



Effective Court Communication: Assessing the Need for Language Access Services for Limited English Proficient Litigants in Domestic Violence, Sexual Assault, Dating Violence, and Stalking Cases

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Introduction

Ensuring meaningful access to justice for Limited English Proficient (LEP) litigants is an essential responsibility of the justice system, government agencies, and organizations that provide related services. Title VI of the Civil Rights Act of 1964¹ established this responsibility for all recipients of federal assistance, and subsequent federal mandates provide guidance on complying with the law.² Over the past several years, courts, their justice system partners, and service providers have devoted significant resources to improving language access and reducing barriers to critical protections and services on behalf of all LEP individuals.

To gauge the status of language access services for litigants in domestic violence, sexual assault, dating violence, and stalking cases, the Center for Court Innovation and the National Center for State Courts conducted a needs assessment of courts, government agencies, and community-based organizations in the fall of 2013.³ The needs assessment examined the availability of interpreters⁴ and translated materials in criminal, civil, and family cases; training for interpreters on domestic violence and sexual assault; protocols for monitoring the quality of interpretation and translation services; and engagement in state and local court language access planning. This report focuses primarily on language access services in courts, which are central to ensuring access to justice for LEP litigants, victims, and defendants in criminal, civil, and family cases.

The needs assessment highlighted several issues related to language access resources and planning. First, despite making major strides in

this area, courts need to continue their efforts to improve fundamental language access, including the provision of qualified court interpreters in all types of cases and the production and availability of translated forms and other materials. In addition, access to qualified interpreters for case-related activities outside the courtroom, including services mandated by courts, is limited. Another concern is the low level of knowledge among practitioners both inside and outside the courts about language access plans and procedures for reporting deficiencies in interpreter or translation services. This lack of awareness suggests that courts should engage in greater outreach in developing and publicizing language access plans and protocols for monitoring the quality of language access services. Outreach should extend to service providers and other agencies to assist in publicizing the availability of court language access services. Finally, opportunities for interpreters to acquire training on domestic violence and sexual assault are scarce and stakeholder knowledge about existing training is limited.

The remainder of this report describes the needs assessment methods and demographics of the respondents, discusses the needs assessment findings and their relevance for improving language access, and highlights three promising solutions to meeting the needs of LEP litigants: building capacity of bilingual staff, increasing access to qualified interpreters, and providing specialized interpreter training on domestic violence and sexual assault.

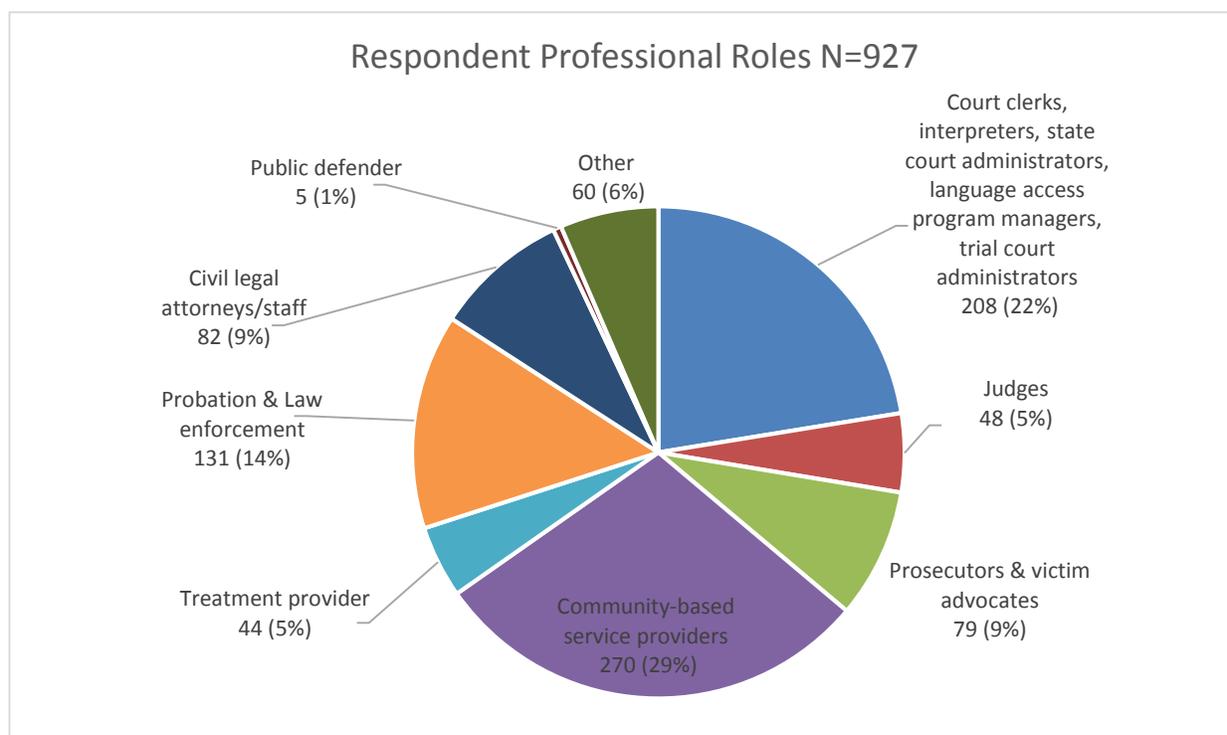
Respondents

With the assistance of several organizations,⁵ the needs assessment was disseminated to a variety of stakeholder groups across the U.S., including judges, court administrators and court staff, prosecutors, defense counsel, civil legal services attorneys, based victim service providers, probation officers, batterer intervention treatment providers, and court and community interpreters. To provide the greatest opportunity for obtaining responses from professionals in a broad range of roles, the needs assessment was not confined to representative samples of each stakeholder group. The responses from a particular stakeholder group therefore do not necessarily reflect the knowledge or views of that group as a whole. The needs assessment was anonymous, unless the respondent opted to provide his or her contact information for follow-up questions.

A total of 927 individuals completed the needs assessment in whole or in part; 84% (776)

stated that they directly provide services to individuals who are limited English proficient or deaf. With the exception of New Hampshire and Rhode Island, at least one person responded from each state, the District of Columbia, and the U.S. territories (Guam, Northern Mariana Islands, and Puerto Rico). For several states, only one person responded. The six states with the largest number of respondents were: Washington (115), California (84), Michigan (69), New York (59), Arizona (58), and Ohio (55).

Community-based service providers comprised the largest portion of respondents (nearly 30%). (See figure below.) A slightly smaller percentage of respondents were court staff, including clerks, interpreters, and administrators. Probation and law enforcement, civil legal attorneys and staff, prosecutors, and victim advocates together made up another 30% of the respondents, while judges and treatment providers comprised about 5% each.



Findings

1. Courts need to continue their efforts to improve the provision of qualified court interpreters for all languages.

Court interpretation is a highly specialized task that demands a mastery of many elements, which the Conference of State Court Administrators noted in their “White Paper on Court Interpretation, Fundamental to Access to Justice: “Not only are court interactions at a significantly higher level of difficulty than conversational language, but they also require a familiarity with legal terminology and procedures and with the cultural context impacting the parties in the court proceedings. The court interpreter’s successful performance of their job is dependent upon their ability to convey the meaning of the speaker’s words and presentation style of the speaker in another language in the courtroom setting, without changing the colloquial expressions or the tone of the speech.”⁶

The demanding nature of a court interpreter’s job can be heightened in domestic violence or sexual assault cases, which involve specialized vocabulary and idioms, as well as ever-evolving slang. Competent interpretation in these cases also requires knowledge about the impact of trauma on victims and witnesses.

The needs assessment indicated that court interpretation services are currently provided primarily by in-person interpreters who are certified or otherwise qualified by the court, qualified interpreters working remotely through audio or video connections, and bilingual staff. However, too often courts still rely on unqualified persons to interpret in court

Needs Assessment Findings at a Glance

1. Courts need to continue their efforts to improve the provision of qualified court interpreters for all languages.
2. Greater efforts and resources are needed to provide interpreters in civil cases.
3. Courts need to increase production and expand availability of translated materials.
4. Access to interpreters and language services outside of the courtroom remains limited.
5. Training for interpreters on domestic violence and sexual assault issues is a significant area of need.
6. Courts need to publicize their language access plans and extend outreach to stakeholders in developing and implementing the plans.
7. Courts need to develop protocols for monitoring quality of language access services and educate litigants, justice system partners, and service providers on existing mechanisms for advising the court about service deficiencies.
8. Potential litigants need access to information about the availability of court language access services from sources outside the courthouse.

proceedings. About one third of all needs assessment respondents reported that their court sometimes uses family members or friends, advocates, and other non-credentialed individuals to interpret for LEP litigants. According to prosecutors, victim witness advocates, and community-based service providers, the frequency goes up for languages other than Spanish.

In the face of the challenges of recruiting and qualifying interpreters, the Council of Language Access Coordinators (CLAC) has led the development of standardized testing and credentialing for court interpreters. In 2013-

2014, exams were administered in 23 languages.⁷ Many states and local courts also are developing promising practices for certifying and qualifying court interpreters.⁸ In addition, CLAC is working in conjunction with the Conference of State Court Administrators Language Access Advisory Committee to establish a national database of qualified interpreters.⁹

2. Greater efforts and resources are needed to provide interpreters in civil cases.

The majority of courts provide interpreters for defendants and witnesses who require language assistance in criminal proceedings. About three-quarters of court-based needs assessment respondents—including clerks, administrators, and interpreters—reported that language assistance is always available at no cost for litigants in criminal cases. However, the provision of interpreters in civil cases is less routine. Just over half of court-based respondents reported that language assistance is always available for litigants filing petitions for civil orders of protection. Similarly, just over half of court-based respondents reported that language assistance is always available in family law and other civil matters, as well as contested civil cases. This rate drops even lower for uncontested civil cases.

This disparity in language access is of particular significance in civil cases involving domestic violence, which include decisions regarding civil protective orders, custody and visitation, and divorce. A full understanding of the scope of violence is critical to decisions in these cases, in which the safety and well-being of victims and children are potentially at risk. Litigants in civil

cases are also more likely to lack representation, leaving them without an attorney to help communicate relevant histories of violence to the court. Without an interpreter, LEP victims are at an even greater disadvantage. Fortunately, increasing numbers of courts are funding interpreter services at either the state or local level.¹⁰ For example, California recently prioritized this issue by expanding the use of state-funded interpreters to civil cases.

3. Courts need to increase production and expand availability of translated materials.

The Title VI mandate to provide meaningful access to services extends to the provision of written materials in languages other than English, yet the availability of translated materials is limited. About 40% of court-based respondents indicated that they have translated protection order and restraining order forms, and about one third reported having translated material about court services more generally. Other system stakeholders are taking a leadership role in the provision of translated materials—over 80% of civil legal attorney respondents indicated the availability of translated materials, as did three-quarters of community-based service providers and two-thirds of respondents based in the prosecutor's office.

Courts are making progress in translating informational materials and forms into the languages most commonly spoken in the communities they serve, and several state court systems provide translated brochures on domestic violence laws and forms for filing

petitions for domestic violence protection orders. For example, New York provides informational brochures for victims of domestic violence in Spanish, Bengali, Chinese, Haitian Creole, Korean, and Russian. California offers protection order forms in Spanish, Chinese, Korean, and Vietnamese, while Oregon posts online forms in Spanish, Korean, Russian, and Vietnamese. King County Superior Court (Washington) provides online family law forms and materials in several languages and includes a link to forms and information about family and domestic violence laws in several languages¹¹

4. Access to interpreters and language services outside of the courtroom remains limited.

With court interpreter resources already stretched thin due to the demand for interpretation in official court proceedings, court interpreters are unavailable for other forms of litigant assistance. For example, almost half of the respondents based in a prosecutor's office said they do not have access to interpreters for non-court-related aspects of domestic violence cases, and just over half of civil attorneys who responded indicated the same. For out-of-court proceedings, about two-thirds of all respondents reported that family members, friends, advocates, or other non-credentialed persons serve as interpreters sometimes or often.

Access to language services also is an issue for court-mandated services. In his August 16, 2010 letter to state court administrators, former U.S. Assistant Attorney General Thomas Perez noted that the "meaningful access requirement extends to court functions that are conducted

outside the courtroom as well," citing probation and parole offices and anger management classes as examples.¹² The idea that "access to justice" extends beyond the courtroom should be a familiar concept for domestic violence court practitioners and stakeholders. Domestic violence courts, and many non-specialized courts that hear domestic and sexual violence cases, rely on court-mandated monitoring of offenders via probation, batterer intervention programming, or both.

Many community-based service and treatment providers have large LEP caseloads, but they are limited in their ability to serve them. Two-thirds of treatment providers report that LEP individuals are mandated to their services by the courts, but 41% of them often or sometimes have to turn away LEP individuals. Mandated services and supervision of offenders have become cornerstones of the court response to domestic violence. Just as the courts worked hard to build these important partnerships, they must now work with these partners to increase the language access capacity of providers.

5. Training for interpreters on domestic violence and sexual assault issues is a significant area of need.

Although states have strengthened court interpreter certification requirements to include training on ethics and other issues, the lack of specialized interpreter training specific to domestic violence and sexual assault cases is striking. Only 11% of all needs assessment respondents reported that court interpreters in their jurisdiction are trained on issues related to domestic and sexual violence, while nearly

three-quarters of respondents did not know whether court interpreters receive this training. Less than 20% of court-based respondents indicated that these issues are included in training, while over half do not know. These responses indicate that specialized interpreter training on domestic violence and sexual assault is not yet a priority for most courts.

A number of issues arise specifically in domestic violence and sexual assault cases that interpreters should consider. For example, vocabulary specific to these cases can be challenging, including idioms particular to domestic and sexual violence. Some interpreters and many victims are uncomfortable with language related to sexual assault and genitalia. An interpretation that is a sterilized version of a victim's more graphic account might have an impact on the outcome of the case. Additionally, in cases where advocacy so often is employed, it is important for interpreters to know the distinctions between advocacy and interpretation, and how to clarify with victims the role of each. Confusion about confidentiality obligations also becomes an issue in these cases, and interpreters need preparation for how to respond appropriately to litigants who might be in danger and confide in them. And, as with anyone who works with domestic violence and sexual assault victims, training on vicarious trauma is critical.

Several efforts are underway to develop and deliver specialized interpreter trainings on domestic violence and sexual assault. For example, the Asian Pacific Islander Institute on Gender-Based Violence and the Center for Court Innovation have partnered to produce training curricula on interpreting in domestic violence and sexual assault cases. An online

curriculum for interpreters is under development by the National Center for State Courts in partnership with Cross Cultural Communications. In addition, the New Mexico Center for Language Access, part of the New Mexico Administrative Office of the Courts, offers several interpreter training options, which address domestic violence and sexual assault.¹³

6. Courts need to publicize their language access plans and extend outreach to stakeholders in developing and implementing the plans.

The needs assessment revealed a dearth of knowledge about state and local language access plans. Over two-thirds of all respondents did not know if their court has a state or local language access plan. Court staff have greater knowledge, but about one-third were not familiar with their state or local language access plan. Given that the court language access plan is intended to be the guiding management document for how a court “defines tasks, sets deadlines and priorities, assigns responsibility, and allocates the resources necessary to come into or maintain compliance with language access requirements,”¹⁴ the low level of awareness of the existence or content of a court's language access plan is a crucial gap.

In the time since the needs assessment was conducted, the number of resources for language access planning has grown appreciably. The Council of Language Access Coordinators, through the Language Access Services Section of the National Center for State Courts, provides comprehensive information

and guidance for states on language access programs and planning.¹⁵ Other resources for language access planning include the American Bar Association’s 2012 *ABA Standards for Language Access in Courts*¹⁶ and the U.S. Department of Justice’s 2014 *Language Access Planning and Technical Assistance Tool for Courts*.¹⁷ As states create more robust and detailed language access plans, it is essential that courts educate their staff and stakeholders about their plans and actively engage them in their implementation.

7. Courts need to develop protocols for monitoring quality of language access services and educate litigants, justice system partners, and service providers on existing mechanisms for advising the court about service deficiencies.

Monitoring service quality is essential for providing effective interpreter services, and a robust system for gathering feedback from court users is a key component of the monitoring process. Information received from consumers and stakeholders can inform the court about what is working and what needs improvement. This feedback can identify not only particular interpreters or services that are not performing up to standards but also broader issues, such as shifting demographics of LEP users and unmet needs. The system must be transparent, responsive, and widely publicized. If the system lacks these qualities, it will not be used and, consequently, will not serve its purpose.

Responses to the needs assessment items related to quality monitoring indicated that significantly greater outreach to stakeholders

on these issues is required. For example, less than a quarter of prosecutors and victim witnesses, civil legal attorneys, and community service providers reported that they or their clients know how to file a complaint about interpreter services. Given this lack of knowledge, it is not surprising that few respondents have ever filed a complaint—about 15% of civil legal aid attorneys and less than 10% of prosecutors, victim witnesses, and community service providers. Of those few who have filed a complaint, responses were mixed regarding the action taken. Some reported that nothing was done, others never received information about what happened, and in some cases the interpreter subject to the complaint was removed.

The lack of knowledge about how to make a complaint is echoed in the responses about protocols or processes for soliciting feedback regarding the availability, quality, or performance of an interpretation service or an individual interpreter. Less than a fifth of respondents reported having a feedback protocol and just over a third did not know if one exists. Among the various professional groups, a quarter of court staff report having feedback protocols, while the rates are around 15% for judges, prosecutors, community service providers, and civil legal aid attorneys. These responses are troubling in general, and particularly significant for LEP domestic violence and sexual assault victims. For example, a robust quality monitoring system could address safety and access to justice issues that may arise from the lack of interpreter services for protection order and other civil proceedings, as well as the lack of specialized training on domestic violence and sexual assault for interpreters that are provided.

The few agencies and courts with feedback systems employ a variety of methods to gather input. These include customer satisfaction surveys, court monitoring, oversight or interpreter committees that meet to discuss performance, and annual performance evaluations for interpreters. These oversight strategies should be encouraged in other courts and agencies. For example, North Carolina's Language Access Services posts a complaint form that can be completed and submitted online.¹⁸

respondents, almost 90% reported that LEP individuals learn about the availability of interpreter services in-person from court staff, while only about a third cited referrals from other service agencies. Courts and community-based organizations and other justice system stakeholders share a responsibility to educate one another and community members about language access services.

8. Potential litigants need access to information about the availability of court language access services from sources outside the courthouse.

Many state courts have made significant progress in providing interpreters for LEP litigants and alerting litigants to language access services when they come into the courthouse. However, a key element of promoting access to justice is to make information about these services available in the community as well. Victims of domestic and sexual violence already face numerous barriers when considering whether or not to report abuse. Fear of not being able to communicate with the court or understand the process is a significant additional barrier. Of all court-based

Innovative Solutions

While much work remains in order to ensure access to justice for LEP litigants involved in domestic and sexual violence, dating violence, and stalking cases, there are a growing number of innovative strategies courts can utilize to expand access and leverage existing resources. Three examples are described here.

1. Expanding Use and Building the Capacity of Bilingual Staff

Increasing the number of bilingual staff employed by the court can greatly increase services to LEP litigants outside of the courtroom, as well as bring a higher level of cultural competence to service. Bilingual staff also can reduce reliance on court interpreters for assisting litigants with information and form completion.¹⁹ The Superior Court of the District of Columbia has prioritized hiring bilingual staff, with 36 designated bilingual positions, including a Deputy Clerk position within each division (civil, criminal, family, domestic violence). Superior Court staff also have noted the benefits of having bilingual staff in the Human Resources Department and to attract more bilingual job applicants.

Other jurisdictions have focused on building the capacity of their bilingual staff to bolster their court interpreter programs and enhance service to LEP litigants. The New Mexico Center for Language Access—a program of the New Mexico Administrative Office of the Courts—has created a training program specifically for bilingual staff.²⁰ The Language Access Specialist Certification Program is a 12-week online training that covers modes of interpretation

Exploring Innovative Solutions to Meeting the Needs of LEP Litigants at a Glance

1. Expanding Use and Building the Capacity of Bilingual Staff
2. Increasing Access to Qualified Interpreters through Video Remote Interpretation and a National Database of Qualified Interpreters
3. Providing Specialized Training Opportunities for Court Interpreters

and interpreter ethics, as well as English/Spanish legal terminology and oral/written skills, and cultural competency. The training uses a number of domestic violence and family law scenarios throughout, highlighting specific issues that arise in these cases. The program’s certification allows bilingual staff to do basic interpretation outside of the courtroom in New Mexico courts.

2. Increasing Access to Qualified Interpreters through Video Remote Interpretation and a National Database of Qualified Interpreters

The use of video remote interpretation can increase access to qualified court interpreters both in court proceedings and in out-of-court activities, such as petitioning for a civil protection order or conferencing with a prosecutor. To date, 13 states have implemented video remote interpretation and another 14 are exploring its use.²¹ As technology costs have declined, the quality of high-definition video, availability of broadband Internet connections, and compliance with

open technical standards for hardware and software have increased. These developments have made video remote interpretation a viable and affordable option for courts that otherwise would not have the resources to provide qualified interpreters for the growing number of languages spoken by LEP parties and witnesses across the various locations within a court system. Video technology also can accommodate a range of needs, from small rural courts using Skype to large urban courts with sophisticated electronic courtrooms. This flexibility means that courts and other agencies will have greater capacity to provide interpretation resources not only for courtroom proceedings but also for out-of-court services.

State court leaders have supported the Council of Language Access Coordinators in developing best practice guidelines for using video remote interpretation, as well as in building a shared national database of qualified interpreters.²² The national database will help courts in need of interpreters for particular languages and proceedings identify and access qualified and video remote interpretation trained interpreters, while courts with excess capacity can make interpreters available to other courts. The maximum benefits of both video remote interpretation and a national database could be realized by providing access to the database through a national cloud provider. The national provider potentially would have the capacity to match a qualified interpreter for almost any language with any in-court or out-of-court proceeding.

3. Providing Specialized Training Opportunities for Court Interpreters

The complex nature of domestic and sexual violence cases poses special challenges for LEP litigants and court interpreters. From mastering specialized vocabulary to struggles with advocacy and ethics, interpreters in domestic and sexual violence cases have particularly demanding responsibilities. Training for interpreters in domestic and sexual violence issues can enhance interpreter skills, clarify roles and responsibilities, and improve the litigant experience of the courtroom.

Washington State and Ohio have committed to working with the Asian Pacific Institute on Gender-Based Violence to train many of their court interpreters on domestic violence and sexual assault-related issues. In 2015, the National Center for State Courts will launch an online training for interpreters on these issues, making remote access to training possible. Courts should take advantage of opportunities like these to ensure access to justice for LEP litigants involved in domestic and sexual violence cases.

¹ 42 U.S.C §§ 2000d - 2000d-7.

² See, for example, Executive Order 13166 (2000) and U.S. Assistant Attorney General Thomas E. Perez Letter to State Court Leaders. For extensive Federal resources on language access and Title VI compliance see www.LEP.gov.

³ In the same time period, Casa de Esperanza conducted a similar needs assessment of domestic violence advocates.

⁴ Although the needs assessment sought information on American Sign Language interpretation, it focused on interpretation and translation services for spoken languages required by Title VI of the Civil Rights Act. For information about the specific items included in the needs assessment and further information about the needs assessment methodology and analysis contact, Liberty Aldrich (aldrichl@courtinnovation.org) at the Center for Court Innovation or Susan Keilitz (skeilitz@ncsc.org) at the National Center for State Courts.

⁵ The Center for Court Innovation and the National Center for State Courts distributed the needs assessment through various listservs and received dissemination assistance from other organizations, including Aequitas, American Probation and Parole Association, National Association for Court Management, and Batterer Intervention Services Coalition of Michigan.

⁶ White Paper on Court Interpretation: Fundamental to Access to Justice, Conference of State Court Administrators, at 5 (adopted November 2007)(<http://bit.ly/1zOh1I7>).

⁷ For information on oral and written exams, testing schedules, and interpreter preparation resources, see National Center for State Courts, Language Access, Written and Oral Exam Resources (<http://bit.ly/1q59yo7>).

⁸ See *A National Call to Action*, the report of the proceedings of the first National Summit on Language Access in the Courts held in 2012, where states developed action plans to improve training and certifying interpreters, including recruitment, training, credentialing, and efficient utilization (<http://bit.ly/1EBH5ih>).

⁹ The development of a national database of qualified interpreters is described in “Video Remote Interpretation as a Business Solution,” (<http://bit.ly/1NLGtuj>).

¹⁰ See State Court Organization (National Center for State Courts), Funding Sources for Interpreters by Case Category (<http://bit.ly/1u1CALX>).

¹¹ Washington LawHelp.org (<http://bit.ly/1sCxHCD>).

¹² U.S. Assistant Attorney General Thomas E. Perez Letter to State Court Leaders (2010) (<http://1.usa.gov/1HKhJ7n>).

¹³ New Mexico Center for Language Access (<http://bit.ly/10W5S1C>).

¹⁴ U.S. Department of Justice Language Access and Technical Assistance Tool for Courts (<http://1.usa.gov/1B99KNq>).

¹⁵ National Center for State Courts Language Access Services Section (<http://bit.ly/1oLyd5U>).

¹⁶ American Bar Association Language Access (<http://bit.ly/1sCARq6>).

¹⁷ See note 14.

¹⁸ Available at <http://bit.ly/1xhwZm1>.

¹⁹ A number of court-based legal self-help centers also provide assistance to self-represented LEP litigants. In an American Bar Association survey of self-help centers, about half of 222 responding self-help centers report having bilingual or multilingual staff. Over half of the centers offer services in Spanish. See, *The Self-Help Center Census: A National Survey* (American Bar Association Standing Committee on the Delivery of Legal Services, August 2014) (<http://bit.ly/VDVQzR>).

²⁰ The Language Access Specialist Certificate Program is described at: <http://bit.ly/1pNMIXE>. The New Mexico Center for Language Access also offers a downloadable Language Access Basic Training Suite for bilingual employees (<http://bit.ly/1v45g7s>).

²¹ See “Video Remote Interpretation as a Business Solution,” note 9.

²² In July 2013, the Conference of Chief Justices and the Conference of State Court Administrators adopted resolutions supporting the use of VRI (“In Support of Establishing Best Practices/Recommendations for the Use of Video Remote Interpretation” (<http://bit.ly/1pRfjeF>), and the creation of a national database of interpreters (“In Support of Sharing Interpreter Resources through Establishing a Shared National Court Video Remote Interpreting Network and National Proficiency Designations for Interpreters” (<http://bit.ly/1xxBLtX>)).