreters.*
- B. In designing degree and certificate programs, plans need to keep the costs of attaining the degree or certificate as low as possible.
- i. *States need to take into account that individuals with needed language skills who may be interested in serving as interpreters often have limited funds and come from ethnic groups with lower median incomes.*

- i. By working with law schools, they can increase a legal clinic's language capacity, which is crucial in order to serve LEP individuals, especially if these legal aid organizations or bar associations cannot provide bilingual attorneys or staff.*

- C. Minority bar associations should have their bilingual members volunteer at local legal clinics to increase linguistically accessible legal services.

10. Multilingual Hotlines Should be Created to Increase Linguistically Accessible Legal Services

- A. Advocacy groups should partner with community organizations and legal aid organizations to create multilingual legal referral hotlines that allow LEP individuals to receive legal assistance in their principal language.

- i. The Asian Pacific American Legal Center of Southern California's Asian Language Legal Intake Program (ALLIP) should be looked at as a possible model (see page 47).*

- B. Bilingual attorneys should staff these hotlines and give legal counsel if needed. If bilingual attorneys are not available, bilingual staff or volunteers should perform intake and refer the case to an attorney if necessary.

11. Community Groups, Advocacy Organizations, and Legal Aid Organizations Should Reach Out to their Respective LEP Communities

- A. Information regarding services provided by the community group, advocacy organization, or legal aid organization should be produced in multiple languages.

- i. The information should be translated into the geographic area's most commonly spoken languages. The information could be distributed via pamphlet and on the organization's website.*

- B. Legal aid programs should establish relationships with community and advocacy organizations that serve LEP APA individuals.

- i. Establishing relationships will allow legal aid programs to increase the visibility of their services to LEP APA clients. By increasing awareness, the number of LEP APA clients served will likely increase.*

- C. Legal aid programs should create LEP APA outreach units that strictly focus on serving LEP APA clients.

- i. By creating an outreach unit, an organization guarantees that it will dedicate a portion of its resources to providing services for LEP APA individuals.*

12. Community Groups, Advocacy Organizations, and Legal Aid Organizations Should Work Together to Educate LEP APA Community Members on Legal Issues in the LEP Individuals' Principal Language

A. Legal workshops should be created that educate LEP APA community members on legal issues in the community members' principal languages.

i. Successful community education programs have ensued in California (Orange County Korean American Bar Association (page 50)); Washington (Refugee Women's Alliance (page 52)); and Connecticut (Connecticut Legal Services (page 45)).

B. Bilingual attorneys should staff these workshops to best provide information on legal issues. If bilingual attorneys are not available, interpreters should be available to interpret for attorneys providing information.

13. Community Groups, Advocacy Organizations, and Legal Aid Organizations Should Look for Funding Resources to Assist Persons with Limited English Proficiency

A. Funding from various grant-giving foundations should be used to create programs aimed at serving LEP individuals.

i. Legal Services Corporation (LSC) should provide technical assistance to grantees to assist them with efforts to get grants.

ii. Programs such as the Cambodian Outreach Project of Merrimack Valley Legal Services (page 44) and the Immigrant and LEP Outreach Project of Connecticut Legal Services (page 45) have achieved results using grant funding.

B. LSC, Interest on Lawyers Trust Accounts (IOLTA) programs, and other funding sources should consider funding efforts by legal services grantees to improve services to LEP clients.

i. IOLTA grants can help programs provide better services for underserved client populations such as LEP people. These grants can help overcome the initial hurdles experienced with high start-up costs from assessment, planning, and procurement of language services.

ii. Community Legal Services in Philadelphia (page 44) demonstrates that IOLTA grants can go along way in improving language services to clients.

C. LSC should provide, itself or by contract, technical support and other assistance to help programs conduct assessments, develop plans, train staff, and translate materials.

i. As one example, LSC could contract with a census data center to provide detailed language-specific and income-sensitive demographic data on the service population of each program.

D. National and local APA advocacy organizations should use their contacts with foundations to educate them on the need for more money to fund programs designed to increase access to judicial proceedings for APAs with LEP.

- E. Foundations and grant makers should increase funding for organizations that advocate for language access to APAs with LEP.

- i. *Increased funding will allow these organizations to expand their advocacy and improve language access to the courts.*

14. Legal Services Programs Need to More Aggressively and Effectively Increase Access for APAs with Limited English Proficiency

- A. The Legal Services Corporation (LSC) should create a committee to ensure that legal aid programs that receive funds from LSC are following federal law by providing legal services in an LEP client's principal language.

- B. LSC staff should carefully monitor whether the organization is doing everything possible to implement LSC board directives regarding language access.

- i. Staff should look at what other legal aid programs are accomplishing as a gauge in determining whether grantees are complying with 1006(a) of the Legal Services Corporation Act. See page 40 for more information.

- ii. Objective 3, under Goal 2, of the LSC's *Strategic Direction: 2006–2010*, states: "Work to improve support for hard to serve areas and populations, e.g., rural areas, migrants, Native Americans, limited English proficiency clients." This should be aggressively and fully implemented and, while the directive may be challenging for all legal programs, the expectations should be higher for urban programs.

- C. Legal aid grantees should examine efforts by other programs and methods used by other grantees to determine whether they can replicate these efforts to more effectively provide services to the LEP community in their area.

- i. Grantees should consider creating a special committee to examine whether they can more effectively provide services to those with LEP.

- D. Grantees should work closely with APA advocacy groups in their service areas to ensure maximum effectiveness in these efforts.

- E. LSC and its grantees should utilize modern technology to help lower barriers to services for those with LEP.

- i. *On page 46, model practices are described in Massachusetts and Maryland.*

15. The American Bar Association (ABA), State Bar Associations, and Other Local Bar Associations Should Play an Important Role in Ensuring those with LEP Have Full Access to Justice

- A. The ABA should either create a special committee or assign one of its existing committees to examine generally the need for increased access to judicial proceedings for APAs and others with LEP.
- B. The ABA should design a plan to provide technical support to jurisdictions, especially those with greatest need and most limited resources, to ensure that the greatest needs for interpreters are met.
- C. The ABA should periodically review progress made toward increasing access to judicial proceedings for APAs and others with LEP.
- D. The ABA should annually, or at least once every two years, compile best practices of states and local jurisdictions that address increasing access to judicial proceedings for APAs and others with LEP. These findings should be distributed widely.
- E. At least once every four years, the ABA should engage in a comprehensive review to analyze the progress made in addressing the needs of those with LEP in the judicial system and provide recommendations for further progress.
- F. When state and local bar associations perform studies to examine improving justice, how well the LEP communities are served should always be a key component of the study.

16. The Federal Government Should Play a More Significant Role in the Effort to Increase Access for LEP individuals.

- A. Appropriate Congressional committees should examine whether LSC is fully meeting its statutory obligations to provide access to legal services for clients and potential clients with LEP.
- B. Congress should augment the LSC budget overall and also add monies specified to increase access to its services for those who are vision or hearing impaired or who have LEP.
- C. The Congressional Research Service (CRS) should examine whether the LSC and legal aid grantees have fully complied with language access requirements under federal law.
 - i. *The CRS is the public policy research arm of the United States Congress. CRS works exclusively and directly for Members of Congress, their committees, and staff. CRS provides Congress with comprehensive research, analysis, and information services.¹*
- D. The Government Accountability Office (GAO) should examine whether the LSC and legal aid grantees have fully complied with language access requirements under federal law.

¹ Congressional Research Service, <<http://www.loc.gov/crsinfo/whatscrs.html>>.

i. The GAO is an agency that studies the programs and expenditures of the federal government. GAO, commonly called the investigative arm of Congress or the congressional watchdog, evaluates federal programs, audits federal expenditures, and issues legal opinions. When GAO reports its findings to Congress, it recommends actions.²

E. The White House Initiative on Asian Americans and Pacific Islanders should advocate for greater use of interpreters in judicial proceedings and other situations and in particular for greater language access to federal courts and agencies, together with more vigorous enforcement of Title VI language access requirements.

i. The Office of the White House Initiative on Asian Americans and Pacific Islanders coordinates the activities of the President's Advisory Commission and the Interagency Working Group.³

17. APA Advocacy Groups Should Continue to Help Increase Access to Justice

A. Local APA advocacy groups need to aggressively advance the cause of those with limited English proficiency in their communities. In that regard, they should use this report to:

- i. Find best practices for their communities.
- ii. Utilize resources identified in this report to help them in those efforts.

B. APA legal organizations have a special responsibility for breaking down barriers to judicial proceedings for those within their jurisdictions.

i. To identify best practices, APA legal organizations should look at other legal organizations that have:

- Established community services and programs committees within their local bars to work on these issues.
- Created a range of pro bono programs to serve the APA community.
- Worked with LSC grantees and other legal aid programs.
- Advocated for interpreters and other services for APAs with LEP.
- Provided community legal education to the local APA community.

ii. Legal organizations should seek guidance from a number of national or regional APA organizations that address LEP issues, including those facing APAs who cannot get full access to justice because of LEP. Many of these efforts are described in pages 47 to 53, along with contact information.

² Government Accountability Office, <<http://www.gao.gov/about/what.html>>.

³ The White House Initiative on Asian American and Pacific Islanders, <<http://www.aapi.gov/aboutus.htm>>.

- iii. Legal organizations should call NAPABA headquarters at (202) 775-9555 for advice, guidance, and materials.
- C. APA advocacy groups should meet with their elected and court officials to discuss and propose that states mandate courts to provide qualified interpreters to LEP individuals.

Appendix

NAPABA Advisory Committee Members:

- *Lillian Lawbeerjour*, owner of Language Solutions in Milwaukee, Wisconsin, works for courts, agencies, law firms, and other entities to provide translation and interpretive services from English to Hmong and Hmong to English. Ms. Lawbeerjour may be contacted at (414) 383-9759 or languagesolutionsitc@yahoo.com.
- *Anita Le*, Staff Lawyer with the Asian Pacific American Legal Center of Southern California. The organization advocates for civil rights, provides legal services and education, and builds coalitions to positively influence and impact APAs. Ms. Le is assigned to the Vietnamese legal hotline, which is dedicated to the Vietnamese LEP community in Los Angeles and Orange Counties with legal issues, especially poverty law issues. Ms. Le can be contacted at (213) 977-7500.
- *Willie Nguyen*, Attorney for Legal Aid Society in Oakland, California, a legal services program that serves low-income individuals. Mr. Nguyen works heavily on language rights issues. Mr. Nguyen may be contacted at (415) 864-8848 or wNguyen@las-elc.org.
- *Jayne Park*, Executive Director for Asian Pacific American Legal Resource Center (APALRC), a nonprofit organization dedicated to advancing the legal and civil rights of Asian Americans in the Washington, DC metropolitan area. APALRC works with the community through direct services, education, and advocacy. Ms. Park was named a 2005 Washingtonian of the Year by Washingtonian magazine. She can be contacted at (202) 393-3572 or jayne.park@apalrc.org.
- *Doua Thor*, Executive Director of the Southeast Asian Resource Action Center, a national organization advancing the interests of Southeast Asian Americans, especially those from the Hmong, Laotian, and Cambodian communities. Ms. Thor can be contacted at (202) 667-4690 or doua@searac.org.
- *Paul Uyehara*, Staff Attorney for Community Legal Services of Philadelphia, a program that addresses the legal needs of low-income individuals. Mr. Uyehara is an expert on language barriers to justice issues in the legal services community. He can be contacted at (215) 981-3700 or pUyehara@clsphila.org.
- *Suzanne Young*, Staff Attorney for Community Legal Services of Philadelphia, a program that addresses the legal needs of low-income individuals. Ms. Young can be contacted at (215) 981-3700 or sYoung@clsphila.org.

Other language access, court interpreting, and APA community experts include:

- *Theresa Barrett*, Administrative Officer of the Arizona Supreme Court, can be contacted at (602) 542-9364 or tbarrett@supreme.sp.state.az.us.

- *Burt Butler*, Trial Court Administrator of the Idaho court system, can be contacted at (208) 529-1350 or bbutler@co.bonneville.id.us.
- *Margaret Chin*, Deputy Executive Director of Asian Americans for Equality in New York City, can be contacted at (212) 979-8988 or Margaret_Chin@aafe.org.
- *Tuyet G. Duong*, Staff Attorney for the Asian American Justice Center, specializes in language access and disaster & emergency preparedness. Ms. Duong can be contacted at (202) 296-2300 or tduong@AdvancingEquality.org.
- *Shirley Fan*, Executive Director of the Asian Task Force Against Domestic Violence (ASAP), can be contacted at (617) 338-2350.
- *Katrin Johnson*, Minnesota's Court Interpreter Program Coordinator, can be contacted at (651) 215-0046 or Katrin.Johnson@courts.state.mn.us.
- *Mary Lavery Flynn*, Staff Director of the California Commission on Access to Justice, can be contacted at (415) 538-2251 or mary.flynn@calbar.ca.gov.
- *Joann Lee*, Staff Attorney at the Legal Aid Foundation of Los Angeles, can be contacted at (323) 801-7976 or jlee@lafla.org.
- *Robert Joe Lee*, Court Executive at the New Jersey Judiciary Branch, can be contacted at (609) 984-5024 or RobertJoe.Lee@judiciary.state.nj.us.
- *Emy Lopez*, Court Administrator of the Colorado Supreme Court, can be contacted at (608) 267-7335 or emy.lopez@judicial.state.co.us.
- *Samnang Man*, Project Coordinator of the Cambodian Outreach Project at Merrimack Valley Legal Services, can be contacted at (978) 458-1465 or sMan@mvlegal.org.
- *Cynthia Mark*, Supervising Attorney of the Asian Outreach Unit at Greater Boston Legal Services, can be contacted at (617) 371-1234.
- *Lisette McCormick*, Executive Director of the Pennsylvania Supreme Court Committee on Racial and Gender Bias, can be contacted at (215) 560-6300 or mccormickm@duq.edu.
- *Adrian Meiring*, Program Coordinator at the Indiana Court Interpreter Program, can be contacted at (317) 232-2542.
- *Alex Saingchin*, Equal Justice Works Fellow helping lead the New Jersey-Asian American Legal Project, can be contacted at (201) 988-1881 or asaingchin@aaldef.org.
- *Marcia Vandercook*, Staff Member of the Office of Court Operations in Wisconsin, can be contacted at (608) 267-7335 or marcia.vandercook@courts.state.wi.us.