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PROMOTING LANGUAGE ACCESS IN THE LEGAL ACADEMY

Gillian Dutton, Beth Lyon,
Jayesh M. Rathod & Deborah M. Weissman*

INTRODUCTION

Since the 1960s, the United States government has paid increasing attention to the rights of language minorities[1] within its borders and to the need for greater civic and political integration of these groups. With the passage of the Civil Rights Act of 1964, Congress prohibited entities that received federal funding from discriminating on the basis of national origin,[2] a norm that has been interpreted to protect limited English proficient ("LEP") persons.[3] In 2000, President Clinton affirmed the government's commitment to language rights with the issuance of Executive Order 13166, which reinforced the obligations of federal agencies and their grantees vis-à-vis the LEP population.[4] Consistent with the steps taken by Congress and the executive branch, the federal judiciary has enhanced its protocols relating to language access.[5] State and local courts have likewise taken steps, albeit imperfectly, to provide interpretation and translation assistance to LEP per-

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[1] Although there are some similarities between the need for sign language interpreting for deaf and hard of hearing individuals, this Article focuses on spoken-word interpretation for speakers of a foreign language.

[2] Civil Rights Act of 1964, 42 U.S.C. § 2000d (2006).

[3] *See, e.g.*, Lau v. Nichols, 414 U.S. 563, 568–69 (1974) (extending the protections of Title VI to cases involving discrimination on the basis of language). A limited English proficient individual is someone who speaks a language other than English as her primary language and has a limited ability to read, write, speak, or understand English. *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455, 41459 (June 18, 2002).

[4] Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000).

[5] *See, e.g.*, Court Interpreters Act, 28 U.S.C. § 1827 (2006).

sons.[6] Most recently, responding to both a lack of services and inconsistent practices, the American Bar Association ("ABA") adopted *Standards for Language Access in Courts* ("Standards"), setting out national guidelines on the subject.[7]

As language access rises in importance—within the government as a whole, and the legal system in particular—law schools have begun to develop strategies to promote language access within the academy. These strategies serve multiple purposes: to prepare students to identify, and respond to, issues of language difference in the context of legal work; to ensure that the policies and practices of law schools comply with language access norms; to foster lawyer bilinguality and interpreter pipelines; and to foment student awareness and advocacy on language access, as a key social justice issue.

Educating future lawyers involves not just teaching law students how to read a case, interview a client, or draft a brief; it also includes introducing them to the numerous ways lawyers seek to participate in and improve the justice system. Promoting language access in the legal academy offers numerous opportunities to expose students to a diverse set of organizations and skills, and to a community of advocates who have engaged on these issues. From the ABA to the Department of Justice ("DOJ"), from individual legal services attorneys to the Conference of Chief Justices ("CCJ"), lawyers around the United States have been working to ensure access to justice for LEP individuals for many years.

This Article describes some innovations and best practices relating to language access in the legal academy. It opens, in Part I, with a description of the salience of language access in the current political moment, noting recent demographic trends, the political importance of language access, and recent steps taken by the ABA. Part II reviews various models for incorporating language access into the law school curriculum, in both doctrinal and experiential settings. Part III positions bilingual instruction as a language access strategy: by preparing

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[6] *See* LAURA K. ABEL, BRENNAN CTR. FOR JUSTICE AT N.Y. UNIV., LANGUAGE ACCESS IN STATE COURTS 67–73 (2009) [hereinafter BRENNAN CENTER REPORT].

[7] *See generally* STANDING COMM. ON LEGAL AID & INDIGENT DEF., ABA, STANDARDS FOR LANGUAGE ACCESS IN COURTS (2012) [hereinafter STANDARDS], *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indgent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf.

students for the bilingual practice of law, law schools can bridge the gap between the legal system and the LEP community. In Part IV, the Authors describe how law schools can expand the pipeline into the interpreter professions by training and deploying bilingual college students as community interpreters.

I. THE CONTEMPORARY SALIENCE OF LANGUAGE ACCESS AND THE 2012 ABA STANDARDS

Language diversity is a longstanding and growing phenomenon in American society, one that has a major impact in nearly every justice system. The United States is home to a linguistically diverse population:

> According to the 2007–2009 American Community Survey of the U.S. Census Bureau, more than 55 million persons in the United States who are age five or older, almost 20% of the population, speak a language other than English at home. This is an increase of eight million persons since 2000.[8]

Recent data demonstrate that 8.7% of the U.S. population speaks English "less than very well."[9] In certain parts of the country, the LEP population is well over ten percent.[10]

In addition to the sheer relative growth in the LEP population, another recent demographic development reinforces the importance of language access: a change in destinations for migrants to the United States. Previously, the majority of immigration flowed into five "gateway" states: California, Texas, Florida, New Jersey, and New

[8] STANDARDS, *supra* note 7, at 1.

[9] *2011 American Community Survey 1-Year Estimates of Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_B16001&prodType=table (last visited Apr. 15, 2013).

[10] *See* MIGRATION POLICY INST., LIMITED ENGLISH PROFICIENT INDIVIDUALS IN THE UNITED STATES: NUMBER, SHARE, GROWTH, AND LINGUISTIC DIVERSITY 3 (Dec. 2011), *available at* http://www.migrationinformation.org/integration/LEP databrief.pdf.

York; 60% of the foreign-born still live in those states.[11] This pattern is changing, however: migration is increasing to the *interior* of the United States. According to the Pew Research Hispanic Center, five different states have seen the fastest growth in their foreign-born population: Kentucky, Mississippi, North Carolina, South Carolina, and Wisconsin.[12]

The result is that many smaller, non-metropolitan communities are adapting to a rapidly growing limited English proficient population for the first time in decades.[13] Thus, rural and small town agencies and courts with fewer resources are likely faced with growing challenges in terms of serving LEP litigants. Given these trends, legal institutions must necessarily adapt to provide language access to LEP individuals. Failure to do so will result in practical communication difficulties that can seriously impair legal proceedings.

A. Importance of Language Access

Beyond the need to ensure basic communication among different legal actors, the promotion of foreign language access—whether by courts or by lawyers themselves—is a political act. Language is perhaps the most conspicuous characteristic of cultural difference and is at the core of one's identity.[14] The inability to speak the dominant language has long served as motivation for anti-immigrant sentiment in the United States.[15] Those who lack proficiency in English are often subject to disadvantage and discrimination, and accordingly suffer fundamental inequality.

To be sure, promoting language access is an obligation that comports with lawyers' general professional responsibilities to ensure access to the courts for all categories of litigants and specific ethical

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[11] *See A Portrait of U.S. Immigrants*, PEW RESEARCH HISPANIC CTR., http://www.pewhispanic.org/2013/02/15/u-s-immigration-trends/ph_13-01-23_ss_immigration_06_states1/ (last visited May 23, 2013).

[12] *See id.*

[13] *See, e.g.*, Daniel T. Lichter, *Immigration and the New Racial Diversity in Rural America*, 77 RURAL SOC. 3, 10 (2012) (describing a town in Minnesota that reported its population as 4% Hispanic in 1990 and 35% in 2010).

[14] *See* Rosemary C. Salomone, *Multilingualism and Multiculturalism: Transatlantic Discourses on Language, Identity, and Immigrant Schooling*, 87 NOTRE DAME L. REV. 2031, 2032 (2012).

[15] Angel R. Oquendo, *Re-Imagining the Latino/a Race*, 12 HARV. BLACKLETTER L. J. 93, 124 (1995).

obligations to communicate effectively with clients.[16] Most advocates and scholars who approach the issue of language access do so within the confines of these lawyerly obligations. Implicit, if not explicit, is the assumption that promoting language access is a stopgap measure; that is to say, non-English speaking individuals whose access rights are defended should, and many will, eventually acquire necessary English language skills.[17] Yet, data on language acquisition have shown that many factors influence the ability of an individual to learn a language. In many instances, due to age, trauma, and other cognitive impairments, it may be impossible for a non-native speaker of English to learn English sufficiently well to understand and participate in a legal proceeding. Moreover, as other scholars have noted, technology and relative ease of travel have facilitated the maintenance of transnational families and communities, and motivate immigrants to maintain their native languages.[18]

Advocates often conceive of language access promotion narrowly, as a means to facilitate access to the judicial system. But the effort can also produce other benefits, including a fundamental reorientation of the notion of language rights and recognition of the obligations that arise from the consequences of globalization and migration patterns.[19] Such a reorientation calls for an effort that is more intentionally political than seeking an interpreter for a client to comply with ethical obligations. Borrowing from the European Court of Justice, European national courts, and treaty bodies, U.S. advocates should consider an additional good that flows from the promotion of foreign language access: expanding language rights of immigrants and advancing language diversity rights.[20] Advocates who politicize the issue of language and legal access, and elevate the issue from one of individual client need to one of acute systemic deficiencies in the legal system can build an alliance of people willing to fight for language access in the courts, in the legislature, and as a matter of social justice generally.

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[16] *See, e.g.*, MODEL RULES OF PROF'L CONDUCT R. 1.4 (2012).

[17] *See* Deborah M. Weissman, *Between Principles and Practice: The Need for Certified Court Interpreters in North Carolina*, 78 N.C. L. REV. 1899, 1903 (2000).

[18] *See, e.g.*, Salomone, *supra* note 14, at 2032.

[19] *See generally* Stella B. Elias, *Regional Minorities, Immigrants, and Migrants: The Reframing of Minority Language Rights in Europe*, 28 BERKELEY J. INT'L L. 261 (2010) (describing the move to afford immigrant minorities nearly the same language rights, including language diversity and language preservation as regional minorities).

[20] *See id*. at 293.

Important though it is, language access in the courts is often not protected. In 2009, the Brennan Center for Justice issued a report on language access in state courts.[21] After surveying the fifty states, it concluded:

> 46% fail to require that interpreters be provided in all civil cases; . . . 80% fail to guarantee that the courts will pay for the interpreters they provide, with the result that many people who need interpreters do not in fact receive them; and . . . 37% fail to require the use of credentialed interpreters, even when such interpreters are available.[22]

Consistent with these findings, a 2010 report issued by the University of North Carolina School of Law's Immigration/Human Rights Policy Clinic ("I/HRP Clinic"),[23] documented so many systemic and anecdotal problems[24] that it became the basis for various advocacy and enforcement actions.[25] Likewise, in the early 2000s, the Pennsylvania Supreme Court Committee on Gender and Racial Bias in the Justice System reported that several states, including Pennsylvania, had no system for testing or certifying court interpreters.[26] These data reveal the critical need to implement comprehensive standards to govern the provision of language access in the courts.

B. The ABA Standards for Language Access in the Courts

An important step in this direction, of particular importance for those in the legal academy, took place in 2012. On February 6, in New Orleans, Chief Justice Eric Washington of the District of Columbia

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[21] *See generally* BRENNAN CENTER REPORT, *supra* note 6.

[22] *Id*. at 1.

[23] *See generally* EMILY KIRBY, SARAH LONG & SONAL RAJA, UNIV. N.C. SCH. OF LAW, AN ANALYSIS OF THE SYSTEMIC PROBLEMS REGARDING FOREIGN LANGUAGE INTERPRETATION IN THE NORTH CAROLINA COURT SYSTEM AND POTENTIAL SOLUTIONS (2010), *available at* http://www.law.unc.edu/documents/clinicalprograms/foreignlanguageinterpretationproblemsnc.pdf.

[24] *See id*. at 51–80; *infra* Part V.A.

[25] *See infra* Part II.C.

[26] *See* PA. SUPREME COURT COMM. ON RACIAL & GEND. BIAS IN THE JUSTICE SYS., FINAL REPORT OF THE PENNSYLVANIA SUPREME COURT COMMITTEE ON RACIAL AND GENDER BIAS IN THE JUSTICE SYSTEM 36–37 (2003).

stood in front of the ABA House of Delegates for a "State of the State Judiciary" address. Endorsing the proposed *Standards for Language Access in Courts*,[27] Justice Washington commented on the remarkable work that judges, court administrators, advocates, interpreters, and translators had done to produce a comprehensive document describing the provision of language access services in courts.[28] As Justice Washington pointed out, the more than 130-page Standards were the product of almost two years of hard work, first by a thirty-five member national Advisory Group[29] and then in the fall of 2011 by a committee involving the CCJ and National Center for State Courts ("NCSC") in addition to members from the original ABA group. Immediately following the remarks, the ABA delegates voted overwhelmingly in favor of the document.

Equally significant was Justice Washington's announcement that plans to promote the implementation of the approved Standards were already underway.[30] The Standards had not only built on prior

[27] *See generally* STANDARDS, *supra* note 7.

[28] *See* The Honorable Eric Washington, Chief Judge, Wash. D.C. Court of Appeals, Remarks at the 2012 ABA Midyear Meeting: No Courts – No Justice – No Freedom (Feb. 6, 2012) *available at* http://www.ncsc.org/Information-and-Resources/Budget-Resource-Center/Economic-impact/ABA-Task-Force-Midyear-Address-Washington.aspx.

[29] The group was led by Judge Vanessa Ruiz, Associate Judge (ret.) of the D.C. Court of Appeals, and Robert E. Stein, Chair of the ABA Standing Committee on Legal Aid & Indigent Defendants. Co-author Gillian Dutton served as a primary consultant responsible for drafting the Standards and co-author Beth Lyon served on the ABA Advisory Group. *See* STANDARDS, *supra* note 7, at vi–vii.

[30] Justice Washington announced that CCJ and the Conference of State Court Administrators ("COSCA") would hold a Language Access Summit to bring together teams of executive, legislative, and judicial branch representatives to assess government-wide needs for language services and develop court-specific plans. *See* The Honorable Eric Washington, *supra* note 28. The conference, held in early October 2012, covered a number of topics necessary to successful implementation of the Standards, ranging from uses of technology to the impact of immigration issues on court provision of interpreter and translation services. Participants shared best practices and prioritized the development of resources, with each state task force pledging to devise a state call to action based on local conditions and concerns. This summit, long desired even before the process to draft the Standards was undertaken, demonstrated that a commitment to improve language access had become a core value in promoting access to justice throughout the country. S*ee generally National Summit on Language Access in the Courts Agenda*, NAT'L CTR. FOR ST. CTS., http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/LA-Smit/~/media/Files/PDF/Conferences%20and%20Events/Language%20Access/Agenda-Summit-MASTER-Oct-12%20%282%29.ashx (last visited Apr. 15, 2013).

years of work and efforts by many individuals and organizations,[31] but also had become a catalyst for further improvement. By including language access as one of the topics to be covered in the organization's body of standards, the ABA signaled to the legal profession that promoting language access is the work of every lawyer.

In its Introduction to the Standards, the ABA pointed out the increasing need for interpretation and translation as an issue of access to justice for individuals:

> As American society is comprised of a significant and growing number of persons with limited English proficiency (LEP) in every part of the country, it is increasingly necessary to the fair administration of justice to ensure that courts are language accessible to LEP persons

[31] Prior efforts by COSCA and NCSC included the establishment of the Consortium for Language Access in the Courts, proposed federal legislation for a grant program to expand court interpreter services, development of education programs for judges and court administrators, and the establishment of commissions to improve access to justice, among many other initiatives. *See About Us*, NAT'L CTR. FOR ST. CTS., http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/About-us.aspx (last visited Apr. 15, 2013); *Court Interpreter Legislation*, NAT'L CNTR. FOR ST. CTS., http://www.ncsc.org/Services-and-Experts/Government-Relations/Access-to-Justice/Court-Interpreter-Legislation.aspx (last visited Apr. 15, 2013); *Education and Careers*, NAT'L CTR. FOR ST. CTS., http://www.ncsc.org/Education-and-Careers.aspx (last visited Apr. 15, 2013). Similarly, legal aid attorneys working as part of the National Language Access Advocates Network ("NLAAN") had promoted work to improve language access at conferences and in advocacy with state and federal agencies as well as courts. *See NLADA Conference–NLAAN Panels*, NAT'L LANGUAGE ACCESS ADVOC. NETWORK, http://www.probono.net/nlaan/calendar/event.454978NLADA_ConferenceNLAAN_Panels (last visited Apr. 15, 2013). DOJ had been active in issuing guidance and had sent a guidance letter to all courts in August of 2010. *See Justice Department Issues Guidance Letter to State Courts Regarding Their Obligation to Provide Language Access*, U.S. DOJ (Aug. 17, 2010), http://www.justice.gov/opa/pr/2010/August/10-crt-930.html. Finally, the Legal Services Corporation ("LSC") had issued guidance to LSC programs for serving LEP persons in December 2004. *See generally* LEGAL SERV. CORP., GUIDANCE TO LSC PROGRAMS FOR SERVING CLIENT ELIGIBLE INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY (Dec. 6, 2004), *available at* http://lri.lsc.gov/engaging-clients/access-barriers/limited-english-proficiency/activities.

> who are brought before, or require access to, the courts.[32]

The text of the document further explains the role of these services in ensuring the smooth functioning of the justice system as a whole:

> Inability to communicate due to language differences also has an impact on the functioning of the courts and the effect of judgments, as proceedings may be delayed, the court record insufficient to meet legal standards, and court orders rendered unenforceable or convictions overturned, if a defendant or other party has not been able to understand or be understood during the proceedings . . . . [L]anguage services are critical to ensure access to justice for LEP persons and necessary for the administration of justice by ensuring the integrity of the fact-finding process, accuracy of court records, efficiency in legal proceedings, and the public's trust and confidence in the judicial system.[33]

The endorsement of such comprehensive Standards in a time of desperate budget cuts is significant for three reasons. First, the Standards recognize that, despite the uneven judicial precedent that focuses largely on criminal cases, language access services are necessary in *both civil* and *criminal* cases, confirming an understanding that where a litigant or witness is LEP, the use of interpreters and translators is crucial to a fair trial. Second, although the Standards are not binding, they represent the highest level of deliberation of American lawyers, judges, and administrators on this issue, and serve as a benchmark for decision-making throughout the United States. The vote on the Standards was delayed to allow members of CCJ, Conference of State Court Administrators ("COSCA"), and the ABA to work out differences of opinion on the initial draft;[34] the result was a final document supported

[32] STANDARDS, *supra* note 7, at 1.

[33] *Id*. at 2.

[34] "While members of our working group didn't always agree, both sides listened to the other[']s concerns, and worked in good faith to resolve our differences knowing that we shared the common goal of establishing language-access standards that would provide equal access to justice for persons with limited English proficiency." *See* The Honorable Eric Washington, *supra* note 28.

by all three bodies, evidence that the groups had consciously and deliberately determined language access to be necessary to the fair administration of justice. Third, the Standards extend beyond the courtroom, and cover other services offered and mandated by courts including clerk and informational offices, alternative programs, and the translation of certain written materials. Representing significant new expansions, they reflect the clear principle that if language access services are not available in *every* part of the judicial system, "[T]he door to justice is effectively closed."[35] Indeed, as the Standards recognize, these different programs and services have become a "critical component" of the justice system.[36]

The emergence of these Standards reflects how mainstream the need for language access services has become. The issuance of ABA standards evolved from an initial focus on codes of conduct in the 1930s to a broader consideration of issues of practice and general justice today.[37] The ABA's role as the drafter of such documents has occasionally been questioned.[38] Commentators have noted the ABA's clear self-interest, and have therefore recommended expanding the group of drafters to avoid tunnel vision.[39] The ABA's expansion to areas such as standards of practice in criminal defense and juvenile justice has generally been praised for the development of guidance, clarification of ambiguities, and provision of best practices in areas where current jurisprudence is both inconsistent and incomplete.[40] While many standards do not include a mandate, attorneys and judges nonetheless use them as a model when drafting and implementing state

[35] The Honorable Vanessa Ruiz, Assoc. Judge, Wash. D.C. Court of Appeals, Remarks at the 2012 ABA Midyear Meeting (Feb. 6, 2012) (transcript on file with the authors).

[36] STANDARDS, *supra* note 7, at 69.

[37] Some have argued that the perspective on improvement and management of judicial branch organization was plagued for a long time by a bureaucratic and inflexible approach. *See* David J. Saari, *Modern Court Management: Trends in Court Organization Concepts—1976*, 2 JUST. SYS. J. 19, 20–21 (1976).

[38] Deborah L. Rhode, *Why the ABA Bothers: A Functional Perspective on Professional Codes*, 59 TEX. L. REV. 689, 690–92 (1981) (questioning whether a group solely made up of lawyers can make effective improvements in the legal system).

[39] *See id.* at 720–21.

[40] *See, e.g.*, David R. Katner, *Coming to Praise, Not to Bury, the New ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, 14 GEO. J. LEGAL ETHICS 103, 121–22 (2000) (arguing that the ABA made improvements to standards of practice in abuse and neglect cases).

statutes and court rules.[41] The adoption of standards as a way to procure additional funding for unmet needs has been explicitly stated in cases such as those concerning defense counsel[42] and is an underlying goal of other ABA efforts such as the adoption of the model act for a civil right to counsel, also known as civil Gideon.[43] Finally, ABA standards have attempted to bring clarity and consistency to issues that implicate other disciplines, such as the social sciences, as evidenced by the publication of the ABA Criminal Justice Mental Health Standards.[44]

All of these goals were behind the ABA's decision to draft the *Standards on Language Access in Courts*; they also underscore the importance of including the topic in the preparation and education of new lawyers. Contrary to a common perspective that inability to speak sufficient English is unusual and short-term,[45] the ABA explains the importance of helping courts to manage these changing demographics for the foreseeable future:

> These numbers are significant because a high level of English proficiency is required for meaningful participation in court proceedings due to the use of legal terms, the structured nature of court proceedings, and the stress normally associated with a legal proceeding when important interests are at stake. Therefore, it is widely recognized that language access services, through professional interpretation of spoken communication and translation of documents, as well as the use of bilingual and multilingual court personnel, lawyers, and others integral to court operations and services, are an

[41] *Id.* at 115–16 (discussing the use of the ABA Model Code and Model Rules as a basis for holding lawyers liable in civil actions and disciplinary proceedings).

[42] *See, e.g.*, Griffin v. Illinois, 351 U.S. 12, 19–20 (1956); Williams v. Illinois, 399 U.S. 235, 241 (1970); Morris v. Slappy, 461 U.S. 1, 22 (1983).

[43] *See generally* AM. BAR ASS'N, AMERICAN BAR ASSOCIATION SECTION OF LITIGATION REPORT TO THE HOUSE OF DELEGATES (2010), *available at* http://www.americanbar.org/content/dam/aba/migrated/legalservices/sclaid/atjresourcecenter/downloads/2010_CivilRighttoCounsel_ABA_Initiatives.authcheckdam.pdf.

[44] *But cf.* Elyce H. Zenoff, *Controlling the Dangers of Dangerousness: The ABA Standards and Beyond*, 53 GEO. WASH. L. REV. 562 (1985) (critiquing the ABA's Criminal Justice Mental Health Standards).

[45] *See* Salomone, *supra* note 14, at 2032.

> essential component of a functional and fair justice system.[46]

The recognition of language access as not just universally necessary but also a matter of social justice was one of the reasons for Seattle University School of Law's support for the ABA effort.[47] The school housed both reporters: Gillian Dutton, an Associate Professor of Lawyering Skills and Director of the Externship Program, and Kristi Cruz, the school's first recipient of the Leadership for Social Justice Fellowship in 2009 for earlier work on language access.[48] In addition, the school provided technical assistance and administrative support to the Advisory Group effort as a whole.[49]

The extensive effort invested in the Standards over the period of two years by such a diverse group yielded a rich reward. Now drafted and finally adopted, the Standards are designed to be a blueprint for courts and court administrators as well as a guide for judges, lawyers, litigants, interpreters, and translators. Organized into ten separate chapters,[50] they represent not only the most up-to-date and thorough compilation of information on each individual topic, but also the development of new guidelines in important areas.[51] The Standards explicitly state that the principles described apply broadly to state courts, federal courts, tribal courts, and administrative proceedings.[52]

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[46] STANDARDS, *supra* note 7, at 1.

[47] *Externship Program and Clinic Works Together*, SEATTLE UNIV. SCH. OF L., http://www.law.seattleu.edu/prebuilt/lawclinic/newsletter/201010/bridge.html (last visited Apr. 16, 2013).

[48] *See Faculty & Staff Directory*, SEATTLE UNIV. SCH. OF L. http://www.law.seattleu.edu/x2250.xml?name=Dutton&submit=Submit (last visited Apr. 16, 2013); *Breaking Down Barriers*, SEATTLE UNIV. SCH. OF L., http://www.law.seattleu.edu/x6322.xml (last visited Apr. 16, 2013).

[49] *See infra* Part II.D.

[50] These chapters include: (1) Fundamental Principles, (2) Meaningful Access, (3) Identifying LEP Persons, (4) Interpreter Services in Legal Proceedings, (5) Language Access in Court Services, (6) Language Access in Court-Mandated and Offered Services, (7) Translation, (8) Qualifications for Language Access Providers, (9) Training, and (10) Statewide Coordination. *See* STANDARDS, *supra* note 7, at ix–x.

[51] For example, the Standards clarify when and how courts should provide written translation or tape recordings of judicial decisions and orders. *See id.* at 80–83.

[52] *Id.* at 3.

In an effort to address the problems of inconsistent services, the Standards provide guidance on two obligations that are often disregarded in courts throughout the country: (1) the requirement to provide language access in civil as well as criminal proceedings,[53] and (2) the prohibition on courts charging for such services.[54] The Standards acknowledge that at the time of their drafting, only half the states mandated interpreters in civil proceedings,[55] yet in many cases federal law, specifically Title VI of the Civil Rights Act of 1964 ("Act" or "Civil Rights Act"), prohibits courts from discriminating against individuals on the basis of national origin.[56] Consistent with the role of previous ABA Standards in setting guidelines based on sound legal reasoning, and not just current legal precedent, the Standards clearly explain that the fundamental principles of fairness, access to justice, and integrity of the judicial process require the same level of services in civil and criminal proceedings.[57] These same principles are cited in deciding the question of cost, as the Standards explain that "courts should provide language access services without charge," allowing courts to "assess or recoup the cost of such services only in a manner consistent with" the principles and not prohibited by state and federal laws.[58]

Improvements in language access were also occurring as the result of increased activity by the DOJ during the same time frame that the Standards were being developed.[59] As the DOJ stepped up its investigations, it also prioritized resource development, recognizing that sharing resources was crucial to avoid the establishment of services in isolation. Activity by the federal government led to the development and funding of a number of helpful services; in August 2011, the Federal Coordination and Compliance Section of the Civil Rights Division of the DOJ ("FCS") issued a chart of *Federal Funding Programs for State and Local Court Activities to Address Access to Justice for Lim-*

[53] *See* BRENNAN CENTER REPORT, *supra* note 6, at 1.
[54] *Id.* at 19.
[55] STANDARDS, *supra* note 7, at 24.
[56] Civil Rights Act of 1964, 42 U.S.C. § 2000d (2006).
[57] STANDARDS, *supra* note 7, at 22.
[58] *Id.* at 33.
[59] Laura K. Abel & Matthew Longobardi, *Improvement in Language Access in the Courts, 2009 to 2012*, 46 CLEARINGHOUSE REV. 334, 334 (Nov.-Dec. 2012).

ited English Proficient (LEP) Individuals.[60] These funds are available from the DOJ Office of Justice Programs and Office of Violence Against Women, as well as from the Department of Health and Human Services Administration on Children, Youth and Families.[61] Of the thirty-seven separate programs listed, state courts are eligible to apply for almost half, and even for the nineteen programs where state courts are not directly eligible to apply, they can often receive some funding from the grants as sub-grantees.[62] Another resource recently available from the DOJ is a report from a workshop FCS co-hosted with the DOJ Access to Justice Initiative and the Administrative Conference of the United States ("ACUS") entitled *Promising Practices for Language Access in Federal Administrative Hearings and Proceedings*.[63]

The existence of these broad efforts highlights the fundamental role of language access and the importance of educating the next generation of lawyers on this issue *before* they leave the legal academy. In the words of Judge Vanessa Ruiz as she addressed the ABA delegates:

> These Standards address core issues of access to justice and the fair and efficient administration of justice. We frequently speak of and demand the constitutional guarantee of due process. But notice and an opportunity to be heard, the essential components of due process, cannot be meaningfully protected when a person does not understand the notice or cannot be understood by the court. We know that justice cannot be fairly and equally administered if the evidence that is presented for consideration by the fact finder – be it a jury or a judge – is incomplete

[60] U.S. DEP'T OF JUSTICE, FEDERAL FUNDING PROGRAMS FOR STATE AND LOCAL COURT ACTIVITIES TO ADDRESS ACCESS TO JUSTICE FOR LIMITED ENGLISH PROFICIENT (LEP) INDIVIDUALS (2011), *available at* http://www.lep.gov/resources/courts/081811_Language_Access_Funding_Chart_for_State_Courts.pdf. For other language access resources, *see Federal Coordination and Compliance*, U.S. DEP'T OF JUSTICE, http://www.justice.gov/crt/about/cor/ (last visited May 23, 2012).

[61] U.S. DEP'T. OF JUSTICE, *supra* note 60.

[62] *See id.*

[63] *See generally* U.S. DEP'T OF JUSTICE & ADMIN. CONFERENCE OF THE U.S., PROMISING PRACTICES FOR LANGUAGE ACCESS IN FEDERAL ADMINISTRATIVE HEARINGS AND PROCEEDINGS (2012), *available at* http://www.justice.gov/atj/publications.html.

> or is inaccurate because of nonexistent or faulty interpretation. . . . .
>
> And the stress [of language barriers] is felt not only by the individual litigant, but also by judges, lawyers and court administrators who must contend with delay, inadequate resources and the resulting inefficiencies. There is a real human toll. Victims of violence, at home and abroad, and other vulnerable persons the law seeks to protect are left exposed to danger, or worse, without recourse to available services and necessary court orders. The opportunity to make real improvement in underlying conditions is squandered if, for example, the need for services is not properly identified or the programs for drug treatment and training for parents are not available for those who do not speak English. Charges cannot be proved at trial and convictions are overturned on appeal because of inadequate interpretation.[64]

As the remarks of Judge Ruiz indicate, the stakes are often very high in the judicial system, and language access is often critical to ensuring the fundamental fairness of the proceedings. The sections that follow describe how law schools can prepare their students to be more vigorous advocates for language access.

II. INCORPORATING LANGUAGE ACCESS INTO THE LAW SCHOOL CURRICULUM

A. General Approaches for Doctrinal and Experiential Courses

Incorporating language access into existing courses offers the opportunity to tie diverse areas of the law to key ethical and civil rights issues. Amendments to the Model Rules of Professional Responsibility, charging lawyers with "special responsibility" for the quality of justice,[65] and urging them to perform annual pro bono ser-

[64] The Honorable Vanessa Ruiz, *supra* note 35.

[65] ABA MODEL RULES OF PROF'L CONDUCT pmbl. (2012); *see also* Douglas L. Colbert, *Professional Responsibility in Crisis*, 51 HOWARD L.J. 677, 689 (2008) (calling inclusion of the provision a "remarkable shift").

vice,[66] sparked a campaign to bring access to justice more squarely into the law school curriculum.[67] The Society of American Law Teachers ("SALT") suggests three goals for incorporating access to justice into law school courses:

> 1) making students aware of the access to counsel crisis where most people are unrepresented in civil proceedings and at the beginning stages of a criminal prosecution; 2) educating students about a lawyer's professional duty as a public citizen having special responsibilities to the quality of justice and to engage in pro bono work; and 3) acknowledging that a lawyer's pro bono efforts and advocacy would make a significant difference in balancing the scales of justice for unrepresented parties and for addressing existing deficiencies in the legal system.[68]

These are important goals that can and should be pursued in virtually every course in the law school curriculum, be it doctrinal or experiential. Language access fits into this broader framework as an essential element of access to justice and, moreover, provides the following supplementary teaching opportunities: 1) educating students about substantive language access law, and its relevance to different practice areas; 2) pointing out the impact of language difference on LEP communities and practitioners of the particular area of law that is the subject of the course; 3) using in-class exercises and training materials re-

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[66] ABA MODEL RULES OF PROF'L CONDUCT 6.1 (2012); *see also* Colbert, *supra* note 65, at 700 (discussing the provision).

[67] *See, e.g.*, Colbert, *supra* note 65, at 705; Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, *in* ETHICS IN PRACTICE: LAWYERS' ROLES, RESPONSIBILITIES, AND REGULATION 264, 273 (Deborah L. Rhode ed., 2000); Deborah L. Rhode, *The Pro Bono Responsibilities of Lawyers and Law Students*, 27 WM. MITCHELL L. REV. 1201, 1202–03 (2000); Deborah L. Rhode, *Legal Education: Professional Interests and Public Values*, 34 IND. L. REV. 23, 24 (2000); Elliott S. Milstein, *Teaching Professional Values Through Clinical Legal Education: Address for the Opening Ceremony of Ritsumeikan University School of Law*, 22 RITSUMEIKAN L. REV. 111, 115 (2005); Elliott S. Milstein, *Preparing Students for Transnational Lawyering: The Role of Clinical Legal Education*, *in* ASSOCIATION OF AMERICAN LAW SCHOOLS (AALS) CONFERENCE ON EDUCATING LAWYERS FOR THE TRANSNATIONAL CHALLENGES 599, 599 (2004).

[68] *Access to Justice Committee*, SALT, http://www.saltlaw.org/contents/view/accesstojustice (last visited Apr. 29, 2013).

lating to language difference and work with interpreters and translators; and 4) raising the civil rights concerns of immigrants.

1. Substantive Language Access Law

Law students should be aware both that there is a language access problem and that laws exist to address it. As noted above, to prevent national origin discrimination, the Civil Rights Act requires that all recipients of federal financial assistance be accessible to individuals who are not proficient in English.[69] The Federal Court Interpreters Act specifies that federal courts must retain certified or otherwise qualified interpreters for people who primarily speak a language other than English.[70] Additionally, some states and municipalities mandate language accessibility for state and local government services, including courts.[71] More generally, language access arises from the fundamental constitutional principles of fairness, "meaningful access to the courts,"[72] due process, equal protection, the right to counsel, and judicial independence.[73] In 1923, the United States Supreme Court held that "the protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue."[74] In 1973, the United States Court of Appeals for the First Circuit eloquently captured the importance of language access in the criminal context: "[N]o defendant should face the Kafkaesque specter of an incomprehensible ritual which may terminate in punishment."[75] President Clinton's 2000 Executive Order 13166, referenced above,

[69] Civil Rights Act of 1964, 42 U.S.C. § 2000d (2006). *See also* Lau v. Nichols, 414 U.S. 563, 569 (1974).

[70] 28 U.S.C. § 1827 (2006).

[71] *See e.g.*, David Jung, Noemi Gallardo & Ryan Harris, *A Local Official's Guide to Language Access Laws*, 10 HASTINGS RACE & POVERTY L.J. 31, 49–50 (2013); Jessica Rubin-Wills, *Language Access Advocacy After* Sandoval*: A Case Study of Administrative Enforcement Outside the Shadow of Judicial Review*, 36 N.Y.U. REV. L. & SOC. CHANGE 465, 483–84 (2012).

[72] *See* Letter from Assistant Attorney Gen. Thomas E. Perez, U.S. Dep't of Justice Civil Rights Div. to Chief Justice & State Court Admin'r (Aug. 16, 2010), *available at* http://www.lep.gov/final_courts_ltr_081610.pdf; *see also* Federal Court Interpreters Act of 1978, Pub. L. 95-539, 92 Stat. 2040 (codified at 28 U.S.C. § 1827 (2006)).

[73] *See* STANDARDS, *supra* note 7, at 19; BRENNAN CENTER REPORT, *supra* note 6, at 1.

[74] Meyer v. Nebraska, 262 U.S. 390, 401, 403 (1923) (holding that the Due Process Clause of the Fourteenth Amendment prohibits restriction on education in foreign languages).

[75] United States v. Carrion, 488 F.2d 12, 14 (1st Cir. 1973).

requires federally funded programs to "take reasonable steps to ensure meaningful access to their programs and activities by LEP persons."[76] The Standards and other recent national efforts described in Part I demonstrate that the situation is changing rapidly and that tools increasingly exist for new lawyers to improve matters in the localities where their careers unfold.

Language access protections thus have a sound footing in constitutional and statutory law, are of major concern for tens of millions of vulnerable persons within the United States, and constitute a major preoccupation for courts and agencies facing the need to innovate. Yet, these concerns are rarely addressed in today's law school curriculum. Deciding what material to cover is always a difficult balance, but this area of law is worthy of mention in many courses, including civil procedure, criminal procedure, civil rights, immigration law, federal courts, and administrative law.

2. Practice Aspects to Raise in Doctrinal and Experiential Courses

Language access is a practice issue in most areas of law, varying with the demands on and resources of each adjudication system. Any class that requires students to observe court can add a few questions about LEP litigants and witnesses to a student response questionnaire.[77] Students enrolled in professional responsibility and experiential courses can consider the importance of making their practices and the courts language-accessible if they are going to solicit and communicate professionally with LEP clients. Recruiting bilingual staff, working with interpreters, following document translation protocols, managing the role of interpreters in litigation, and advocating for language access are all simple concepts that can help broaden a client base while setting the stage for competent practice and improving the

[76] Exec. Order No. 13,166, 65 Fed. Reg. 50,121, 50,121 (Aug. 16, 2000).

[77] Sample questions include:

- Were any of the litigants or witnesses you saw today Limited English Proficient (LEP)? Which language/s?
- Was the language one that is commonly encountered in the U.S., such as Spanish or Mandarin, or was it a language of lesser diffusion (also known as a minority, rare, or exotic language)?
- How did the litigant or witness interact with court personnel?
- How did they interact with their lawyers?
- If they had interpreters, who paid for the interpretation?
- How, if at all, do you think the language aspect affected the case?

"quality of justice." Pre-trial advocacy classes can highlight the LEP issues that frequently arise in depositions, such as negotiating payment for and qualifications of interpreters. Trial advocacy classes can cover monitoring interpretation quality and raising objections to interpretation, while students taking evidence can learn how to manage and enter foreign language documents properly.

3. In-Class Exercises and Training Materials

Educators can use a range of exercises and training materials to raise awareness about lawyering across language differences, and the use of interpreters and translators. At the Seattle University School of Law, for example, Professor Gillian Dutton has incorporated training on LEP issues into her externship seminars. Students are exposed to a brief exercise that requires them to work in groups of three, one reading the part of a client at an agency, the other playing the role of a client, and the third acting the part of an interpreter who must, from memory, repeat in English the conversation between the other two students. Students engaging in this exercise regularly experience just how difficult the simplest part of interpreting—accurate memorization of the material—is, and readily learn how to modify their speech to help the English speaking "interpreter" get through the material accurately. A discussion of the difficulties involved in a real interpreting situation, where two (and in relay interpreting[78] sometimes three) languages are used follows, and students reflect on their own language acquisition. They are then given information on scientific research into the complicated process of code switching that occurs when interpreters must transform meaning in one language into its equivalent in a language that may be completely different in syntax, grammar, and vocabulary.

A final reflection in the exercise involves teaching students how to conduct the conversation in a legal setting where they are advising the client of confidentiality, accuracy, and the challenges of working with an interpreter. In recent classes, students have watched a video produced by Legal Services New Jersey on *Working with Interpreters*[79] that covers common problems of informal interpreting such

[78] Relay interpreting "[i]nvolves using more than one interpreter to act as a conduit for spoken or sign languages beyond the understanding of a primary interpreter." STANDARDS, *supra* note 7, at 12.

[79] *See* Legal Serv. of N.J., *Working with Interpreters*, YOUTUBE (Aug. 2, 2010), http://www.youtube.com/watch?v=pVm27HLLiiQ&feature=relmfu.

as failing to use the first person, violating ethical codes by adding interpreter advice to the meaning, or inappropriately summarizing the material. Students are encouraged to think of this as another skill in their tool kit and are referred to the wealth of resources available for attorneys such as *Tips for Attorneys Working with Interpreters* produced by the Northwest Justice Project.[80] Externship students are also asked to journal on the language access services they have observed and to compare the use of interpreters by courts, government agencies, civil legal aid attorneys, and those working in prosecution and criminal defense.

In addition to teaching basic techniques for working with interpreters and translators, the externship seminars cover how language access impacts clients in all kinds of legal cases, and describe the role that attorneys can play in language access advocacy—filing civil rights complaints, pursuing impact litigation, engaging in community lawyering, and drafting administrative and legislative solutions. Students are encouraged to think about how they will use case law, state statutes, and civil rights regulations and guidance to advocate for clients both in individual cases and at a systemic level. Materials such as the Northwest Justice Project's *Language Access 101*, *Incorporating Language Access Laws into Your Legal Practice*[81] highlight the role that attorneys play in educating others about these important rights.

4. Social and Moral Importance of Immigrants

As reflected in the amount of attention they receive in the public policy sphere and in religious social thought,[82] the treatment of

[80] *See* Northwest Justice Project, *NJP*: *Tips for Attorneys Working with Interpreters*, YOUTUBE (July 16, 2012), http://www.youtube.com/watch?v=skw9vWIpZjQ.

[81] *See* Northwest Justice Project, *NJP*: *Language Access 101: Incorporating Language Access Laws into Your Legal Practice*, YOUTUBE (July 16, 2012), http://www.youtube.com/watch?v=4WlHnF8Q6KQ.

[82] *See, e.g.*, Christina Iturralde, *Rhetoric and Violence: Understanding Incidents of Hate against Latinos*, 12 N.Y. CITY L. REV. 417 (2009); Lori A. Nessel, *The Practice of Medical Repatriation: The Privatization of Immigration Enforcement and Denial of Human Rights*, 55 WAYNE L. REV. 1725 (2009); David B. Thronson, *Entering the Mainstream: Making Children Matter in Immigration Law*, 38 FORDHAM URB. L.J. 393 (2010); *National Migration Week 2013 To Be Celebrated January 6-12*, U.S. CONF. OF CATH. BISHOPS (Jan. 2, 2013), http://www.usccb.org/news/2013/13-001.cfm; *Region's Bishops Express Concern over Immigrants Deaths, Call Governments to Action*, U.S. CONF. OF CATH. BISHOPS

immigrants is a key moral and civil rights issue of our time. For example, federal, state, and local legislatures devote enormous amounts of time to immigration, and immigration takes up a growing portion of federal court dockets, a phenomenon likely to be all the more true with comprehensive immigration reform.[83] Incorporating language access into existing law school courses offers law students the opportunity to integrate their attitudes toward these vulnerable communities with their own budding identities as "officer[s] of the legal system and . . . public citizen[s] having special responsibility for the quality of justice."[84]

B. Experiential Learning Opportunities in Clinics

Experiential learning opportunities are an important vehicle for the promotion of language access. These opportunities allow students to build upon the knowledge and skills they have acquired in other contexts within the law school, and apply them to concrete language access issues affecting the local community. Described below are experiential learning opportunities pursued by the University of North Carolina School of Law's I/HRP Clinic, and American University

(June 30, 2011), http://www.usccb.org/news/2011/11-133.cfm; Archbishop Jose Gomez, *USCCB Statement on the DREAM Act*, U.S. CONF. OF CATH. BISHOPS (June 28, 2011), http://www.usccb.org/issues-and-action/human-life-and-dignity/migrants-refugees-and-travelers/dream-act-bishops-statement-2011-06-18-archbishop-gomez-on-dream-act.cfm; Kristin Heyer, *Easy Targets: The Plight of Migrant Women*, COMMONWEAL MAG. (Feb. 1, 2012), *available at* http://commonwealmagazine.org/easy-targets; Cathleen Kaveny, *More Than a Refuge: Why Immigration Officials Should Steer Clear of Churches*, COMMONWEAL MAG. (Oct. 24, 2011), http://commonwealmagazine.org/more-refuge; Ananda R. Robinson, *Borderline: Stranded in Nogales*, COMMONWEAL MAG. (May 4, 2009), http://commonwealmagazine.org/borderline-0.

[83] *See, e.g.*, Karla M. McKanders, *Welcome to Hazleton! "Illegal" Immigrants Beware: Local Immigration Ordinances and What the Federal Government Must Do About It*, 39 LOY. U. CHI. L.J. 1, 6–7 (2007); Stacy Caplow, *After the Flood: The Legacy of the "Surge" of Federal Immigration Appeals*, 7 NW. J. L. & SOC. POL'Y 1 (2012); Julia Preston, *Besides a Path to Citizenship, A New Path on Immigration*, N.Y. TIMES, Apr. 17, 2013, at A10; David Nakamura, *Senators Clash Over Border Security Proposals In Immigration Bill*, WASH. POST (May 9, 2013), http://articles.washingtonpost.com/2013-05-09/politics/39127870_1_border-security-border-enforcement-comprehensive-immigration-reform-bill

[84] ABA MODEL RULES OF PROF'L CONDUCT pmbl. (2012).

1. UNC's Immigration/Human Rights Policy Clinic: Assessing Foreign Language Interpreters in State Courts

In 2010, the I/HRP Clinic undertook a semester-long policy project working with community advocates who had long been concerned with the state of foreign language interpreters in North Carolina courts.[85] North Carolina has witnessed a dramatic demographic shift. In addition to a growing Latino/a population, the Vietnamese and Burmese populations have also increased in recent decades. It is difficult to identify exactly what percentage of these individuals speaks a language other than English; however, data indicate that a sizeable portion of the state's population cannot communicate fully in English.[86] Notwithstanding increasing numbers of the state's LEP population and the concomitant frequency with which these individuals interact with the courts, North Carolina has no state statutory or administrative guarantee of a foreign language interpreter. Horror stories abounded on listservs, and at various conferences and continuing legal education programs advocates described a range of problems from a denial of interpreters to lack of quality control relating to the use of interpreters. However, most practicing lawyers seemed stymied by their own lack of knowledge about the legal issues pertaining to the right to interpreters and the complexities that arise when working with them.

After meeting with representatives of a community organization and individuals concerned about egregious violations of rights of LEP individuals, the I/HRP Clinic determined to undertake an analysis of the issue. The project was structured to enable students to improve their legal research skills; to gather evidence, particularly empirical evidence through court observations and interviews; to analyze and categorize their findings; to identify, evaluate, and recommend options for remedying the violations they determined existed; and to present and defend their findings and recommendations. Students were able to develop and improve a number of law-related skills. They researched the law and, through their courtroom observations, gained important insights about the structure and workings of the courtroom in general.

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[85] *See generally* KIRBY, LONG & RAJA, *supra* note 23.

[86] *See* MIGRATION POLICY INST., LIMITED ENGLISH PROFICIENT INDIVIDUALS IN THE UNITED STATES: NUMBER, SHARE, GROWTH AND LINGUISTIC DIVERSITY 4, 5 (Dec. 2011) (noting that North Carolina had the second highest growth in LEP population from 1990 to 2010), *available at* http://www.migrationinformation.org/integration/LEPdatabrief.pdf.

They studied the performance and behavior of all courtroom parties and actors including clerks, litigants, interpreters, judges, attorneys, witnesses, courtroom bailiffs, and observers.

Three students were assigned to three types of work: legal research, collection of qualitative data, and development of solutions. This work yielded concrete outcomes, as described below.

a. Legal Research: Analysis of the Law Regarding Access to the Courts for Non-English Speakers

The students assigned to perform legal research examined federal law, including federal criminal and civil case law and applicable statutes, and then assessed the degree to which North Carolina courts complied with federal legal standards. They similarly researched state law beyond North Carolina with regard to the right to and standards for the use of interpreters, and engaged in a comparative analysis. They identified those laws and practices that seemed to rise to the level of model or best practices, and scrutinized the foundations for such practices as a means to consider how to achieve improvements in North Carolina. Students focused particularly on the Civil Rights Act with regard to language access. They reviewed the history of the Act, its basic provisions, the Executive Order that set out guidance for implementation of the Act, DOJ guidelines regulating foreign language access, case law interpreting Title VI, as well as the administrative compliance and enforcement mechanisms of Title VI (i.e., the complaint process, voluntary compliance, and the termination of federal funding). Lastly, they analyzed Title VI's applicability to the North Carolina Administrative Office of the Courts ("AOC") and the state's deficiencies with regard to Title VI. They argued that the law required North Carolina courts to provide an interpreter to all litigants in all proceedings, both civil and criminal, without regard to income and without charging them. The students also argued that court interpreters had to meet requisite standards set forth in national and professional guidance and protocols, and that judges and lawyers were required to be familiar with such standards and with their own obligations, and to utilize foreign language interpreters appropriately.

b. Gathering of Qualitative Data

Students were assigned to observe in courtrooms around the state.[87] They also interviewed litigants, private lawyers, public defenders, prosecutors, judges, interpreters, and individuals from the state's Indigent Defense Commission, which oversees the provision of criminal defense to the indigent, as well as assigned counsel in other matters as required by law. They sought to assess both access to, and quality of, interpreter services. They identified a range of issues, from those that could be characterized as blatant violations of constitutional rights, to subtler due process concerns emerging from an underfunded system with insufficient oversight. For example, often, indigent criminal defendants were charged for the use of a court interpreter, and civil litigants were routinely denied any right to a court interpreter at all.

Students observed that as a result of the failure to provide interpreters to LEP litigants consistently, the court system experienced delays and inefficiencies. They reported that judges often evinced callous disregard for procedure and practices that went well beyond the bounds of legal norms. They observed judges calling out to individuals waiting for their cases to be called to see if anyone "spoke Spanish" and would help out. Anyone who chose to raise their hand and help out was deemed satisfactory, regardless of proficiency in either Spanish or English, and irrespective of conflicts and confusion.

Interpreters who were present and utilized by the courts often failed to comport with basic professional obligations despite the fact that the AOC had provided judges with "bench cards" to enable them to identify proper interpreter practices as well as with common errors that were not to be tolerated. Interpreters regularly and obviously summarized testimony, failed to interpret what witnesses said to the judge, failed to interpret in the first person, and were allowed to continue as interpreters despite the potential for conflict of interest. The bench behavior of most judges demonstrated the judiciary's lack of familiarity with standards and guidelines for working with interpreters.

Similarly, many lawyers representing or cross-examining LEP litigants revealed a lack of familiarity with rules and protocols for working with interpreters. While these stories may not be unique to

[87] Travel and budget limitations restricted them to three urban and three rural counties in close proximity to the law school.

North Carolina, methodically observing, recording, and analyzing them allowed such anecdotal information to be usable information. The students could easily conclude that the guidelines provided by the AOC were inadequate to safeguard the rights of LEP individuals.

c. Generating Remedial Options

Perhaps one of the most innovative aspects of the report related to the identification and evaluation of remedial options. Four options were described: (1) lobby for a written mandate requiring the provisions of interpreters in all cases in North Carolina courts; (2) file a Title VI complaint with the DOJ; (3) bring suit against the AOC; and (4) negotiate directly with the AOC.[88] Based on public policy methodology, students decided that an evaluation would have to be based on a number of criteria, including the timeliness of the proposed remedy (i.e., how long it would take to obtain change); political feasibility; legitimacy (measured by how and whether a remedial approach would be transparent and public, and how much the AOC would view the approach as a serious threat); effectiveness (i.e., whether or not the option would solve the problem of access and quality issues with interpreters); and costs related to advocate, client, and community efforts, time, and expense. The students created a matrix to plot their evaluation, which judged whether the option fully satisfied the criteria, partially satisfied the criteria, or failed to satisfy the criteria. They also recommended the creation of a statewide task force to prioritize the issue and to support whatever option the key organizations determined to pursue.[89]

d. Specific Outcomes

i. Department of Justice (Pérez) Letter, August 2010

During the compilation of the report, students contacted the DOJ to determine the status of a Title VI complaint that had been filed by a private attorney regarding the employment of a court interpreter who was alleged to be affiliated with a racist hate group. In the course of their communication, the students described their project, and DOJ attorneys asked them to send their report upon its publication. The students complied and sent the report to DOJ in July 2010. In August

[88] KIRBY, LONG & RAJA, *supra* note 23, at 81.
[89] *Id.* at 89

2010, the DOJ Civil Rights Division sent a letter to the fifty state court administrators and state chief justices, advising that certain practices violated Title VI—specifically, (1) limiting the types of proceedings for which qualified interpreter services are provided by the court, (2) charging interpreter costs to one or more parties, (3) restricting language services to courtrooms, and (4) failing to ensure effective communication with court-appointed or supervised personnel—while also clarifying that fiscal pressures did not provide an exemption from civil rights requirements.[90]

ii. Complaint Under Title VI of the Civil Rights Act of 1964

In May of 2011, the North Carolina Justice Center, with whom the I/HRP collaborated, filed a complaint on behalf of several plaintiff organizations whose members were likely to need and suffer from the failure to provide access to foreign language interpreters in the courts.[91] The complaint traced federal funds allocated to the North Carolina courts, including a history of such funding, and considered relevant sources of budgetary information, including the Office of Justice Programs and the North Carolina state budget.[92] The complaint also reported on demographic trends and data including estimated numbers of LEP individuals based on recent U.S. Census reports.[93] The complaint relied upon the I/HRP report as authoritative documentation on systemic access problems in North Carolina.[94]

In March of 2012, the DOJ issued its findings (DOJ Investigation Findings, Complaint 171-54M-8) in a twenty-two-page report, and offered the following core finding:

> [W]e have determined after a comprehensive investigation that the AOC's policies and prac-

[90] *See generally* Letter from Assistant Attorney Gen. Thomas E. Perez (Aug. 16, 2010), *available at* http://www.lep.gov/final_courts_ltr_081610.pdf. The DOJ Civil Rights Division informed state court administrators and chief justices that LEP litigants engaged in court functions that took place outside the courtroom (e.g., probation offices and diversion programs) were also entitled to an interpreter. *Id.* at 3.

[91] *See generally* Complaint Under Title VI of the Civil Rights Act of 1964, Latin Am. Coal. v. N.C., U.S. Dep't of Justice Office of Civil Rights (May 16, 2011) (on file with authors).

[92] *Id.* at 8.

[93] *Id.* at 9.

[94] *Id.* at 4 n.3.

> tices discriminate on the basis of national origin, in violation of federal law, by failing to provide limited English proficient (LEP) individuals with meaningful access to state court proceedings and operations.[95]

Among the key findings and directives, the DOJ found that the cost of expanding interpreter services as calculated by the AOC was $1.4 million per year, or 0.3% of the AOC's fiscal year 2011 certified budget of $463.8 million.[96] The DOJ also found that the AOC "refused to provide interpreter services even when doing so would not involve *any* additional financial expenditure."[97]

The DOJ noted that the AOC impermissibly restricted the types of proceedings in which it would provide interpreters, and failed to ensure that even the limited requirements of its current policy are met across the state.[98] It further noted that the courts failed to ensure that interpreters were scheduled at an appearance when needed and that court documents key to the fair process of proceedings were not translated.[99] The DOJ found that as a result of AOC policy and practices, LEP litigants were required to present their claims and defenses without any language assistance and were deprived of meaningful access to justice.[100]

The DOJ discounted any claim by the AOC that suggested that financial costs of complying with Title VI ought to weigh in the consideration of whether the state could comply with statutory and regulatory requirements, noting that "any focus only on the financial costs of providing additional interpreter services ignores the significant fiscal and other costs of *non*-compliance with the AOC's obligation to take reasonable steps to ensure access to court operations for LEP individu-

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[95] Letter from the U.S. Dep't of Justice to the Hon. John W. Smith, Director, N.C. Admin. Office of the Courts 1 (Mar. 8, 2012), *available at* http://www.justice.gov/crt/about/cor/TitleVI/030812_DOJ_Letter_to_NC_AOC.pdf (hereinafter DOJ letter Mar. 2012).

[96] *Id*. at 3.

[97] *Id.* at 2.

[98] *Id.* The AOC, for example, failed to inform LEP individuals properly of their right to an interpreter. *Id.*

[99] *Id.*

[100] *Id*. at 2.

als."[101] As a result of the DOJ's investigation, the AOC faced the threat of DOJ civil litigation pursuant to Title VI, the related contractual agreements, and the pattern-or-practice provisions of the Safe Streets Act.[102] These acts allow the DOJ to seek injunctive relief as well as the termination of federal financial assistance.[103]

iii. North Carolina Administrative Office of the Court's Response

On August 8, 2012, the AOC issued a response to the DOJ findings that significantly expanded the right to court interpreters in all criminal, juvenile, involuntary commitment, incompetency, and protection order matters, regardless of indigence.[104] The first part of the memorandum addressed immediate changes authorized by the AOC to move the state into compliance with Title VI. The memorandum prohibited assessing costs for interpreting services, and extended court interpreting to some court functions as well as out-of-courtroom communications for indigent defendants.[105] It authorized remote language access technology, including telephonic interpreting services in clerks' offices, as well as the translation of additional court-related forms.[106] It established new procedures for identifying cases in which an interpreter may be required.[107] Of note, the AOC directive created a language access officer and administrative complaint process.[108]

Part II of the Memorandum set forth the AOC's obligation to further expand and enhance foreign language access to all civil and small claims matters, and committed to a two-year timetable for authorizing interpreters in cases involving the welfare of children and families, loss of residency, and money and property disputes.[109] It authorized the creation of a stakeholders committee, collection of data,

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[101] *Id*. at 3 (emphasis in original).

[102] *See* 42 U.S.C. § 14141 (2006).

[103] *See id.*; 42 U.S.C. § 2000d-1 (2006); 28 C.F.R. § 42.108 (2012); 42 U.S.C. § 3789d(c) (2006); 28 C.F.R. §§ 42.210, 42.215 (2012).

[104] Memorandum from John W. Smith, N.C. Admin. Office of the Courts: Notice of Expansion and Enhancement of Foreign Language Access Services, to All Judicial Branch Elected and Appointed Officials 1 (Aug. 8, 2012), *available at* http://www.nccourts.org/citizens/cprograms/foreign/documents/foreign_language_access_and_interpreting_services_memo.pdf.

[105] *See id*. at 1–2.

[106] *See id.* at 2–3.

[107] *Id.* at 2.

[108] *Id.* at 3.

[109] *Id*.

and ongoing translation of forms.[110] In sum, the immediate reforms and proposed future reforms will enhance rights of, and protections for, language minorities within the North Carolina judicial system.

iv. Proposed Legislation

In addition to the administrative memorandum expanding the rights of LEP litigants, the North Carolina state legislature proposed statutory reform. In 2011, House Bill 950 was introduced, which, among other matters, would allow the Judicial Department to "use funds appropriated and funds available to the Department to provide assistance to persons with limited proficiency in English to assist the court in the fair, efficient, and accurate transaction of business and provide more meaningful access to the courts."[111] Although the legislation has not yet been enacted, in its proposed form, it signals additional progress on the issue of access to justice for LEP litigants.

2. American University Washington College of Law Immigrant Justice Clinic: Language Access Advocacy and Compliance Reports

In the fall of 2006, the IJC at American University Washington College of Law began a multi-year advocacy effort to strengthen language access protections in the District of Columbia. For this work, the IJC's organizational client was the D.C. Language Access Coalition ("DCLAC"), a coalition of over thirty community-based organizations dedicated to promoting language access rights.[112] The District of Columbia is governed by a robust language access statute, itself the product of advocacy by DCLAC. The D.C. Language Access Act 2004 ("Language Access Act") imposes obligations on virtually all D.C. government agencies, requiring "covered entities" to provide oral language services in any non-English language, and written translations of vital documents where certain numerical thresholds are met.[113] The Language Access Act imposes additional obligations on "covered entities with major public contact;" including community outreach, the designation of a Language Access Coordinator within the agency, and

[110] *Id*. at 3–5.

[111] H.R. 950, 2011 Gen. Assemb., Reg. Sess. (N.C. 2011).

[112] *See* D.C. LANGUAGE ACCESS COAL.., http://www.dclanguageaccess.org (last visited Feb. 5, 2013).

[113] D.C. CODE §§ 2-1932 (2012).

the submission of biannual reports.[114] It also creates a complete procedure administered by the D.C. Office of Human Rights, and calls for the appointment of a Language Access Director to be housed within the Office of Human Rights.[115] Notably, the DCLAC is written into the Language Act regulations as an entity with which the D.C. government should consult on language-access-related matters.[116]

Unsurprisingly, in the years after the passage of the Language Act, local advocates found that government compliance with the law was inconsistent. Some agencies had fully embraced its mandates while others were notoriously inhospitable to LEP constituents. In this context, the IJC began its partnership with DCLAC to devise strategies to increase government compliance with the law. Throughout the representation, student attorneys with the IJC have worked closely with members of DCLAC's legal committee, comprised of staff attorneys from organizations that are members of DCLAC, including the Legal Aid Society of the District of Columbia, Bread for the City, the Asian Pacific American Legal Resource Center, the Central American Resource Center, and others. The DCLAC and IJC directly advocated before the Office of Human Rights, the D.C. City Council, and collaborated with the D.C. Mayor's Offices on Latino Affairs, Asian Pacific Islander Affairs, and African Affairs.

In the first years of the collaboration, IJC student attorneys worked on the drafting and implementation of regulations to accompany the Language Access Act. Student attorneys also identified flaws in the complaint procedure, including the lack of an effective enforcement mechanism; as a result, they performed legal research to explore the possibility of a private right of action under the Act. Over the years, student attorneys from the IJC have advocated before specific D.C. government agencies on language access matters and testified at oversight hearings before committees of the D.C. City Council. While these efforts resulted in incremental improvements, both the DCLAC and IJC saw the need to document instances of non-compliance formally. In 2010, DCLAC and IJC conceived of a research-based report that would evaluate government compliance with the Act. The development of this report is described below.

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[114] *Id.* § 2-1934(a)(1) (2012); D.C. MUN. REGS. tit. 4, §§ 1206.3, 1206.4 (2012).

[115] D.C. CODE §§ 2-1935 (2012).

[116] D.C. MUN. REGS. tit. 4, § 1209.1 (2012).

a. Access Denied: The Language Access Report

After deciding upon a report as an advocacy strategy, IJC student attorneys and DCLAC representatives began to develop the research methodology. Together, they devised a multi-faceted data collection effort. A primary survey instrument was a Community Member Survey, which collected basic demographic information about LEP community members, along with their experiences with different D.C. government agencies. In addition to this survey, the students developed additional surveys focused on a subset of agencies covered by the Language Access Act. An in-person testing survey was developed to test how agency personnel responded to non-English-speaking persons requesting information or documents. Likewise, a telephone testing protocol was devised to test how agencies responded to phone inquiries in languages other than English. Finally, DCLAC and IJC developed a tool to measure the accessibility of agency websites to LEP individuals. In preparing these surveys, the student attorneys educated themselves about basic qualitative and quantitative research methodologies.

To supplement this research, they submitted Freedom of Information Act ("FOIA") requests to select agencies, and scrutinized language access plans submitted by covered agencies to the D.C. Office of Human Rights. Finally, DCLAC representatives collected narratives from community members to ensure that the data from the report kept a human face. For much of the data collection, IJC and DCLAC worked collaboratively to train community volunteers to administer the community member surveys, or to serve as in-person, telephone, or website testers. After over a year of data collection—resulting in over 250 community member surveys, and scores of agency tests—the IJC began the process of analyzing the findings and preparing a report.

The collaborative effort between DCLAC and IJC culminated in a report entitled *Access Denied: The Unfulfilled Promise of the D.C. Language Access Act*.[117] The report contained several key findings, including the following: 58% of individuals surveyed reported some

[117] IMMIGRANT JUSTICE CLINIC, AMERICAN UNIV. WASH. COLL. OF LAW & D.C. LANGUAGE ACCESS COAL., ACCESS DENIED: THE UNFULFILLED PROMISE OF THE D.C. LANGUAGE ACCESS ACT 15 (2012), *available at* http://www.wcl.american.edu/news/documents/AccessDenied.pdf.

kind of language access difficulty in their interaction with a D.C. agency; 74% of those who had difficulty experienced a problem with interpretation services; 30% of those who had difficulty noted a lack of documents, while 31% did not find translated signs; and 70% of agency website testing revealed a lack of translated documents.[118] The IJC student attorneys had an opportunity to develop their advocacy skills further in the context of a formal press conference where the report was released. At this press conference, the students presented some of the report's recommendations, which included changes to agency databases to allow better tracking of language needs, more robust training of agency personnel, increased signage and more website content in non-English languages, hiring of bilingual staff, an accelerated complaint process, and the creation of a private right of action under the law.[119]

b. Prescription for Inequity:
A Report on Language Access in D.C. Pharmacies

Following its work on *Access Denied*, in fall 2012 IJC partnered with Many Languages, One Voice ("MLOV"), a D.C.-based nonprofit that works with the local LEP community, and also administers the work of DCLAC.[120] Inspired by successful advocacy efforts in New York State, and in response to concerns from LEP residents in D.C.,[121] MLOV turned its attention to the issue of language access at chain pharmacies in Washington, D.C. Since most chain pharmacies receive federal funds through the Medicare program, they are obligated to comply with Title VI, and are prohibited from discriminating against LEP persons who seek to access their services.[122] The failure to

[118] *Id*. at 14–15.

[119] *Id*. at 35–38.

[120] *See About Us*, MANY LANGUAGES ONE VOICE, http://www.mlovdc.org/ (last visited May 7, 2013).

[121] *See generally* MAKE THE ROAD NEW YORK, CENTER FOR POPULAR DEMOCRACY, & NEW YORK LAWYERS FOR THE PUBLIC INTEREST, RX FOR SAFETY: SAFERX RECOMMENDATIONS FOR CLEAR AND ACCESSIBLE PRESCRIPTION MEDICATION (2012), *available at* http://www.maketheroad.org/pix_reports/SafeRx_Regulations_Recommendations_Report_with_Appendices_2012.7.17.pdf.

[122] These obligations are spelled out in guidance from the U.S. Department of Health and Human Services. *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47,313 (Aug. 8, 2003); Policy Guidance on the Prohibition Against National Origin Discrimination as it

provide language access at pharmacies can lead to dangerous mistakes on the part of LEP patients.

MLOV staff surveyed LEP persons to gauge their experience at pharmacies, spoke with pharmacy staff about language access protocols, and conducted in-person and telephonic tests of pharmacies. IJC students analyzed the data that MLOV had collected, and worked with MLOV staff to draft a report summarizing the findings. The report, entitled *Prescription for Inequity: The Struggles of Limited English Proficient Patrons at D.C. Pharmacies*,[123] was released in April 2013. The report revealed that 68% of pharmacies provided no language assistance services, and the majority of respondents reported that key written information—such as bottle labels, warning labels, supplemental leaflets, and the like—had not been translated.[124] The report also offered proposals for amending the D.C. code to ensure interpretation and translation services are available at local pharmacies.[125] As of the date of this publication, D.C. Council Member Jim Graham intends to introduce legislation before the D.C. Council to amend the relevant pharmacy laws.[126] This dimension of the work will allow students to engage in legislative advocacy relating to language access.

C. Pro Bono Initiatives

As a complement to more sustained projects, law schools occasionally engage in *ad hoc* initiatives relating to language access. For example, in support of the mobilization for immigrant rights that exploded onto the streets of U.S. cities in the spring of 2006, the University of North Carolina School of Law, together with a broad range of on-campus and community groups interested in the issue of language access generally, organized a teach-in about linguistic access and the right of all newcomers, regardless of immigration status, to participate

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Affects Persons with Limited English Proficiency, 65 Fed. Reg. 52,762 (Aug. 30, 2000).

[123] *See* MANY LANGUAGES ONE VOICE & AM. UNIV. WASH. COLL. OF LAW IMMIGRANT JUSTICE CLINIC, PRESCRIPTION FOR INEQUITY: THE STRUGGLES OF LIMITED ENGLISH PROFICIENT PATRONS AT D.C. PHARMACIES (2013), *available at* http://www.wcl.american.edu/news/documents/prescription_equity.pdf.

[124] *Id*. at 9–14.

[125] *Id*. at 17–22.

[126] Alan Blinder, *Advocates to Seek Law Requiring Interpreters for D.C. Pharmacies*, WASH. EXAMINER, Apr. 21, 2013, http://washingtonexaminer.com/advocates-to-seek-law-requiring-interpreters-for-d.c.-pharmacies/article/2527757.

in the structures and networks of society.[127] Included in the list of groups specifically targeted for the event were volunteer interpreters for the law school's clinical programs, as well as undergraduate and graduate students studying language and applied linguistics. The I/HRP Clinic coordinated this effort with the law school's student pro bono board, the University of North Carolina Center on Public Interest, the University of North Carolina Department of Romance Languages, and the University of North Carolina Institute for the Study of Latin America. The law school invited state office personnel from the AOC who administer the courts' foreign language interpreters' project to participate as a way to encourage them to invest in the issue of language access and the courts. Also included were local officials with the North Carolina Department of Justice with Title VI enforcement authority. In addition to teaching about interpreting issues specifically, the organizers introduced the theme of immigrant rights and the way in which language differences represent the most notable obstacle that arises as newcomers weave themselves into the tapestry of North Carolina communities.

In addition to issue advocacy, *ad hoc* initiatives can include raising language access outside the classroom. It is not difficult to weave the topic into conference themes and panel discussions, even if peripheral to the key subjects at hand. At the University of North Carolina, faculty and clinic students have participated in on-campus events, and describe the challenges, obligations, and rights at stake. They have taken advantage of the opportunities to be visible about their work and their issues. For example, the clinics rely on university experts in asylum cases and have been able to build strong ties to a number of professors in other parts of the university as a result. The clinics often rely on the university community as a function of relationships with various entities that focus on global academic interests. These relationships put the law faculty in contact with people with language skills and interest about the issue of language rights.

[127] *See Analyzing the Problems with Foreign Language Interpretation in the North Carolina Court System and Potential Solutions*, UNIV. OF N.C. SCH. OF L., http://www.law.unc.edu/academics/clinic/ihrp/highlights/default.aspx (last visited Apr. 18, 2013).

D. Clinical and Externship Program Language Access Policies

Law schools can also promote language access through their institutional policies and practices. An important step is for clinical programs and externship programs to adopt policies relating to language access.

At Seattle University School of Law, an important step in expanding language access in the curriculum came when the Ronald A. Peterson Law Clinic adopted a formal policy for clinic students working with LEP clients.[128] The policy was modeled on one developed by the Externship Director Gillian Dutton, that she previously used in teaching a refugee and immigrant advocacy clinic at the University of Washington School of Law. Consistent with the clinical focus on reflective lawyering, the policy was revised to include a requirement that both students and interpreters evaluate the quality of the encounter after each interpreted interview. Initial response to the policy was accompanied by concerns about costs and a discussion of the informal interpreting methods previously encountered. A belief that students should be instructed in best practices, combined with a reminder of the law school's legal obligations, served to confirm faculty commitment to the policy, and it has been used to provide regular training to clinic staff and all incoming clinic students.

III. BRIDGING LANGUAGE DIFFERENCE BY PROMOTING STUDENT BILINGUALISM

Many discussions of language access assume that lawyers and legal institutions operate entirely in English, and that the discourse of LEP persons must be translated for English-centered communication. While English continues to be the dominant language in U.S. society, an alternative approach to language access involves promoting the non-English language capabilities of U.S. lawyers and, increasingly, legal institutions. Under this approach, lawyers and other institutional actors with advanced foreign language ability can serve as bridges between LEP persons and the U.S. legal system. Over time, processes and institutions may evolve such that they operate fully in languages

[128] *See generally* Ronald A. Peterson Law Clinic, *Policy on Services for Limited English Proficient Clients*, SEATTLE UNIV. SCH. OF L., http://www.law.seattleu.edu/Documents/lawclinic/LEP_Policy.pdf (last visited Apr. 30, 2013).

other than English; for example, court-ordered mediations, or even parts of trials, might be conducted in another language. Given the emergence of Spanish as the nation's "second language," many of the efforts in this regard have been oriented towards the Spanish language and the Latino immigrant community.

This approach to language access places responsibility on U.S. law schools as the gatekeepers and training ground for the profession. Law schools often tout the language abilities of their incoming classes of students, but non-English language course offerings are still somewhat uncommon. Law schools are increasingly offering "Legal Spanish" or "Spanish for Lawyers" courses,[129] but more robust curricular offerings are relatively nascent. For example, relatively few schools offer doctrinal courses that are taught in non-English languages,[130] or even hybrid doctrinal courses that include a non-English-language component. While law school clinical programs are usually quite attentive to issues of language difference, structured, non-English-language clinical instruction is rare.

Before delving into specific models of instruction, a threshold question arises: what specific knowledge and skills are intended to be conveyed through bilingual legal education? Naturally, this instruction must equip students with the foreign language ability (specifically, specialized vocabulary) needed to converse about legal concepts in another language. The teaching must extend far beyond language instruction to address issues of cross-cultural lawyering, legal ethics, and considerations of client dignity. Given that immigrant clients—or even overseas colleagues or co-counsel—are likely to be familiar with another legal system, some comparative law instruction is also warranted. Students must also deepen their abilities in reading and writing in

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[129] *See, e.g.*, *Law School Launches Spanish for Lawyers Course*, SEATTLE UNIV. SCH. OF L., http://www.law.seattle.edu/x8366.xml (last visited Apr. 30, 2013); *Spanish for Lawyers*, STANFORD UNIV. SCH. OF L., http://www.law.stanford.edu/course/spanish-for-lawyers (last visited Apr. 30, 2013); *Legal Spanish Programs*, AMER. UNIV. WASH. C. OF L., http://www.wcl.american.edu/spanish/ (last visited Apr. 30, 2013).

[130] One such course is an International Arbitration Seminar taught by Prof. Vivian Curran at the University of Pittsburgh School of Law. *See International Arbitration Seminar*, UNIV, OF PITT. SCH. OF L., http://www.law.pitt.edu/academics/courses/5986/21027 (last visited Apr. 30, 2013). The seminar is designed for students with some knowledge of the French language. *Id*.

the foreign language; all too often, language ability is equated with oral communication.

As noted above, numerous schools have introduced "Spanish for Lawyers" classes. These classes are usually designed to equip students with the vocabulary and conversational skills needed to communicate in Spanish in a legal setting. A handful of schools have more fully developed "Lawyering in Spanish" programs. For example, the Sturm College of Law at the University of Denver offers various doctrinal courses and experiential learning opportunities in Spanish.[131] The McGeorge School of Law at the University of the Pacific offers the Inter-American Program, an innovative effort designed to graduate lawyers who have both linguistic and cultural competence.[132]

Another approach, adopted by two of the co-Authors, involves the development of hybrid courses that involve a Spanish language component. At American University Washington College of Law, Professor Jayesh Rathod has offered courses in immigration law and workplace law that involve an optional hour, taught in Spanish, for credit. In the immigration law survey course, students may enroll in the traditional three-credit course, or may opt to take the course for four credits. During the fourth hour, students review the Spanish language vocabulary applicable to the week's readings, and also engage in role-play exercises that involve Spanish language lawyering scenarios. For instance, students are asked to explain, in Spanish, to an audience with limited education, the eligibility requirements for certain forms of relief. Students are also asked to explain the holding of key cases, assuming their audience is an educated lawyer from Latin America. These exercises involve hypothetical situations with tricky substantive and ethical considerations.

In addition to developing the students' ability to communicate orally in Spanish about U.S. immigration law, the course includes required written assignments designed to develop their reading and writing skills. Students have three written assignments over the course of the semester: the drafting of an introductory letter to a client in Span-

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[131] *See Lawyering in Spanish*, UNIV. OF DENVER STURM C. OF L., http://www.law.du.edu/index.php/lawyering-in-spanish (last visited Apr. 18, 2013).

[132] *See Inter-American Program*, UNIV. OF THE PACIFIC, MCGEORGE SCH. OF L., http://www.mcgeorge.edu/Future_Students/JD_Programs/Global_Impact/Inter-American_Program.htm (last visited May 7, 2013).

ish; the drafting of a client retainer in Spanish; and the translation of a client's birth certificate from Spanish to English. Through these exercises, students often develop an awareness of the limitations of their language ability. Moreover, apart from learning how to communicate in writing, the students learn about more subtle conventions that are typical of written legal Spanish. The course also makes use of short articles and media clips in Spanish.

At the University of North Carolina School of Law, Professor Deborah Weissman has undertaken a similar effort to encourage students with some level of Spanish proficiency. Specifically, a domestic violence seminar class was designed to provide opportunities throughout the semester for students to utilize their Spanish language skills. Certain assigned readings were translated into Spanish and selected to correspond to in-class breakout sessions and small group problem solving exercises. Students opting to participate in the Spanish language component of the course were assigned these alternative reading assignments and then met together in their own breakout group to discuss the readings or entertain the problem in Spanish. Participation was entirely optional and did not affect those students who did not choose to participate.

IV. USING LAW SCHOOLS TO EXPAND THE PIPELINE INTO THE (INTERPRETER AND LEGAL) PROFESSIONS

Law schools can work with bilingual undergraduate students to enhance language access as well as the diversity of the legal profession. Bilingual undergraduate students are a significant potential resource for the community and the judiciary, and are members of the public likely to have a personal interest in learning about language access. However, few colleges and universities are making the connection between their bilingual students and the interpretation and translation needs of the community. Most interpretation training in the United States is focused on professional certification, and takes place in freestanding[133] and university-based certification programs.[134] The univer-

[133] For example, one freestanding program offers "a nationally recognized curriculum that (1) trains interpreters to the high standards today's health care industry requires and (2) equips them with the skills and knowledge to professionally and ethically serve patients and practitioners alike." *Bridging the Gap*: *Health Care Interpreter Training*, JAMES MADISON UNIV., http://www.brahec.jmu.edu/training_bridgingthegap.html (last visited Apr. 30, 2013).

sity-based certification programs are situated in continuing education schools rather than academic departments, and the students are not full-time undergraduates. Typically, academic training in the field is focused on training scholarly translators.[135] Meanwhile, there is a rapidly growing demand around the country for interpretation and translation. Government courts and agencies are attempting to comply with Title VI and its state correlates; globalization has more U.S. businesses working with foreign affiliates; and U.S. military operations create demand for trained interpreters. Simultaneously, U.S. universities and colleges are expanding their service learning options.[136] The Community Interpreter[137] Internship Program ("CIIP") at Villanova University

[134] *See, e.g.*, *National Center for Interpretation*, UNIV. OF ARIZ., http://nci.arizona.edu/ (last visited Apr. 30, 2013); *M.A. in Translation & Interpretation*, MONTEREY INST. OF INT'L STUD., http://www.miis.edu/academics/programs/translationinterpretation (last visited Apr. 18, 2013); *Accord Interpreter Program—Community, Legal,* & *Medical Certificates*, BOSTON UNIV., http://professional.bu.edu/programs/interpreter/ (last visited Apr. 30, 2013).

[135] *See, e.g.*, *The M.A. in Translation Studies*, UNIV. OF MASS. AT AMHERST, http://www.umass.edu/complit/programs_ma_trans.shtml (last visited Apr. 18, 2013).

[136] *See* Kiren D. Zucker &Bruce Zucker, *Including Undergraduate Students in Service Learning Legal Clinics*, 63 GUILD PRAC. 93, 94–95 (2006) (discussing service-based opportunities for students in legal clinics).

[137] One scholar defines community interpretation as "assist[ing] those who are not fluent speakers . . . to gain full and equal access to public services (legal, health, education, local government and social services)." Roda Roberts, *Community Interpreting Today and Tomorrow*, *in* THE CRITICAL LINK: INTERPRETERS IN THE COMMUNITY 7, 11 (Silvana E. Carr et al. eds., 1995) (internal quotation marks omitted). Characterized as "a profession in its infancy," the field of community interpretation must strike the difficult three-way balance between 1) the desperate lack of qualified interpreters in America, 2) the historical lack of attention to (and funding for) incorporating interpretation into delivery of services, and 3) the high importance of quality in virtually every interpretation event. This Article uses the term community interpretation to distinguish it from the more heavily regulated interpretation that takes place in other settings. Community interpreters carry a great deal of responsibility in our society. For example, an undocumented woman who goes to the emergency room to give birth is unlikely to be provided a certified interpreter to communicate with her doctor, despite the important choices she and her doctor will make. Any interpretation assistance is likely to come from bilingual hospital staff or community members who have had little, if any, interpretation training, or from family members, including children, who should not be put into the interpreter role. Meanwhile, in more resourced settings such as federal court and international trade negotiations, virtually all interchanges will be facilitated by highly trained and certified interpreters.

("VU") demonstrates the potential for useful synergies between these trends.

The CIIP began in 2001 as a volunteer effort coordinated between what is now the VU Romance Languages and Literatures Department ("RLLD") and the then-fledgling Villanova University School of Law ("VUSL") Farmworker Legal Aid Clinic ("Farmworker Clinic"). In 2002, Farmworker Clinic Director Professor Beth Lyon and Spanish Professor Dr. Mercedes Juliá created a hybrid internship/language course in the undergraduate Spanish curriculum. The course has evolved significantly over the years, and today offers at least ten students three internship or independent study credits for attending a two-hour weekly course on community interpreter skills and ethics, and for providing eight hours of weekly service work. The students must be Spanish majors or minors, and must demonstrate near-fluency in both Spanish and English through an interview with the RLLD professor assigned to the course.[138]

The service work includes providing interpretation in VUSL clinic cases, staffing the clinical program's 1-800 Spanish language line, and assisting with community outreach. During downtime on the phone line, interns translate documents for the clinic and for other non-profit agencies.[139] They have also provided interpretation services in a neonatal clinic in Camden, New Jersey, a farmworker union in Kennett Square, a local hospital, farm labor camps, tax preparation sites, and brief advice and referral outreach sessions for rural Latino communities in western North Carolina, central Florida, the Delmarva peninsu-

[138] Over the years, co-teachers for the course have included Mercedes Juliá, Carmen Peraita, Salvatore Poeta, Adriana Merino, and Adriano Duque from the RRLC; JoAnna McGrath and Kim Trout from the from the Villanova College of Nursing, and Beth Lyon, Kathy Gomez, J.C. Lore, Yolanda Vazquez, and Meredith Rapkin from the Farmworker Clinic. Judy Moyer, JoAnn Viviani, Lori Freda, and Pat Brown have all administered the course.

[139] These include local legal services and other non-profit agencies (the Comité de Ayuda a Trabajadores Agrícolas, Chester County Cares, Friends of Farmworkers, the Senior Law Center, the Philadelphia Bar Association Volunteers for the Indigent Program, DeMay Living Center, New York), national organizations (Latina/Latino Critical Legal Theory, Inc., National Employment Law Project), and international organizations (Foro Migraciones, Global Workers Justice Alliance, International Senior Lawyers Project).

la, and Pittsburgh, Pennsylvania. Since 2002, more than 200 for-credit students have provided roughly 22,500 hours in casework.[140]

Various quality control measures are in place. In addition to undertaking the pre-enrollment screening, faculty review videos of the students in a simulated interview at the beginning of the semester, and work with the course administrator to ensure that interns are given assignments commensurate with their skills. Work-study graduate students and highly qualified alumni of the course ("mentors") review each written translation into their first language, and bilingual faculty do a final read. Mentors also work in the clinic, sitting in on client phone calls and providing front-line assessment of intern performance. Interpreter interns are invited to attend court to offer informal support, but professional interpreters provide any on-the-record (i.e., deposition or in-court) interpretation.

This course is considered a hybrid because most internships and independent study courses do not require attendance at a substantive class. However, the faculty quickly concluded that specialized training is critical. As community interpretation is not a subject taught in the general curriculum, and the agencies that need the students' services do not possess this expertise, a training course is necessary. With a small grant from the Wachovia Foundation, the faculty were able to hire a consultant and access supplementary resources to develop the course, which today covers modes and roles of interpretation, consecutive interpretation, linguistic techniques and strategies, sight translation, interpreter ethics, cultural competence, professional habits, and interpreter careers. The community interpreter interns also receive service hours credit for attending any classes in the Farmworker Clinic Lawyering Seminar, particularly the sessions on lawyering through interpreters, working with survivors of trauma, clinic student presentations on the law, and clinic case rounds.

The CIIS course utilizes various pedagogical tools, including lecture, case rounds, critiqued videotaped interview simulations, and sight translation simulations. Students produce weekly specialized

[140] In addition to supporting the work of the Farmworker Clinic, the students have provided assistance to the Advanced Advocacy Clinic, Clinic for Asylum, Refugee and Immigrant Services, Civil Justice Clinic, Federal Tax Clinic, Interdisciplinary Health Law Clinic, and Interdisciplinary Counseling Program, all at VUSL.

glossaries, bi-weekly journals, and a ten-page paper at the end of the semester. The CIIS students are encouraged to learn as much as they can about the cases for which they are interpreting and translating, and to attend any hearing handled by the clinic. In the fall semester they are required to assist with farm labor camp outreach during the apple-picking season in Adams County. In the spring semester, they are given credit for participating in the Farmworker Clinic faculty's spring break service project. Farmworker Clinic faculty members teach several sessions of the class each semester, and when students have questions about particular clinic cases or policies, the relevant law students and faculty visit their class. The course varies depending on requests from the community for assistance. One year, two nursing professors co-taught the course, while a portion of the class worked for them in a low-income prenatal clinic in Camden, New Jersey. Currently, the students are translating a book on critical legal theory for University of Miami Law Professor Frank Valdés, and he guest lectures each semester on critical theory and minorities, including language minorities.

The course presently focuses on Spanish because of the high demand for that language in the law school clinics. Thus, although the course is not structured to provide multilingual services, it could be done with relatively little change. At VU, French-, Arabic-, and Chaldean-speaking students have also been given internship credit through independent study with relevant faculty participation and supervision, using the existing written course materials on community interpretation.

As reported by the students, the program provides many educational benefits. Community interpretation training and experience is an important way for bilingual students to develop their professional skills and specialized vocabularies, preparing them for the unique challenges and opportunities in their future career paths. For those students for whom the work resonates, such university programs can serve as a much-needed pipeline into professional interpretation. The course has been replicated at the University of Tennessee and reportedly is channeling students into the state's pool of professional interpreters.[141] Through exposure to law and medicine, bilingual students also find a pipeline into the helping professions that utilize interpretation, enhancing the capabilities and diversity of America's professions.

[141] Interview with Professor Karla McKanders, Associate Professor of Law, Univ. of Tenn. College of Law (2011) (notes on file with authors).

CONCLUSION

Language access to justice is a key civil rights and practice issue confronting both lawyers and law students. Law schools have a myriad of opportunities to contribute to achieving language access, by incorporating the theme into existing courses, by engaging in curricular innovation and clinical language access advocacy, by nurturing bilingualism in our profession, and by creating pipeline programs for bilingual undergraduates.