"We Have to Get By": Court interpreting and its impact on access to justice for non-native English speakers

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Non-native English speakers find themselves on an unequal footing in American courts. While some of them possess reasonable proficiency in conversational English, almost all have poor or no proficiency in legal English, including the complex legal terminology used in the courtroom. Since legal language is heavily dependent on the legal system in which it is used, litigants who lack this understanding may fail to fully appreciate what is transpiring in the courtroom. Worse still, interpreters who lack it may interpret inadequately or completely incorrectly. While American federal and state judiciaries purport to provide non-native English speakers with equal access to justice through court interpreters, the reality is that the existing court interpreting system fails to protect their rights. Two pivotal problems are the lack of certification programs for prospective interpreters of minority languages and a deficient system of court interpreter appointment, often resulting in the selection of unqualified "interpreters." This article explores the issues in the current court interpreting regime and suggests systemic improvements in court interpreter appointment and administration.

Keywords: court interpreter, access to justice, legal language, non-native English speakers

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1 Introduction

Mrs. W is a pleasant Korean woman in her early fifties who owns a nail salon. Her English is not ideal – she speaks with a heavy accent, her grammar is flawed, and sometimes she struggles to find the right word. Nevertheless, having lived in the United States for 28 years, she runs a network of successful businesses in two states and owns a home in an affluent town. With her limited proficiency in English, she stood her ground in a suit brought against her by a customer who claimed that Mrs. W had damaged her designer purse. Mrs. W appeared in court pro se, told the judge her version of the events – again, using her limited English vocabulary – and won the lawsuit.

While undoubtedly a success story, Mrs. W is an exception to the rule when it comes to first-generation immigrants in American courts. In an overwhelming majority of instances, they lack the access to justice that native English speakers enjoy. A more prevalent sentiment among first-generation immigrants who struggle with limited English proficiency can be summed up in the words of another immigrant woman: "If I had to go to court here, I would not understand everything. I would not know who the people in the courtroom are, where to stand, what to do. But I speak English, so I should be OK, right? I guess we just have to get by." This article endeavors to show just how many people in the United States have to "get by" when they find themselves a party or a witness in court proceedings. Although the federal court system and some states have developed and implemented programs for the certification and testing of court interpreters, the grim reality is that there are not enough qualified interpreters for languages other than Spanish and a handful of others. Other than the Court Interpreters Act of 1978 and its amendment, the Access to Justice Act of 1988, no cohesive statutory scheme for equal access to justice exists for immigrants with limited English proficiency, ones who do not speak English at all, or who speak unusual languages. Moreover, while Codes of Ethics and Codes of Conduct for court interpreters do exist on both federal and state levels,[1] they have little or no effect on the quality of interpreting actually delivered in American courtrooms.

[1] See, e.g. Model Code of Professional Responsibility for Interpreters in the Judiciary (2002). National Center for State Courts,

This article surveys the current landscape of court interpreting services provided in state and federal courts in the United States, including the appointment and certification of court interpreters. It also explores the different methodologies judges employ when appointing court interpreters, and illuminates the linguistic barriers first-generation immigrants face when they participate in legal proceedings. My background in both law and linguistics makes me uniquely qualified to explore different facets of the issue of court interpreter appointment and qualifications.[2] Through my experiences as a court interpreter and informal interviews conducted within the local immigrant communities, it became evident that non-native English speakers are severely handicapped when engaging the American legal system. In support of my argument that the proficiency in legal English, rather than conversational English, should be dispositive in determining whether an interpreter needs to be appointed, I conducted a brief empirical study of first-generation immigrants. The results indicate that these individuals are largely unfamiliar with the meaning of several legal terms commonly used in American courtrooms, which suggests that they may be unable to comprehend the proceedings without the assistance of a competent court interpreter. The findings from this pilot study will be used to create a follow-up study with a large enough number of respondents to extrapolate the results across more significant immigrant populations. Finally, this article also identifies practical suggestions for improving the status quo in court interpreting administration and implementation.

2 Background

2.1 First-generation immigrants and their limited access to justice

http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter9Pub.pdf (last accessed June 16, 2012). California, Maryland, Washington, New Jersey, Massachusetts, Idaho, and Connecticut are among the states that have adopted their own versions of the Code of Professional Responsibility for Court Interpreters.

[2] Before receiving my legal training in the United States, I was educated and practiced as an interpreter and translator of legal documents in Europe for several years. My linguistic training allows me to appreciate the inadequacy of standards established by American courts for court interpreters, as well as the need to consider proficiency in *legal* English rather than *conversational* English when determining whether an interpreter should be appointed.

Immigrants have been transplanted into the culture and society of the United States from vastly different economic, cultural, educational, and social backgrounds. These differences play an important role in the quality of their access to justice in American courts. Due to their general unfamiliarity with the legal process in their home countries, many immigrants lack any meaningful grasp of American legal proceedings, including who is in charge and what the roles of the various persons in the courtroom are. Moore (1999, p. 18) explains the differences between the legal system in the United States and other parts of the world: absence of juries, cultures that prefer informal dispute resolution to engaging the judicial system, and the view that judges are political appointees prone to being corrupt and who are to be feared.

In addition to cultural limitations and general unwillingness to engage the court system to resolve disputes, immigrants also face significant language barriers. Despite the sincere desire and earnest attempts by recent immigrants to the United States to learn English well enough to assimilate fully into the society of their new host country, the truth is that many of them struggle to achieve that proficiency. Nearly one out of every seven Americans over the age of five does not use English as a primary language. Of those 32 million persons, 43.9 % speak English "less than very well" (Moore, 1999, p. 32). As a result of language acquisition barriers, many immigrants, especially those who moved to the United States as adults, have mastered English at a "casual" conversational level – which allows them to handle everyday tasks like discussing job duties or taking care of their grocery shopping, – rather than at a fully bilingual level (Moore, 1999, p. 32).

2.2 The right to a qualified interpreter

The American legal system purports to have legal protections in place that guarantee individuals with limited English proficiency equal access to justice. Let us now examine how these rights are protected in practice. As Shulman (1993) notes, the United States Supreme Court has yet to answer the question of whether a constitutional right to an interpreter exists. However, most lower courts agree that in criminal trials, the defendant does have a constitutional right to an interpreter. In

the seminal case of *United States ex rel. Negron v. New York,*[3] the court-appointed interpreter translated the defendant's testimony into English for the court, but the interpreter was unavailable to interpret the testimony of the English-speaking witnesses for the benefit of the defendant, so the defendant was unable to understand most of the testimony presented against him. The court held that if a defendant has difficulty understanding English, the court must inform him that he has a right to a competent interpreter.

The Court Interpreters Act of 1978[4] recognizes the rights of non-English-speaking persons and those with limited English proficiency in the federal courts of the United States, and stipulates that both parties and witnesses who have trouble understanding judicial proceedings because they primarily speak a language other than English should be provided interpreter assistance. In 1988, the Court Interpreters Act was amended by the Judicial Improvements and Access to Justice Act.[5] Specifically, the 1988 Act reiterated how important it was that "the highest standards of accuracy be maintained in all judicial proceedings in which interpreters are utilized," and introduced the classification of different levels of interpreters that are allowed to work in federal courts (deJongh, 1992, pp. 14-15).

2.2.1 Interpreter Certification

Under the Court Interpreters Act, as amended, a *certified* court interpreter shall be used unless one is not reasonably available, in which case an *otherwise competent* interpreter shall be appointed. Federal courts classify court interpreters as follows: 1) certified interpreters;[6] 2) professionally qualified interpreters;[7] and 3) language

[3] United States ex rel. Negron v. New York, 434 F.2d 386 (2d Cir. N.Y. 1970).
[4] 28 U.S.C. 1827-1828.
[5] 100 PL 702.
[6] A certified interpreter has passed the Administrative Office certification examination. Interpreter Categories, http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx (last accessed June 12, 2012).
[7] This category applies only to languages other than Spanish, Navajo, and Haitian Creole. Credentials for professionally qualified interpreters require sufficient documentation and authentication, and must meet the following criteria: a) passed the State Department conference or seminar interpreter test in a language pair that includes English and the target language; b) passed the interpreter test of the United Nations in a language pair that includes English and the

skilled/*ad hoc* interpreters.[8] deJongh (1992) provides a detailed account of the interpreter certification proceedings: an interpreter becomes certified for a particular language by passing the Federal Court Interpreters Examination for that language. The certification examination consists of an oral and a written portion and tests the interpreter's ability in both English and the foreign language. The examination is difficult even for experienced interpreters; as a result, only a small percentage of candidates receive certification. Between 1980 and 1991, 388 persons were certified for Spanish-English proceedings out of a pool of 9,579 candidates (deJongh, 1991, p. 285). What the record does not indicate is how many of the successful candidates took several attempts to complete the certification, as is often the case, particularly with the interpreters for Spanish, who often struggle with the oral portion of the examination.[9]

Identifying the need for an interpreter by the court system is one thing; meaningfully fulfilling that need by appointing a qualified interpreter is quite another. Let us look at specific examples of problems that the current system of classifying and managing federal court interpreters poses. In federal courts, certification is available for only three languages: Spanish, Navajo, and Haitian Creole.[10] All other languages are essentially relegated to a "minority" status, and will be interpreted either by a professionally qualified interpreter or, as is more likely due to the rigorous qualification criteria involved, a language skilled/*ad hoc* interpreter. This in itself raises the question of the availability of competent court interpretation for true linguistic minorities. The following example is illustrative: The author is a Slovakian interpreter, with a near-native fluency in English. She holds a Master's degree in translating and interpreting of Slavic languages,

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target language; c) is a current member in good standing of Association-Internationale des Interpreters de Conference (AIIC), or The American Association of Language Specialists (TAALS).

[8] Refers to an interpreter who does not qualify as a professionally qualified interpreter, but who can demonstrate to the satisfaction of the court the ability to interpret court proceedings from English to a designated language and from that language into English.

[9] Telephone interview with Andrea Krlickova, Court Interpreter Program Coordinator, Supreme Court of Nevada (Jan. 10, 2011).

[10] Categories of Interpreters, http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/InterpreterCategories.aspx (last accessed Feb. 21, 2011).

and she received comprehensive five-year training in the simultaneous and consecutive interpreting modes. According to the federal court classification of interpreters she does not, however, meet the criteria for professionally qualified interpreters.[11] Yet based on the information available from the interpreting agency for which the author sporadically completes interpreting assignments, she is the *only* Slovakian interpreter the agency has on its roster. There has been an instance where an attorney wishing to take a deposition of a Slovakian party was willing to accommodate the author's schedule in order to be able to conduct the deposition as no other Slovakian interpreter was available in the entire state of Connecticut at that time.

This example, hardly isolated, illustrates the importance of establishing a better-working system of providing interpreters to linguistic minorities. The need is particularly pressing in state courts, which see the fastest growing number of cases involving non-native English speakers. Most state courts recognize a right to an interpreter for non-English speaking defendants in criminal cases, and in some states such a right is protected by the state constitution. In terms of certification efforts, many states have endeavored to mimic the certification guidelines and requirements outlined in the federal Court Interpreters Act. In 1995, the State Court Interpreter Certification Consortium was created to develop and administer tests to certify court interpreters for state courts. The Consortium currently consists of 40 member states.[12] However, even the Consortium member states only have limited resources at their disposal: oral examinations are available for only 15 languages in addition to the ones tested by the federal court system.[13] As for unusual languages, the member states rely on "registered" interpreters, who are essentially uncertifiable due to the unavailability of formal testing even though they have passed a foreign

[11] See Note 10 for professionally qualified interpreter credentials.

[12] Court Interpreting Consortium Member States, http://www.ncsconline.org/D_Research/CourtInterp/Res_CtInte_ConsortMemberStatesPubNove07.pdf (last accessed June 12, 2012).

[13] Court Interpreting Consortium Certification Test, Consortium Oral Examinations Ready for Administration, http://www.ncsconline.org/D_Research/CourtInterp/OralExamReadyforAdministration.pdf (last accessed June 16, 2012). Languages for which testing is available are: Arabic, Cantonese, Chuukese, Bosnian/Croatian/Serbian, French, Hmong, Ilocano, Korean, Laotian, Mandarin, Marshallese, Polish, Portuguese, Turkish and Vietnamese.

language proficiency exam administered by each member state, and met all the other requirements that a certified interpreter in a member state would otherwise have to meet.

For languages in which the oral examination is not available, the Consortium member states utilize an "oral proficiency interview."[14] This is performed with the help of outside agencies that provide an independent interpreter to gauge the skills of the candidate in the language for which she seeks to become certified. Customarily, only the highest level of language proficiency, "superior/native-like mastery," will satisfy the requirements of most member states. Of course, even these efforts do not guarantee that an interpreter for every language or dialect requested by the court will be available in a particular locale. In emergency situations, court administrators have been known to reach out to colleagues in other states to locate a qualified interpreter for a particularly unusual language, or to resort to community interpreting if no other interpreter can be located.

2.2.2 Interpreter Appointment

This section illustrates the vast disparity between law on the books and law in practice when it comes to providing persons with limited English proficiency a competent court interpreter. The American court system is not properly set up and administered to handle the volume of defendants and witnesses who do not speak English well enough to participate meaningfully in legal proceedings. A significant part of the problem is that the appointment of a court interpreter in federal courts is at the discretion of the judge. The Court Interpreters Act mandates the appointment of an interpreter not only when the defendant speaks no English at all, but also when not having an interpreter would limit the ability of the defendant to understand the proceedings (Shulman, 1993, p. 181). Problems arise when the individual before the judge at first sight appearing reasonably proficient in conversational English has lived in the United States for some time. The judge is faced with a dilemma: if he appoints an interpreter, it may be a waste of judicial

[14] I am grateful for the details of the oral proficiency interview to Ms. Andrea Krlickova, Court Interpreter Program Coordinator, Supreme Court of Nevada (telephone interview, Jan. 10, 2011).

resources since the defendant arguably may not need one. Moreover, if the defendant speaks an unusual language, a search for a competent interpreter would delay the speedy resolution of the case. On the other hand, a prudent judge may elect to appoint an interpreter as a precautionary measure so that the defendant is not able to appeal the case on the grounds that an interpreter was denied to him (Shulman, 1993, p. 182).

The Act provides no specific, practical guidelines to aid judges in selecting a competent interpreter. Moore (1999) and deJongh (1992) report that in practice, appointment procedures range from taking whoever is available and swearing them in, to conducting *voir dire* of a prospective interpreter, to summoning a certified interpreter from another jurisdiction at the expense of delaying the trial. Some judges have ruled that no interpreter is necessary if someone has overheard the defendant speaking English (Shulman, 1993, p. 179; ABA Standard, 2012, p. 32). Romero (2008(2), p. 20) suggests that many judges employ what he calls an "appearance model" when appointing court interpreters.[15] In most instances, monolingual judges are not good "judges" of who can act as a qualified interpreter:

> At the courtroom level, judges . . . are generally unaware that being bilingual is not a sufficient condition for being able to function adequately as a court interpreter. As a consequence, they do not realize how often errors committed by untrained interpreters distort evidence relied on by the court, mislead and threaten the fairness of proceedings. (Mikkelson, 2010, p. 4)

Ideally, when faced with the prospect of no interpreter or an individual who is biased or under-qualified, the judge should continue the proceedings until a competent interpreter can be summoned.

[15] According to Romero, this model is based on three factors: looks, self-affirmation, and assumptions. If a prospective interpreter appears to come from the country of the desired language, or meets the stereotypical expectation of a minority visage, then she is accepted as an interpreter. If, subsequently, such an individual affirms that she indeed *is* an interpreter, this self-proclamation is usually accepted by a judge or an attorney selecting the interpreter at face value. The legal professional conducting the interpreter selection process thus *assumes*, without actually confirming the candidate's educational or professional credentials, or inquiring about the level of fluency and training, that the candidate is competent to interpret in legal proceedings.

Another factor adversely affecting the appointment of court interpreters for a limited English proficiency defendant or witness is the bias certain judges feel when the individual before them speaks very little English or none at all. In this situation, judges sometimes mistakenly assume that if an immigrant speaks no English, he is uneducated (Moore, 1999, p. 91). Even worse, some judges are reluctant to appoint interpreters because they harbor a belief that immigrants "feign ignorance of English in the courtroom," and are of the opinion that interpreters "waste the state's money."[16] Many immigrants are hesitant to speak English in court or to ask for an interpreter: they are ashamed to admit that they need help understanding the proceedings and expressing themselves to the court; they may be embarrassed about their English proficiency; or they may fear that there is a cost associated with the interpreter's use (Moore, 1999, p. 91). In some instances, a foreign-born defendant for whom English is a second language is so intimidated and anxious about being in court, he is rendered practically speechless. One of the respondents in the empirical study reported below said that when she had been charged with child neglect and had to appear in court, she was unable to speak to defend herself, even though she has lived in the United States for over ten years, speaks perfectly adequate (if not always entirely grammatically correct) English, and runs a successful small business. "I was not able to put one sentence together. It felt as if I had forgotten all the English I spoke. I felt stupid and helpless because I could not tell the judge the truth about my case, and that I was innocent," she said.

On the other end of the spectrum are non-native English speakers who are unjustifiably over-confident in their linguistic abilities. They assume that since they do not experience any difficulties in everyday communication, participating in legal proceedings will not be any different. When a judge is presented with such a confident and outspoken individual, he is unlikely to appoint an interpreter because the interpreter does not appear to be needed. However, once the legal

[16] Deborah M. Weissman, *Between Principles and Practice: The Need for Certified Court Interpreters in North Carolina*, 78 N.C.L. Rev. 1899, 1917 (2000) (citing a study by Justin Brown et al., *Should the North Carolina Administrative Office of the Courts Certify Language Interpreters?* 4 (1997).

proceedings are underway and the individual realizes that he understands little or none of the legal terminology discussed in the courtroom, it is too late to ask the judge for an interpreter. The results of the empirical study strongly suggest that non-native English speakers, particularly recent immigrants, go to great lengths to appear competent in front of native speakers, and are very unlikely to report to the judge that they do not understand the proceedings once it has been determined that they speak English well enough to proceed without an interpreter.

The previous two points illustrate how important it is for the judges and the court personnel to weigh the many factors that can influence non-native English speakers' ability to fully understand the case being made against them. If judges are aware of these pitfalls and conduct proper *voir dire* of the defendants or witnesses to determine their true English proficiency, there will be fewer instances where an interpreter is not appointed for an individual who truly needs one.[17]

2.3 "Competent" court interpreter – ideal and reality

Perfect interpretations, just as perfect interpreters, do not exist. Even under ideal conditions (with the judge and all parties to the proceedings speaking slowly and clearly; with the interpreter alert and not fatigued by working for several hours with little or no rest time; and with an interpreter who possesses excellent linguistic proficiency in both his native language and English), losing some of the meaning as well as the ability to evaluate the witness's credibility is inevitable.

Many factors influence the skillset of a competent interpreter, and a comprehensive enumeration is beyond the scope of this article. deJongh (1992) provides an excellent summary. In addition to being bilingual, a truly competent interpreter must also possess a high level of bicultural proficiency to account for the transfer of information from

[17] Wisconsin suggests a protocol a judge can follow in to trying to determine a person's English proficiency for purposes of appointing a court interpreter. While I argue that assessing the proficiency of only conversational English is not sufficient to determine the full extent of a person's linguistic abilities and their capacity for understanding the legal proceedings, this type of *voir dire* is significantly better than not conducting any type of questioning at all as happens in many U.S. courtrooms. Voir dire of person of possible limited English proficiency, http://www.wicourts.gov/services/judge/docs/interpreter1.pdf (last accessed June 12, 2012).

one culture to another (deJongh, 1992, p. 53). Bilingualism is a fluid state that can develop or diminish over time depending on the effort or circumstances of an individual. In practice, this means that someone who was born and educated in a foreign country is more proficient in the foreign language than a "heritage" speaker (i.e., someone who was born in the United States and only learned the foreign language here, while English is his first language). Romero (2008(2)) suggests that heritage speakers are not well suited to act as court interpreters. I argue for the appointment of first-generation immigrants as court interpreters, since their language abilities in their native language are qualitatively better and, for lack of a better word, "fresher" than those of heritage speakers. On the other hand, the longer an individual lives in the United States and does not use his native language, the faster he loses fluency and vocabulary, which can impair his performance as a court interpreter. This is why a proper *voir dire* by the judge is necessary in order to ensure that only truly competent individuals are appointed as court interpreters.

The nuances of legal language add another layer of complexity to the job of the court interpreter. Consider a hypothetical, where the defendant was born in the former Soviet Union and Russian is his native language. Although he has lived in the United States for over 10 years, he resides in an immigrant community where everyone speaks Russian, and as a result his English is broken at best. The interpreter appointed by the judge is a young woman who has only recently emigrated from the Russian Federation, speaks English fluently, and is currently completing her MBA in the United States. During the course of the trial, the issue of a limited liability company comes up. The interpreter correctly interprets the terms into Russian as *tovarichesto na vere.* The Russian defendant does not understand, but the judge notes his dismay and the issue is clarified through the interpreter. As it turns out, this is an instance of the introduction of terms into the legal language of a particular country – new words are created to account for the changes in the economic or political climate. Limited liability companies did not exist in the Soviet Union, and therefore the defendant would never have learned the Russian term that describes them. If, during his time in the United States, he has not been exposed to a situation which would allow him to learn the word in Russian, he

will not know its meaning even though his interpreter would have used the correct translation of the term. A similar situation occurs when terms are "reintroduced" into a language – in this instance, a particular term, such as *gubernator* (governor), had existed in the czarist Russia, but had fallen out of use because governors were eradicated under the communist regime. Since the Russian Federation has returned to using governors, so has the term that describes the position (Mattila, 2006, p. 114 n.29).

A variation of this scene probably happens in many courtrooms every day – only the defendants and the languages they speak change. However, not every judge is a keen observer of facial expressions; not every defendant speaking English poorly would speak up to say that he does not understand; and if a less-than-competent interpreter is selected, she may not know the correct translation of a particular term, and interpret it either incorrectly, or not at all. Unfortunately, many people involved in the administration of the court interpreter system are not aware of the difficulties that both the individuals needing interpreting assistance and the court interpreters themselves face. The empirical study described below illustrates the importance of understanding the legal proceedings, the complex terminology used in American courtrooms, and how first-generation immigrants struggle with mastering both these categories.

3 An empirical study

Lack of fluency in both conversational and legal English is a serious obstacle to obtaining equal access to justice for first-generation immigrants. Even for individuals with a good grasp of conversational English, participating in legal proceedings in American courts poses a serious difficulty. For an immigrant party to be considered bilingual in a legal proceeding, his proficiency should be at least at the 12th grade level in both English and his native language (Moore, 1999, p. 32). This level of fluency may be unattainable, particularly for undocumented immigrants, many of whom have less than a ninth grade education, and almost a half have not completed high school (Passel & Cohn, 2009, p. 10). In addition, the immigrant party must possess the

same familiarity as a native English speaker with crucial English legal terms used in the courtroom.

My research revealed no existing study on the comprehension of legal English by LEP[18] individuals. Therefore, I conducted a brief empirical survey of first-generation immigrants in Connecticut to gauge their understanding of legal terminology and, consequently, their potential to appreciate what transpires in the courtroom proceedings in which they may find themselves participating. As the study did not cover a large- or representative-enough demographic sample, I cannot extrapolate from the findings to any conclusions about the entire immigrant population of the state or the country. Nevertheless, the results of the study help support the argument that this segment of the population as a whole generally does not possess the requisite linguistic proficiency to brave legal proceedings without assistance of a competent interpreter.

3.1 Participants

In this simple study, 12 questions were posed to some 30 first generation immigrants[19] to gauge their knowledge of conversational English while at the same time collecting demographic data. The countries of origin included Poland, Czech Republic, Slovakia, Venezuela, Colombia, Georgia, Ukraine, Belarus, Latvia, Bulgaria, Hungary, India, Germany, and South Korea. The respondents had lived in the United States anywhere from 2.5 to 49 years, and several had become naturalized citizens of the United States. Their ages ranged from 21 to 72. Their occupations were: homemaker; small business owner; construction worker; nanny; clerical/administrative/customer service employee; accountant; hairdresser; photographer; dental assistant; engineer; paralegal; law student; hairdresser; and assistant branch manager of a bank. Many respondents received their education (in some cases as high as a Master's degree) in their respective home countries; some were educated both in the home country and in the United States; and one exclusively in the United States. The lowest level of education reported was high school, with some respondents

[18] "LEP" refers to Limited English Proficiency individuals.

[19] Individuals born outside of the United States currently residing in the United States, irrespective of their immigration status.

having completed vocational school[20] or a business school.[21] The highest level reported was an MBA obtained abroad; and a Masters of Science from the United States.

TABLE 1
Highest Level of Education Achieved

	High School	**Vocational/ Business**	**Bachelor's**	**Master's**
Abroad Only	√	√	√	√
Partial U.S. Education			√	
Full U.S. Education			√	√

3.2 Design/Methodology

Respondents were first asked twelve relatively simple questions (see Appendix A). The goal of these particular questions was three-fold: 1) To gauge their proficiency in conversational English (since some questions required elaboration past monosyllabic answers); 2) to collect demographic data – age, education level, length of stay in the United States – in order to analyze the results across different sets of metrics; and 3) to determine the respondents' extent of use of their native language versus English in different areas of their lives. Some of these questions have been identified by several sources (Moore, 1999; NAJIT, 2005) as useful in *voir dire* examination of LEP individuals by judges when deciding whether a court interpreter should be appointed.

Respondents were then asked to define six legal terms in their own words. I used a combination of simple, commonly used words that the majority of lay people associate with the judiciary, along with several more complex words that are, at the same time, pivotal to a good understanding of the judicial proceedings under the common law system. The purpose of this design was to determine whether an

[20] A two-year program geared at trade-specific education in lieu of high school education commonly used in many European countries.

[21] An equivalent of high school education in some European countries with a degree comparable to a high school diploma.

individual who might appear to a judge to be proficient in conversational English actually has enough proficiency in *legal* English to warrant the judge's decision not to appoint a court interpreter to assist her. The respondents (8 male and 22 female) were interviewed in person, which allowed for the evaluation of behavioral and extra-linguistic clues. One questionnaire was completed and returned via email. A sample questionnaire is attached as Appendix A.

3.3 Results

In designing the study, I expected that the respondents would be more or less proficient in conversational English, but that they would struggle with legal English, particularly when asked to explain specific legal terms. However, the results proved to be even more dire than I had anticipated. An overwhelming majority (27 out of 30) of the respondents spoke their respective native language at home and English at work and in everyday public life. Only one respondent indicated that she spoke English everywhere, and another reported speaking both her native language and English at home. Interestingly, the length of stay in the United States and the level of education achieved did not directly correlate with the language proficiency in both conversational and legal English.

The second part of the survey was designed to measure the respondents' ability to explain six legal terms: *prosecutor; evidence; defendant; arrest; bail*; and *plaintiff*. The results are recorded in Table 2 below.

TABLE 2
Understanding of Legal Terms

	Prosecutor	**Evidence**	**Defendant**	**Arrest**	**Bail**	**Plaintiff**
No Recognition	1	1	3	0	1	6
Unclear/Confused Understanding	21	16	14	0	13	21
Satisfactory Understanding	8	13	13	30	16	3

Somewhat surprisingly, every respondent could explain what *arrest* meant in reasonably satisfactory, even if often very simplified,

terms. Even the one respondent (R10) who spoke very little English and did not understand the other four legal terms at all, used a telling gesture of crossed hands held together to indicate being handcuffed.

While respondents were generally familiar with the term *bail*, many did not have a clear understanding of what the term implied. Some erroneously assumed that bail was a "fine" or a way of "get out of jail," and failed to appreciate the temporary nature of the freedom the payment of bail affords the defendant. Many struggled with verbalizing their understanding of *evidence*, although they did have a general notion of what the word meant.[22] A significant number of respondents did not understand the prosecutor's role, particularly that he is involved only in criminal, not civil, cases. More respondents knew the term *defendant* than the term *plaintiff*, and in most cases they understood the adversarial nature of the plaintiff-defendant relationship. Several respondents reported that they had learned the difference between a plaintiff and a defendant from watching "court TV," and specifically mentioned *Judge Judy*.[23]

Forty-six percent of the respondents reported some level of prior interaction with the American court system: whether as non-participating parties (27%), or defendants in criminal (16%) or civil (3%) proceedings.[24] However, while one would expect that appearing in court would enhance their general understanding of the legal terminology, the respondents did not report this, with the exception of one respondent who had been a defendant in a civil tort case. The other respondents who had appeared in court in the United States were conversant in English only on a false beginner to intermediate level, and therefore most had trouble expressing their understanding of the

[22] For example, a common explanation was "things that prove a crime;" "show something to prove a case;" or "the fact that proves something," which suggest an insufficient understanding of the term for purposes of meaningfully participating in legal proceedings.

[23] *Judge Judy* is a daytime syndicated reality show in which a former family court judge, Judith Sheindlin, arbitrates over small claims matters. While the cases are real, the "courtroom" that appears on TV is not since the matters are arbitrated. www.judgejudy.com (last accessed June 18, 2012).

[24] Respondents reported the following instances of involvement with the U.S. courts: going to court to fight a traffic ticket; defending a civil tort case; filing an uncontested divorce; having been prosecuted for immigration-related charges and for child neglect; appearing in court in connection with naturalization proceedings; attending a civil wedding ceremony of a friend; and serving as a juror.

legal terms with adequate amount of detail and eloquence. Interestingly, many respondents were readily able to identify *bail*, *arrest*, and *evidence* in their native language, even if they failed to explain the terms adequately in English. This may have been due to a combination of factors. First, respondents indicated that they understood these three terms better than the others since they had seen and heard them mentioned many times on television and in movies. Moreover, these terms are "universal" across all legal systems, and therefore the respondents would be more likely to have grown up in their native countries knowing and understanding these terms. In contrast, terms such as *prosecutor, plaintiff,* or *defendant* are examples of legalese and not generally understandable to immigrants with a limited English proficiency unless they have had direct exposure to these terms, or they made a concentrated effort to learn them.

The results of the study indicate how important it is for the judges and court personnel to recognize that although some parties or witnesses in legal proceedings before them may superficially appear sufficiently conversant in everyday English, this does not imply that they also understand legal English well enough to participate adequately in legal proceedings, and therefore, does not justify refusing to provide them with a court interpreter. If the judge only bases his perception of a speaker's proficiency on a small-talk-type conversational exchange with the witness or criminal defendant, he is not getting a clear understanding of whether the individual standing before him will actually understand the legal proceedings at hand. I argue that every judge faced with a defendant or witness for whom English is not the first language should engage in a comprehensive *voir dire* to determine the actual linguistic proficiency of that individual in both conversational and legal English. Only when the judge is satisfied that the defendant or witness is adequately fluent in both is it appropriate not to appoint a court interpreter. Finally, when in doubt, it is always safer to appoint a court interpreter.

4 Solutions for improving the current court interpreting system

In response to the results of the empirical study, following are several solutions likely to streamline the court interpreting process in the

United States significantly and make it much more understandable and efficient for all parties involved. The involvement of all stakeholders is necessary – the court interpreter; the judge and the court personnel; the counsel; and finally, the non-native English speaker himself.

4.1 A "non-native English speaker-friendly" courtroom

More often than not, judges are not accustomed to working with interpreters, and are therefore unsure how to incorporate the interpreter into the legal proceedings. For that matter, the party in need of an interpreter does not have a clear idea of the interpreter's duties either. Moore (1999) reports that a large percentage of non-native English speakers misperceive the role of the interpreter. Unqualified interpreters are known to give legal advice, explain the proceedings to the non-English-speaking party, and act as "cultural ambassadors" (Moore, 1999, p. 37). To educate the non-native English speaker about the role the interpreter is to play, Hewitt (1995) suggests that the judge should advise such an individual that the interpreter works for the judge; that the interpreter's job is to interpret everything the party says into English and everything else said in court into the party's language; that the interpreter cannot give any explanations or legal advice; and that if the party does not understand the interpreter the party should inform the judge (see Moore, 1999, p. 37, n.21).

Judges can follow simple guidelines to streamline the proceedings that require the use of an interpreter to ensure that quality interpretation occurs. As Moore (1999) suggests, the judge should frequently check whether the interpreter is constantly talking, using simultaneous interpreting to convey the entire proceedings to the non-English-speaking party and consecutive interpreting for witnesses. Since only one voice can be interpreted at a time, the judge must ensure that speakers do not overlap. Interpreters should be allowed regular breaks, in any case no later than every two hours.[25]

Finally, perhaps the most significant adjustment should be for the judge to show empathy to the handicap of the non-native English speaker before him. While judicial efficiency and economy are valid

[25] The Handbook for Ohio Judges suggests that, "after interpreting for two consecutive hours, an interpreter must be relieved by another interpreter" (Romero, 2008(1), p. 60).

interests of the court system, the potential for delay of the proceedings or slight inconvenience to the other participants is greatly outweighed by the importance of adequately addressing the needs of LEP individuals. A judge who takes responsibility for properly incorporating the court interpreter into the legal proceedings creates the expectation that the non-English-speaking party and her legal rights will be respected, and encourages others in the courtroom to follow suit.

4.2 Educating non-native English speakers and the legal community about working with court interpreters

Educational outreach regarding court interpreting is necessary for two distinct groups. First, the non-native English speakers must be educated about their rights to have a court interpreter appointed. Second, the legal community in general, including attorneys, judges, court personnel, and law students, must learn new ways of enforcing this right to an interpreter. As mentioned earlier, due to a lack of information on the subject, the legal community is relatively unaware of how to work with court interpreters. A legal right to a court interpreter is of little use to non-native English speakers if they do not know that the right exists. Even for recent immigrants who have attained higher levels of education and are well versed in their rights in other areas of life, many are at a loss when it comes to specific legal rights. Some states report that non-English-speakers hire and provide their own interpreters for legal proceedings because they are not aware of that a court-appointed interpreter is available (Olson, 2009, p. 24). It is therefore imperative that attorneys representing non-English-speaking parties (or, for criminal cases and indigent clients, the court-appointed attorneys) inform their clients that the court system will provide them with an interpreter. Ideally, once a member of the court personnel determines that an individual will likely need an interpreter, the clerk or other personnel should immediately advise that person of his or her right to have one appointed. This practice would be particularly helpful to individuals speaking unusual languages, because identifying the need for a court interpreter would trigger the search for a qualified interpreter in that language, a process that may take some time since outside sources may have to be employed in the search.

In some jurisdictions, efforts have been made to educate non-native English speakers of their right to a court interpreter. For example, trial courts in Connecticut use Language Line, a commercial service providing instantaneous access to telephone interpreting in over 170 languages. When a limited-English-proficiency person arrives at a Connecticut courthouse, and a staff member at the Clerk's Office determines that the individual has trouble communicating in English, he is shown a card saying, "Point to your language. An interpreter will be called. The interpreter is provided at no cost to you," in 20 different languages.[26] When the individual selects his language, the staff member calls Language Line which provides immediate interpreting services over the telephone. Several other states use "you have a right" poster,[27] or use "I speak" cards which provide the monolingual court personnel with the opportunity to inform non-English speaking individuals arriving at the courthouse of their rights.

While these efforts are laudable, they are still insufficient to address the needs of all non-native English speakers who enter the American legal system. The cards and/or telephone interpreting services are available only for a limited number of languages, so even with these mechanisms in place there will still be a certain number of individuals who will not be informed of their rights and will not be provided adequate assistance. In addition, even if these services are purportedly available, no mechanisms exist to determine whether the court personnel at each courthouse are actually using them consistently. An "I speak" card is of little practical use if a staff member at the Clerk's Office does not show it to the person at the counter seeking assistance.

A second issue is that the legal community at large knows very little about the difficulties associated with working with interpreters. I

[26] The languages available are: Arabic, Armenian, Cantonese, French, German, Hindi, Hmong, Italian, Japanese, Khmer (Cambodian), Korean, Laotian, Mandarin, Polish, Portuguese, Russian, Spanish, Tagalog, Thai, and Vietnamese (copy of card on file with author).

[25] Interpreting Services, http://www.masslegalservices.org/system/files/5948_You_have_a_right_to_an_interpreter_poster_20060130.pdf (last accessed June 12, 2012).

suggest that, in addition to incorporating training modules on how to work with interpreters into continuing education classes for practicing attorneys, law school curricula nationwide should be revised to educate law students on how to work with court interpreters. It is only through dedicated and comprehensive educational efforts across all levels of the legal community in the United States that the issue of obstructed access to justice for individuals with limited English proficiency due to inadequate court interpreting can be resolved.

5 Conclusion

Limited-English-proficiency individuals, particularly first-generation immigrants, face serious obstacles in equal access to justice in American courts due to their inability, or limited ability, to participate meaningfully in legal proceedings. The current system of providing court interpreters for these individuals, both in federal and in state courts, is flawed at best, and individuals speaking unusual languages are particularly susceptible to receiving unequal treatment because only poorly trained or unqualified interpreters are available to assist them. The problem can be remedied by a variety of solutions that fall into two broad categories. First, it is important to ensure that judges appoint interpreters for all individuals who might need one. This requires the creation and implementation of a comprehensive and thorough *voir dire* process that judges would employ whenever a non-native English speaker enters the legal system. Second, judges, attorneys, and court personnel must acquire an improved understanding of the peculiarities of working with an interpreter to ensure that the rights of the limited-English-proficiency party to the legal proceedings are protected, and that errors and inaccuracies in the interpreting process can be detected and remedied.

As a follow-up to the pilot study of first-generation immigrants conducted in 2011, a large-scale study of a fully representative sample of LEP individuals in Connecticut is contemplated. This study will significantly expand the questionnaire put forth to the respondents, and data will be collected to test two propositions: first, that LEP individuals do not possess enough understanding of the legal system as such, and are therefore unable to meaningfully participate in the legal

proceedings in American courts without prior educational outreach, or, at the very least, without assistance of cross-culturally competent counsel and a competent and highly qualified court interpreter. Second, I intend to show that legal English, as opposed to conversational English proficiency, should be the measuring stick for courts and judges to determine whether a court interpreter should or should not be appointed. Additionally, my modest initial inquiry into this heretofore unexplored issue will serve as a stepping stone for research by other authors, both lawyers and linguists, in furthering the understanding of steps necessary to protect equal access to justice for linguistic minorities.

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Appendix A – Sample Questionnaire

1. What country were you born in?
2. What is your first language?
3. What is your nationality?
4. How old are you?
5. What is your occupation?
6. How long have you lived in the United States?
7. Where did you learn to speak English? (in your home country or in the U.S.?)
8. What if your highest level of education? (in your home country and/or in the U.S.)
9. Where do you speak English and where do you speak your native language? (e.g., at home vs. at work)

10. Do you *read* and *write* in English?
11. What was the last book/magazine/newspaper you read in English?
12. Have you ever been to any court in the United States for any reason?

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