

**EQUAL JUSTICE,  
UNEQUAL ACCESS:**

**Immigrants & America's Legal System**



**Recommendations for  
Action and Collaboration**

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UNEQUAL ACCESS:

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Asian Law Caucus



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ISBN: 1-9232526-05-6

Cover photo: [www.comstock.com](http://www.comstock.com)

Published by the National Asian Pacific American Legal Consortium and made possible through  
the generous support of the Open Society Institute.

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This is a report by the **National Asian Pacific American Legal Consortium** (NAPALC) as part of NAPALC's Fair Access Program with the continued support from the Open Society Institute. Founded in 1991, the National Asian Pacific American Legal Consortium works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. NAPALC is one of the nation's leading experts on issues of importance to the Asian American community, including: affirmative action, anti-Asian violence prevention/race relations, census, immigration and immigrant rights, language access, and voting rights. NAPALC is affiliated with the Asian Law Caucus in San Francisco and the Asian Pacific American Legal Center of Southern California.

Founded in 1972, the **Asian Law Caucus** (ALC) was the nation's first nonprofit law office serving Asians and Pacific Islanders. ALC's mission is to promote, advance, and represent the legal and civil rights of the Asian and Pacific Islander community in Northern California. Annually, ALC consults with and oversees cases of over 1,500 clients and provides legal information to over 5,000 people on workers rights, immigration, housing issues, voting rights, and hate crimes.

The **Asian Pacific American Legal Center of Southern California** (APALC) was founded in 1983 and is the largest organization in the country focused on providing multilingual, culturally sensitive legal services, education, and civil rights support to Asians and Pacific Islanders (APIs). APALC's mission is to advocate for civil rights, provide legal services and education, and build coalitions to positively influence and impact Asians and Pacific Islanders and to create a more equitable and harmonious society. APALC works on a range of issues affecting APIs and immigrants, including workers rights, consumer rights, immigration, citizenship, domestic violence, hate crimes, health care, language access, and voting rights.

NAPALC would like to acknowledge the principal authors of this report, Ms. Deepa Iyer and Ms. Juliet K. Choi, NAPALC staff attorney & NAPABA Partners Community Law Fellow. Additionally, NAPALC would like to extend a special thanks to the following: our affiliates, particularly Mr. Gen Fujioka with the Asian Law Caucus and Ms. Karin Wang with the Asian Pacific American Legal Center; Mr. George Wu, NAPALC legal intern; and the individuals listed in the Appendix who provided invaluable input and guidance.



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## INTRODUCTION

A responsive legal system that is both efficient and accessible, regardless of one's national origin or socioeconomic status, is a critical element of a democratic society. In America, the forums provided by the courts and the assistance generated through the legal assistance system facilitate the effective resolution of civil disputes, ensure that individuals are empowered to address violations of fundamental civil rights, and enable those who have been accused of crimes to receive due process.

In recent years, however, there is a growing concern that America's courts are becoming more and more inaccessible to millions of individuals, whether as a result of jammed court dockets yielding several-month delays, financial barriers both low- and moderate-income individuals are confronted with in trying to secure legal assistance, or the cultural and language barriers immigrants face in attempting to navigate today's courts. There are numerous studies documenting just how inaccessible today's legal system has become.

For example, in 1993, the American Bar Association (ABA) conducted a comprehensive assessment<sup>1</sup> on the legal needs of Americans with regard to civil matters. The study revealed that while nearly half of all low- and moderate-income households faced at least one legal situation per year that could have been resolved through the legal system, these individuals did not seek legal assistance. The reasons for not seeking legal assistance ranged from doubts about the effectiveness of the legal system to concerns about fees and court costs to a sense that the problem at hand was not serious enough to adjudicate and could somehow be handled outside of the legal system without an attorney. According to the ABA, the findings of this landmark study "sounded an alarm that our civil justice system is fundamentally disconnected from the lives of millions of Americans."<sup>2</sup>

Echoing the ABA's study, subsequent state reports have confirmed that access to justice continues to be limited for the poor and is a particularly elusive notion for immigrants. Nearly a decade later, in 2002, the California Commission on Access to Justice issued a report<sup>3</sup> that presented the achievements of California's statewide initiatives in increasing legal access since 1996. The report revealed that the "access gap" between poor Californians and legal services, while diminishing, remains high. According to the report, "just 28 percent of the legal needs of the state's poor and lower-income residents [were] being addressed." Similarly, in Washington State, a 2002 legal needs survey<sup>4</sup> revealed that low-income residents tried to handle over 85 percent of their civil legal needs without seeking legal assistance because they either did not know there were laws that could protect them, or they simply did not know where to turn for help.

In 2000, the National Asian Pacific American Legal Consortium (NAPALC), a national organization whose mission is to advance the human and civil rights of Asian Americans through policy advocacy, public education and litigation, issued a hallmark report entitled *The Search for Equal Access to Justice: Asian American Access to Justice Project*. In an effort to capture a broad perspective, NAPALC hosted a one-day conference of legal experts from across the country with familiarity and experience in working with the Asian community to produce this report, synthesized the comments and recommendations from the national experts, and ultimately produced a sentinel report documenting the challenges faced by Asian Americans seeking legal services. In the end, the final report not only echoed the ABA's declaration that today's legal system is becoming more inaccessible to millions but also provided a blueprint for understanding the unique and *growing* unmet needs and challenges of the Asian American community.

Since the publication of the *Asian American Access to Justice Project* just four years ago, NAPALC has continued to recognize the need to comprehensively address the legal needs of immigrants, particularly in light of the ever changing demographics of our society. For example, current Census figures reflect that the number of people with limited English proficiency (LEP) ranges from nearly 11 million people (or just over 4% of the total population who speak English "not well" or "not at all") to 21 million (or just over 8% who speak English less than "very well").<sup>5</sup> Therefore, not surprisingly, a dual set of circumstances faced by the immigrant community – language barriers that prevent individuals from seeking legal assistance *and* the lack of linguistically and culturally appropriate and accessible services in today's legal system – has created a

frustrating environment for many stakeholders: a judiciary with limited or even no resources to address immigrant litigants amidst jammed dockets; a public interest law community, particularly public defenders and legal aid attorneys, striving to provide adequate legal counsel without the necessary resources; and especially an immigrant community that faces devastating consequences by inadvertently becoming more vulnerable and more disenfranchised than ever before.

With this second publication, NAPALC hopes to sound a clarion call for all stakeholders – policymakers, the judiciary, members of the bar, the non-profit community, governmental agencies, and philanthropic institutions – to examine and work together to strengthen America’s legal system so as to ensure that the most vulnerable populations of our society, particularly our immigrant community, have access to the legal system and, ultimately, to justice. While perhaps a behemoth effort at first blush, the legal community must embrace the challenge to reform, especially in light of the progress and efforts made by other institutions and industries to better reflect and serve our dynamic society. The business community often cites their efforts in the spirit of business necessity given the competitive market. The healthcare community often cites both business reasons and public health and safety imperatives. To illustrate, in a recent report issued by Chinese for Affirmative Action (CAA) entitled *The Language of Business – Adopting Private Sector Practices to Increase Limited-English Proficient Individuals’ Access to Government Services*, several institutions were highlighted for their effective practices in ensuring access to services for the immigrant community. All innovative, some programs and practices have been in existence for over a decade while others are new and evolving.

For example, in an effort to provide quality healthcare services *and* capture cost savings, Kaiser Permanente, a leader in private healthcare, established a Multicultural Services Center in San Francisco. The Center’s bilingual staff all must have conversational proficiency in both English and a non-English language, including knowledge of idiomatic expressions. Further, there is a commitment to ensure that healthcare interpreters possess a set of core competencies, including the understanding of basic medical situations, medical terminology, cultural competency, and professional standards and ethical codes. Charles Schwab’s Asia Pacific Services operates sixteen “fully bilingual” branches for two Asian language populations, Chinese and Korean, across the states of New York, Texas, Washington and California. Additionally, SBC Communications, one of the world’s leading data, voice and Internet service providers, provides dedicated call center customer service in Cantonese, Japanese, Korean, Mandarin, Spanish, Tagalog and Vietnamese across multiple call centers located throughout California. Each service representative undergoes testing in English, math, language assessment and reasoning/logic and completes 12 weeks of training prior to beginning their full responsibilities. These are just a few illustrations, but they are tried and true programs with translatable and applicable relevance to the legal system.

Again, the fundamental question is how can the American legal system address the unmet needs of a growing population of immigrants? More specifically, how can the judiciary, the public interest legal community (particularly public defenders and legal aid attorneys), policymakers, and philanthropic institutions comprehensively address the challenges that accompany the increased need for legal services by new immigrants? This report suggests a framework for initiating public/private partnerships among all stakeholders in the legal system.

Based on research and interviews with individuals representing a range of stakeholders around the country, this report is being offered to recommend policy positions, identify intersections of collaborative work between the private and public sectors, and highlight “best practices” and models already in place. Following this Introduction is an Executive Summary that provides an outline of this report’s Recommendation for Action and Collaboration. The body of the report provides the expanded Recommendation for Action and Collaboration, which includes illustrations, model programs and practices. The Appendix contains, among other anecdotal information, descriptions of stakeholders in the legal system and data about the linguistic needs of immigrants in America today.

## IMMIGRANTS AND THE LEGAL SYSTEM

Regardless of income level or economic status, immigrants – be they small-business owners, undocumented workers, or those who have been in America for many years – can find the legal system to be overwhelming, incomprehensible and inaccessible due to cultural and language barriers.

LEP individuals are wary of seeking legal assistance for a variety of reasons. Like many in the general public, immigrants are often unaware of the fact that no- or low-cost services from lawyers or the courts are available. Some immigrants also believe that legal institutions are neither functional nor trustworthy, a perspective that is rooted in their experiences in their countries of origin, where legal systems may have been dysfunctional or non-existent.

In addition, when limited English ability intersects with factors such as poverty,<sup>6</sup> a lack of basic legal knowledge, or cultural apprehension associated with engaging with legal and governmental institutions, it places not merely a gap, but a wall, between LEP immigrants and legal services or the courts.

Similarly, in the legal system, there is an absence of comprehensive policies and practices that facilitate access by LEP immigrants, often resulting in:

- The use of family members, minor children, friends and untrained staff at community or religious groups being asked to translate for LEP clients, leading to a wariness on the part of clients to be completely forthright;
- Miscommunication between attorneys and clients, leading to inaccurate or incomplete legal advice being given or followed;
- The reluctance by LEP individuals to resolve even simple legal situations that could be addressed by a call to a legal advice hotline or a court appearance; and
- The need to identify and provide more costly and serious legal intervention if legal issues were not addressed at the time of their inception.

In addition, when the legal system does not adequately address the legal needs of immigrants, there is a ripple effect throughout the entire infrastructure. The ineffectiveness of courts to provide linguistic access to LEP litigants or witnesses can lead to delays that affect all litigants. Access by non-LEP litigants, whether individuals or corporations, can be frustrated if the system is incapable of effectively addressing the needs of LEP individuals.

Stories abound about the harmful impact that the lack of linguistically and culturally sensitive legal assistance can have on LEP individuals:

- The lead paragraph of an April 2002 story in the *California Bar Journal*<sup>7</sup> noted:

*Some must use their children as interpreters when facing an eviction or some other pressing civil matter. Some show up in court unable to communicate with the judge or court staff. And some – fearing a language barrier – simply do not show up for court at all.*

- An attorney from Greater Boston Legal Services remarked recently upon the multiple barriers that prevent her immigrant clients from attempting to navigate the state’s complicated unemployment insurance program’s requirements. As she noted:

*It’s a complicated system to begin with... Then when you layer that on top of the*

*language barriers, on top of the noncompliance by employers, the factors combine to make it very difficult for workers with limited English to get access.<sup>8</sup>*

- An article in the *Scranton Times-Tribune* told the story of how a Chinese translator was once called to translate for a Vietnamese speaker who had failed to make a court appearance. The same article mentioned that the Vietnamese man had to spend at least six weeks in jail for a drunken driving charge (which usually requires only a few days in jail) due to inadequate interpretation and communication.<sup>9</sup>
- An article in the *Milwaukee Journal-Sentinel* describes the “soundproof wall” that exists between a Hmong family and court proceedings<sup>10</sup>:

*A glass barrier blocked the off-microphone conversation between the attorneys and the judge. Eventually the microphone came on, and the dialogue of the sentencing could be heard throughout the courtroom.*

*It didn't help the non-English speakers in Thao's family much.*

*To them, the language barrier had the same effect as the soundproof wall. Only after the hearing, in a cluster around Thao's family, did the group get a full explanation of what had happened: three years' probation.*

## **AN OPPORTUNITY FOR COMPREHENSIVE CHANGE**

To facilitate greater access to the legal system and the courts by immigrants and LEP individuals, there are numerous opportunities for all stakeholders to take action and institutionalize model practices so as to comprehensively reform and produce a more user-friendly *and* efficient legal system.<sup>11</sup> Currently, there are a handful of efforts under way around the country to address the lack of meaningful access to the legal system; unfortunately, they are largely occurring in a vacuum and in isolation from one another. As a result, LEP individuals have varied experiences depending on the types of legal structures they attempt to access or the geographical areas in which they live.

For example, in some states, immigrants may have access to certified interpreters, while elsewhere there are no standards for testing interpreter qualifications. Some immigrants will be able to access legal services from legal aid agencies, while others may not due to their immigration status. Some legal service providers may offer a variety of linguistic services, while others in the same service area are unable to provide any. In the court system, an LEP witness or litigant speaking an African or Asian language may have access to interpreters in some courts, while only Spanish-speaking interpreters are available in others.

In fact, a recent *National Law Journal* described a Tennessee state judge's practice of relying upon a “...hodgepodge of untrained-and free-interpreters for arraignments, pleas and hearings, despite a 2002 order by the Tennessee Supreme Court [that] said that courts must use state-certified or registered court interpreters.”<sup>12</sup> An article in the *Scranton Times Tribune*<sup>13</sup> noted that interpreters who are used in the courts there range in their competency levels:

*Some are noted as especially competent. Others are noted as ‘not certified’ even though there is no standard certification for court translators in Pennsylvania.*

*Some have taken standardized language proficiency tests and submitted detailed resumes. Others just happen to speak a language. Some are sought out at the recommendation of lawyers. Others call the courthouse and offer their services.*

In introducing legislation in 2003 to assist state court interpreter programs resolve some of these inconsistencies, Senator Kohl of Wisconsin characterized the programs in this manner:

*...[S]ome states have robust and effective court interpreter programs in their State courts. These States recruit, train, test and certify individuals in all necessary languages. However, many States have limited programs which may test and certify interpreters for only one language. Such States may have only a small number of interpreters certified to interpret courtroom proceedings. Still other States have no program at all. We have heard horror stories of “amateur” interpreters attempting to translate courtroom events...<sup>14</sup>*

Clearly, the lack of uniform standards, policies or benchmarks that can guide the legal system in developing and implementing linguistic assistance and access by immigrants to their services must be addressed. A straightforward example is the need for developing a reference book of commonly used legal terms made available in various languages with standardized translation so as to ensure consistency of translation nationally. Otherwise, a patchwork of responses and varying standards may emerge, creating (or perhaps perpetuating) the inconsistent delivery of legal services to immigrants.

The benefits of instituting uniform standards and policies to measure interpretation ability, enforce Executive Order 13166, enhance the participation by states in creating interpreter services, and encourage local bar associations to provide trainings to lawyers and judges on how to work with interpreters or LEP clients can all have a profound impact on the ability of LEP individuals to access the legal system and the courts, as well as on the experiences of non-LEP litigants generally.

With the current focus by governmental agencies such as the Department of Justice on linguistic access issues,<sup>15</sup> local and federal legislative initiatives to expand interpreter access,<sup>16</sup> successful collaborative projects around the country between community-based organizations and legal services,<sup>17</sup> and language-centered services in courts,<sup>18</sup> a unique opportunity exists to create a comprehensive package of policies and practices that incorporate partnerships between a variety of stakeholders.

Without appropriate action on a number of different levels and by a variety of stakeholders, the legal system stands to collapse under the weight of the incoherent patchwork of responses currently in place to address the legal needs of immigrants and LEP individuals. It is vital that the legal system and other stakeholders seize this opportunity to create uniform policies, highlight successful models, and develop a long-term vision for ensuring that the legal system becomes accessible to immigrants and LEP individuals at all levels. Stakeholders must engage in local and national dialogue to prevent the legal system’s current inability to serve LEP individuals and immigrants from reaching a point of crisis.

**SIDEBAR:**  
**TAKING ACTION ON CRITICAL ISSUES**

Stakeholders in the legal system need to join together with community stakeholders and form a coalition to address the following issues.

- Issue 1.** *Meaningful access to the legal system, particularly the civil system, must be guaranteed for all individuals, particularly the immigrant community.*
- Issue 2.** *Private money restrictions on Legal Service Corporations (LSC) is unduly burdensome and unnecessary and must be lifted to help address the unmet legal needs of our immigrant community.*
- Issue 3.** *There is a dire shortage of trained interpreters for the legal system, and initiatives must be created to increase the supply of interpreters and translators.*
- Issue 4.** *Discussions on the national level are long overdue and must be convened to tackle language access issues in the legal system.*
- Issue 5.** *Broad-based partnerships are necessary and must be developed at the local level (community organizations and legal stakeholders).*
- Issue 6.** *More dollars are needed for English as a Second Language programs so that all immigrants have a fair chance so as not to be treated as second class citizens.*

## EXECUTIVE SUMMARY

**Recommendation 1. Congress, the Administration, and federal agencies, specifically, the Department of Justice and the Legal Services Corporation, should create and implement a comprehensive set of policies to guarantee access by limited English proficient individuals to the civil legal aid system.**

**Action 1.1.** The Department of Justice (DOJ) should issue specific guidance to federally-funded legal service providers, the courts, and federal agencies with administrative law processes (ie. Social Security, U.S. Citizenship and Immigration Services, etc.) regarding their obligations to provide linguistic access.

**Action 1.2.** DOJ should convene conferences and meetings with legal service providers, court personnel, and judges to regularly update them about best practices and model programs and to provide technical assistance.

**Action 1.3.** DOJ should determine the appropriate mechanism for evaluating and reviewing the progress of agencies that provide legal or adjudicative services in complying with Executive Order 13166.

**Action 1.4.** The Legal Services Corporation (LSC) should issue its highest level of guidance to recipients to clarify their responsibilities to provide linguistic access.

**Action 1.5.** During the annual appropriations cycle for LSC, Congress should allocate funds towards a comprehensive language access research and funding initiative to benefit legal service providers who are LSC recipients.

**Action 1.6.** Congress should require DOJ to work with LSC in identifying issues for trainings and technical assistance that could be useful for legal service providers.

**Recommendation 2. Congress should lift restrictions preventing LSC recipients from addressing the legal needs of individuals with certain types of immigration status.**

**Action 2.1.** States should repeal any similar restrictions on legal service providers at the local level.

**Action 2.2.** State justice communities, the American Bar Association and community groups should educate Congress and states about the impact of restrictions and be vigilant in monitoring similar initiatives in other states.

**Recommendation 3. Congress, the Administration, the Department of Justice and other legal stakeholders should support the hiring, training and testing of interpreters.**

**Action 3.1.** Congress, the Administration and states should support initiatives to establish court interpreter programs.

**Action 3.2.** DOJ should convene a taskforce to develop recommendations for the use, testing, qualifications and training of interpreters both inside and outside the courtroom. When adopting guidelines for measuring interpretation skills and ability, a range of issues need to be considered.

**Action 3.3.** Courts, bar associations, and interpreter associations should collaborate in developing and conducting trainings for interpreters.

**Action 3.4.** Bar Associations and law schools should develop training programs and seminars on how to work with interpreters.

**Action 3.5.** Community colleges and universities should prepare individuals for careers in legal interpretation.

**Recommendation 4. On the national level, bar associations, the National Legal Aid and Defender Association, interpreter associations, and funders should convene discussions around linguistic access in the legal system to foster partnerships, identify areas for future research and assessment, and share information about proven practices.**

**Action 4.1.** The philanthropic community should fund national discussions and regional follow-up forums on the topic of language access in the legal system.

**Action 4.2.** The American Bar Association, in partnership with national minority bar associations, should conduct a national study on the legal needs of and barriers faced by LEP individuals, while a *larger* number of local bar associations should conduct similar studies on a statewide or city level.

**Action 4.3.** The National Legal Aid and Defender Association, in partnership with ABA committees and community-based organizations that serve immigrants, should assess the effectiveness of telephonic interpreter programs and technology-based initiatives to enhance linguistic access while continuing to support existing telephone bi- and multi-lingual legal hot line programs.

**Action 4.4.** Civil rights organizations, the American Immigration Law Foundation, and the American Bar Association should collaborate in assessing the extent to which interpreters are being provided at immigration-related hearings.

**Action 4.5.** The American Bar Association and the National Legal Aid and Defender Association should create a national taskforce to study the provision of linguistic services in state courts.

**Action 4.6.** Funders should support national and regional gatherings of legal interpreters and members of the civil rights community with familiarity and experience in working with immigrant communities.

**Recommendation 5. Locally, partnerships between bar associations, community organizations, court interpreter programs, legal service providers and other state justice community stakeholders should encourage the development of internal policies that will enhance linguistic access to legal services.**

**Action 5.1.** Courts and legal service providers should adopt internal policies to assess language needs in the service population, identify existing resources, create mechanisms for the translation of vital documents and provision of interpreter services, and collect data about the language needs of clients.

**Action 5.2.** Minority bar associations, interpreter associations, and community-based organizations should offer trainings to judges and court personnel; to lawyers through continuing legal

education programs; and to law students. The trainings should be focused on serving limited English proficient (LEP) clients and working with interpreters.

**Action 5.3.** Interest on Lawyers' Trust Accounts (IOLTA) programs should support localized demonstration projects to enhance linguistic access.

**Action 5.4.** The ABA Commission on Interest of Lawyers' Trust Accounts should encourage and support the development of language access initiatives in local IOLTA programs.

**Recommendation 6. Congress and state legislatures should support English as a Second Language and other language enrichment programming to facilitate the learning of English by recent immigrants and non-English speakers.**

**Action 6.1.** Congress should direct the Office of Management and Budget to conduct a study analyzing the costs and benefits implications of providing (and failing to provide) linguistic access in the legal system.

## RECOMMENDATIONS FOR ACTION AND COLLABORATION

**RECOMMENDATION 1: Congress, the Administration, and federal agencies, specifically, the Department of Justice and the Legal Services Corporation, should create and implement a comprehensive set of policies to guarantee access by lep individuals to the civil legal aid system.**

Congress, the Administration, federal agencies along with the Legal Services Corporation (LSC), state-level policymakers, bar associations and courts can all participate in the development of policies to institutionalize the provision of access by immigrants to the legal system. Policies that define the scope and nature of linguistic access, provide evaluative and enforcement methods, and set uniform standards for interpreter services can be helpful in meeting the legal system's goal of ensuring equal access to justice. In order to ensure stakeholders can all participate in the development of these fundamental and critical policies, stakeholders need a vehicle and a capacity to meet regularly to nurture the development of initial policies and strengthen relationships between agency and non-agency entities alike. Further, a broader coalition can be developed so as to invite new stakeholders to the table who can help to build a more comprehensive and diverse strategy, particularly on linguistic access policies.

**ACTION 1.1: THE DEPARTMENT OF JUSTICE SHOULD ISSUE SPECIFIC GUIDANCE TO FEDERALLY-FUNDED LEGAL SERVICE PROVIDERS, THE COURTS, AND FEDERAL AGENCIES WITH ADMINISTRATIVE LAW PROCESSES (IE. SOCIAL SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, ETC.) REGARDING THEIR OBLIGATIONS TO PROVIDE LINGUISTIC ACCESS.**

Over the past five years, the provision of language access has increasingly become a civil rights issue. Title VI's prohibition against national origin discrimination has been extended to include the denial of or the refusal to provide language access by federally funded entities. The Department of Justice (DOJ) regulations implementing Title VI require that recipients of federal funds must ensure meaningful access by limited English proficient (LEP) persons to their programs and activities.<sup>19</sup>

As a result of Executive Order 13166 signed by President Clinton in 2000, federal agencies providing financial assistance are required to publish guidance on how they and their recipients will ensure meaningful assistance to LEP persons.<sup>20</sup> DOJ published a policy guidance document in June 2002 to clarify legal requirements and set forth criteria that should be considered when designing and implementing language assistance plans.<sup>21</sup> It is clear then that under Title VI, Executive Order 13166, and subsequent guidance, courts and legal service agencies receiving federal financial assistance would be obligated to provide linguistic access.

Many organizations and legal service providers currently receive funding from DOJ and other federal agencies to provide legal assistance. Legal service agencies around the country receive grants from DOJ to develop and provide a range of services that affect immigrants.<sup>22</sup> DOJ has already set forth four criteria that recipients of federal funds should consider when determining which methods to employ to provide language access. These criteria include:

- The number or proportion of LEP persons served or encountered in the eligible service population;
- The frequency with which LEP individuals come in contact with the recipient's program;
- The nature and importance of the program, activity, or service provided by the program; and
- The resources available to the recipient and costs.

Pursuant to this general framework, DOJ should issue guidance that is specific to legal service

providers. On several occasions in the past, DOJ has provided direction to domestic violence and treatment programs operating shelters and to state courts.<sup>23</sup> Similarly, DOJ should undertake the responsibility of providing guidance that is tailored towards legal service agencies that receive federal funding. The guidance should include formal guidelines and parameters, and offer examples of models and practices that are effective in the legal system context.

DOJ should also issue guidance regarding the obligations of the court system. DOJ has provided some initial guidance to state courts with respect to their obligations.<sup>24</sup> DOJ's guidance letter states in part:

*It is beyond question that America's courts discharge a wide range of important duties and offer critical services both inside and outside the courtroom. Examples range from contact with the clerk's office in a pro se matter to testifying at trial. They include, but are not limited to: matters involving domestic violence, restraining orders, parental rights and other family law matters; eviction actions; alternative dispute resolution or mediation programs; juvenile justice matters; judicial diversion programs; matters affecting driving privileges; actions having potential impact on immigration status; criminal actions; and more. Each is a critical encounter to participants in the judicial process. Where those participants are also LEP persons, the provision of reasonable and appropriate language assistance may be necessary to ensure full access to your courts...*

Further guidance from DOJ that clarifies the scope of linguistic access in both federal and state courts is necessary. For example, does judicial administration (ie. practices, procedures and offices that manage the courts) have an obligation to provide linguistic access? Are all courts and all proceedings expected to be accessible to immigrants and LEP individuals? Are courts expected to provide written translated materials to litigants and witnesses who must navigate the court system?

**ACTION 1.2: THE DEPARTMENT OF JUSTICE SHOULD CONVENE CONFERENCES AND MEETINGS WITH LEGAL SERVICE PROVIDERS, COURT PERSONNEL AND JUDGES TO REGULARLY UPDATE THEM ABOUT BEST PRACTICES AND MODEL PROGRAMS AND PROVIDE TECHNICAL ASSISTANCE.**

DOJ and other federal agencies that fund entities providing legal services to immigrants and LEP individuals should provide technical assistance through regular meetings and conferences. For example, the Violence Against Women's Office (VAWO), which funds many legal service agencies, should convene conferences that specifically analyze and review the availability of linguistic assistance for women who seek temporary protection orders or self-help divorces.

Examples of technical assistance that DOJ could provide may include the following: translated fact sheets for use by legal service providers in conducting outreach to LEP populations to inform them of their rights and of possible courses of action if they are denied linguistic access by the legal system, and a funding program through which providers seeking to enhance language access receive the resources to be able to do so.

**ACTION 1.3: THE DEPARTMENT OF JUSTICE SHOULD DETERMINE THE APPROPRIATE MECHANISM FOR EVALUATING AND REVIEWING THE PROGRESS OF AGENCIES THAT PROVIDE LEGAL OR ADJUDICATIVE SERVICES IN COMPLYING WITH EXECUTIVE ORDER 13166.**

DOJ should review the extent to which those agencies responsible for legal and adjudicative processes are meeting their obligations to provide linguistic access. For example, DOJ should assess the progress of agencies such as the Social Security Administration that provide quasi-legal adjudicative functions for the public. In addition, DOJ should devise an internal process by which complex complaints alleging violations of Title VI are referred to DOJ's Civil Rights Division.

**ACTION 1.4: THE LEGAL SERVICES CORPORATION SHOULD ISSUE ITS HIGHEST LEVEL OF GUIDANCE TO RECIPIENTS, CLARIFYING THEIR RESPONSIBILITIES TO PROVIDE LINGUISTIC ACCESS.**

The federal government has historically deemed the provision of civil legal services to be a federal responsibility, and as such, created a single entity to be the primary funder for legal service agencies. The Legal Services Corporation (LSC) – the current incarnation of the Office of Economic Opportunity that was established in the 1960s – was created in 1974 by Congress. LSC is a private, nonprofit corporation with a bipartisan Board of Directors. Congress appropriates funding to LSC yearly, which LSC then allocates to legal service organizations around the country through a competitive grant process. Legal service providers in a designated region essentially “bid” to become the federal provider in that area. LSC establishes maximum income levels for individuals who are eligible for legal assistance from its grantees. For 2004, LSC established a maximum income level equivalent to 125 percent of the federal poverty guidelines.

However, the scope of the obligation on the part of LSC recipients to provide linguistic access has not been clearly defined. Historically, there has been ambiguity over whether or not LSC and LSC programs are covered under Title VI and subsequent policies.<sup>25</sup> We believe that LSC and its programs are covered under Title VI and Executive Order 13166 and should abide by their requirements, mainly due to the fact that LSC receives its funds directly from Congress like other federal agencies.

LSC clearly understands the need to address linguistic access institutionally. Before a Congressional appropriations committee in 2004, representatives of the LSC were questioned about the scope of linguistic access provided by LSC grantees.<sup>26</sup> During the hearing, LSC President Barnett noted:

*[I]t is important to be able to provide translation and interpretive services, and that is an increased cost to the program but one that we feel is critically important. And we are actually, in large measure, trying to be of assistance in three ways. We are trying to as a policy measure give guidance to our programs as to how they can give meaningful access to people with limited English proficiency, to get information on translation of vital documents and standards for interpreters and translators and approaches to determining language needs in that community and trying to help them recruit bilingual staff...*

LSC’s first effort at articulating clear standards and obligations for its grantees began in January 2002 when it requested public comment on whether or not it should issue formal or informal guidance regarding compliance with obligations regarding limited English proficiency.<sup>27</sup> After reviewing public comments and convening an advisory committee, LSC chose to issue a Program Letter regarding services to clients with limited English proficiency.<sup>28</sup> The Program Letter however is not a regulation, which would have made certain standards binding on LSC’s grantees.

LSC should continue to elevate the significance of linguistic access issues by providing guidance along with continued training that clearly defines the scope of linguistic access provided by the majority of legal service providers around the country. We recommend that LSC provide its strongest level of guidance to recipients and that it include the following components at minimum:

- An explanation of how LSC grantees will be evaluated in terms of their obligations to provide linguistic access;
- The provision of training and technical assistance to assist LSC programs in meeting their obligations;
- The requirement that LSC grantees and potential recipients incorporate the costs of linguistic access provision into their budgets and proposals;

- The requirement that LSC grantees assess their service areas for LEP needs and detail their efforts to provide linguistic access in program reports; and
- The evaluation of linguistic access methods during audits and site visits conducted by the LSC’s compliance and enforcement office.

**ACTION 1.5: DURING THE ANNUAL APPROPRIATIONS CYCLE FOR LEGAL SERVICES CORPORATION, CONGRESS SHOULD ALLOCATE FUNDS TOWARDS A COMPREHENSIVE LANGUAGE ACCESS RESEARCH AND FUNDING INITIATIVE BENEFITING LEGAL SERVICE PROVIDERS WHO ARE LSC RECIPIENTS.**

Each year, LSC requests funds from Congress to support its programs. Congress should increase funds, providing an increase in total resources to LSC, for an initiative that is focused on conducting research and providing support to language access programming. These funds could be used by LSC to do the following:

- Conduct local demographic surveys that measure the number of LEP individuals in the service areas of LSC grantees and assess their language needs. This information could be used by LSC grantees in developing appropriate programs that meet the needs of the LEP population in their service areas;
- Allot funds for regional “demonstration projects” to providers in regions of the country with large LEP populations to develop language assistance programs; and
- Distribute funds through a competitive grant program to providers interested in developing extensive programs for language access provision and immigrant outreach.

The start of a special initiative to enable the provision of linguistic access would not be a unique endeavor for LSC or Congress. Since 2000, Congress has appropriated funds to LSC with the purpose of increasing the incorporation of technology to enhance service delivery among legal aid providers.<sup>29</sup>

Moreover, allocating funds for language access provision finds ample precedent in the health care context where providers can seek funds through the Bilingual/Bicultural Demonstration Project grants through the Office of Minority Health (OMH) of the U.S. Health and Human Services (HHS), as well as through programs operated by the Health Resources and Services Administration (HRSA). In addition, federal matching funds for language services are available through Medicaid and the State Children’s Health Insurance Program (SCHIP).

Similar pockets of Congressional funding do not currently exist for LEP individuals seeking legal services. Congress should therefore specifically earmark funds for LSC that will be allocated to programs to create or strengthen options for language assistance.

**ACTION 1.6. CONGRESS SHOULD REQUIRE THE DEPARTMENT OF JUSTICE TO WORK WITH LEGAL SERVICES CORPORATION IN IDENTIFYING ISSUES FOR TRAININGS AND TECHNICAL ASSISTANCE THAT COULD BE USEFUL FOR LEGAL SERVICE PROVIDERS.**

In the mandate to fund the language access research and planning initiative described above, Congress should also require DOJ to collaborate, and coordinate if necessary, with LSC in identifying areas for trainings and technical assistance. Such trainings and technical assistance could be provided to LSC recipients on a formal and frequent basis by DOJ representatives, the American Bar Association, the National Legal Aid and Defender Association, community-based and non-profit organizations, and interpreter associations. LSC should coordinate the provision of trainings and technical assistance after consultation with DOJ and LSC recipients.

**RECOMMENDATION 2: Congress should lift restrictions preventing Legal Services Corporation recipients from addressing the legal needs of individuals with certain types of immigration status.**

In 1996, Congress imposed restrictions on legal service providers that receive funds from LSC. These restrictions range from prohibitions on lobbying and participating in class actions to the representation of individuals with certain types of immigration statuses. With respect to the latter, Congress stated:

*None of the funds appropriated . . . to the Legal Services Corporation may be used to provide financial assistance to any person or entity . . . that provides legal assistance [to] any alien, unless the alien is present in the United States and [is] a legal permanent resident, has been granted asylum or admission as a refugee – including conditional entry as a refugee prior to April 1, 1980, whose order of deportation has been withheld by the Attorney General, or belongs to a narrow category of lawfully admitted agricultural workers.<sup>30</sup>*

While Congress had restricted LSC grantees from assisting certain types of immigrants with Congressional funds since 1980, there were no restrictions on who grantees could assist with non-LSC or private funds. (Informally, this prohibition is often referred to as the “LSC private money restriction.”) However, the 1996 restrictions also barred LSC grantees from providing services to certain types of immigrants, even if they were using non-LSC funds to do so.<sup>31</sup> As a result, many agencies have had to create physically and financially distinct entities that would secure non-LSC funds to assist the classes of immigrants who cannot be helped through LSC funds. Moreover, recognizing that this private money restriction amounts to the denial of access to justice for a vulnerable population, particularly the immigrant community, a growing alliance of organizations and legal providers has come together to push for legislative reform to remove the LSC private money restriction. One of the more visible coalitions includes the National Campaign to Repeal the Legal Services Corporation’s “Private Money Restriction” led by the Brennan Center For Justice at NYU School of Law. An active member of this growing national coalition, NAPALC continues to provide its expertise on the issue to assist with this advocacy initiative and help educate the public about how these types of restrictions have such a devastating impact on the Asian American community.

**ACTION 2.1: STATES SHOULD REPEAL ANY SIMILAR RESTRICTIONS ON LEGAL SERVICE PROVIDERS AT THE LOCAL LEVEL.**

Many states have followed Congress’ example to impose “copycat” restrictions on legal services for immigrants. Texas, Virginia and Washington State prohibit assistance to undocumented immigrants, while Virginia prohibits legal assistance to migrant workers.<sup>32</sup> In response to the LSC and state-based restrictions, many organizations have simply given up their LSC funds or have had to maintain physically separate programs.<sup>33</sup>

As former LSC President John McKay pointed out in a *Los Angeles Times* May 2001 article in response to the Virginia state legislature’s imposition of the restriction barring the use of state funds for legal services to migrants, “[t]o restrict funding for migrants is a huge mistake... You are invited by the government to work here but you must check your legal rights at the border. The morality of that is highly questionable.”<sup>34</sup>

Following the lead of the national efforts to reform and repeal the restrictions discussed above, state level organizations and stakeholders can implement similar coalition strategies currently being developed and rolled out by national alliances and coalitions.

**ACTION 2.2: STATE JUSTICE COMMUNITIES, THE AMERICAN BAR ASSOCIATION AND COMMUNITY GROUPS SHOULD EDUCATE CONGRESS AND STATES ON THE IMPACT OF SUCH RESTRICTIONS, AND BE VIGILANT IN MONITORING SIMILAR INITIATIVES IN OTHER STATES.**

Access to justice is clearly denied to those immigrants who cannot be assisted by LSC grantees due to these restrictions. It is vital for state justice communities to become involved in lifting the restriction that currently exists. Engaging in public dialogue about the impact of the restriction on local immigrant workers and others seeking legal assistance could make this issue more visible in the legal community.

**RECOMMENDATION 3: Congress, the Administration, the Department of Justice, and other legal stakeholders should support the hiring, training and testing of interpreters.**

The use of interpreters by legal service providers and the courts is a practice that does not occur frequently enough around the country. Interpreters are needed to mediate between LEP clients and attorneys in pre-courtroom proceedings such as intake, meetings and conference calls, and witness preparation sessions. Courts need interpreters for legal proceedings that include an LEP litigant or witness.

Despite the rising awareness of the need to provide interpreter services and the universally acknowledged notion that not offering a criminal defendant adequate language services could violate his or her constitutional right to a fair trial, courts around the country are not providing interpreter services uniformly.

Moreover, while the use of interpreters is becoming more common, it is unclear whether courts or lawyers are ensuring that interpreters are meeting basic qualification standards. In order to prevent inconsistency in terms of the quality of interpretation and translation services of interpreters, and to ensure that LEP clients and attorneys are able to rely on a certain standard in interpretation service provision, stakeholders should consider whether uniform policies need to be implemented.

**ACTION 3.1: CONGRESS AND THE ADMINISTRATION SHOULD SUPPORT INITIATIVES TO ESTABLISH COURT INTERPRETER PROGRAMS.**

Congress and the Administration should consider establishing a national court interpreter program. In July 2003, the Conference of Chief Justices and the Conference of State Court Administrators passed a resolution calling on Congress to establish such a program. The resolution recognized that LEP individuals require interpreter services in order to fully understand and participate in the court system, and that the costs for developing a pool of interpreters in multiple languages are on the rise.

*(continued on page 17)*

**WHO CAN LSC-FUNDED PROGRAMS HELP?**

- ✓ Legal permanent residents
- ✓ Spouses and parents of U.S. citizens
- ✓ The unmarried children (under 21) of U.S. citizens
- ✓ Immigrants with asylum, refugee and conditional entrant status
- ✓ Persons granted withholding of deportation
- ✓ Persons who have applied for legal permanent residency status and whose applications have not been rejected, if they have a spouse, parent or child who is a U.S. citizen
- ✓ Migrant farm workers with H-2A visa status
- ✓ Victims of trafficking
- ✓ Victims of domestic abuse regardless of immigration status, as long as representation is related to preventing or obtaining relief from the abuse

*A SNAPSHOT OF INTERPRETER USE  
IN THE COURT SYSTEM & LEGAL AID CONTEXT*

- ◆ Pursuant to the Court Interpreters Act of 1978, the Administrative Office of the U.S. Courts determines standards of qualification for interpreters in certain languages for use in criminal proceedings. Thus far, the Administrative Office has approved certification exams in Spanish, Haitian Creole and Navajo. Currently, however, only Spanish is in use, as it is the single largest requirement in federal courts. The Administrative Office does not provide national tests for speakers of any other languages.
- ◆ In 2002, federal courts used interpreters in approximately **170,000 events**, according to the Administrative Office of U.S. Courts. **More than 100 languages** were interpreted in those events, with Spanish being used in 93.6 percent of the proceedings, followed by Arabic, Mandarin, Russian, Vietnamese, Korean, Cantonese, Haitian Creole, French, and Punjabi.
- ◆ **Federal courts** rely upon professionally qualified or language-skilled interpreters when languages other than Spanish are needed. Professionally qualified interpreters are those who have passed similar examinations by another federal agency, or are members in good standing in professional associations that provide certification exams. Language-skilled interpreters have not been evaluated in the same manner as professionally qualified interpreters and must be approved by the court on a case-by-case basis.

- ◆ Similarly, **State Courts** have different standards for evaluating interpreter competency. An attempt at uniformity of certification testing and standards led to the creation of the Consortium for State Court Interpreter Certification in 1995 to develop court interpreter proficiency tests and regulate their usage. This body, which is a part of the National Center for State Courts, consists of 30 states that represent approximately two-thirds of America's non-English speaking population. To join, states must pay between \$15,000 and \$50,000 depending on the number of non-English speakers in their state, and serve as the official representative of the state court system in their states. The Consortium for State Court Interpreter Certification sets standards for testing in many languages, and provides testing materials, operational manuals, and assistance in setting up court interpreter programs.
- ◆ States often provide testing exams in additional languages as well. There is currently great variation in terms of the levels of competency that is required of interpreters working in state courts who speak languages other than the ones tested by the Consortium

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Justices and state court administrators are not far from the mark in suggesting that national attention should be paid to the state court interpreter services in America. There have been some efforts to increase funding for state court interpreter programs of late. Senator Herb Kohl (D-WI) introduced the State Court Interpreter Grant Program Act in October 2003, which would create a federal grant program to support state court interpreter services to help states begin developing interpreter programs or to modify their current models.<sup>35</sup>

In support of his legislation, Senator Kohl has noted that federal funding is necessary to ensure that court interpreters receive specialized training and that state interpreter services programs do not rely on friends or family members of LEP clients for interpreter assistance.<sup>36</sup> He also emphasized the importance of federal involvement by noting that federal guarantees of due process might be violated if adequate interpreter services are not provided.

Congress should hold hearings and the Administration should conduct studies in order to become more knowledgeable about the status of court interpreter services and support legislation that will make the system more effective. Similarly, states should consider allocating specific funds to develop local court interpreter programs, as well as provide training and technical assistance to judges and court administrators. Further, the judiciary, both on the federal and state levels, should invest in foreign language learning for existing court personnel in conjunction with court interpreter programs so as to strengthen language-based initiatives. Cumulatively, these efforts will also help to improve and ameliorate language accessibility issues *outside* the courtroom (ie. filing forms with and requesting information from the clerk's office, etc.).

**ACTION 3.2: THE DEPARTMENT OF JUSTICE SHOULD CONVENE A TASKFORCE TO DEVELOP RECOMMENDATIONS FOR THE USE, TESTING, QUALIFICATIONS, AND TRAINING OF INTERPRETERS AND TRANSLATORS BOTH IN THE COURTROOM AND OUTSIDE THE COURTROOM. WHEN ADOPTING GUIDELINES FOR MEASURING INTERPRETATION SKILLS AND ABILITY, A RANGE OF ISSUES NEED TO BE CONSIDERED.**

Developing qualification standards for oral interpretation and written translations can provide a benchmark by which lawyers, judges and court administrators can assess interpreters and translators. Such baseline standards can also lead to uniformity among the courts around the country.

### *Legal Service Organizations*

In legal service organizations, qualified and trained interpreters are asked to interpret between attorneys and LEP clients. In non-courtroom proceedings such as conference calls, meetings and discussions, an interpreter who is sufficiently trained and qualified to interpret in a legal context could be used. Interpreters may be hired on staff or as independent contractors, or may work on a freelance or contract basis.

For example, several organizations have already developed programs to work with qualified interpreters in legal contexts. One program at Washington, DC's Asian Pacific American Legal Resource Center recruits, hires and trains qualified interpreters from the community to serve as legal interpreters in non-courtroom settings. Another program, based at the Access to Justice Institute at University of Seattle School of Law in Washington State, works with bilingual law students who provide interpreter services for clients.

A taskforce convened by DOJ could develop recommendations for the types of qualifications, testing and training that should be used in both the court system as well as in the pre-courtroom context. The taskforce should consist of representatives from the American Bar Association, the National Legal Aid and Defender Association, national minority bar associations, representatives from state and federal court systems that have maintained successful interpreter offices, the National Consortium for State Court Interpreter Certification, community-based organizations with effective interpreter projects, interpreter associations, and the Legal Services Corporation.

When adopting guidelines for measuring interpretation skill and ability, the following issues should be considered:

✓ **How can the existing system and use of court interpreters be enhanced?**

***State Courts:** The Consortium for State Court Interpreter Certification should expand its member states. Currently, 30 states are part of the Consortium and all efforts should be made to recruit the remaining states. The advantages of membership in the Consortium include training and technical assistance and participation in a standardized testing program that permits interstate reciprocity, making it possible for interpreters tested in member states to work anywhere without retesting.*

*Generally, state court interpreter programs seem to be inconsistently developed and implemented. While some states such as Washington and New Jersey have had long-standing programs with effective track records, others are only beginning the process of developing interpreter services. Many states have not made it a priority to allocate funds to join the National Consortium of State Courts or develop their own interpreter programs. In turn, the Consortium may not have made sufficient funding available to support the development of additional certification examinations, which can range from \$20,000-\$30,000. State-level policymakers should assist states that have not yet joined the Consortium to do so by providing sufficient funds when allocating funds for state court budgets.*

***Federal Courts:** The Administrative Office of U.S. Courts must conduct an audit to assess the language needs presented by LEP individuals by consulting with district court interpreter programs. Understanding the types of language needs that are presented and the languages in which federal district courts are providing professionally-qualified or language-skilled interpreters will provide the basis for the Office to expand the languages in which national certification examinations are offered.*

- ✓ **Should there be a competency level that all interpreters should meet in order to provide oral interpretation or written translations both inside and outside the courtroom setting?**
- ✓ **How much flexibility in terms of training and testing can be used to employ qualified interpreters in non-courtroom proceedings?**
- ✓ **Should there be a standardized pay scale used for interpreters dependent on their capabilities?**
- ✓ **What are the drawbacks and strengths of using video conferencing as a means to identify and engage interpreters (as opposed to live interpretation or the use of telephone)?**
- ✓ **In what languages should certification or testing be provided?**

*On the federal court level, the Administrative Office currently provides certification exams only in Spanish. For all other languages, the federal courts must devise their own systems, leading to arbitrary decision-making by individual judges and the absence of baselines or benchmarks to evaluate interpreter competency. As a result, courts in the federal system differ vastly in their administration of court interpreter programs. For example, the Southern District of New York administers in-house examinations to*

evaluate competency (rather than have qualifications determined by presiding judges) in Russian, Polish, French, Italian, Mandarin, Cantonese, Fuzhou, Arabic, Greek, and Portuguese.<sup>37</sup>

At minimum, NAPALC recommends that national certification examinations should be offered in Arabic, Mandarin, Korean, French, Russian and Vietnamese. Moreover, federal district court programs should expand the languages in which they provide examinations and ensure that linguistic access is being offered to LEP clients at all points of entry into the federal court system, and not only during trials or courtroom proceedings.

On the state court level, tests are currently provided by the Consortium to its member states to evaluate interpreter proficiency in Spanish, Russian, Vietnamese, Korean, Hmong, Spanish, Cantonese, Laotian, Haitian-Creole, Arabic and Mandarin. Tests in Somali and Serbian are in development.<sup>38</sup> The National Consortium should continue to expand the languages that are tested in order to reflect the linguistic diversity and special needs of member states, based on a survey of the new language needs being presented in the state courts.

### **INTERPRETER DEGREE PROGRAMS**

#### **MASTER DEGREES IN LEGAL INTERPRETING**

There is only one program in the country that offers a two-year masters program specifically in legal interpreting. Developed by Dr. Virginia Benmaman, this program is housed at the Graduate School of the College of Charleston in South Carolina. The program focuses on English-Spanish interpreting in the courtroom and offers classes on the American legal system and legal language. Begun in 1997 with a grant from the State Justice Institute, the program's graduates are working in law enforcement, government agencies and the court system.

#### **MASTER DEGREES IN TRANSLATION & INTERPRETATION**

The Graduate School of Translation & Interpretation at the Monterey Institute of International Studies offers masters degrees in translation and interpretation. The program also prepares students to take the California court and federal certification exams.

#### **CERTIFICATE PROGRAMS**

New York University's School of Continuing and Professional Studies offers a certificate program in court interpreting in Spanish/English, which includes classes in court procedures and fundamentals of court interpreting. UCLA Extension, for example, offers a one-year program that leads to certificates in Chinese/English, Korean/English, and Spanish/English interpretation and translation. Brookdale Community College in Lincoln, New Jersey, offers a community interpreting in Spanish certificate program which introduces students to consecutive interpreting and prepares them for state court certification exams.

### **ACTION 3.3: COURTS, BAR ASSOCIATIONS, AND INTERPRETER ASSOCIATIONS SHOULD COLLABORATE IN DEVELOPING AND CONDUCTING TRAININGS FOR INTERPRETERS.**

Seasoned interpreters working at all levels must have access to regular trainings and refresher classes. Since attorneys, judges and parties are likely to use legal terminology, procedural jargon, and formal language, it is important that a court-certified interpreter is comfortable in such an environment.

Interpreters should be required to attend frequent trainings and seminars where they learn about various aspects of the law, how to communicate with judges and lawyers, and develop a deeper understanding of legal terminology. These programs could also offer interpreters an opportunity to discuss and resolve common problems faced during in-court interpretation or translations.

### **ACTION 3.4: BAR ASSOCIATIONS AND LAW SCHOOLS SHOULD DEVELOP TRAINING PROGRAMS AND SEMINARS ON HOW TO WORK WITH INTERPRETERS.**

Just as interpreters should attend trainings and seminars to learn legal terminology, members of the bar, law students and faculty should attend training programs so as to better understand the effective use and role of the interpreter. Because there are numerous parties involved in a proceeding, the role of an interpreter must be clearly understood so as to avoid any conflict between the parties. As highlighted in some programs, for example, an interpreter used on behalf of a victim of domestic violence should not then be used as an interpreter for the defendant. Further, such trainings can also highlight cultural considerations an interpreter must handle when interpreting between two (or more) languages.

**ACTION 3.5: COMMUNITY COLLEGES AND UNIVERSITIES SHOULD PREPARE INDIVIDUALS FOR CAREERS IN LEGAL INTERPRETATION.**

For new interpreters or individuals seeking to become interpreters, training opportunities should be created. For example, community colleges and universities can establish terminal degree programs and/or short, intensive courses for individuals interested in becoming professional translators or interpreters. Programs leading to masters' degrees in interpretation can help individuals expand their ability to pass certification exams and find staff positions with courts or legal service providers or increase freelancing opportunities. In addition, refresher courses as part of continuing professional education curricula will allow more seasoned interpreters to receive information about new developments and techniques. Finally, programs should include courses that specifically address legal interpreting to provide students with an understanding of the contexts in which they might work, legal terminology, and the ethical rules.

Some universities and colleges are already offering different types of programs to assist individuals who seek to become interpreters. These programs vary from practical courses on simultaneous and consecutive interpretation to intensive modules to prepare students for the state court certification examination. Other institutions, especially in areas with large immigrant populations, should follow the examples presented below to offer educational and professional opportunities for individuals interested in becoming interpreters or translators.

Educational institutions should also conduct research on the programs that are currently available to make recommendations for incorporating model practices, simulations, and research into similar programs. Interpreter associations should be consulted in ensuring that educational programming is useful to the practitioner and provides a realistic understanding for students of the challenges that could be faced on a day-to-day basis as a legal or court interpreter.

**RECOMMENDATION 4: On the national level, bar associations, the National Legal Aid and Defender Association, interpreter associations and funders should convene discussions around linguistic access provision in the legal system to foster partnerships, identify areas for future research and assessment, and share information about proven practices.**

Engaging in national discussions around linguistic access can bring visibility and urgency to an issue that is often ignored or de-emphasized at conferences dealing with the practice of law. Creating a national or several regional forums to discuss many of the recommendations presented in this report can lead to the development of a comprehensive effort to address linguistic access in local communities around the country.

**ACTION 4.1: THE PHILANTHROPIC COMMUNITY SHOULD SUPPORT NATIONAL DISCUSSIONS AND REGIONAL FOLLOW-UP FORUMS ON THE TOPIC OF LANGUAGE ACCESS IN THE LEGAL SYSTEM.**

At such a gathering, various stakeholders should be convened to engage in discussions around the need for better research, the sharing of model programs, and the practicality of making many of the recommendations presented here and by stakeholders at a national forum a reality. Key parts of the agenda at these forums should be an identification of topics that need further research.

**ACTION 4.2: THE AMERICAN BAR ASSOCIATION, IN PARTNERSHIP WITH NATIONAL MINORITY BAR ASSOCIATIONS, SHOULD CONDUCT A NATIONAL STUDY ON THE LEGAL NEEDS OF AND BARRIERS FACED BY LEP INDIVIDUALS, WHILE A LARGER NUMBER OF LOCAL BAR ASSOCIATIONS SHOULD CONDUCT SIMILAR STUDIES ON A LOCAL LEVEL.**

The American Bar Association (ABA) should take a leadership role in conducting a comprehensive legal needs study of low- and moderate-income individuals that is translated into different languages and

asks specific questions related to linguistic access. The Standing Committee on Legal Aid and Indigent Defendants (SCLAID) within the ABA should be tasked with conducting the study in partnership with the Hispanic National Bar Association and the National Asian Pacific American Bar Association.

The last comprehensive study in the 1990s was not conducted in any non-English languages, and may not have captured the experiences and responses of low-income LEP individuals. The ABA should conduct another such national study that contains substantive sections to understand how immigrants and LEP individuals address legal needs. In addition, the study should inquire into the linguistic barriers faced by LEP individuals in both in-court and out-of-court proceedings.

Local bar associations and access to justice commissions should undertake comprehensive studies that explore the impact of linguistic and cultural barriers on the ability to access the legal system. (A handful of bar associations and commissions have taken the initiative to conduct such studies and those should be reviewed and utilized as reference models.) Many states are currently in the process of conducting such studies. For example, California's Access to Justice Commission is in the process of developing a report that details the use of interpreters in the courts. The National Legal Aid and Defender Association (NLADA) which publishes a report on the progress of state-based partnerships created under the State Planning Assistance Network (SPAN) Access to Justice Support project should provide guidance on the types of survey questions that should be asked of immigrants and combine the results of local studies into a report that will supplement any national studies.

**ACTION 4.3: THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, IN PARTNERSHIP WITH THE AMERICAN BAR ASSOCIATION COMMITTEES AND COMMUNITY-BASED ORGANIZATIONS THAT SERVE IMMIGRANTS, SHOULD ASSESS THE USE AND EFFECTIVENESS OF TELEPHONIC INTERPRETER PROGRAMS AND TECHNOLOGY-BASED INITIATIVES TO ENHANCE LINGUISTIC ACCESS WHILE CONTINUING TO SUPPORT EXISTING TELEPHONE BI- AND MULTI-LINGUAL LEGAL HOT LINE PROGRAMS.**

While the use of telephonic interpreter services (also called language lines) should not be relied upon as the sole method of providing linguistic access, legal service providers often use language lines to communicate with LEP clients in languages that are rarely encountered, or when no trained and qualified interpreters are immediately available.<sup>39</sup> Language lines are also used in emergency situations when, for example, a client seeks a restraining order at a court proceeding when no interpreters are readily available. An assessment of the pitfalls and challenges from the use of language lines should be conducted, and recommendations outlining the appropriate and limited use of language lines should be issued. NLADA and the ABA should consider entering into a national contract for telephonic interpreter services to allow member organizations or legal service partners to access language lines at low cost.

Deeper inquiry needs to be made into the use of technology to enhance linguistic access. NLADA and the Center for Law and Social Policy (CLASP) engaged in a joint project called the Project for the Future of Equal Justice between 1997 and 2001 to assess how legal services programs could improve their use of technology. Recent analysis from that Project and others show that there is an increase in the use of the Internet by all segments of the population.<sup>40</sup> Further research needs to be conducted to understand how technological advances and the digital revolution assist the legal system in bridging language barriers. While case management and intake systems can clearly benefit from technological improvements, immigrants and LEP individuals need to be assisted as well.

In addition, NLADA should conduct an assessment of the use of self-help kiosks, information centers in courts and other programs to measure their effectiveness and impact on increasing legal access by immigrants and LEP individuals. Several courts are beginning to use information centers and kiosks to assist litigants and others seeking to use the system. A study on how these programs could be used to assist LEP clients could reveal model practices that could be replicated in other parts of the country.

For example, the “Centro de Recursos Legales,” or Spanish Self-Help Center,<sup>41</sup> established by the Fresno County Superior Court in Fresno, California, helps Spanish speakers complete legal forms and review court documents. It also presents “how to” clinics on various aspects of the law that may affect the Spanish speaking community. The I-CAN project (Interactive Community Action Network) developed by the Legal Aid Society of Orange County informs clients how to complete legal and court forms. Whether such projects can be enhanced with linguistically accessible software and technology should be explored as well.

**ACTION 4.4: CIVIL RIGHTS ORGANIZATIONS, THE AMERICAN IMMIGRATION LAW FOUNDATION, AND THE AMERICAN BAR ASSOCIATION SHOULD COLLABORATE IN ASSESSING THE EXTENT TO WHICH INTERPRETERS ARE BEING PROVIDED AT IMMIGRATION-RELATED HEARINGS.**

In the aftermath of September 11th, the government’s use of policies such as detentions, special registration, and deportations may have compromised linguistic access, according to reports by Amnesty International and Human Rights Watch. It is important to examine the current status of linguistic access by immigration authorities and officials to ensure that Title VI is not being violated.

The assessment should study the extent to which interpreters are being provided at hearings before the Board of Immigration Appeals, the Executive Office of Immigration Review, asylum hearings, detention and deportation proceedings, and other proceedings where decisions are made regarding the immigration status of individuals.

**ACTION 4.5: THE AMERICAN BAR ASSOCIATION AND THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION SHOULD CREATE A NATIONAL TASKFORCE TO STUDY THE PROVISION OF LINGUISTIC SERVICES IN STATE COURTS.**

The study should examine the need for linguistic services in all state and county courts and at other points of entry to the court system, including traffic, criminal, small claims and family courts by conducting audits of court administrators, judges and customer services staff and engaging with local community-based organizations that serve immigrants.

**ACTION 4.6. FUNDERS SHOULD SUPPORT NATIONAL AND REGIONAL GATHERINGS OF LEGAL INTERPRETERS AND MEMBERS OF THE CIVIL RIGHTS COMMUNITY WITH FAMILIARITY AND EXPERIENCE IN WORKING WITH IMMIGRANT COMMUNITIES.**

Supporting the professional development of qualified and certified interpreters is a much-needed initiative. Interpreter associations are being formed both nationally and locally and require funding to provide continuing education classes or to share resources and information.

Nationally, these organizations include the American Translators Association (ATA)<sup>42</sup> and the National Association of Judiciary Interpreters and Translators (NAJIT),<sup>43</sup> both membership-based entities. Among other resources and activities, the ATA provides an online directory of interpreters and translators with nearly 5,000 entries. NAJIT, which has more than 900 members, advances quality interpretation and translation services in the judicial system and holds an annual conference where members can learn about innovative techniques and receive training on interpretation in the legal context.

On the state level, different interpreter/translator associations exist as well. These entities include interpreters who practice in various arenas and offer a valuable resource for legal service agencies and court systems seeking interpreters or information about providing linguistic access. For example, the Chicago Area Translators and Interpreters Association, the Houston Interpreters and Translators Association and the Michigan Translators/Interpreters Network all have online directories and hold trainings and meetings regularly.<sup>44</sup>

While there is a considerable amount of activity and interest by members of interpreter associations, they lack the support needed to become more engaged in the discussions and dialogues surrounding linguistic access. Convening regional and national gatherings of legal interpreters will set the foundation for partnerships between interpreter associations and legal service providers; for the start of research initiatives regarding the practical impact of the use of techniques such as telephonic interpretation in the courts; and for the sharing of information about model programs and proven practices. Such regional and national gatherings should include the input and participation of members of the civil rights community, specifically with organizations with familiarity and experience in working with immigrant and LEP communities like the Mexican American Legal Defense and Education Fund (MALDEF), National Council of La Raza (NCLR), National Asian Pacific American Legal Consortium (NAPALC) and others convening the meetings in an effort to ensure the input of the immigrant communities. With support from public and philanthropic institutions, interpreter associations can become effective partners in local and national discussions on linguistic access and services.

**RECOMMENDATION 5: Locally, partnerships between bar associations, minority bar associations, community organizations representing ethnic communities, court interpreter programs, legal service providers and other state justice community stakeholders should encourage the development of internal policies that will enhance linguistic access to legal services.**

Locally, collaborative partnerships between legal and community-based stakeholders can improve the methods by which linguistic access is being provided. We recommend that local taskforces with stakeholder representatives be created within the state bar association. These taskforces should make recommendations regarding model policies that can be implemented by court interpreter programs and legal service providers.

**ACTION 5.1. COURTS AND LEGAL SERVICE PROVIDERS SHOULD ADOPT INTERNAL POLICIES TO ASSESS LANGUAGE NEEDS IN THE SERVICE POPULATIONS, IDENTIFY EXISTING RESOURCES, CREATE MECHANISMS FOR THE TRANSLATION OF VITAL DOCUMENTS AND PROVISION OF INTERPRETER SERVICES, AND COLLECT AND MAINTAIN DATA ABOUT THE LANGUAGE NEEDS OF CLIENTS.**

Based on effective policies that meet the above-stated goals, we recommend that policies contain the following components:

***Court System:***

1. Develop policies by which courts can assess the qualifications of an interpreter who is not certified or qualified by the state by way of a *voir dire* examination that elicits information about the interpreter's background and interpretation experience.
2. Recruit interpreters through mainstream and ethnic media and community-based organizations to become staff-level interpreters who are assigned to certain counties.<sup>45</sup>
3. Develop bilingual brochures and materials that convey information to LEP individuals about one's rights in the courts, what one should do and where one should go to address particular issues. In addition, any forms commonly used should be translated, and bilingual signage should be posted in areas of the courts to direct LEP individuals.<sup>46</sup>
4. Collect and share information about best practices and model court interpreter programs.
5. Develop a lexicon of frequently-used words that appear in the legal context (*ie. settlement, litigation, plaintiff, defendant, witness, judge, juror*) and translate it into the most commonly-used languages. The

lexicon should be made available to state and federal courts around the country, as well as to community-based organizations and legal service providers who may encounter LEP clients seeking to use the court system.

***Legal Service Providers:***

1. Convene meetings with local legal service providers and the LSC and DOJ representatives to discuss implementation issues.
2. Conduct self-testing to assess how well legal service programs are serving legal immigrants.

*The Discrimination Research Center in California has conducted studies for a legal service agency to assess how effectively it addresses language needs of clients. Similar studies should be incorporated into activities by legal providers who are conducting assessments regarding their existing services.*

3. Recommend the adoption of certain critical components in a language access plan to be developed by legal service providers.<sup>47</sup> The plan should accomplish the following:
  - a) Sets forth a statement that communicates that its efforts to provide linguistic access are part of its underlying commitment to access to justice for all individuals.
  - b) Notes that the use of family members, friends or minor children to interpret for clients should be avoided at all costs.

*As Paul Uyehara who manages the language access project at Community Legal Services (CLS) in Philadelphia has written, allowing family members and friends to interpret for an LEP client “. . . extends past bad habits of making the client, rather than the program, responsible for overcoming language barriers.”<sup>48</sup> In addition, the client’s privacy may be endangered and family members or friends will likely be untrained in providing consistent and accurate interpretation in a legal context.*

- c) Sets forth a process by which vital documents will be translated.

*“Know your rights” documents that explain a client’s legal rights in various contexts, as well as intake forms and other administrative applications that must be completed, should be translated into the most commonly encountered languages. It is useful to use “safe harbors” by which languages will be translated if they are spoken by a certain percentage or number of individuals in*

**ORAL LANGUAGE SERVICES**

*In-Language Messages for Phone Callers:* Legal service providers should include information in outgoing messages that indicate the types of languages in which assistance can be provided and, where possible, include such a message in the target language. Bilingual staff who will use their language skills should be encouraged to include a message in the non-English language on their voicemail systems as well.

*Commercial Telephonic Interpretation Services:* While the use of telephonic interpreter services should not be relied upon as the sole method of providing access, it may be effective where LEP clients speak languages that are rarely encountered, or when no trained and qualified interpreter is immediately available. If the organization will be relying on a telephonic interpreter service, the policy should indicate whether and how authorization is required by staff persons seeking to use the “language line.”

*Hiring bilingual staff:* Recruiting and hiring bilingual staff is the most effective way of providing linguistic assistance. While it is not possible to hire staff that speak all languages that might be encountered in the provider’s service area, it is important to identify the most commonly-spoken languages and hire staff that can communicate with clients speaking those languages. A policy should emphasize the importance of recruiting bilingual staff as a means of reaching LEP populations.

*the service area. While many organizations are using the web to disseminate in-language information, it is unclear whether LEP individuals are actually using internet-based resources to a great extent. It is not effective to exclusively limit information dissemination to an organization's website. A provider should assess the language needs in the service population in order to develop appropriate benchmarks that meet the needs of the local LEP community.*

- d) Mandates periodic assessments on the implementation of a language access plan.

*It is important to evaluate how well a language access plan is being implemented, especially if a provider has multiple offices. Consistent training opportunities and an understanding of innovative models or techniques should also be considered frequently.*

- e) Requires collection and maintenance of data about language needs of clients.

*Collecting information about the number of clients who present language needs and the types of languages that clients speak (regardless of their language proficiency in English) is vital. Such information should be gathered during the intake process and be specifically coded and preserved in data collection systems.*

- f) Identifies a variety of methods by which oral language services will be offered.

*With respect to oral interpretation services, a provider should include in its policy the variety of ways in which LEP clients will receive assistance.*

**ACTION 5.2: MINORITY BAR ASSOCIATIONS, INTERPRETER ASSOCIATIONS, AND COMMUNITY-BASED ORGANIZATIONS SHOULD OFFER TRAININGS TO JUDGES AND COURT PERSONNEL; TO LAWYERS THROUGH CONTINUING LEGAL EDUCATION PROGRAMS; AND TO LAW STUDENTS. THE TRAININGS SHOULD BE FOCUSED ON SERVING LEP CLIENTS AND WORKING WITH INTERPRETERS.**

The provision of training and technical assistance must become an institutional responsibility for all stakeholders who work with immigrant clients. The trainings should be focused on serving LEP clients and working effectively with interpreters.

ACTION 5.2(A): Trainings and Technical Assistance for the Court System

Court administrators, judges, and court interpreters must each receive proper training regularly. Judges and court administrators clearly understand both their obligations to ensure linguistic access for LEP litigants and the process by which interpreters should be requested or appointed. All judges should undergo an orientation during which they are exposed to information about the LEP population in the jurisdiction, the legal obligations for providing meaningful linguistic assistance, and the cultural biases that could come into play.

Trainings for court personnel should include:

- Cultural and linguistic sensitivity trainings during orientations for new judges and court administrators on the obligation to provide linguistic access and on the methods by which to ensure it is provided in the jurisdiction, and discussions/seminars for all judges and court administrators on a regular basis; and
- Trainings for new attorneys on working with court interpreters through continuing legal education seminars.

Such trainings can be developed by chapters of minority bar associations who often work closely with

local community-based organizations that encounter individuals who report having had negative experiences with the court system. Joint trainings between minority bar associations and community-based organizations for the judiciary and court administrators can become meaningful and cost effective programs. Being exposed to the cultural and linguistic barriers that face LEP individuals will help judges become more sensitive to their needs in the courtroom. Increasing cultural and linguistic awareness will help to underscore the importance of using a certified interpreter and prevent the inappropriate use of a friend or family member as an interpreter.

In addition, the judiciary can take active steps to increase its own understanding of local immigrant communities by initiating partnerships with minority bar associations and community-based organizations. In Minnesota, for example, the judiciary voluntarily arranged meetings between Hmong community members, the Minnesota Supreme Court, and court administrators in an effort to discuss and anticipate cultural issues that might be presented by the expected arrival of thousands of Hmong refugees to St. Paul in 2004.<sup>49</sup> Outreach to community members, supplemented with formal trainings, can help the judiciary become more aware of and open to cultural and linguistic issues that many LEP immigrants face.

**The Hispanic National Bar Association (HNBA)** is an incorporated, non-profit, national association representing the interest of more than 25,000 Hispanic American attorneys, judges, law professors, and law students in the United States and Puerto Rico. The primary objectives of the HNBA are to increase professional opportunities for Hispanics in the legal profession and address issues of concern to the national Hispanic community. Legal education and civil rights have been fundamental concerns of the HNBA.

**The National Asian Pacific American Bar Association (NAPABA)** is the United States' only national association of Asian Pacific American attorneys, judges, law professors, and law students, providing a national network for its members and affiliates. Through its network of committees, NAPABA is in the forefront of national and local activities in the areas of civil rights reform, combating anti-immigrant backlash and hate crimes, increasing the diversity of the Federal and State judiciaries, and professional development.

#### ACTION 5.2(B): TRAININGS FOR LAWYERS AND LAW STUDENTS

Law students and new lawyers should be given ample opportunities in law schools and through continuing legal education classes to understand the unique experiences of potential clients. Several actions could be taken including the following:

- The ABA should encourage law schools to expand their **clinical programs** in order to allow students to work with immigrants, and incorporate into the curriculum basic cultural and linguistic sensitivity trainings.<sup>50</sup> Learning how to work with interpreters or how to ask questions of new immigrants are essential skills that could lead to more effective communications between attorneys and their clients. In addition, the ABA should consider recommending that law schools offer students the opportunity to learn a second language while pursuing legal studies.
- Bar associations, law firms and educational institutions should incorporate seminars and classes about working with LEP clients and interpreters into the **continuing legal education program** of each state. Certified interpreters, local judges, and representatives of minority bar associations could teach many of these classes. For example, the Court Interpreter Association of the Ohio Valley (CCIO) develops and participates in such seminars for lawyers and other interpreters, and could be a source of information for similar efforts around the country. In Philadelphia, the

Pennsylvania Bar Institute’s CLE programs recently included a session on effectively representing LEP clients in hearings. Lawyers will be more likely to attend such trainings and seminars if they can receive continuing legal education credit for them.

- A specific mention of the importance of **training criminal defense lawyers** who often work with indigent immigrants is warranted. Criminal defense lawyers and public defenders must especially receive training on when to secure an interpreter’s assistance in communicating with or representing an LEP defendant. The NLADA, which works closely with public defenders around the country, and the ABA’s SCLAID Committee should convene a working group to study the current state of interpreter use by criminal defense lawyers and public defenders, and recommend policies and programs to improve the status of linguistic access to criminal defendants.

**ACTION 5.3. INTEREST ON LAWYERS TRUST ACCOUNTS SHOULD SUPPORT LOCALIZED DEMONSTRATION PROJECTS THAT PROVIDE LINGUISTIC ACCESS.**

In each state, lawyers place client funds in Interest on Lawyers Trust Accounts (IOLTA) that are then pooled into an interest-bearing trust account. The proceeds are directed towards civil legal service programs in the state. IOLTA programs operate in all fifty states and in the District of Columbia, and have withstood legal challenges. IOLTA funds can be a resource for agencies seeking to build language access programs. As these programs have a commitment towards supporting equal justice for poor individuals and strengthening community-based legal providers, it is reasonable to expect IOLTA programs to fund initiatives that improve linguistic access for LEP individuals.

Supporting language access programs would not be new territory for IOLTA programs. In 2003, for example, the Pennsylvania IOLTA Board supported Community Legal Services of Philadelphia for its Language Access Project (LAP). IOLTA funds were used to supplement LAP’s provision of training and consultations to other legal service programs in Pennsylvania on language access. In a recent article published in *Dialogue* by the ABA Division for Legal Services, Paul Uyehara notes that IOLTA programs “can . . . take a leadership role in educating [LSC] grantees about the imperatives behind serving LEP clients” in addition to funding program efforts of this nature.<sup>51</sup>

**ACTION 5.4. THE ABA COMMISSION ON INTEREST OF LAWYERS TRUST ACCOUNTS SHOULD ENCOURAGE AND SUPPORT THE DEVELOPMENT OF LANGUAGE ACCESS INITIATIVES IN LOCAL IOLTA PROGRAMS.**

The ABA Commission on IOLTA supports the operation of IOLTA programs and provides information, materials and technical assistance regarding the design and operation of IOLTA programs. The Commission should conduct a review of IOLTA programs nationwide to assess which ones support linguistic access initiatives. The Commission should also make recommendations to programs locally about what types of linguistic access initiatives should be supported.

**RECOMMENDATION 6: Congress and state legislatures should support English as a Second Language and other language enrichment programming to facilitate the learning of English by recent immigrants and non-English speakers.**

Non-English speakers in America know that they need to possess English-language proficiency in order to succeed. In 2000, approximately 1 million adults enrolled in English as a Second Language (ESL) programs that received funding through the U.S. Department of Education’s Office of Vocational and Adult Education (OVAE).<sup>52</sup> According to the OVAE, ESL classes are the fastest growing component of the state-administered adult education programs.<sup>53</sup>

However, Congress and state legislatures do not direct sufficient funds towards ESL or other language enrichment programs.<sup>54</sup> As a result, around the country, ESL classes are overfilled. In Lowell,

Massachusetts, a city with two large minority groups – Asians (primarily Cambodians) and Hispanics make up about 30 percent of the population – several centers offering ESL programs typically have waiting lists with 250 – 450 people who may have to wait up to a year to enroll. These centers serve nearly 2,000 students each year.<sup>55</sup> In addition, a report by the American Immigration Lawyers Foundation notes that in Seattle, 3,000 adults were on one program’s waiting list, while in New York, over 1,000 were subscribed to a public library’s list.<sup>56</sup> Limited funding for ESL classes continues to hamper the success of these highly demanded language enrichment programs and centers.

Congress, the Administration and state-level policymakers must follow through on their commitment to immigrants by ensuring that programs such as ESL classes are being supported. These programs will not fully resolve the need for linguistic access in the legal system, but can be an important first step in equipping immigrants with the language skills needed to be successful in their adopted homeland.

**ACTION 6.1: CONGRESS SHOULD DIRECT THE OFFICE OF MANAGEMENT AND BUDGET TO CONDUCT A STUDY ANALYZING THE COSTS/BENEFITS IMPLICATIONS OF PROVIDING (AND FAILING TO PROVIDE) LINGUISTIC ACCESS IN THE LEGAL SYSTEM.**

In 2002, the Office of Management and Budget (OMB) released a report that assessed the costs and benefits to federal agencies required to implement Executive Order 13166. The OMB report focused on the provision of language assistance in the health care context, and found that the “LEP premium,” or additional cost of providing language services, is only about \$4 per hospital visit.<sup>57</sup> A similar study should be commissioned by Congress in the legal context.

## CONCLUSION

Around the country, efforts to provide culturally and linguistically appropriate services have been initiated to ensure that LEP individuals are not excluded from receiving information or services to which they are entitled in various contexts. Here are just a few examples:

- ◇ To assist the approximately 5.5 million LEP students who attend public schools, the Administration has allocated more than \$13 billion in the 2004 fiscal year for public school programs to increase English proficiency;
- ◇ The health care advocacy community has created a National Language Access Advocacy Project, a coalition of over 45 entities including hospital and provider groups to develop a national agenda to improve language access in health care, and the Democratic leadership in the Senate has introduced legislation to provide culturally and linguistically appropriate health care to LEP individuals; and
- ◇ Cities from Monterey Park in California to New York City to Washington, D.C. have enacted policies that allocate funds to provide language access and impose local obligations on city agencies to ensure that LEP individuals seeking government services and benefits receive linguistic assistance.

How these initiatives and efforts can complement and enhance meaningful access by immigrants and LEP individuals to the legal system remains to be seen. It is clear that an opportunity exists today to develop policies and systems, informed by local models already in place, that will provide immigrants and LEP individuals with the ability to access legal services and the courts, understand their legal situations and the laws, and participate in legal proceedings. It is imperative that the legal system and its stakeholders ensure meaningful access to legal services and the courts for immigrants by: developing national standards for interpreter certification; conducting research into the substantive legal needs of immigrants; and institutionalizing language access programs and policies.

To make gains in the struggle towards ensuring full and equal access by immigrants and LEP individuals to the legal system, many of the recommendations in this report – directly offered by legal stakeholders themselves – should be considered, supported, and actualized. To underscore the point, a 1999 survey conducted by the National Center for State Courts revealed that immigrants, specifically non-English speakers, receive worse treatment in court than English speakers.<sup>58</sup> The time has come for not only a comprehensive assessment of linguistic access for immigrants, but also the creation of partnerships and the implementation of concrete steps to fulfill the legal system's promise of equal access for all.

## SOURCE NOTES

- 1 *Legal Needs and Civil Justice: Major Findings from the Comprehensive Legal Needs Study*, American Bar Association (1994).
- 2 *Id.*
- 3 “The Path to Equal Justice: A Five-Year Status Report on Access to Justice in California,” California Commission on Access to Justice (October, 2002) <<http://calbar.ca.gov/calbar/pdfs/accessjustice/2002-Access-Justice-Report.pdf>>.
- 4 “The Washington State Civil Legal Needs Study,” Task Force on Civil Equal Justice Funding, Washington State Supreme Court (September 2003) <[www.courts.wa.gov/newsinfo/CivilLegalNeeds%20093003.pdf](http://www.courts.wa.gov/newsinfo/CivilLegalNeeds%20093003.pdf)>.
- 5 Appendix 1 contains demographic information about the LEP population in America, including a list of commonly-spoken languages, and areas of the country where the LEP population has substantially increased in the past decade.
- 6 Recent studies reveal correlations between language proficiency rates and poverty levels. Poor people then who are LEP have an even more difficult time accessing legal services. According to a report by the Urban Institute’s Immigration Studies Program, during the 1990s, immigrants comprised one-fifth of low-wage workers in America. In addition, the report revealed that nearly two-thirds of these immigrant workers do not speak English proficiently. In Los Angeles County, the Asian Pacific American Legal Center has found that many Asian refugee communities have high LEP and poverty rates. Forty-six percent of the Cambodians in Los Angeles County are low-income, with seventy-two percent of that group reporting limited proficiency in English.
- 7 “Dearth of Qualified Interpreters Raises the Courtroom Language Barrier,” Kristina Horton-Flaherty, *California Bar Journal* (April 2002).
- 8 “Immigrants Hurt At Work Face Struggles,” Monica Rhor, *The Boston Globe* (November 28, 2003).
- 9 “Court Translators: Vital Need, Haphazardly Met,” *The Scranton Times-Tribune* (September 27, 2004).
- 10 “Hmong Immigrants Navigate Perplexing Legal System,” Derrick Nunnally, *The Milwaukee Journal-Sentinel* (May 1, 2004).
- 11 Appendix II contains a description of stakeholders that address components of the larger issue of meaningful access by LEP individuals to legal services and benefits. While this list is by no means comprehensive, it provides an initial understanding of the stakeholders that should be convened to begin discussions and dialogues on the issues presented in this report.
- 12 “Subject to Interpretation,” Peter Aronson, *The National Law Journal* (March 22, 2004).
- 13 “Court Translators: Vital Need, Haphazardly Met,” *The Scranton Times-Tribune* (September 27, 2004).
- 14 *Id.*
- 15 The Department of Justice’s webpage on language access issues is available at [www.lep.gov](http://www.lep.gov).
- 16 “The Language Access Act of 2004” (D.C. Code § 2-2001.01); Local Law 73 (2003).
- 17 The Asian Pacific American Legal Center in Los Angeles has collaborated with the Legal Aid Foundation of LA, Neighborhood Legal Services and the Legal Aid Society of Orange County in its Asian Language Legal Intake Project (ALLIP). The Asian Pacific American Legal Resource Center in Washington, D.C. has collaborated with legal aid organizations such as the Maryland Legal Aid Bureau and the Legal Services of Northern Virginia.
- 18 The Legal Aid Society of Orange County (LASOC) in partnership with the Superior Court of Orange County first deployed the Interactive Community Assistance Network (better known as I-CAN!) in May 2000 to help thousands of local residents obtain legal services. I-CAN! is a network of computer kiosks located in courthouses, libraries, police departments and other public buildings where people go to seek help with legal matters. Many of its software have been translated into Spanish and some into Vietnamese.
- 19 See 28 CFR 42.104(b)(2).
- 20 “Improving Access to Services for Persons with Limited English Proficiency,” 65 FR 50121 (August 16, 2000).
- 21 “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” 69 FR 53484 (September 1, 2004).
- 22 For example, the Office of Justice Programs (OJP) at DOJ provides grant opportunities for states and non-governmental institutions in the areas of juvenile and criminal justice and crime victim assistance. Through OJP, the Office on Violence Against Women has awarded over \$1 billion in funds since 1995 to states and organizations seeking to educate the community about domestic violence issues, provide legal services, and establish specialized domestic violence units.
- 23 “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,” 69 FR 53484 (September 1, 2004).
- 24 *Letter to Director of State Court and/or State Court Administrator* from Loretta King, Deputy Assistant Attorney General, Civil Rights Division, U.S. Department of Justice (dated December 1, 2003).
- 25 This is in part due to the undefined position of LSC and its grantees under Title VI of the Civil Rights Act and the possibility that

- defining LSC-directed funds as being federal in nature may preclude the receipt of matching funds from other federal agencies. As the LSC itself stated in the January 2002 Federal Register notice: “At the outset, a question has been raised with LSC regarding whether our grantees are, in fact, even subject to the requirements of Title VI of the Civil Rights Act. 68 FR 1210 (January 9, 2003). The argument in this case is that LSC grantees should not be considered recipients of Federal financial assistance, and therefore, not subject to Title VI. There is no single answer to the question of the “Federal” nature of LSC funds; LSC funds are considered “Federal” funds for some purposes and “non-Federal” for others.”
- 26 *Legal Services Corporation: Hearing on Legal Services Corporation Before the Subcomm. on Commerce, Justice, and State, the Judiciary, and Related Agencies of the House Comm. on Appropriations*, 108 Cong. (2004).
- 27 “Limited English Proficiency Guidance –Request for Comments,” 68 FR 1210 (January 9, 2003).
- 28 See LSC, *Draft Program Letter to All LSC Program Directors (no date listed)* <[http://www.lri.lsc.gov/pdf/other/011204\\_drftlepprogltr.pdf](http://www.lri.lsc.gov/pdf/other/011204_drftlepprogltr.pdf)>. As of September 2004, there was no final draft of this letter.
- 29 LSC’s Technology Initiative Grant (TIG) program awards funds to LSC grants through a competitive process. In fiscal year 2005, LSC plans to allocate \$4 million of appropriated funds to the TIG program.
- 30 Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, Sec 504(a)(18), 110 Stat. 1321, 50 (1996).
- 31 Many immigrants, especially those without status, are not receiving legal assistance. Immigrant workers, for example, are routinely provided unsafe housing and not paid minimum wages. Yet, these workers are often unable to seek legal services from local legal service providers due to their immigration status. Immigrants who suffer from domestic violence can also be affected by the restrictions placed on LSC providers. While Congress modified restrictions on LSC grantees to allow them to provide assistance to abused spouses and children *after* a victim of domestic violence was killed, that same victim, prior to her death, is unable to seek assistance for a protective order from an LSC grantee. Many LEP individuals and migrants, excluded from eligibility for legal assistance, are unable to find help elsewhere. *Preserving Aliens’ and Migrant Workers’ Access to Civil Legal Services: Constitutional and Policy Considerations*, Laura K. Abel & Risa E. Kaufman, 5 U. Pa. J. Const. L. 491 (2003).
- 32 *Id.*
- 33 Scott Carroll, *Group Fighting Trail Battle; Gulfcoast Legal Services Decided to Forgo Federal Money to Gain Freedom*, Sarasota Herald-Trib. (Florida), Feb. 15, 2004.
- 34 *Supra*, at n. 31.
- 35 *The State Court Interpreter Grant Program Act*, S. 1733, 108 Cong. (2003).
- 36 Senate Statement by Herb Kohl, CR S12610-12611 (October 15, 2003).
- 37 See <<http://www.nysd.uscourts.gov/interp.htm>>.
- 38 Consortium Certification Tests, Research Services, The National Center for State Courts (July 31, 2003).
- 39 Common commercial telephonic interpreter vendors include Bowne Global Solutions, a provider of interpreter services to the Executive Office for Immigration Review, and Language Line Services ([www.LanguageLine.com](http://www.LanguageLine.com)), a former division of AT&T and a provider widely used by government agencies. New Jersey is the first state to adopt a statewide telephonic interpretation program. For additional information, visit <<http://www.judiciary.state.nj.us/interpreters/index.htm>>.
- 40 *Equal Justice and the Digital Revolution: Using Technology to Meet the Needs of Low-Income People*, Julia Gordon, Project for the Future of Equal Justice (November 2002); *Future of Technology in Legal Services*, Gabrielle Hammond, National Technical Assistance Project (November 2002).
- 41 Further information can be accessed at [http://www.co.fresno.ca.us/2810/sshc\\_eng.htm](http://www.co.fresno.ca.us/2810/sshc_eng.htm).
- 42 [www.atanet.org](http://www.atanet.org).
- 43 [www.najit.org](http://www.najit.org).
- 44 See <[www.chicata.org](http://www.chicata.org); [www.hitagroup.org](http://www.hitagroup.org)> and <[www.mitinweb.org](http://www.mitinweb.org)>.
- 45 The New Jersey court interpreter program, for example, has 40 Spanish-speaking staff interpreters on hand who are assigned to a specific county.
- 46 The Foreign Language Services project of the Administrative Office of the Courts in North Carolina is translating information into Spanish to help LEP individuals. The materials include an English/Spanish pocket card that includes ten tips for anyone facing a court appearance, as well as bilingual criminal, domestic violence and civil forms. Bilingual signs are posted, and informational pocket cards describing different court programs available to assist clients are also provided.
- 47 Even though clearer policies must emerge from policymakers on the scope of linguistic access provision by the legal system, much can be accomplished in the interim. In fact, many legal service providers are already providing linguistic access to their clients, understanding that they risk disengaging from a large service population if they do not develop in-language methods of outreach and service delivery. At minimum, all legal service providers must develop internal policies that set forth the procedures that the organization’s staff will follow when an LEP client seeks legal services.
- 48 *Opening Our Doors to Language-Minority Clients*, Paul M. Uyehara, Clearinghouse Review, March-April 2003, 555.

- 49 “Justices Hope to Mend Cultural Gap,” Marie McCain, *Twin Cities Pioneer Press* (April 2004).
- 50 Several examples of such law school clinics already exist, including the Immigration/Workers’ Rights clinic at New York University Law School and the Access to Justice program at the University of Washington’s law school.
- 51 *Funding the Mandate for Language Access*, Paul M. Uyehara, *Dialogue*, Winter 2004, Vol.8: 1.
- 52 Frequently Asked Questions, National Center for ESL Literacy Education <<http://www.cal.org/ncl/faq.htm#Two>> (last accessed on September 30, 2004).
- 53 See Department of Education, *Adult Education Facts at a Glance* <<http://www.ed.gov/about/offices/list/ovae/pi/AdultEd/aefacts.html>> (last accessed on September 30, 2004).
- 54 The U.S. Department of Education (DOE) Budget as outlined on the Department’s web page provides figures for funding on English Language Acquisition for Elementary and Secondary Education but no such information appears to be available for equivalent programming in Adult/Vocational-Technical Education. That said, according to DOE’s Office of Vocational and Adult Education’s web site, ESL programs are the fastest growing component of the state-administered adult education programs. In 1997-98, nearly half (48%) of all [adult education programs] enrollments were in ESL programs, compared to 33% in 1993-94. See <<http://www.ed.gov/about/offices/list/ovae/pi/AdultEd/aefacts.html>> (last accessed on Sept. 8, 2004).
- 55 “Similar Cities, Different Tactics for ESL students,” Cathleen F. Crowley, *Eagle-Tribune* (January 13, 2002).
- 56 [http://www.aifl.org/ipc/policy\\_reports\\_2002\\_esl.asp](http://www.aifl.org/ipc/policy_reports_2002_esl.asp) (last accessed on September 30, 2004).
- 57 OMB Report to Congress: Assessment of the Total Benefits and Costs of Implementing Executive Order #13166: Improving Access to Services for Persons with Limited English Proficiency (March 14, 2002).
- 58 See *Position Paper on State Courts’ Responsibility to Address Issues of Racial and Ethnic Fairness*, Conference of State Court Administrators (December 2001).

APPENDIX

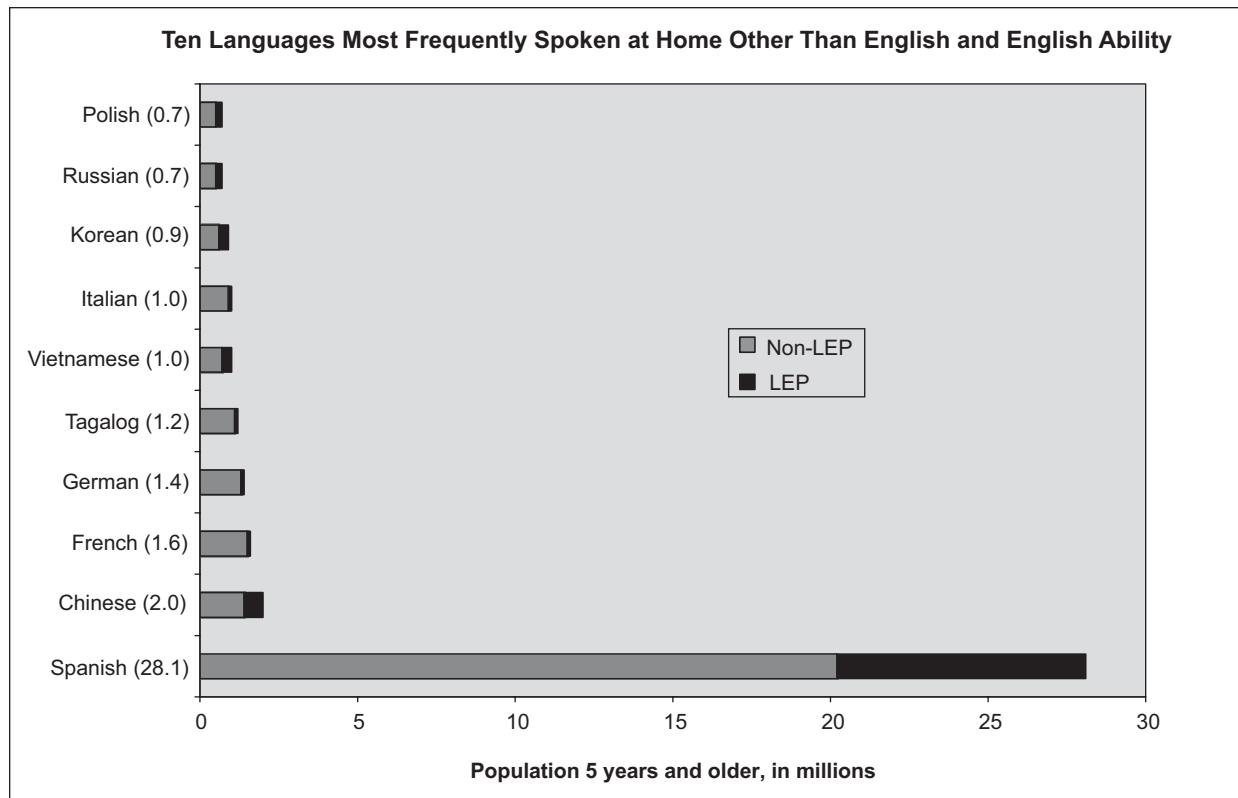
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### APPENDIX I. IMMIGRANTS AND LANGUAGE<sup>1</sup>

According to the Census Bureau, approximately 18 percent, or 47 million people, of the U.S. population speaks a language other than English at home. The top ten languages spoken at home are displayed below.<sup>2</sup>



This number is higher among the rapidly increasing foreign-born population in the United States: nearly 83 percent speaks a language other than English at home. The states with the highest percentages of populations with limited English proficiency are California (20 percent); Texas (13.9 percent); New York (13 percent); Hawaii (12.7 percent); New Mexico (11.9 percent); and New Jersey (11.1 percent). With respect to the Asian and Latino communities, census data reveals that 22% of Asian and Pacific Islander language speakers and 28% of all Spanish speakers speak English “not well” or “not at all.”

It is important to also note that several states experienced dramatic changes in their LEP populations. For example, North Carolina and Georgia experienced nearly a 250 percent increase in their LEP populations between 1990 and 2000, while Utah experienced a 158 percent growth and Minnesota experienced a 110 percent growth.

<sup>1</sup> [http://www.migrationinformation.org/jan03\\_spotlight\\_table.cfm](http://www.migrationinformation.org/jan03_spotlight_table.cfm).

<sup>2</sup> <http://www.nhelp.org/pubs/nlaap/200412.censusreport.pdf>, page 2.

### State by State Analysis of Change in LEP Population Between 1990 and 2000

Area	% of Population with LEP, 2000	% Change in LEP Population, 1990-2000
Alabama	1.5	77.5
Alaska	5.3	37.2
Arizona	11.4	95.7
Arkansas	2.3	169.9
California	20.0	41.9
Colorado	6.7	143.4
Connecticut	7.4	27.6
Delaware	3.9	94.8
District of Columbia	7.1	31.3
Florida	10.3	61.7
Georgia	4.9	243.2
Hawaii	12.7	15.3
Idaho	3.9	108.7
Illinois	9.1	60.3
Indiana	2.5	64.9
Iowa	2.5	92.4
Kansas	3.9	103.2
Kentucky	1.6	100.1
Louisiana	2.8	-8.9
Maine	2.0	-13.3
Maryland	5.0	65.9
Massachusetts	7.7	31.6
Michigan	3.2	56.2
Minnesota	3.6	111.1
Mississippi	1.4	47.1
Missouri	2.0	63.7
Montana	1.5	10.5
Nebraska	3.6	159.6
Nevada	11.2	234.1
New Hampshire	2.4	13.2
New Jersey	11.1	43.4
New Mexico	11.9	26
New York	13.0	30.9
North Carolina	4.0	243.1
North Dakota	1.8	-5.7
Ohio	2.2	23.5
Oklahoma	3.1	90.8
Oregon	5.9	141.8
Pennsylvania	3.2	25.7
Rhode Island	8.5	26.8
South Carolina	2.2	117.9
South Dakota	2.3	31
Tennessee	2.0	137.8
Texas	13.9	51.2
Utah	5.2	158.9
Vermont	1.6	28.4
Virginia	4.6	88.4
Washington	6.4	112.4
West Virginia	0.8	-0.3
Wisconsin	3.0	59.6
Wyoming	1.9	22.7

Source: <http://www.healthlaw.org/pubs/2004.ActionKitReprint.pdf>, page 35.

Of the foreign-born population, 35 percent reported having limited English proficiency. In certain states, the rate of English proficiency is lower among the foreign-born. In eight states (highlighted below), more than 40 percent of the foreign-born population over the age of five reported a lack of proficiency in English. These included Arkansas, Colorado, Georgia, Idaho, Nebraska, New Mexico, North Carolina and Texas.

### State by State Analysis of English-speaking Abilities of the Foreign-born<sup>3</sup>

Area	Foreign-born population five years and over	Language spoken at home							
		Speak only English		Speak language other than English					
				Total		LEP		Non-LEP	
		Number	%	Number	%	Number	%	Number	%
United States	30,709,064	5,212,041	17	25,497,023	83	8,968,415	35.1	16,528,608	64.8
Alabama	85,973	21,541	25.1	64,432	74.9	20,270	31.4	44,162	68.6
Alaska	36,660	9,227	25.2	27,433	74.8	6,069	22.1	21,364	77.9
Arizona	643,640	97,335	15.1	546,305	84.9	232,343	42.5	313,962	57.5
Arkansas	72,196	13,478	18.7	58,718	81.3	24,514	41.8	34,204	58.3
California	8,762,060	958,357	10.9	7,803,703	89.1	2,980,878	38.2	4,822,825	61.8
Colorado	362,151	66,226	18.3	295,925	81.7	121,726	41.1	174,199	58.9
Delaware	44,191	11,605	26.3	32,586	73.7	8,916	27.3	23,670	72.7
District of Columbia	72,671	16,977	23.4	55,694	76.6	17,311	31.1	38,383	68.9
Florida	2,647,037	551,074	20.8	2,095,963	79.2	725,539	34.7	1,370,424	65.4
Georgia	567,081	105,200	18.6	461,881	81.4	185,152	40.1	276,729	59.9
Hawaii	210,423	31,389	14.9	179,034	85.1	46,222	25.9	132,812	74.2
Idaho	63,020	12,825	20.4	50,195	79.6	20,196	40.2	29,999	59.8
Illinois	1,509,261	173,175	11.5	1,336,086	88.5	456,946	34.2	879,140	65.8
Indiana	182,751	39,234	21.5	143,517	78.5	45,061	31.4	98,456	68.6
Iowa	88,849	17,354	19.5	71,495	80.5	24,307	34	47,188	66
Kansas	131,895	19,988	15.2	111,907	84.8	41,854	37.4	70,053	62.6
Kentucky	78,432	17,414	22.2	61,018	77.8	17,844	29.3	43,174	70.7
Louisiana	114,770	22,399	19.5	92,371	80.5	20,566	22.3	71,805	77.7
Maine	36,196	16,948	46.8	19,248	53.2	2,637	13.7	16,611	86.3
Maryland	511,881	115,376	22.5	396,505	77.5	88,626	22.4	307,879	77.7
Massachusetts	764,008	167,321	21.9	596,687	78.1	160,406	26.8	436,281	73.1
Michigan	514,695	127,987	24.9	386,708	75.1	91,399	23.6	295,309	76.4
Minnesota	254,250	55,892	22	198,358	78	59,479	30	138,879	70
Mississippi	39,269	10,658	27.1	28,611	72.9	8,945	31.3	19,666	68.7
Missouri	147,656	34,309	23.2	113,347	76.8	29,830	26.3	83,517	73.7
Montana	16,136	8,675	53.8	7,461	46.2	859	11.5	6,602	88.5
Nebraska	72,948	11,147	15.3	61,801	84.7	25,476	41.2	36,325	58.7
Nevada	312,796	46,682	14.9	266,114	85.1	93,341	35.1	172,773	64.9
New Hampshire	53,164	18,921	35.6	34,243	64.4	6,027	17.6	28,216	82.4
New Jersey	1,460,077	243,816	16.7	1,216,261	83.3	349,455	28.7	866,806	71.2
New Mexico	147,292	21,093	14.3	126,199	85.7	53,387	42.3	72,812	57.7
New York	3,834,479	961,572	25.1	2,872,907	74.9	939,305	32.7	1,933,602	67.3
North Carolina	420,957	74,702	17.7	346,255	82.3	146,493	42.3	199,762	57.7
North Dakota	11,919	5,245	44	6,674	56	1,084	16.3	5,590	83.7

<sup>3</sup> [http://www.migrationinformation.org/jan03\\_spotlight\\_table.cfm](http://www.migrationinformation.org/jan03_spotlight_table.cfm).

### State by State Analysis of English-speaking Abilities of the Foreign-born (continued)

Area	Foreign-born population five years and over	Language spoken at home							
		Speak only English		Speak language other than English					
				Total		LEP		Non-LEP	
		Number	%	Number	%	Number	%	Number	%
United States	30,709,064	5,212,041	17	25,497,023	83	8,968,415	35.1	16,528,608	64.8
Ohio	333,271	85,083	25.5	248,188	74.5	49,483	19.9	198,705	80.1
Oklahoma	129,664	22,425	17.3	107,239	82.7	36,334	33.9	70,905	66.1
Oregon	284,724	56,188	19.7	228,536	80.3	87,273	38.2	141,263	61.9
Pennsylvania	501,106	129,627	25.9	371,479	74.1	87,778	23.7	283,701	76.4
Rhode Island	118,104	18,515	15.7	99,589	84.3	31,639	31.8	67,950	68.2
South Carolina	113,829	28,740	25.2	85,089	74.8	29,210	34.3	55,879	65.6
South Dakota	13,065	3,799	29.1	9,266	70.9	2,521	27.2	6,745	72.7
Tennessee	155,547	31,305	20.1	124,242	79.9	42,097	33.9	82,145	66.1
Texas	2,858,396	303,267	10.6	2,555,129	89.4	1,122,590	43.9	1,432,539	56.1
Utah	155,012	28,013	18.1	126,999	81.9	44,796	35.3	82,203	64.8
Vermont	22,729	10,198	44.9	12,531	55.1	1,517	12.1	11,014	87.9
Virginia	562,217	102,043	18.2	460,174	81.8	117,306	25.5	342,868	74.5
Washington	605,340	135,384	22.4	469,956	77.6	149,649	31.8	320,307	68.1
West Virginia	19,105	6,540	34.2	12,565	65.8	1,417	11.3	11,148	88.7
Wisconsin	189,590	40,412	21.3	149,178	78.7	44,721	30	104,457	70
Wyoming	11,047	3,858	34.9	7,189	65.1	1,918	26.7	5,271	73.3

## APPENDIX II. STAKEHOLDERS IN THE LEGAL SYSTEM

With respect to civil matters, like others seeking legal assistance, immigrants are most likely to turn to the civil legal aid community for legal advice or the courts, particularly in pro se matters, for guidance in navigating the legal system. As a result, both the civil legal aid system and the courts are beginning to understand and address the cultural and linguistic needs of immigrants and LEP individuals. However, to better and effectively address the unmet needs of the immigrants and LEP communities, a broad array of stakeholders – the non-governmental organizations, interpreter associations, bar associations and governmental agencies – can and must all play a critical role in improving the quality of legal assistance.

Since being founded in the nineteenth century to assist poor people in America, the civil legal aid system has undergone dramatic changes and transitions. Today, the civil legal system consists of various entities on the federal and state levels which are briefly explained and discussed below.

### LEGAL SERVICE PROVIDERS

The federal government has historically deemed the provision of civil legal aid services to be a federal responsibility, and as such, has created a single entity to be the primary funder for legal service agencies called the Legal Services Corporation (LSC). LSC, the current incarnation of the Office of Economic Opportunity that was established in the 1960s, was created in 1974 by Congress. Today, LSC is a private, nonprofit corporation with a bipartisan Board of Directors. Congress appropriates funding to LSC yearly, which LSC then allocates to legal service organizations around the country through a competitive grant process. Legal service providers in a designated region essentially “bid” to become the federal provider in that area.

Funds allocated to legal service agencies by LSC are used, in the words of LSC, “to ensure equal access to justice under the law for all Americans by providing civil legal assistance to those who otherwise would be unable to afford it.”<sup>4</sup> LSC establishes maximum income levels for individuals who are eligible for legal assistance from its grantees. For 2004, LSC established a maximum income level equivalent to 125 percent of the federal poverty guidelines.

LSC’s 2004 congressional budget was 336.6 million dollars.<sup>5</sup> The programs funded by LSC in 2004 received one- to three-year grants and included entities in 22 states, the District of Columbia and American Samoa.<sup>6</sup> Grantees are expected to satisfy LSC’s own performance criteria, to meet the American Bar Association’s Standards for Providers of Civil Legal Services, and to participate in LSC’s State Planning Initiative.<sup>7</sup> In 2004, LSC-funded programs ranged from the Alaska Legal Services Corporation to Legal Action of Wisconsin, Inc. to Legal Services for New York City.<sup>8</sup>

The organizations funded by LSC are on the front lines of legal service delivery every single day. Local programs set their own case priorities but are bound by restrictions imposed on the use of LSC funds. Many local programs receive funding from other federal agencies, foundations, individual donors, the Interest on Lawyers Trust Accounts (IOLTA), and state governments.

It is important to note that many legal service providers in the United States do not receive LSC funds yet encounter LEP clients regularly. These providers receive funds from other sources and maintain their own case priorities. They should be included in partnerships and dialogues designed to increase meaningful access for LEP individuals, as they are more likely than LSC grantees to provide legal assistance to LEP populations due to restrictions with which LSC providers must comply.

<sup>4</sup> “What is LSC?” [http://www.lsc.gov/welcome/wel\\_who.htm](http://www.lsc.gov/welcome/wel_who.htm) (last accessed on September 30, 2004).

<sup>5</sup> *Legal Services Corporation Names Winners of 2004 Service Area Competitions, Announces Grant Terms*, Press Release (November 25, 2003).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> “Map of LSC Programs,” <http://www.lsc.gov/fundprog.htm> (last accessed on September 30, 2004).

Vital stakeholders also include **state justice communities** that are being created locally to provide integrated statewide legal service delivery systems. These systems are expected to be a “single point of entry for all clients” and are championed by Access to Justice commissions in states that include the courts, bar associations and legal service providers themselves.<sup>9</sup> State efforts to guarantee equal and meaningful access to legal services have been initiated on two fronts: by LSC and by the State Planning Assistance Network (SPAN), which is a project of the American Bar Association (ABA) and the National Legal Aid and Defender Association (NLADA).

LSC began a State Planning Initiative in 1996, after Congress decreased LSC’s budget by \$122 million and imposed strict restrictions on the use of LSC funds. Through this initiative, LSC grantees are required to develop strategic plans and set benchmarks to evaluate the development of a state planning system that will increase access to legal services.

That same year, the NLADA and the ABA developed a joint project (the SPAN Access to Justice Support Project) to promote state-based partnerships among various stakeholders through Access to Justice Commissions. In 2004, **Access to Justice Commissions**, or similar entities, operated in 16 states.<sup>10</sup> These Commissions are formal state-level entities dedicated to improving civil legal aid, and are composed of appointed representatives of the bar, legal service providers and the judiciary, among others.<sup>11</sup> In the remainder of the states, other entities with a broad mission to improve access to justice for the poor exist. These take the form of an active committee of the state bar association, a statewide steering committee, a formal consortium of legal aid programs, or a special office with an Access to Justice mission.<sup>12</sup>

Additional strong partners in the state justice community are **Interest on Lawyers Trust Account (IOLTA) programs**. In each state, lawyers place client funds in IOLTA accounts that are then pooled into an interest-bearing trust account. The proceeds are directed towards civil legal service programs in the state. IOLTA programs operate in all fifty states and in the District of Columbia, and have withstood legal challenges.

## COURTS

Much attention has been focused on the challenges that LEP individuals face when approaching the court system. In 1999, the National Center for State Courts (NCSC) conducted a survey to measure the public’s view of state courts. According to the survey, over half of the respondents said that non-English speakers received “somewhat worse” or “far worse” treatment in the courts.<sup>13</sup> In its recommendations, the NCSC noted that steps need to be taken to ensure linguistic access, including the provision of training to judges and court staff so that “. . . no short-cuts are taken in the interests of time or cost, at the expense of the individual’s understanding of the proceedings.”<sup>14</sup> These findings only strengthened the resolve of courts to respond to the barriers facing LEP individuals and other minorities.

On both the federal and state levels, laws and policies have been implemented to secure the assistance of interpreters for LEP individuals in court proceedings and services provided both inside and outside the courtroom. On the federal level, due to the enactment of the Court Interpreter Act of 1978, court interpreters often interpret in civil or criminal court proceedings for witnesses or parties, translate written legal documents, or provide telephonic interpretation services as needed. On the state level, the Consortium for

<sup>9</sup> “Civil Legal Aid in the United States: An Overview of the Program in 2003,” Alan W. Houseman, Center for Law and Social Policy (September 2003), 7.

<sup>10</sup> Access to Justice Partnerships State by State, SPAN Access to Justice Support Project (April 2004).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Position Paper on State Courts’ Responsibility to Address Issues of Racial and Ethnic Fairness*, Conference of State Court Administrators (December 2001), 2.

<sup>14</sup> *Id.* at 5.

State Court Interpreter Certification (a part of the National Center for State Courts) provides a uniform testing examination in various languages for its 30 member states.

## GOVERNMENTAL AGENCIES

Governmental agencies on the federal and state level are critical partners in raising public awareness of the challenges faced by LEP individuals in seeking legal services, developing and enforcing policies that require the provision of linguistic access, in allocating funding, and creating centralized entities to provide technical assistance to legal service providers and the courts. These partners include congressional representatives and elected state officials and government agencies such as the Department of Justice and the Legal Services Corporation (LSC). LSC has begun take formal steps to address the issue of linguistic access to LEP individuals on the part of its programs, as discussed in this report.

With the issuance of President Clinton's Executive Order 13166, the Coordination and Review Section (COR) in the Civil Rights Division of the Department of Justice was charged with government-wide coordination responsibilities.<sup>15</sup> COR's tremendous and consistent efforts in coordinating agency plans, as well as providing guidance and assistance, have played an invaluable role in bringing language access issues to prominence in the federal government.<sup>16</sup> COR has also initiated an Interagency Working Group on Limited English Proficiency, which brings together federal employees from the civil rights, program implementation, and budgeting sections of federal agencies to discuss issues, challenges and strategies that will most effectively ensure language access.<sup>17</sup> COR has traditionally provided technical and legal assistance, interagency coordination, and policy and program review to federal agencies to ensure that the federal government's own programs enforce laws prohibiting discrimination.

## NON-GOVERNMENTAL ORGANIZATIONS

Public sector organizations with both legal and non-legal purposes are important stakeholders and participants in the process to improve linguistic access to LEP individuals.

For example, the ABA and the NLADA are legal organizations that remain staunch supporters of the civil legal aid system. The ABA, the largest voluntary professional association in the world, comprises of more than 400,000 members. As early as 1921, the ABA created a Standing Committee on Legal Aid (renamed the Standing Committee on Legal Aid and Indigent Defenders), which has lasted to this day. SCLAID examines issues relating to the delivery of civil legal services to the poor, and criminal defense services to indigent persons.<sup>18</sup> In 1961, the ABA adopted standards for the operation of civil legal aid programs. In 1986, these standards were updated and provided to guide legal aid organizations and attorneys in

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<sup>15</sup> To access Executive Order 13166, the DOJ LEP Final Guidance for Department of Justice Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons as published in the Federal Register on June 18, 2002, and other guidances as issued by federal agencies, visit [www.LEP.gov](http://www.LEP.gov) (last accessed on February 2, 2005).

<sup>16</sup> While it is beyond the scope of this report, the DOJ should also assess the extent to which interpreters are being provided at hearings before the Board of Immigration Appeals; asylum hearings; and other proceedings where decisions are made regarding the immigration status of individuals.

<sup>17</sup> See [www.lep.gov](http://www.lep.gov). The Interagency Working Group on Limited English Proficiency, which includes members representing more than 35 federal agencies, created the website entitled **LEP.gov** to act 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. The website is maintained by the U.S. Department of Justice.

<sup>18</sup> See <<http://www.abanet.org/legalservices/sclaid/home.html>> (last accessed on February 2, 2005).

their ethical conduct, representation of client interests, and use of innovative lawyering techniques.<sup>19</sup> In addition, the ABA regularly testifies before Congress in support of LSC’s request for increased appropriations. The ABA also works with the judiciary to increase access to the courts.

The NLADA represents legal aid and defender programs and individual advocates. The organization provides technical assistance, public policy analysis and works closely with both the LSC and legal service providers around the country.

**State bar associations and access to justice commissions** can be strong supporters of efforts to study legal needs of LEP communities, train lawyers on linguistic and cultural sensitivity issues, and expand the legal resources to assist LEP clients. **Law schools**, clinical programs and law students can provide a wealth of resources and time in terms of developing partnerships between community-based organizations, the private bar and legal service agencies.

In addition, **immigrant rights and civil rights organizations** are also stakeholders who need to be further engaged on the issue of linguistic access in the legal services context by framing it as a civil rights obligation on their policy agendas. Further, **community-based organizations** that have large or exclusive immigrant bases are important stakeholders, as they can be “gatekeepers” for legal service entities seeking entry or information about the needs presented by LEP individuals.

Finally, **foundations** are important potential sources of funding for legal service providers and the courts, and catalysts for research into various aspects of linguistic access in the legal arena.

## INTERPRETER ASSOCIATIONS

Around the country, interpreters and translators are creating organizations to share information, cultivate training opportunities and conduct research on language access issues. Nationally, these organizations include the American Translators Association (ATA)<sup>20</sup> and the National Association of Judiciary Interpreters and Translators (NAJIT)<sup>21</sup>, both membership-based entities. Among other resources and activities, the ATA provides an online directory of interpreters and translators with nearly 5,000 entries. NAJIT, which has more than 900 members, advances quality interpretation and translation services in the judicial system and holds an annual conference where members can learn about innovative techniques and receive training on interpretation in the legal context.

On the state level, different interpreter/translator associations exist as well. These entities include interpreters who practice in various arenas and offer a valuable service for legal assistance agencies and court systems seeking interpreters or information about providing linguistic access. For example, the Chicago Area Translators and Interpreters Association, the Houston Interpreters and Translators Association and the Michigan Translators/Interpreters Network all have online directories and hold trainings and meetings regularly.<sup>22</sup>

**Community college and universities** are playing an important role in training individuals to become certified interpreters and translators in the legal context, and in providing continuing education classes that seasoned interpreters can take to stay abreast of innovative techniques and issues.

<sup>19</sup> *Standards for Providers of Civil Legal Services to the Poor*, Standing Committee on Legal Aid and Indigent Defendants, American Bar Association (1986).

<sup>20</sup> [www.atanet.org](http://www.atanet.org).

<sup>21</sup> [www.najit.org](http://www.najit.org).

<sup>22</sup> See [www.chicata.org](http://www.chicata.org); [www.hitagroup.org](http://www.hitagroup.org); and [www.mitinweb.org](http://www.mitinweb.org).

### APPENDIX III. ACKNOWLEDGEMENTS

The principal authors of this report are Ms. Deepa Iyer and Ms. Juliet K. Choi.

Ms. Iyer is an attorney with more than five years of experience in civil rights and immigrant rights issues. She began her public interest career at the National Asian Pacific American Legal Consortium (NAPALC) where she managed the Consortium's language rights, voting rights and census 2000 programs. She then served as Trial Attorney in the Civil Rights Division of the Department of Justice where she focused on employment discrimination cases facing immigrants, as well as policy matters related to language access and post September 11th initiatives to combat bias. Ms. Iyer's work on linguistic access was further honed at the Asian Pacific American Legal Resource Center (APALRC), where she managed a multilingual legal referral hotline and assisted a DC-based coalition to draft and advocate for the passage of legislation that would increase in-language services by government agencies for DC residents. The law passed in 2004.

Ms. Choi is a staff attorney with the National Asian Pacific American Legal Consortium and the recipient of the 2004 NAPABA Partners Community Law Fellowship, presented by the National Asian Pacific American Bar Association Law Foundation and NAPALC. Through the generous support of Mr. Paul W. Lee, the Fellowship Program was launched to address the shortage of attorneys working on behalf of the Asian Pacific American populations. During the two-year fellowship period, Ms. Choi will work on language rights/access projects focused on three primary areas: 1) access to justice and legal services; 2) ensuring services to limited English proficient individuals, with an emphasis on access to healthcare; and 3) advocating against federal, state, and local English-only initiatives.

In addition, NAPALC wishes to acknowledge Jerry Johnson, NAPALC Web Editor, Kara Prezocki, design consultant, and George Wu, NAPALC legal intern, for their assistance with this report.

Finally, we wish to thank the following individuals<sup>23</sup> who assisted in providing valuable information and insight and shared their resources and ideas. Their contributions have been vital to the development of the report. The report does not reflect their opinions or conclusions.

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<sup>23</sup> As is often the case, there may be updated affiliations and titles that were not captured in time for this list of individuals. Kindly accept our apology for any inadvertent oversight or omission.

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