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Improvements in Language Access in the Courts, 2009 to 2012 | By Laura K. Abel and Matthew Longobardi

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Several state court systems have significantly improved their assistance to limited-English-proficient court users over the past three years. Much of this has come in response to U.S. Department of Justice guidance documents, warning letters, and investigations pursuant to Title VI of the Civil Rights Act of 1964. The American Bar Association has weighed in, too, adopting the landmark Standards for Language Access in Courts in February 2012.¹ Civil legal aid attorneys encouraged these developments by filing civil rights complaints, helping with Justice Department investigations, working with the American Bar Association, and collaborating with the courts to improve conditions in individual states.

Here we describe Title VI of the Civil Rights Act and Justice Department guidance interpreting the Act; the status of the Justice Department's investigations into language-access problems in courts in Alabama, California, Colorado, North Carolina, and Rhode Island; and the language-access improvements in the Tennessee and Utah courts, neither of which is known to be the subject of a Title VI complaint.²

Title VI and the Justice Department

Title VI of the Civil Rights Act requires recipients of federal funding to provide equal access to their services regardless of "race, color or national origin."³ The U.S. Supreme Court and executive agencies, including the Justice Department, interpret Title VI's prohibition against national-origin discrimination as requiring funding recipients to provide equal access to limited-English-proficient individuals.⁴ In 2002, for instance, the Justice Department issued a guidance document instructing state courts and other funding recipients that they must provide competent interpreters

¹AMERICAN BAR ASSOCIATION, ABA STANDARDS FOR LANGUAGE ACCESS IN COURTS (Feb. 2012), <http://bit.ly/Pbrvkf>.

²Significant improvements in language access in the Georgia courts are described in a companion article, Jana J. Edmonson & Lisa J. Krisher, *Seen But Often Unheard: Limited-English-Proiciency Advocacy in Georgia*, in this issue.

³Civil Rights Act of 1964, 42 U.S.C. § 2000d.

⁴See, e.g., *Lau v. Nichols*, 414 U.S. 563, 568–69 (1974); *Identification of Discrimination and Denial of Services on the Basis of National Origin*, 35 Fed. Reg. 11595 (July 18, 1970).

free of charge in all criminal and civil matters, including encounters outside of the courtroom.⁵

Despite this guidance, many state courts fail to provide interpreters in civil matters, charge for interpreters they provide, or fail to ensure that the interpreters have adequate language and interpretation skills. The human toll is tragic. As a result of language barriers, limited-English-proficient court users lose custody of their children, women fearing domestic violence cannot get restraining orders, and cases are dropped against people charged with serious crimes.⁶

The Justice Department publicly stepped up its Title VI enforcement efforts in August 2010, when Assistant Attorney General Thomas Perez wrote to the chief judge and chief court administrator in each state. Perez warned that the Justice Department “continues to encounter state court language access policies or practices that are inconsistent with federal civil rights requirements” and that it “will continue to review courts for compliance and to investigate complaints.”⁷

The Justice Department followed up by providing a set of questions and answers about the August letter and a separate set of frequently asked questions about Title VI more generally.⁸ The Justice Department also identified federal funding that could be used by state courts to improve language access.⁹

Furthermore, the Justice Department acted to improve language access in other government sectors, including federal executive agencies, the department’s own operations, and federal administrative proceedings.¹⁰ Thus the Justice Department demonstrated its serious commitment to ensuring that limited-English-proficient individuals have equal access to activities funded and conducted by federal agencies.

As of December 2011, the Justice Department was investigating or monitoring language access in seven state court systems.¹¹ Although the Justice Department does not publicize information about the complaints it receives, we were able to identify five of the seven states.¹² What are these complaints, and how have the

⁵Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455, 41471–72 (June 18, 2002), <http://1.usa.gov/ReJOI5>.

⁶Laura Abel, Brennan Center for Justice, *Language Access in State Courts 3–5* (2009), <http://bit.ly/9IOZ0N>.

⁷Letter from Thomas E. Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Chief Justice/State Court Administrator 1, 5 (Aug. 16, 2010), <http://1.usa.gov/OazjPM>.

⁸U.S. Department of Justice, *Frequently Asked Questions About the Protection of Limited English Proficient Individuals (LEP) Under Title VI of the Civil Rights Act of 1964 and Title VI Regulations* (March 2011), <http://1.usa.gov/U8ymPO>; U.S. Department of Justice, *Questions and Answers Regarding the August 16, 2010 Title VI Language Access Guidance Letter to State Courts* [Dec. 2010], <http://1.usa.gov/SYCe6K>.

⁹Federal Coordination and Compliance Section, Civil Rights Division, U.S. Department of Justice, *Federal Funding Programs for State and Local Court Activities to Address Access to Justice for Limited English Proficient (LEP) Individuals* (Aug. 2011), <http://1.usa.gov/OaA6qG>.

¹⁰U.S. Department of Justice, *Department of Justice Language Access Plan* (March 2012), <http://1.usa.gov/SZtKfD>; U.S. Department of Justice & Administrative Conference of the United States, *Promising Practices for Language Access in Federal Administrative Hearings and Proceedings: A Report from the September 22, 2011 Workshop* (Feb. 3, 2012), <http://1.usa.gov/OBxfBz>; Memorandum from Attorney General Eric Holder to Heads of Federal Agencies, General Counsels, and Civil Rights Heads on *Federal Government’s Renewed Commitment to Language Access Obligations Under Executive Order 13166* (Feb. 17, 2011), <http://1.usa.gov/PouLZW>; Memorandum from Attorney General Eric Holder to Heads of Department Components on *Access Obligations Under Executive Order 13166* (June 28, 2010), <http://1.usa.gov/QIBR2V>.

¹¹U.S. Department of Justice, *Summary of Resources and Efforts to Ensure Access to Federal and Federally Funded Programs and Activities by Limited English Proficient Individuals* (Dec. 2011).

¹²The Justice Department is reviewing, besides these five states, a Title VI complaint filed by Lone Star Legal Aid on behalf of a limited-English-proficient woman who had tried to obtain an interpreter in her divorce action. The woman’s husband was in prison for attacking her; she was trying to obtain a divorce and child custody order before he was released. The trial court, which had appointed an interpreter, refused to issue the orders until she paid interpreter costs (Press Release, Lone Star Legal Aid, DOJ Has Begun Investigating Lone Star Legal Aid’s Civil Rights Complaint Against Texas Courts for Denying Access to DV Victim Based on Language (Oct. 11, 2011), <http://bit.ly/S30E8f>). A Texas statute requires courts to provide interpreters whenever people need them (TEX. GOV’T CODE ANN. § 57.002 (West 2012)). However, the general rule in civil proceedings is that courts are not required to pay for spoken language interpreters (Whether Chapter 57 of the Government Code Requires the Appointment of Licensed Court Interpreters in Certain Circumstances, and Related Questions, Texas Attorney General Opinion JC-0584, (Nov. 26, 2002), <http://bit.ly/RoM11B>). The Justice Department has not yet issued any public information on the complaint.

Justice Department, the courts, and state legislatures responded?

Alabama. In November 2009 the Justice Department visited several Alabama courts to evaluate their language-access policies.¹³ According to reports in the *Birmingham News*, the investigation was prompted by a complaint received “more than a year” before the visit.¹⁴ Alabama law and court policy state that the courts pay for interpreters in criminal and juvenile cases, although they may assess interpreter costs against one or more parties at the end of the case.¹⁵ Alabama courts apparently do not provide interpreters in civil cases, although they do have the inherent power to do so.¹⁶ In 2008, after the Justice Department first contacted court officials about the complaint, the Alabama judiciary established a system for certifying interpreters and required courts to use certified interpreters when available.¹⁷ The Justice Department has not issued any public information about the status of the complaint.

California. In December 2010 two low-income Korean-speaking women filed with the Justice Department a Title VI complaint asserting that the Los Angeles, California, Superior Court refused to provide interpreters for them in their civil cases. The women, who are being represented by the Legal Aid Foundation of Los Angeles in their Title VI complaint, had sought interpreters in cases concerning child custody, child support, and civil harassment. According to the complaint, the Los Angeles Superior Court takes the position that it is obli-

gated to provide interpreters only in juvenile, criminal, mental health, domestic violence restraining order, and small claims court proceedings. In other types of cases it often provides interpreters for Spanish-speaking court users. However, court users who speak other languages, including Korean (the fourth most frequently spoken language in the state, after English, Spanish, and Armenian), are told to bring friends or family members with them to interpret.¹⁸ The Justice Department has not taken any public action on the complaint.

Similar problems are found statewide. According to a recent Legal Aid Foundation of Los Angeles newsletter, “[t]he Judicial Council of California, Administrative Office of the Courts, in its Benchguide for Judicial Officers, specifically states that there is no right to interpreters in civil cases.”¹⁹ In 2005 the California Access to Justice Commission documented similar language-access problems in courts across the state and noted the communication difficulty between judges and court users without interpreters in one of the most diverse states in the nation.²⁰

Colorado. In June 2011 the Colorado Judicial Department responded to a seven-year-old Title VI complaint, and more recent Justice Department investigation, by agreeing to extend interpreter coverage to all civil proceedings and court services, translate signage and frequently used forms, and make other major improvements in language access.²¹ The 2004 complaint alleged that Colorado “failed to provide interpreters and other

¹³Erin Stock, *U.S. Justice Department Probes Alabama Court Translation Practices*, BIRMINGHAM NEWS (Nov. 7, 2009), <http://bit.ly/OCqyog>.

¹⁴*Id.*

¹⁵Sue Bell Cobb & Callie T. Dietz, *Alabama’s Unified Judicial System: Policies and Procedures for Foreign Language Interpreters* 14–15 (Sept. 2008), <http://bit.ly/POLc3r>.

¹⁶Erin Stock, *U.S. Probes Alabama’s Funding for Court Interpreters*, BIRMINGHAM NEWS, Nov. 28, 2009, <http://bit.ly/Qz7kfl>; Cobb & Dietz, *supra* note 15, § 3.1.

¹⁷Cobb & Dietz, *supra* note 15, § 3.2; Stock, *U.S. Justice Department Probes Alabama Court Translation Practices*, *supra* note 13.

¹⁸Legal Aid Foundation of Los Angeles, *Complaint Under Title VI of the Civil Rights Act 4–5* (citing Los Angeles Superior Court Limited English Proficiency Plan).

¹⁹Joann Lee, *Beyond Self-Help: What Happens in the Courtroom?*, LAFLA MATTERS (Feb. 2012), <http://bit.ly/Oq5aCK>.

²⁰California Commission on Access to Justice, *Language Barriers to Justice in California* 1–3 (2005).

²¹U.S. Department of Justice, No. 171-13-63, *Memorandum of Agreement Between the United States of America and the Colorado Judicial Department* (June 28, 2011), <http://1.usa.gov/S2NGaA>.

language access services in all court proceedings and operations to limited English proficient (LEP) individuals.”²² The *Denver Post* reports that the complaint, which has not been made public, was filed by a person who “did not have a case before any court but examined the state’s practices.”²³

To resolve the complaint, the Colorado Judicial Department entered with the Justice Department into a memorandum of agreement outlining the steps that Colorado planned to take to improve limited-English-proficient persons’ access. In the memorandum and an accompanying directive from the chief justice of the Colorado Supreme Court, the Colorado Judicial Department agreed to provide interpreters to all “parties in interest” in all court proceedings and operations.²⁴ This was an improvement over the previous chief justice directive, which Colorado court personnel had construed as requiring the provision of interpreters in civil cases only if a determination of indigence had been made.²⁵

Other notable improvements contemplated by the memorandum of agreement and directive were specific procedures for remote interpreting, disqualifying interpreters, and making complaints; the translation of court signage, commonly used forms, and other written communication; and the provision of language access at clerks’ counters and in “court[-]mandated programs including without limitation family court facilitations and mediations.”²⁶

The memorandum of agreement and directive also establish a process for policy development, implementation, and monitoring. The memorandum contemplates that additional stakeholders will be appointed to the Court Interpreter Oversight Committee, including “a Colorado Legal Services attorney, a prosecutor, a public defender, an advocate representing the interests of the language[-]minority populations in Colorado, and other members of the bar or community, all of whom shall have relevant experience in court language access issues.”²⁷ The directive assigns specific roles to judges, the state court administrator, district administrators, probation officers, and others.²⁸ The memorandum sets deadlines for the Judicial Department to develop and seek Justice Department approval of statewide and district-level language assistance plans and of “policies, forms, and procedures” to implement the directive and plans.²⁹ And every six months the Judicial Department must submit to the Justice Department a detailed report describing the implementation of the directive.³⁰ According to the terms of the memorandum of agreement, the Justice Department will monitor Colorado’s progress for at least three years.

Since then, the Justice Department has approved the statewide language assistance plan: “the structure and scope of the Colorado plan will be instructive for other entities adopting or revising plans.”³¹ That plan makes clear that implementing the memorandum of agree-

²²*Id.* at 1.

²³Felisa Cardona, *Accord Provides Court Interpreters to All Litigants*, DENVERPOST.COM, June 30, 2011, <http://bit.ly/S5Qizy>.

²⁴U.S. Department of Justice, *supra* note 21. A chief justice’s directive defines “party in interest” as “[a] party to a case; a victim; a witness; the parent, legal guardian, or custodian of a minor party; and the legal guardian or custodian of an adult party” (Office of the Chief Justice, Supreme Court of Colorado, Chief Justice Directive 06-03, Colorado Judicial Department Directive Concerning Language Interpreters and Access to the Courts by Persons with Limited English Proficiency (amended June 2011), <http://1.usa.gov/PooljS>).

²⁵Brennan Center for Justice, *Language Access in State Courts: Colorado Summary* (Nov. 2, 2009), <http://bit.ly/QzDlyW>.

²⁶Office of the Chief Justice, Supreme Court of Colorado, *supra* note 24, §§ II.A, II.C, VI, VII, IX, X.

²⁷U.S. Department of Justice, *supra* note 21, at 2.

²⁸Office of the Chief Justice, Supreme Court of Colorado, *supra* note 24, § XI.

²⁹U.S. Department of Justice, *supra* note 21, at 3.

³⁰*Id.* at 3–4.

³¹Tracy Russo, *Ensuring Equal Opportunity in Colorado Courts*, JUSTICE BLOG (March 26, 2012), <http://1.usa.gov/PwSmqX>.

ment and directive is ongoing. Indeed, many of the policies and standards contemplated by the memorandum and directive have not yet been developed. For example, procedures for assessing the language capabilities of bilingual staff are due to be developed by June 2013.³²

Pat Medige, an attorney with Colorado Legal Services, confirms that improvements have been made even if progress has been slow.³³ Although she remains concerned that some *pro se* litigants are not aware that interpreters are available, she reports positive steps in that direction: some courts are posting signs in Spanish notifying litigants of the availability of interpreters, and some courts have accepted a form, developed by Colorado Legal Services, which limited-English-proficient litigants can use to inform the court that they need an interpreter.³⁴

North Carolina. In March 2012 the Justice Department warned that the North Carolina Judicial Department risked losing federal funding if it did not improve language access.³⁵ The letter was the latest development in a series of Title VI complaints and subsequent Justice Department investigations on language-access problems in that state. The first complaint, filed in 2006 by an attorney in private practice, alleged that the North Carolina Administrative Office of the

Courts failed to provide interpreters to limited-English-proficient individuals in eviction cases and told Spanish speakers to bring someone to court to interpret for them.³⁶ The complaint also described derogatory statements that a court interpreter had made about Hispanics. After receiving the complaint, the office stopped using that interpreter's services and required the courts to use certified interpreters when available.³⁷ In February 2008 the Justice Department inspected courts throughout the state, but it did not take public action for another four years.³⁸

In May 2011 the Latin American Coalition, Muslim American Society of Charlotte, and Vietnamese Association of Charlotte filed another Title VI complaint.³⁹ Drafted by attorneys from the North Carolina Justice Center and an attorney in private practice, the complaint relied on evidence gathered by students from the University of North Carolina Law School.⁴⁰ According to the complaint, the North Carolina courts provide interpreters only for indigent defendants in criminal cases and in a small number of civil cases involving domestic violence, child custody mediation, indigent juveniles in abuse and neglect cases, and involuntary commitment proceedings.⁴¹ The courts claim that judiciary policy

³²Office of Language Access, Colorado Judicial Department, Strategic Plan for Implementing Enhanced Language Access in the Colorado State Courts: Blueprint for Providing Full Access to Justice for Colorado's Limited English Proficient Court Users 8 (March 2012), <http://1.usa.gov/RlhCOA>.

³³Telephone Interview by Matthew Longobardi with Patricia Medige, Senior Attorney, Colorado Legal Services (July 26, 2012) (notes on file with Longobardi).

³⁴E-mail from Patricia Medige, Senior Attorney, Colorado Legal Services, to Matthew Longobardi (July 26, 2012) (on file with Longobardi).

³⁵Letter from Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, to Hon. John W. Smith, Director, North Carolina Administrative Office of the Courts, on Complaint No. 171-54M-8, Investigation of the North Carolina Administrative Office of the Courts 2 (March 8, 2012), <http://1.usa.gov/PomOnn>; Report of Findings: Complaint No. 171-54M-8 (n.d.), <http://1.usa.gov/PomOnn>.

³⁶Keren Rivas, *Justice Department Investigates N.C. Courts*, BURLINGTON TIMES-NEWS, May 6, 2007.

³⁷*Id.* See also North Carolina Administrative Office of the Courts, Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System § 3.2 (Feb. 2007).

³⁸Keren Rivas, *Justice Department Visits Local Courts Over Language Access*, BURLINGTON TIMES-NEWS, Feb. 29, 2008. See also Report of Findings, *supra* note 35, § III.

³⁹Complaint Under Title VI of the Civil Rights Act, *Latin American Coalition v. North Carolina* (U.S. Dep't of Justice May 16, 2011).

⁴⁰Emily Kirby et al., An Analysis of the Systemic Problems Regarding Foreign Language Interpretation in the North Carolina Court System and Potential Solutions (May 5, 2011), <http://bit.ly/PoyQx5>.

⁴¹*Id.* at 14–15.

bars judges from providing interpreters in all other cases.⁴² The complaint alleges that judges often invite family members or people waiting for their cases to be called to act as interpreters and that interpreter fees are assessed against indigent criminal defendants found guilty.⁴³

The Justice Department subsequently intensified its investigation, making three additional onsite visits and conducting over eighty interviews.⁴⁴ Among the startling factual findings in its 2012 warning letter: prosecutors in Wake and Durham Counties ask people with limited English proficiency to plead guilty and then, assuming the role of “interpreters,” convey the guilty pleas to the courts, thereby raising serious conflict-of-interest problems. The Justice Department also described a mother who lost custody of her children after a Wake County court conducted her hearing without an interpreter, even though the mother indicated that she could not understand the proceedings.

The Justice Department letter finds that North Carolina is in violation of Title VI and warns that the judiciary could lose federal funding as a result.⁴⁵ The letter acknowledges that the state faces budgetary constraints but estimates that the North Carolina Administrative Office of the Courts could come into compliance for 0.3 percent of the court’s total budget.⁴⁶ The letter invites the office to enter into negotiations. There is no public information available on whether a settlement agreement is in the works.

Rhode Island. In a June 2012 executive order, the Rhode Island Supreme Court

outlined a plan to improve language access by providing and paying for interpreters in all civil and criminal cases, providing interpreters or bilingual staff for communications with court staff, and improving the qualification requirements for court interpreters.⁴⁷ According to the Justice Department, the executive order is a “critical step ... taken in response to the Justice Department’s investigation of the Rhode Island Judiciary’s language access practices” and was worked out during a year of negotiations over the key provisions.⁴⁸

The executive order is apparently intended to resolve long-standing language-access problems brought to light by the American Civil Liberties Union (ACLU) of Rhode Island and others. In 2004 the ACLU filed with the Justice Department a Title VI complaint alleging that the Rhode Island judiciary was “failing to provide appropriate language interpreter services in criminal court proceedings to [limited-English-proficient] persons.”⁴⁹ At the time some limited-English-proficient criminal defendants were being held in jail for days because an interpreter was not available.⁵⁰ The Justice Department did not take any public action on the complaint until it issued a June 2012 blog post announcing the executive order.

In 2009 a Brennan Center report and subsequent article in the *Providence Journal* revealed that language-access problems were in the civil realm, too: there was no requirement that interpreters must be provided in civil cases, although the interpreters assigned to handle criminal and juvenile family court proceedings would

⁴²*Id.*

⁴³Report of Findings, *supra* note 35, at 6, 19–20.

⁴⁴*Id.* at 6.

⁴⁵Perez, *supra* note 35, at 1, 4. The Justice Department deferred making any finding regarding whether the judiciary was violating the Safe Streets Act (*id.* at 2).

⁴⁶*Id.* at 2–3.

⁴⁷Rhode Island Supreme Court, Executive Order No. 2012-05, at 2, 5 (June 13, 2012), <http://1.usa.gov/W10kKZ>.

⁴⁸Tracy Russo, *Working with State Courts to Remove Language Barriers to Justice*, JUSTICE BLOG, June 15, 2012, <http://1.usa.gov/Px8857>.

⁴⁹Rhode Island ACLU, Complaint Under Title VI of the Civil Rights Act (U.S. Dep’t of Justice, July 9, 2004), <http://bit.ly/Qjply7>.

⁵⁰*Id.*

assist in civil proceedings if they had time.⁵¹

In 2011 and 2012 students from Rhode Island's Roger Williams Law School, in a project supervised by the ACLU, spent their spring break observing language access in the Rhode Island courts.⁵² The students reported that many criminal defendants, and even some lawyers, were unaware that the court was required to provide interpreters.⁵³ In 2012 they observed two criminal defendants shackled together, one "interpreting" for the other.⁵⁴ The students also noted that many courthouses' general information pamphlets and posted court rules were in English only.⁵⁵ Many local community groups, such as the Olneyville Neighborhood Association, Providence Youth and Student Movement, Fuerza Laboral, and Direct Action for Rights and Equality, have also pushed for reform.⁵⁶

The executive order's general instruction that interpreters must be provided for all limited-English-proficient parties in interest, without charge, went into effect on July 1, 2012. However, many of the implementing procedures will be rolled out over time. By the end of this year the Rhode Island Administrative Office of State Courts is to prepare a Language Access Plan.⁵⁷ The Justice Department states that it "intends to continue work-

ing with the Rhode Island Judiciary to develop" the plan.⁵⁸

States That Have Improved Language Access Without Complaints Being Filed

The Justice Department's stepped-up enforcement has prompted significant language-access improvements in Tennessee and Utah, neither of which is known to be the subject of a Title VI complaint. Tennessee's chief justice credits the Justice Department's August 2010 letter as the impetus for the courts to provide interpreters in all cases, regardless of indigency status.⁵⁹ By court rule, judges "should" appoint an interpreter for limited-English-proficient individuals in all types of cases.⁶⁰ However, until July 2012, courts paid for interpreters for indigent parties in criminal cases and in civil cases concerning mental health commitment or guardianship, waivers of parental consent for abortion, abuse, neglect or termination of parental rights, or juvenile delinquency.⁶¹ Even in those cases, however, interpreter services were taxed as court costs against nonindigent litigants.⁶² In other types of cases, there was no formal waiver or repayment program for court interpreter costs, although some counties helped cover interpreter costs for those who could not afford them.⁶³

⁵¹Karen Lee Ziner, *Study: R.I. Lags in Providing Interpreters in Civil Court Cases*, PROVIDENCE JOURNAL, July 21, 2009, at A7; Brennan Center for Justice, *Language Access in State Courts: Rhode Island Summary* (Nov. 2, 2009), <http://bit.ly/Rq4gql>.

⁵²E-mail from Shannah Kurland, Roger Williams Law School Student, to Matthew Longobardi (July 5, 2012) (on file with Longobardi).

⁵³RWU School of Law Alternative Spring Break Project, *Court Observations: Summary*, March 14–18, 2011 (on file with Laura K. Abel).

⁵⁴Kurland, *supra* note 52.

⁵⁵RWU School of Law Alternative Spring Break Project, *supra* note 53.

⁵⁶Kurland, *supra* note 52; E-mail from Shannah Kurland, Roger Williams Law School Student, to Matthew Longobardi (Aug. 6, 2012) (on file with Longobardi).

⁵⁷ Rhode Island Supreme Court, *supra* note 47, at 6.

⁵⁸*Id.*

⁵⁹Cornelia A. Clark, Chief Justice of the Tennessee Supreme Court, *Opening Remarks: Interpreter Summit* (May 24, 2012), <http://bit.ly/QY7Yf>.

⁶⁰TENN. SUP. CT. R. 42 § 3(a).

⁶¹Brennan Center for Justice, *Language Access in State Courts: Tennessee Summary* (2009).

⁶²*Id.*

⁶³*Id.*

The problems caused by this patchwork regime were highlighted in an unusual 2011 lawsuit. Flores Vidal Enriquez sued Bradley County after assault charges brought against him were dismissed but he was still assessed the cost of the interpreter in the proceedings in his case.⁶⁴ Barred from bringing a disparate impact claim by *Alexander v. Sandoval*, Enriquez alleged two types of intentional discrimination.⁶⁵ First, only Hispanic people were charged for interpreters (others were not provided with interpreters at all). Second, courts continued to charge for interpreters even after the Justice Department's August 2010 warning that charging violates Title VI.⁶⁶ The county settled the case in March 2012 by agreeing to pay \$10,000 to Enriquez.⁶⁷

In June 2012 the Tennessee Supreme Court amended its rules to provide that the state would pay for interpreters in all cases regardless of a limited-English-proficient individual's indigency status.⁶⁸ The rule took effect the following month, when the legislature made available a \$2 million appropriation for court interpreters, on top of its usual \$1 million annual allocation.⁶⁹

Impetus for change also came from the Tennessee Association of Professional Interpreters and Translators and the Na-

tional Association of Judiciary Interpreters and Translators, together with immigrant and refugee groups, which had been urging an expansion of the court interpreter program for several years.⁷⁰ Moreover, the Tennessee Access to Justice Commission recommended in 2010 that the state should pay for all interpreters and that court rules should make clear courts' duty to find an interpreter, and in January 2011 the commission hosted a language-access summit.⁷¹

Three months after the Justice Department's 2010 letter, a Utah Judicial Council committee recommended that the courts in that state begin providing interpreters in all civil cases.⁷² At the time Utah provided interpreters in criminal and juvenile cases and in the few civil cases deemed to involve personal safety or deprivation of liberty, but not in any other cases.⁷³ The Utah judiciary accepted the recommendation, and in April 2011 it began providing interpreters to limited-English-proficient individuals in cases involving divorce, landlord-tenant, consumer debt, and other important matters.⁷⁴ At the same time Utah tightened its court interpreter credentialing process.⁷⁵ The state still has progress to make: it has reserved the power to continue charging some limited-English-proficient individuals for their interpreters, although

⁶⁴Todd South, *Bradley County Faces Suit on Interpreter Costs*, TIMESFREEPRESS.COM, April 16, 2011, <http://bit.ly/QYmFs9>. The interpreter was also a plaintiff in the case.

⁶⁵*Alexander v. Sandoval*, 532 U.S. 275 (2001).

⁶⁶Complaint, *Enriquez v. Bradley County*, No. 1:11-cv-00094 (E.D. Tenn. April 14, 2011), <http://bit.ly/Um4U7F>.

⁶⁷Kate Harrison, *Bradley County Pays \$10,000 to Settle Interpreter Suit*, TIMESFREEPRESS.COM, March 13, 2012, <http://bit.ly/S46ZG2>.

⁶⁸Order, *In re Amendment of Rule 42, Rules of the Tennessee Supreme Court*, No. M2012-01045-SC-RL2-RL (Tenn. June 27, 2012), <http://bit.ly/UaDYJn>; Press Release, Tennessee State Courts, Tennessee Supreme Court Enhances Language Access Services (June 27, 2012), <http://bit.ly/OY1Qe0>.

⁶⁹Clark, *supra* note 59; Telephone Interview by Matthew Longobardi with Tennessee Court Interpreter Robert Cruz (July 9, 2012) (before July 2012 annual appropriation for court interpreter services had been \$1 million allocated as part of indigent defense budget).

⁷⁰Cruz, *supra* note 69.

⁷¹Tennessee Access to Justice Commission, 2010 Strategic Plan 13 (n.d.), <http://bit.ly/STeZtV>; Telephone interview by Matthew Longobardi with Mary Rose Zingale, Tennessee Court Services Director, and Anne-Louise Wirthlin, Tennessee Access to Justice Coordinator (July 10, 2012).

⁷²Policy and Planning Committee, Utah State Courts, Court Interpreters: Report to the Judicial Council (Nov. 22, 2010).

⁷³*Id.*

⁷⁴Utah Judiciary, Amendments to Rule 3-306 (April 1, 2011), <http://bit.ly/QGaXTW>; Daniel J. Becker, *Foreign Language Interpretation in Utah Courts*, SALT LAKE TRIBUNE, Dec. 4, 2010, <http://bit.ly/S5MxmT>.

⁷⁵Utah Judiciary, *supra* note 74.

the state's court administrator assures that cost recovery "is seldom pursued."⁷⁶

The Current Landscape: Progress and Problems

As a result of the developments described here, communication between the courts and limited-English-proficient individuals in six states is much more reliable than before. Interpreters are now available in all types of civil proceedings in Colorado, Rhode Island, and Utah. Limited-English-proficient individuals, regardless of indigency status, are no longer charged for interpreters in Tennessee. An interpreter certification system has been established in Alabama, while the interpreter credentialing system in Utah has been strengthened. In Alabama and North Carolina courts are now required to use certified interpreters when available. Court administrators and advocates in these states can be proud of all these improvements.

At the same time language-access problems persist in many of the states profiled here. The Alabama courts still do not pro-

vide interpreters in civil cases, although a Title VI complaint was filed in Alabama in 2008 or earlier. Many limited-English-proficient individuals involved in civil matters in California still cannot get interpreters; a Title VI complaint has been pending there for almost two years. A 2006 complaint regarding North Carolina has elicited a warning letter from the Justice Department finding Title VI violations, but interpreters still are not provided in many types of civil cases. Utah continues to reserve the right to charge some limited-English-proficient individuals for interpreters. Colorado and Rhode Island courts are working to implement the changes they have worked out with the Justice Department, but the changes are not yet fully implemented.

Clearly court administrators and advocates have significant work to do in these states, and in others around the country, to improve language access in the courts. At the same time, we hope that the developments described here demonstrate that language-access advocacy can bring improvements worthy of the effort.

⁷⁶Becker, *supra* note 74.



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