

**A REPORT to the
JUSTICE ACTION GROUP
on ACCESS TO MAINE COURTS
for INDIVIDUALS with
LIMITED ENGLISH PROFICIENCY**

January 2005

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I. Executive Summary

A. The Maine Co

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Maine has become increasingly diverse. The immigrant population has grown significantly due to a variety of factors, including Maine's mandatory participation in national refugee resettlement efforts, the increased use of immigrant workers in Maine's agricultural sector, and the influx of immigrants previously living in other states who have been drawn to Maine by its quality of life. Even as the larger presence of immigrants from Africa, Asia, Latin America, the Middle East and Eastern Europe has brought increased cultural, economic, and linguistic diversity to Maine, it has also presented new challenges to entities providing services to the public, including the state court system.

Maine's judicial system must be accessible to all Maine residents. Ensuring that all members of our community can fully communicate with an institution so profoundly impacting their lives, regardless of language spoken, is vitally important to the maintenance of a just society.

Such access is also legally required. Federal law mandates that institutions receiving federal grants or funds provide interpreter services for individuals with limited spoken English skills. State law also requires the provision of interpreter services in situations where any personal or property interest of an individual is the subject of a proceeding. Maine court rules allow judges to appoint, and the courts to pay for interpreters.

While the demographics of Maine's population has changed significantly in the past two decades, the Maine court system has been slow to keep up with the trend. At the time that the Limited English Proficiency (LEP) Committee began its work in January 2003, clear, system-wide approaches to assisting courthouse users who needed language accommodations did not exist. Court personnel had inadequate training regarding how to respond when persons with limited English skills sought court services. Procedures varied from courthouse to courthouse, and available resources, such as telephonic interpreting services, were underutilized. The lack of a coherent approach has discouraged persons with limited English skills from attempting to use Maine's courts, and those who have had contact with the justice system have experienced delayed proceedings, or proceedings which are only partially comprehensible to them, as their cases often have moved forward with under-qualified interpreters. Ultimately, lack of language access has resulted in significant compromises of Due Process, fairness and efficiency, and has been perceived by some as a message that Maine's courts are not here to serve all Mainers.

B. Addressing the issue

Providing access to Maine's courts for an LEP individual is not as simple as finding someone who speaks that person's language. The courts instead must ensure that interpreters are highly trained and qualified. Conducting court business and proceedings involving LEP individuals *without* an interpreter obviously can lead to vital errors in comprehension of the proceedings and in testimony, and, ultimately, to the abridgement of individual rights and liberties. With an *unqualified* interpreter, however,

those same problems exist and some additional distortion problems arise. Under-qualified, amateur interpreters may alter, summarize or censor testimony; they may be associated with the person requiring interpretation services in such a way as to create conflicts of interest that prevent accurate interpretation; or they may lack basic interpretation skills, leading to slow or incomplete interpretation, or to other inaccuracies in the interpretation. All of this compromises the court record and the judicial process itself.

The consequences of inadequate interpretation can be significant, both for the judicial system and for the community. Lack of competent interpreting services can discourage LEP individuals from using Maine's courts, even when life or property might be at stake. Additionally, use of under-qualified interpreters can cause delays in proceedings, compromise Due Process, and lead to convictions being vacated or cases being appealed. It is critical that the Maine court system engage in a concerted effort to remove linguistic barriers to the judicial system, both in the interest of a just society, and in the interest of efficient administration of the courts.

In Maine, however, there is no quick fix to this problem. This is an issue that quite frankly, requires money at a time when money is tight. Obviously, hiring qualified interpreters with greater frequency in response to the increased need, and at a pay scale commensurate to the extremely professional nature of the work requires funding. So too do other necessary changes, such as translating vital court forms, or conducting trainings to ensure that court staff understand the legal obligations and the tools needed to accommodate LEP individuals in the courts. However, funding will not be the only challenge to improving language access in Maine's courts. While the immigrant population in Maine has grown, Maine's bilingual/bicultural population remains relatively small. As a result, Maine has an extreme shortage of professional interpreters, and, until recently, opportunities to be trained in-state in legal interpreting skills have been nonexistent. Therefore, improving access to the courts by LEP individuals cannot be solved simply by throwing money at the problem, even were the money readily available. A long-term cultural shift that recognizes language access as a priority and that cultivates a larger corps of professional interpreters available to work in the courts will be required. Ultimately, the Maine courts will have to work in collaboration with other stakeholders in the state to adequately address the issue of language access in the court system.

C. Recommendations

Significant efforts have been made over the course of the LEP Committee's tenure by the courts, Committee members and community stakeholders to improve access to justice for LEP individuals. However, much remains to be done, both in the short and long term. The Committee's recommendations encompass several categories:

- ❖ Development of system-wide policies and procedures to ensure that Maine's courts are uniformly accessible to those with language barriers, as well as to track the need for, and, ultimately, to improve the utilization of interpreters;
- ❖ Translation of key court forms, such as Protection from Abuse forms, into the most prevalent languages in Maine;
- ❖ Outreach and training for key court staff, attorneys, and the public regarding language access rights;
- ❖ Improvements in the quality and quantity of interpreters available to the courts;
- ❖ Creation of an advisory committee or other appropriate mechanism to oversee the implementation of the recommendations in this Report and to further improve linguistic access to Maine courts.

The Committee's recommendations include those that can likely be accomplished in the near term, and those aimed at systemic change that will take longer and/or need funding or legislation to implement. The recommendations are grouped accordingly. The short-term suggestions should be acted upon quickly, so that LEP Mainers will see noticeable improvements while waiting for long-term, systemic change.

II. Introduction: The JAG Sub-Committee on Access to the Courts

“Working together, we can create a judicial system in which . . . courthouses are safe places where people are treated with dignity; families receive focused judicial attention and children have a voice in the courtroom; all litigants can obtain prompt resolutions to their disputes; [and] the judicial system is accessible to everyone regardless of their income, abilities, or native language.”

- Chief Justice Saufley, “State of the Judiciary,” January 27, 2004¹

Ensuring linguistic access to the Maine judicial system for individuals with limited English proficiency (LEP individuals)² is critical if the Maine courts are to strive to achieve justice for all. Recognizing this, the Justice Action Group (JAG) created a volunteer Committee (the LEP Committee) charged with researching and making any necessary recommendations to address the issue of improving access to Maine’s courts by LEP individuals. The Committee was comprised of the following persons:

- Beth Stickney, Esq., Executive Director of the Immigrant Legal Advocacy Project (Chairperson);
- William S. Brownell, Clerk/Magistrate Judge of the U.S. District Court, District of Maine;
- Priscilla Doel, Professor of Spanish and Portuguese, Colby College, Executive Director of Maine S.A.F.E., and spoken language interpreter;
- James T. Glessner, State Court Administrator, State of Maine Judicial Branch;
- The Honorable Ellen Gorman, Superior Court Justice, State of Maine Judicial Branch;
- Jeffrey Henthorn, Director of Court Services and Programs, State of Maine Judicial Branch; and

¹ Available at <http://www.courts.state.me.us/news/2004StateofJudiciarySpeech.htm>.

² Critical terms used in this Report will be defined throughout. *Limited English proficient individual* or “*LEP individual*” is the phrase used to refer to any person who is unable or has a limited ability to communicate in English. It applies to foreign language speakers whose primary language is a language other than English and who cannot adequately participate in a court proceeding as a result of this language barrier. It also includes deaf or hard of hearing individuals whose primary language is American Sign Language, as well as those whose native language is English but who are unable to hear adequately for court purposes. *Interpretation* means the unrehearsed transmitting of a spoken or signed message from one language into another; the oral transfer of a conversation or presentation from one language into another. By contrast, *translation*, often confused with interpretation, means the converting of written text from one language into the written text of another language. Translation requires different skills than interpretation. For more thorough definitions and explanations, and for additional terminology specific to the interpretation process, see App. A. Words used in this Report that are unique to the interpreter context and are defined in the glossary appear in italics.

- Meryl C. S. Troop, Director, Office of Deaf Services and Multicultural Diversity of the Maine Department of Health and Human Services and nationally certified sign language interpreter.

In 2003, Jennifer Lechner, then Executive Coordinator of the Justice Action Group, assisted the committee in its research and writing efforts. In 2004, Lori Londis, a student at the University of Maine School of Law, assisted the Committee in compiling information and drafting its final report.³

From January 2003 through December 2004, the Committee examined the issue of access to Maine's courts by LEP individuals. The Committee studied the LEP population in Maine and its needs, examined the applicable law to better understand legal requirements concerning language access, and educated itself about the interpretation process to better understand its complexities and its application to legal settings. The Committee interviewed interpreters who currently work in the courts and community stakeholders about the experiences of LEP individuals trying to navigate Maine's court system. The Committee conducted statewide surveys of court clerks and other courthouse personnel, and of attorneys who practice in the courts, to gain a better understanding of the challenges to serving the LEP population. The Committee also reviewed the experiences and practices of court systems in other states, as well as of other disciplines such as the medical field, to determine best (and worst) practices for improving services to LEP individuals. The Committee produced an Interim Report on June 25, 2003.⁴ This final Report includes background information, Committee findings, and Recommendations.

III. The Context

A. Maine's LEP Population

1. The Spoken Language LEP Population

Maine is the largest state in New England in terms of geographic area, yet it is the least densely populated. According to Census 2000, 36,689 foreign-born individuals live in Maine.⁵ Census data, however, tends to underestimate the number of foreign-born individuals living in the state.⁶ Immigrant Legal Advocacy Project (ILAP), a

³ The LEP Committee is deeply grateful to the Cumberland Bar Association for providing the Committee with a grant that allowed it to hire Ms. Londis to assist the Committee.

⁴ See Interim Report, App. B.

⁵ See Census 2000 Table DP-2 Profile of Selected Social Characteristics: 2000 at http://factfinder.census.gov/servlet/QTTable?_bm=y&-geo_id=04000US23&-qr_name=DEC_2000_SF3_U_DP2&-ds_name=DEC_2000_SF3_U&-redoLog=false.

⁶ Accurately quantifying the LEP population in Maine is extremely difficult. Local counts reveal the inaccuracy of Census data. For example, the 2000 Census states that 1,067 persons originally from Africa live in Maine. See *id.* Counts from local sources indicate that over 1,200 Africans live in the City of Lewiston alone, and Portland's African population is viewed as substantially exceeding that of Lewiston, casting serious doubt on the validity of the overall

statewide legal aid agency serving Maine's low-income immigrants, estimates the undercount reasonably to be 58%, leaving the actual number of foreign-born residents in Maine at an estimated 58,000.⁷

In addition, Maine has anywhere from 8,000 to 12,000 migrant workers living in the state each year, according to Maine Department of Labor statistics. They are employed in the blueberry, strawberry, broccoli, and apple harvests, as well as in the egg, seafood processing, wreath-making, forestry, and the hotel and restaurant industries. These workers include Native Americans from Canada, Hispanics from Mexico and Central and South America, Haitians, Eastern Europeans, and Jamaicans. Some are employed only seasonally; others remain in the state year round.

Previous waves of immigrants to Maine were predominantly composed of Canadians and Western Europeans. Since 1980, the State has seen a marked increase in the number of immigrants from Asia, Eastern Europe and Africa.⁸ The result is a demand for language services in a greater array of non-European languages than at any previous point in Maine's history. Maine Department of Education (MDOE) data provides a glimpse into the quantity and array of languages represented across the state. In the school year 2002-2003, MDOE reported that 71 native languages other than English, excluding ASL, were spoken in the State's K-12 schools.⁹ Some of these children are foreign-born; others were born in the United States to immigrant parents and speak the native language of their parents at home.¹⁰ Still others have families that have been present in Maine for generations but nonetheless speak a language other than English, such as those who speak Passamaquoddy, Penobscot or French. A full one-quarter of the students in Portland Public schools and 50% of those living in Portland public housing are foreign-born.¹¹ Somali students comprised the largest enrollment of language minority students (381 students) in Portland, followed by Khmer (283), Spanish (183), Vietnamese (139) and Arabic (128).¹² According to the MDOE, the number of foreign-born students in Maine schools is rising statewide, for example, reaching into Androscoggin, Washington and York Counties.

Despite the apparent growth in Maine's immigrant population, the overall number of LEP individuals in Maine remains proportionately small.¹³ This low population

Census numbers. Foreign-born individuals may fail to participate in the Census for many reasons, including a belief that the Census applies only to U.S. citizens, a distrust or fear of the government or any authoritative body, language barriers, illiteracy, general transience, and homelessness.

⁷ See Grace A. Valenzuela, "A Report on Translation and Spoken Language Interpretation Services for Non-English Speaking or Limited English-Proficient People in the Greater Portland Area," River Rock Foundation 2003, App. C at 6 [hereinafter "Valenzuela Report"].

⁸ See *id.* at 7.

⁹ *Id.* at 9.

¹⁰ *Id.*

¹¹ *Id.* at 9-10.

¹² See Graph, App. D.

¹³ Census Bureau figures show that 7.8% of Mainers responded in Census 2000 that they speak a language other than English at home. See Table 2 "Language Use and English-Speaking

coupled with the wide array of languages spoken and the State's expansive geographical size creates unique challenges for Maine courts. The demographic distribution of LEP individuals across the state is uneven; therefore, the need for court interpreters is spread unevenly as well. The courts must determine how to best serve this vast geographical area efficiently, without sacrificing the quality of interpreter services.

2. The Deaf and Hard of Hearing LEP Population

For purposes of this report, "LEP individuals" also applies to those unable to hear or speak English because of hearing loss, deafness, speech impairment, or other disability affecting communication. Many deaf and hard of hearing persons use American Sign Language (ASL), which has been declared the official language of Maine's Deaf Community by legislative proclamation,¹⁴ as their primary means of communication. ASL is a different language from English, with its own grammar and syntax; therefore, though many signing deaf or hard of hearing individuals can read and write in English to some extent, comprehension may be limited. As with immigrant populations, the demographics of deaf and hard of hearing Mainers are also hard to identify.

The standard statistic used in Maine to quantify the deaf and hard of hearing population is derived from the 1974 Census—the last time a question related to hearing loss was included. According to the '74 Census, 8.5% of the US population had some form of hearing loss, ranging from mild to profound; of those, 10% were profoundly deaf, defined as unable to understand human speech with or without hearing aids or other amplification. In Maine, a state of approximately 1.3 million people, 8.5% of the population amounts to 110,500 deaf or hard of hearing individuals. Of those individuals, 10%, or 11,050, are profoundly deaf. The deaf population in Maine is spread throughout the state, and as with individuals who can hear, the larger population centers—Portland, Bangor, Lewiston-Auburn and Augusta (in descending order)—have a greater concentration of deaf individuals.

Ability for the Population 5 Years and Over for the United States, Regions, and States and Puerto Rico: 1990 and 2000," <http://www.census.gov/prod/2003pubs/c2kbr-29.pdf>. However, only 2% of Mainers responded that they do not speak English very well, presumably because many of the Census respondents who identified the languages they speak at home as Native American dialects or French are multi-generational Maine residents who have a strong command of the English language. *Id.* This 2% figure puts Maine among the ten states with the lowest non-English speaking populations.

¹⁴ See 1 M.R.S.A. § 220.

B. Interpreting in the Courts

Interpretation is necessary during court proceedings and related preparations when there are participants who primarily or only speak a language other than English. The purpose of court interpreting is to allow those directly involved in the court proceeding to understand everything that is being said and to participate effectively. Proper interpretation ensures that courtroom exchanges in English can be understood by the LEP participant and that all non-English testimony is accurately interpreted into English for the record of the proceedings.¹⁵ Interpreters, therefore, will interpret all exchanges during the court proceeding for the LEP individual, as well as interpret the testimony of the LEP individual for the court.

1. Skills Needed for Court Interpreting

It is a common misconception that anyone proficient in two languages can interpret. In reality, interpreting requires a complex set of skills, all of which must be exercised simultaneously. Court interpretation in particular is perhaps the most difficult form of interpreting and cannot be effectively performed without commensurate specialized legal training and skills. A professional interpreter is able to adjust to a broad range of needs and adapt to fast and complicated procedures and courtroom exchanges.

In her initial encounter with the police, an LEP individual may understand very little, including her Miranda warnings. Indeed, in some cultures the concept of "rights" is unknown. In American Sign Language, for example, there is no word comparable to this meaning of the word "right"; thus, a skilled interpretation of the concept is required in order to adequately convey meaning.

Competent court interpreters should have native-like mastery of both the language of the court—English—and a second language; a wide general knowledge (characteristic of a person with at least two years of college-level education); an extensive vocabulary, ranging from formal legal language to colloquialisms and slang; mental and verbal agility; the ability to deal with lawyers, court personnel, judicial officers, and the public; an understanding of the terminology and procedures used in court; and at least some training and experience.¹⁶ Mastery of both English and the other language includes the ability to speak the languages in a way that does not interfere with understanding by native speakers of either language.¹⁷

Mastery of languages at the level required for court interpreting requires reading and speaking the languages regularly in a wide variety of language contexts and years

¹⁵ For a more detailed discussion of the various roles interpreters must play in a court proceeding, see "Court Interpretation: Terminology and Process," App. A, defining proceedings interpreters, defense or table interpreters, and witness interpreters.

¹⁶ See "FAQS <http://www.najit.org/faq.html#g3>.

¹⁷ An interpreter's accent may be noticeable but must not pose problems for the listener.

of formal education. In addition, being a court interpreter requires not only a high level of proficiency in two languages but also an ability to perform all three modes of interpreting: *consecutive interpreting*, *simultaneous interpreting*, and *sight translation of documents*.¹⁸ Interpreters should also be aware of and sensitive to cultural and linguistic concerns.

For sign language interpretation, the interpretation process takes on other dimensions. For example, not all deaf individuals speak the same language. Some deaf individuals use American Sign Language, a natural language with its own grammar and structure that is distinct from English; others utilize a form of signing that more closely follows the grammar and structure of spoken English. The professional sign language interpreter is expected to work comfortably along this wide spectrum. In legal settings it is sometimes necessary to have two or more interpreters working simultaneously in order to satisfy the needs of a varied audience.¹⁹

In general, interpreters who work in court have the weighty responsibility of interpreting everything that is said, maintaining the “legal equivalence” of the source message and the intent of the speaker without adding, deleting, altering or summarizing the content, while conserving the nuances and language level, style, tone and formality (or informality) of the speech. Even insulting or embarrassing language, including profanity, must be accurately interpreted. In addition to rendering spoken and signed language, court interpreters are sometimes required to perform *sight translation*, which is reading documents and interpreting them during the court proceeding.

2. Recognizing When an Interpreter is Needed

LEP individuals do not necessarily self-identify; therefore, court personnel must learn to identify individuals needing language assistance in order to ensure that they have adequate language access in court. If a need is perceived, court staff often ask simple yes/no questions in an effort to ascertain language competence.²⁰ This method seriously underestimates the level of language skill needed to cope in court. Such techniques also minimize the degree to which LEP individuals, who may be fearful and hesitant, will go to please court staff. Thus, the fact that an LEP individual possesses basic conversational skills should not be mistaken for language proficiency sufficient to understand what it means to waive the right to counsel, to understand the implications of a guilty plea, or to undergo cross-examination. In addition, the LEP individual may

¹⁸ See also “What is court interpreting” and “What qualifications do interpreters have,” <http://www.cps.ca.gov/test_registration/FCICE-Spanish/eh1.htm>.

¹⁹ On occasion, a deaf litigant may use a foreign or different form of sign language, which requires a deaf individual with specialized expertise in that foreign sign language to function as an interpreter, whose interpretation, in turn, must be translated into spoken English by a hearing sign language interpreter.

²⁰ i.e., “Do you speak English?” or “Do you understand me?” or “Do you have any questions?” These are often met with a nod or a shake of the head and a smile. In many instances, this means that the individual has little or no idea what is being said but, in an attempt to please, simply gestures and smiles, as though all has been understood.

come from a country where the concept of “rights” is not recognized, or from a cultural context where answering a question “yes” means only “Yes, I acknowledge your question.” Thus, cultural barriers may preclude an understanding of court proceedings. Without the assistance of a trained legal interpreter—one who understands both the particular language *and* culture—substantive misunderstandings can occur in a court proceeding without the judge or attorneys even recognizing it.

The Committee identified three distinct situations where court personnel must recognize that an interpreter is needed and locate a qualified interpreter. Each merits a different response in order to meet the twin goals of efficiency and access for LEP individuals. The three situations are:

- ❖ **Walk-in encounters at clerk’s window**: where court staff have no advance notice that an LEP individual will need court services, such as initial requests for protection from abuse orders or other requests for information at the clerk’s window;
- ❖ **Limited notice proceedings**: where court staff receive very limited advance notice of the need for an interpreter, such as for arraignments, or protection from abuse (PFA) hearings, motions hearings or other hearings where a pro se defendant or one or more of the witnesses cannot fully communicate in English;
- ❖ **Hearings**: where court staff have substantial notice of the need for an interpreter, such as when a full trial is scheduled for a date certain.

Once it is recognized that an interpreter is needed, the appropriate level of interpreter services must be determined. When an LEP individual requires service from court personnel for brief, informational encounters, telephonic interpreting services (Language Line[®])²¹ can often adequately meet interpreter needs. Courts may also need to use Language Line[®] for longer hearings where no interpreter in that language can be found locally or where the need for the interpreter was not anticipated and the Court determines that it is best to move forward rather than continue the case (which could occur in the PFA example, mentioned above). In most other instances, on-site interpreters provide the preferred, most efficient and economical interpretation option.

3. Understanding How to Work with Interpreters

²¹ Language Line[®] is the telephonic interpretation company contracted by the state to provide the Maine courts with immediate access to trained interpreters 24/7. Speakerphones or dual handset phones are available in some courthouses, affording privacy or the ability for a larger group to be privy to the interpretation. Language Line[®] does not claim to have interpreters with legal interpreting qualifications. Costs are incurred on a per-minute basis, and are generally more costly than on-site interpreters for lengthy transactions. Some LEP individuals prefer the anonymity of a telephonic interpreter rather than someone from their same language and culture group; some find it difficult to communicate through someone they can not see, as visual cues, facial expression and body language cues are lost over the phone. See App. A for further discussion of the differences between on-site and telephonic interpretation.

If judges and/or attorneys do not understand how to work with an interpreter, the orderly presentation of evidence, efficiency of the trial, and the creation of the trial record may be compromised. Several basic rules must be followed:

- ❖ Interpreters must be impartial, meaning no family members or friends of the parties, or persons who otherwise have an interest in the outcome of the proceedings should be enlisted to provide interpreter services in a court hearing;
- ❖ Interpreters must be trained in legal terminology and process;
- ❖ Interpreters should be sworn in and qualified via voir dire;²²
- ❖ Questions and responses should be directed to the LEP individual, not to the interpreter;²³
- ❖ Interpretation should always be conducted in the first person;²⁴
- ❖ Requests for clarification of the courtroom communication and corrections of the interpretation by the interpreter are to be made in the third person to the presiding officer.²⁵ Requests for clarification are to be viewed as a normal part of the interpreting process and a sign of a conscientious interpreter;
- ❖ Judges must ensure that all parties, including members of the jury, understand what the interpreting process entails and how the pace of the trial may be affected by the presence of an interpreter;²⁶
- ❖ Case materials must be made available to the interpreters prior to the proceedings so that they may familiarize themselves with the parties and with the issues and any specialized vocabulary, as well as to rule out any potential conflicts of interest before the proceedings begin;

²² For sample voir dire questions, see the Wisconsin Court Interpreters Handbook: A Guide for Judges, Court Commissioners, Attorneys, Interpreters and Other Court Users, App. E at 6; A Report on Interpreter Services in the Vermont Courts, App. G at 67-68, Court Interpretation: Model Guides for Policy and Practice in the State Courts, App. H at 148-149 [hereinafter “Model Guides”]; draft voir dire, App. I (drafted by the Committee); Suggested Guide for Interpreted Proceedings, App. J (Kentucky courts); Draft Manual for Clerks and Judges Regarding Using Interpreters in Maine Courts, App. M. For sample interpreter oaths, see TMCEC Bench Book, Ch. 12 “Oaths and Ceremonies,” App. K (Texas courts). For a further discussion of the need for standard mechanisms that can be used by judges to qualify interpreters as experts, see Model Guides, App. H at 18-20.

²³ i.e., “Where do you live?” not “Ask the defendant where he lives.”

²⁴ For example, the interpreter, in interpreting the answer to the question “Where do you live?” would interpret, “I live at . . .” not “He said he lives at . . .”

²⁵ i.e., “The interpreter requests clarification as to whom the attorney is referring by ‘she’ in the question being asked of the defendant.”

²⁶ Participants must be made aware that proceedings may be slowed, and that simultaneous translation may prove frustrating to those listening to testimony. Nonetheless, the judge must ensure that the interpreter has adequate time to interpret everything that is said in the courtroom, so that the record is properly made and the LEP individual fully understands what has transpired. Efforts must be made to educate all parties involved in a lawsuit in which interpretation is required, so that the parties can adjust their expectations and learn to accept what might, without that education, appear to be unnecessary delays. Juries must be instructed that they must not give any weight to the participant’s LEP status in determining the facts of the case. For sample instructions, see Interpreters in the Courtroom: Instructions & Oaths and Deaf Jurors in the Courtroom: Instructions & Oath, App. L.

- ❖ A pre-trial conference is helpful to clarify how the presiding officer wishes to handle certain interpreting issues such as objections, requests for clarification and the pace of the proceeding.

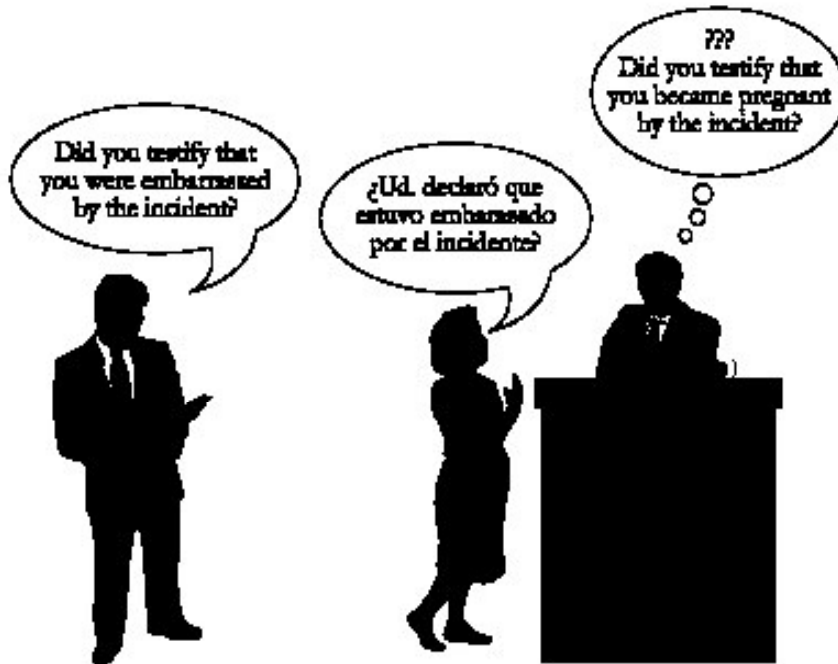
Interpreting is an exacting, demanding task. Studies show that interpreters can maintain accuracy for between twenty minutes to one hour before requiring a break. Often, more than one interpreter may be needed, particularly for proceedings that are lengthy, complex or highly technical, or when there is more than one LEP participant in the proceeding. The benefits of utilizing more than one interpreter are: improved accuracy, less frequent interruptions for clarification and fewer challenges to the record. In addition, interpreters assuming different roles may be needed, such as a *proceedings interpreter*, to interpret exchanges in English in the proceedings to an LEP party, in addition to the interpreter who interprets testimony for the court and the record. Scheduling the appropriate number of interpreters and accurately anticipating the amount of time needed are training considerations that may ultimately save time and money by eliminating the need to reschedule hearings due to lack of interpreters.

4. Consequences of Using Under-Qualified Interpreters or Failing to Use Interpreters When Needed

Access to justice for a measurable part of Maine's increasingly diverse society is seriously diminished when courts use unqualified interpreters, interpreters related to or friendly with the LEP individuals, or use no interpreters at all. Without proper training, most bilingual individuals still lack the skills to interpret in a legal setting. Thus, even if family members, friends, attorneys or untrained persons fluent in both languages can be found to interpret in a given case, they should not be permitted to do so because compromises in the quality of interpretation will likely occur and lead to inaccuracies in the court record.²⁷ Such compromises may occur because the person interpreting does not understand the legal terminology being used, cannot translate street slang or other colloquialisms, has no basic understanding of professional interpreter methods, and/or tries to modify a relative or friend's indelicate or offensive phrasing. Inaccuracies often occur due to deviation from or ignorance of standard interpretation practices. Such compromises in the quality of interpretation result in an inaccurate or incomplete court record and can thus deny litigants and criminal defendants their Due Process rights and undermine confidence in the justice system.²⁸

²⁷ Children should never be used as interpreters, even for brief encounters.

²⁸ See, e.g., "Cities to Hire Full-Time Interpreters," Lexington Herald-Leader, Oct. 2, 2004, an article discussing the hiring of two full-time Spanish language interpreters by the Kentucky court system, which refers to cases in which verdicts have been thrown out due to improper interpretation. Available at <<http://www.kentucky.com/mld/heraldleader/news/9816710.htm>>.



IV. The Importance of Training

A. Educating the Community

It is critical that Maine's LEP population be educated about an LEP individual's rights to meaningful language access in Maine's courts. Education is essential so that LEP individuals will know that they can utilize courts anywhere in the state, without having to arrange for someone who speaks English to accompany them. That extra step can be a barrier that prevents LEP individuals from even attempting to access the justice system. Many persons who need access to justice do not have legal representation. Particularly for issues that are vital to health and safety such as protection from abuse orders and commitment proceedings, LEP individuals who are pro se must be alerted to their right to seek assistance from Maine's courts, and that the courts can and will provide them with a competent interpreter at no cost to them. They must also understand that they should not be afraid to assert their rights in this regard.

Education of the community must be multilayered and at a minimum must include: enlisting partners such as public schools, social service providers, and state agencies such as the Department of Health and Human Services; outreach to community elders and to community groups; posting information in Maine's courthouses and on the court system's website. Outreach by court personnel should include attendance at gatherings of ethnic and linguistic groups, and distribution of printed materials in the languages most frequently encountered in Maine.

B. Training Court Personnel

Court Security Officers need to be trained regarding the legal rights of non-English speakers to access Maine’s courts, and to function as liaisons between the interpreter and the presiding officer, as well as to accommodate reasonable requests from the interpreter in order to perform his/her function. For example, Court Security Officers must be taught to expect that the interpreter may need assistance in locating the LEP client by name, and that the spoken language interpreter may need to *whisper interpret* during the proceedings and sign language interpreters need to be physically located in the courtroom in a placement that affords adequate sight lines.

Court Clerks need training regarding the legal rights of non-English speakers to access Maine’s courts, and in how to: identify LEP individuals who do not self-identify; offer interpreter services at the counter for unanticipated interaction with LEP members of the public; access telephonic interpreters; locate and schedule on-site interpreters; assist interpreters in reviewing the case file while ensuring that the file appears in the courtroom when needed; and to distribute documents that are translated into other languages when needed.

Judges will need training regarding the legal rights of non-English speakers to access Maine’s courts, as well as an orientation to any new bench book and procedures²⁹ implemented in order to improve the use of interpreters in their courtrooms. Sample oaths, voir dire questions, instructions to the interpreters, issues to be discussed in a pre-trial conference, explanations to the jury regarding interpreters in the courtroom, are a few of the items that may be included in a new benchbook. A description of the differences between sign and spoken language interpreting issues in the courtroom should also be included.

*During a court proceeding, an interpreter who was whisper interpreting an exchange between an attorney and the judge to an LEP party was approached by a court security officer and told to be quiet, not understanding that this was the interpreter’s job.
- Anecdote provided by a court interpreter to the LEP Committee*

C. Training Interpreters

In Maine, as elsewhere, there is an urgent need for formal training to increase the number and improve the qualifications of practicing court interpreters. Two kinds of training are needed: 1) short, highly-focused workshops to educate interpreters about the profession of court interpreting and its unique demands, and 2) longer term, formalized programs of education and training to improve interpreters' proficiency in applied interpreting skills.³⁰

²⁹ See Recommendations Section, VII.C for recommendation that a Benchbook be finalized and adopted.

³⁰ See Model Guides, Chapter 4, App. H, also available online at http://www.ncsconline.org/wc/publications/Res_Ctlnte_ModelGuideChapter4Pub.pdf.

The current pool of Maine spoken language interpreters is insufficiently trained to function in legal settings. While Sign Language interpreters have had legal training opportunities regarding courtroom work for over 20 years, training is needed for this group as well. Recognition of the dearth of trained spoken language interpreters in Maine resulted in two workshops being offered to spoken language interpreters in 2004, “Introduction to Legal Interpreting” and “Interpreting in Domestic Violence Cases.” Collaboration among Pine Tree Legal Assistance, Catholic Charities Maine RIS*interpret*, the Immigrant Legal Advocacy Project and the Cumberland County Legal Aid Clinic was instrumental in developing this training. The Administrative Office of the Courts has recently joined in these efforts and a group has been meeting regularly to develop more workshops and mock courtroom practice opportunities.³¹ These efforts are a good start but much remains to be done.

A comprehensive, statewide system of training must be developed and tied to future credentialing of court interpreters. Training topics should include:

- Legal language – vocabulary, syntax, and discourse in English and the *target language*, as well as interpreting to the meaning of the proceedings, not just word-for-word;
- Understanding proceedings and the legal context in which it occurs, leading to more accurate interpretation;
- Roles of interpreters in the courtroom, i.e. *defense interpreter*, *proceedings interpreter*, *witness interpreter*, and the legal ramifications of each role;
- Conflicts of interest and privileged communication issues;
- *Sight translation* of forms and police reports;
- Specialized vocabulary likely to be presented by expert witnesses, and slang or jargon used by parties or witnesses;
- Standards of Professional Conduct for Interpreters in Judicial Proceedings;
- Interpreting in related legal settings: police, jail, mediation, and attorney’s offices.

Two-day workshops are outlined by the National Center for State Courts, and these can be implemented in the short term. The Administrative Office of the Courts should engage in discussions and partnerships with prominent law firms, the Maine State Bar Association, the University of Maine School of Law, and the University of Southern Maine Signed Languages Interpreting program, to create the appropriate forums for advanced on-going interpreter training. Curriculum development for interpreter programs at Maine’s universities and community colleges also should be encouraged, to ensure that interpreters have statewide access to interpreter education.

D. Training Attorneys

Surveys conducted of, and conversations with, Maine attorneys by the LEP Committee reveal that not all lawyers practicing in Maine are aware that their LEP clients should have access to interpreters in order to fully participate in court proceedings. Some attorneys who have this awareness admitted in the Committee’s

³¹ The group includes three members of the LEP Committee.

survey that they do not always ask for an interpreter when their clients need one. Nor do all Maine attorneys, of whom many have limited experience in representing LEP individuals, fully understand the potential prejudice that may occur in their clients' cases if court proceedings go forward without an interpreter or with an unqualified interpreter.

A bilingual attorney appearing in a Maine court was asked by the court to interpret for his own client. To avoid delaying the proceeding, the attorney agreed, and attempted to simultaneously represent the client and function as an interpreter.

-- Information provided by the attorney in the case to the LEP Committee

It is critical that Maine attorneys receive training to become pro-active in requesting interpreters on behalf of their clients every time an interpreter is required for Court proceedings. Training should include: identification of when a client is sufficiently LEP that an interpreter is essential to ensure the client's full and knowing participation in case preparation and in the proceedings; the laws that address language access in the judicial system; the procedures for accessing interpreters in the Maine courts; how to ensure the competency and appropriateness of the interpreter; how to effectively use an interpreter to communicate with the client; and how to litigate the case through an interpreter. Training can be accomplished through CLE seminars, courses or workshops presented at the University of Maine School of Law for law students, and in collaboration with entities competent to provide training in identifying LEP individuals and regarding how to work with interpreters.

V. Legal Considerations

In any legal proceeding the participant's ability to understand and speak the English language is critical to the proceeding's fairness. Maine's court system should therefore strive to ensure that all Mainers have equal access to the courts, by working to eliminate language barriers. This is both the right thing to do and the legally correct approach. Without a coherent statewide system in place to deal with the needs of LEP individuals, Maine courts are vulnerable to legal challenges. Lawsuits or complaints can take several forms, including appeals from civil verdicts or criminal convictions, motions to vacate criminal convictions involving LEP defendants or witnesses, charges filed with the Department of Justice for failure of a federally-funded entity to comply with federal guidelines, or civil lawsuits pursuant to state or federal statutory law (e.g., Title VI, Americans with Disabilities Act, or 5 M.R.S.A. § 51) for failure to provide adequate interpreter services where property interests or other substantial rights of an LEP litigant are at stake.

A. Federal Constitutional Law

Federal courts have consistently held that criminal defendants who do not speak English are constitutionally entitled to have an interpreter provided upon request. See generally 32 A.L.R. 5th 149, § 4; *Luna v. Black*, 772 F.2d 448, 451 (8th Cir. 1985); *United States ex rel. Negron v. New York*, 434 F.2d 386, 389 (2d Cir. 1970). Though

there is no specific constitutional requirement to an interpreter, the right to an interpreter has been declared a necessary prerequisite to ensure that express Constitutional rights are protected. For example, the Sixth Amendment to the U.S. Constitution gives a defendant the right to be present at trial, the right to effective assistance of counsel, and the right to confront witnesses. U.S. Const. Amend. VI. These rights cannot be fully attained unless the defendant understands the proceedings and can effectively communicate with the court, his or her attorney, and the witnesses. *See U.S. v. Carrion*, 488 F.2d 12, 14-15 (1st Cir. 1973); *see also* Alice J. Baker, A Model Statute to Provide Foreign-language Interpreters in the Ohio Courts, 30 U.TOL.L.REV. 593, 596-99 (1999) (hereinafter Baker, A Model Statute). Ideally, the right to be present at trial extends throughout the proceedings, beginning with preliminary hearings and ending with the final sentencing phase. Baker, A Model Statute, at 597. In reality, this does not always occur nor is it necessarily legally required. *See United States v. Cirrincione*, 780 F.2d 620, 634 (7th Cir. 1985).³²

A defendant's Sixth Amendment right to confront witnesses would be "meaningless if the accused could not understand [the] testimony" in his or her trial. *U.S. v. Carrion*, 488 F.2d at 14 (citing *Terry v. State*, 105 So. 386, 387 (Ala. App. 1925)). "If the defendant takes the stand on his own behalf, but has an imperfect command of English," noted the First Circuit, "there exists the additional danger that he will either misunderstand crucial questions or that the jury will misconstrue crucial responses." *Id.* Indeed, "the right to an interpreter rests most fundamentally . . . on the notion that no defendant should face the Kafkaesque spectre of an incomprehensible ritual which may terminate in punishment." *Id.* In *Carrion*, the First Circuit found that an indigent defendant who has "obvious difficulty" communicating in English has the right to a court-appointed interpreter. *Id.*³³

In addition to the Sixth Amendment guarantees, the provision of a qualified interpreter during criminal proceedings for indigent defendants derives from three other Constitutional provisions: the First, Fifth, and Fourteenth Amendments. *See State v.*

³² *See also In re Kafia*, 1999 ME 195, 742 A.2d 919 (holding that DHS's failure to provide a Somali-language interpreter at each stage of the child protection process did not violate the Due Process rights of a Somali-born mother who faced termination of her parental rights; the availability of adequate interpretation at the final termination hearing eliminated the risk that parental rights were improperly terminated).

³³ The *Carrion* court then asked exactly how bad must a participant's English be before a court would be constitutionally required to provide an interpreter. *Id.* On the one hand, if a defendant is "completely aware of all the proceedings," there is no right to an interpreter. *Id.* (citing *Cervantes v. Cox*, 350 F.2d 855 (10th Cir. 1965)). The court's duty is less clear, however, when the defendant has some observable ability to understand English, but still had some difficulty with the language. *Id.* The *Carrion* court concluded that the exact point at which an interpreter would be constitutionally required must be determined on a case-by-case basis, and will hinge on many factors, "including the complexity of the issues and testimony presented during trial and the language ability of the defendant's counsel." *Id.* Because the trial court observes the participants directly, it has "wide discretion" in determining when interpreter services are needed. *Id.*

Roman, 616 A.2d 266 (Conn. 1992); *United States ex rel. Negron v. State of New York*, 434 F.2d 386 (2d Cir. 1970); Baker, A Model Statute, at 596-99.³⁴

In the context of civil cases, the constitutional requirement to provide interpreter services remains to some extent, but is less extensive. *Id.* The Supreme Court has held that access to courts generally is not a fundamental right. *See U.S. v. Kras*, 409 U.S. 434, 443-50 (1973). However, the majority of state courts have noted that the constitutional right to an interpreter logically includes those instances in which other fundamental rights are at stake, such as family law disputes (e.g., termination of parental rights, adoptions, and child custody disputes). *See, e.g.*, 5 M.R.S.A. § 51; *see also* Baker, A Model Statute, at 598, n. 37.

The U.S. Supreme Court's understanding of the challenges of providing effective communication to LEP individuals has become increasingly nuanced over time. Indeed, it has been linked to Equal Protection as well as Due Process concerns. In *Hernandez v. New York*, the Court linked national origin to language access and suggested that issues of race inequality may take the form of language-based discrimination.

"Language," the Court noted,

elicits a response from others, ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.

Hernandez v. New York, 500 U.S. 352, 371 (1991). The Court did not define precisely in what instance language discrimination would be considered racial discrimination for the purposes of an Equal Protection analysis, but it demonstrated a marked awareness of this link between membership in the community and language access, noting that "[l]anguage permits an individual to express both a personal identity and membership in a community, and those who share a common language may interact in ways more intimate than those without this bond." *Id.* at 370. Thus, although the exact requirements were not laid out, the Court conveyed a heightened sensitivity to issues of language access and implied it would entertain an Equal Protection claim if proper accommodations were not made for criminal defendants with limited English proficiency. *But see Alexander v. Sandoval*, 532 U.S. 275 (2001) (limiting a private right of action to enforce Title VI disparate impact claims).

Federal courts have ruled that the extent of interpreter services required to pass constitutional muster will depend on a balancing between the defendant's constitutional

³⁴ The Fifth Amendment provides that "no person shall be . . . deprived of life, liberty or property without due process of law." U.S. Const. Amend. V. The Fourteenth Amendment provides that "[n]o State . . . shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV. Finally, the First Amendment ensures the "right of the people . . . to petition the Government for a redress of grievances." U.S. Const. Amend. I.

rights to confrontation and Due Process and the public's interest in the economical administration of justice. *U.S. v. Carrion*, 488 F.2d 12, 14-15 (1st Cir. 1973). This determination is committed to the wide discretion of the trial court. *See Perovich v. United States*, 205 U.S. 86, 91 (1907). Decisions regarding whether to provide an interpreter and the requisite qualifications of the interpreter will be overturned on appeal only on a showing of abuse of discretion. *Id.*

B. Federal Statutory Law

The Criminal Justice Act of 1964 for the first time mandated courtroom interpreters for criminal defendants, and this right was expanded by the Court Interpreters Act of 1978. 28 U.S.C.A. § 1827; *see also* Baker, A Model Statute, at 599-600. Further, Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. 42 U.S.C. § 2000(d). In *Lau v. Nichols*, the Supreme Court interpreted this as requiring that any recipient of federal financial assistance must ensure that language barriers do not exclude LEP persons from effective participation in its benefits and services. 414 U.S. 563 (1974). However, the Supreme Court has also held that no private right of action to enforce Title VI based on discriminatory impact exists. *See Alexander v. Sandoval*, 532 U.S. 275 (2001); Baker, A Model Statute, at 600. Instead, there must be a showing of intentional discrimination. *Id.*

Congress has provided measurably greater protections for deaf or hard of hearing individuals who require interpreting services. Section 504 of the Rehabilitation Act of 1973 requires states to provide deaf or hard of hearing individuals with interpreters in both criminal and civil cases without regard to the litigant's ability to pay. Rehabilitation Act of 1973, 29 U.S.C. § 794 (1994). The Americans with Disabilities Act of 1990 further expanded section 504, requiring the state to "reasonably accommodate" individuals with disabilities to ensure access to public services, programs and activities. 42 U.S.C. §§ 12101-12213). Under the ADA, meaningful communication access has no data collection component or numeric cutoffs and triggers, as is the case under Executive Order 13166 (discussed below), which applies to all individuals utilizing any federally-funded institutions or organization. Baker, A Model Act, at 600.

C. Executive Order 13166 and the Department of Justice Guidelines

To clarify requirements under Title VI of the Civil Rights Act, former President Clinton issued Executive Order 13166 on August 11, 2000, entitled "Improving Access to Services for Persons With Limited English Proficiency." This makes it the goal of the federal government to ensure that "LEP persons can meaningfully access" any federally funded service and more fully defines "meaningful access." Pursuant to this Order, the Department of Justice (DOJ) issued final LEP Guidance. 67 F.R. 41455 (June 18, 2002); *see full text of DOJ guidance, App. O, and a Summary of Department of Justice LEP Guidance, App. P.* Both the Order and the LEP Guidance apply to Maine state courts because they are recipients of federal funds.

The LEP guidance provides a uniform framework for the recipient of federal funds to integrate, formalize, and assess the federal requirements. At a minimum, the Guidelines require that “every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present.” *Id.* Additionally, when a court appoints an attorney for an LEP individual, the court should ensure that the attorney is either proficient in the defendant’s language or that a competent interpreter is provided during consultations between the attorney and the LEP person. *Id.*

To determine what reasonable steps are needed to provide meaningful access to services for LEP individuals, the DOJ has devised a four-factor balancing test for those federally funded programs seeking to comply with federal requirements. *Id.* In order to determine what steps are “necessary and reasonable,” programs should consider:

- ❖ the number or proportion of LEP persons served or encountered in the eligible service population;
- ❖ the frequency with which LEP individuals come in contact with the program;³⁵
- ❖ the nature and importance of the program, activity, or service provided by the program; and
- ❖ the resources available to the recipient and costs.

If a complaint alleging Title VI violations for failure to provide meaningful language access to the courts is filed with the DOJ, the Department will investigate the charges and make a diligent attempt to settle the disputes informally and cooperatively. If the entity under investigation fails to make progress and take the necessary steps toward improving access for LEP individuals, the DOJ may impose sanctions, which could include, in the extreme, cutting off federal funds to the program.³⁶

D. Maine Law

Maine constitutional, statutory, and case law suggests that the state law requirement to provide interpreters to LEP individuals in court proceedings is similar to the federal requirements. The Maine Constitution provides that “[i]n all criminal prosecutions, the accused shall have a right to be heard by the accused and counsel to

³⁵ This highlights the importance for the court system of keeping accurate statistics on the frequency of contact with LEP individuals and the languages spoken. Such data gathering will enable the court to determine the number of individuals in each language group, which will facilitate the efficient and precise allocation of resources. Without knowing which languages and cultures are attempting to access the court system, effective compliance with federal legal requirements is not possible.

³⁶ A complaint alleging such violations by the Maine Court system apparently was filed with the Office of Civil Rights of the Department of Justice in approximately December 2003. The State Court Administrator understands that the complaint is currently under investigation, although the court system has never been provided with a copy of the complaint.

the accused, or either, at the election of the accused; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witnesses against the accused; to have compulsory process for obtaining witnesses in favor of the accused.” Me. Const. art. 1, § 6.

Maine statutory law provides:

when [a] personal or property interest of a person who does not speak English is the subject of a proceeding before an agency or a court, the presiding officer of the proceeding shall either appoint a qualified interpreter or utilize a professional telephone-based interpretation service. Payment by the State for an interpreter in civil matters is within the discretion of the agency or court to the extent that payment by the State is not already required by law.

5 M.R.S.A. § 51.

The Maine Rules of Criminal Procedure, Maine Rules of Civil Procedure and the Maine Rules of Probate Procedure grant courts the authority to provide an interpreter and to determine reasonable compensation for that interpreter in appropriate circumstances. See Me. R. Crim. P. 28; M.R. Civ. P. 43 (using similar language as the criminal rule but specifically including interpreters for the deaf); M.R. Prob. P. 43. Under the rules, provision of interpreter services is at the discretion of the trial court. See *id.* The Civil Rules, unlike the Criminal Rules, mandate that interpreter compensation be “paid out of the funds provided by law or by one or more of the parties as the court may direct.” *Id.* The money may be “taxed ultimately as costs, in the discretion of the court.” M.R. Civ. P. 43(l). Both the Civil and Criminal Rules mandate that interpreters be “appropriately sworn.” M.R. Crim. P. 28; M.R. Civ. P. 43(l).

Maine case law reveals an understanding that Due Process, as mandated by both the federal and the Maine state Constitutions, requires the provision of qualified interpreters to LEP individuals in court proceedings. See *State v. Doucette*, 398 A.2d 36, 40 (Me. 1978) (holding that a defendant’s right to confront a deaf accuser in a rape trial was adequately protected by the court appointment of one qualified interpreter, despite defendant’s assertions that a second interpreter was required). The Law Court has also recognized that the Constitution requires that interpreters be provided in civil trials that raise issues that implicate substantial rights. See *In re Kafia M.*, 1999 ME 195, 742 A.2d 919.

Although Maine case law is sparse on the subject of providing language access to State courts, the cases confirm the fundamental principle that LEP individuals should adequately understand legal proceedings affecting their rights. Case and statutory law are less instructive as to when funding for interpretation must be provided by the State. Even where the exact contours of the legal requirement is subject to debate, the Committee believes that all parties to a legal proceeding have a basic right to understand the proceedings that will determine their legal rights and status.

VI. Past and Current Practices Regarding Language Access to Maine Courts

A. Past Practices in Maine Courts

When the LEP Committee was formed in January 2003, the Maine courts had no written protocol or statewide procedures for judicial officers or court personnel to identify LEP individuals who may need interpreter services or to delineate how to access those services once the determination was made. Signage alerting LEP individuals to their right to an interpreter was not posted in all of Maine's courthouses. Each of Maine's courts dealt with LEP individuals in an *ad hoc* and inconsistent fashion, and with no centralized database of available foreign language interpreters, found interpreters wherever it could if at all. The use of friends, family members, or attorneys of the LEP individual to interpret during encounters at court clerks' windows and in the courtroom was permitted. It was apparent that the Maine court system had not yet adjusted to its increased use by LEP individuals, and remained unaware of the practical and legal obligations to ensure adequate language access to the court system.

A woman who spoke little English approached the clerk's window to obtain information about obtaining a protection from abuse order. When the clerk realized that they could not communicate, the clerk asked her (in English) if she had a child at home whom she could bring with her to the courthouse to interpret.

-Anecdote provided to the Committee by a witness to the incident.

This anecdote illustrates the need for an interpreter or to obtain a competent interpreter when an interpreter was needed. Furthermore, those court staff who did make an effort to locate and hire interpreters faced many obstacles. First, most courts did not have "I speak" language identifier sheets readily accessible, which meant that ascertaining the target language of the LEP individual was difficult, particularly if that person possessed no English skills. Second, for brief encounters where telephonic interpretation is often the best response, court personnel infrequently took advantage of the availability of Language Line[®] for a variety of reasons, including unfamiliarity with how to use it, or concerns about the cost. Third, even if on-site interpreters were available from interpreter referral services³⁷ their interpreter pools are limited in number and variety of languages, and very few of those interpreters actually have legal interpreting training, further narrowing the pool. Although the interpreter list for the United States District Court of Maine has been available on the Federal Court's website, there was little coordination between the State and the Federal Court Systems concerning interpreter services. Finally, Maine's courts have no screening process to determine if available interpreters are actually qualified to interpret in a legal setting.³⁸

³⁷ For example, Pine Tree Society Deaf Services, and Catholic Charities Maine *RIS* interpret are some of the agencies through which interpreters may be obtained locally.

³⁸ The Federal courts have had an interpreter screening and certification process in place since 1988, but Maine has had no similar screening or certification process. See App. Q, Court Interpreter Qualifications, prepared by Meryl S. Troop for the LEP Committee, for a more in-depth explanation of interpreter certification and qualification programs.

Specific information collected by the LEP Committee through surveys of attorneys, interviews with professional interpreters working in the Maine courts, comments solicited by the Committee from LEP advocates, and a Committee survey of court personnel have generated the above findings. Respondents to a May 2003 survey by the LEP Committee of Maine state court clerks in particular revealed inconsistent approaches to accommodating LEP individuals. Some clerks indicated that they had inadequate training regarding how to respond to limited English speakers, and several admitted that they did not proactively offer interpreter assistance, but rather, waited for the LEP individual to ask for an interpreter. Survey respondents' varying answers revealed that interpretation services were sometimes provided by professional interpreters, by family members or friends, by court personnel with some proficiency in the target language, or sometimes were not provided at all. Several court clerks' offices staff responded that they had been trained or given brochures regarding how to access telephonic interpreters through Language Line[®] but also noted that they had never used the service, indicating potential under-identification of persons who need interpreter assistance, or simple lack of comfort level with the telephonic interpreter service despite any training received, or lack of demand. While most survey respondents indicated a willingness to assist LEP individuals, their responses indicated deficiencies in how the court system has trained them to do so.

*A Somali man arrested for a crime in a Maine county where few Somalis live had his arraignment postponed several times over the course of several months, because at each hearing, the court did not have a Somali interpreter available. He was detained at taxpayer expense while he waited for a successful arraignment proceeding.
-A case known first-hand by a Committee member*

Another survey conducted by the LEP Committee in October 2003 indicated that even individuals who are represented by counsel do not necessarily have interpreters when appearing in court. Some attorneys indicated that they were unaware of their client's right to be provided with an interpreter in Maine court proceedings at court expense.³⁹ However, of those attorneys who were aware of the right to an interpreter, more than half of them admitted that they do not request an interpreter every time their client needs one. Several respondents indicated that they have provided their own interpreter for their client when appearing in court, or that family, friends and even the attorney her/himself, or a member of the attorney's firm, have occasionally been drafted as interpreters in their clients' cases. Overall, the survey indicated that education of the Maine Bar could be an instrumental tool in ensuring that LEP individuals obtain appropriate interpretation in Maine's courts.

³⁹ While the survey was sent to hundreds of attorneys who appear in Maine's courts, the number of responses received was low. Nonetheless, the Committee feels that the responses received were indicative of the broad range of awareness among Maine's Bar of their clients' language access rights, and of the wide range of attorneys' effectiveness in helping their clients exercise those rights.

B. Current Practices in Maine Courts

In spite of the previously discussed shortcomings in existence at the inception of the LEP Committee's work, it is also clear to the Committee that many within the Court system are aware of the unmet needs of LEP individuals and are making significant efforts to improve the provision of services to LEP individuals.⁴⁰ Several concrete steps were taken during the Committee's tenure toward the goal of improving linguistic access to the courts. Court staff and administrators working in partnership with the Committee implemented many of these changes. Additional improvements were made independent of the Committee's efforts as part of the overall process of responding to the increased demand in Maine courts for interpreter services. Progress made since January 2003 includes the following:

Changes made independent of the Committee's work:

- ❖ The State Court Administrator's Office created a new position in September 2003, the Director of Court Services and Programs. Among many other duties, this individual is responsible for ensuring court access for all populations, including LEP individuals. Jeffrey Henthorn became the full-time person in this position on January 2, 2004 and subsequently joined the LEP Committee;
- ❖ Language Line[®], a telephonic interpretation service available in all courthouses prior to the Committee's work, was made available to all bail commissioners from any telephone, so that their explanations of bail conditions can be interpreted;
- ❖ State money provided for sign language interpreters has shifted from the Department of Labor to the Judicial Branch. The Administrative Office of the Courts now pays interpreters for the deaf or hard of hearing directly from the court budget;⁴¹
- ❖ A video of the standard arraignment speech interpreted into Spanish and French was made available to all of Maine's district courts;⁴²
- ❖ A training about legal interpreting basics, believed to be the first ever offered in the state, was conducted by Catholic Charities Maine's Refugee and Immigration Services Interpreter Program and by Pine Tree Legal Assistance, and was offered to those wishing to interpret in the courts in the Spring of 2004;
- ❖ The Director of Court Services and Programs collaborated with Pine Tree Legal Assistance and Catholic Charities Maine to conduct an advanced training,

⁴⁰ The federal government singled out linguistic access to all federally-funded programs as a priority in 2000. This pinpointed the need to enforce Title VI of the Civil Rights Act. President Clinton's Executive Order 13166 declared that access for LEP individuals must be improved. (See App. N). In 2002, the Department of Justice promulgated guidelines to ensure compliance with this Order. (App. O.) See Section III of this Report for further explanation. In her address to the Legislature in 2003, Chief Justice Leigh Saufley highlighted the challenges detailed in this report and acknowledged that language services remained a critical component of ensuring access to justice. "State of the Judiciary" speech, given February 11, 2003, available at <http://www.courts.state.me.us/mainecourts/supreme/speeches/State%20of%20Judiciary%202-10.htm>

⁴¹ P.L. 2003 685 (May 6, 2004).

⁴² Twenty copies of the video in Spanish and six copies in French are available.

“Interpreting in Domestic Violence Cases,” in November 2004, and intends to sponsor an additional legal interpreting training in the Spring of 2005.

Changes implemented or begun by court administrators based on Committee suggestions:

- ❖ Signs were posted alerting LEP individuals of their right to an interpreter in twenty languages near the clerks’ windows in all Maine courts;
- ❖ “I Speak” language identifier sheets were supplied to all court clerks and their staff to help LEP persons indicate their native language to court staff;⁴³
- ❖ The Maine Supreme Judicial Court has adopted a Code of Professional Responsibility for Interpreters that paid interpreters in the state courts must follow, as of January 1, 2005;⁴⁴
- ❖ A system of color-coded identification badges to be issued to all court personnel that is being developed by the Administrative Office of the Courts will be expanded to include interpreters who work frequently in Maine Courts and who have been screened and deemed qualified (the latter pursuant to this Committee’s recommendation);
- ❖ The Administrative Office of the Courts created a list of all persons who have served as paid interpreters in Maine’s courts, to assist court clerks statewide in locating interpreters and to disseminate information from the courts to interpreters;⁴⁵
- ❖ All clerks were given an updated list of qualified Federal court interpreters to assist court clerks in locating interpreters;⁴⁶
- ❖ In the Spring of 2004, signage indicating closing for an administrative week was posted statewide in three languages—Spanish, French and English;
- ❖ In the Fall of 2004, signage indicating the courts’ closing for an administrative week was posted in appropriate courthouses in five languages—Spanish, French, Somali, Khmer and English;
- ❖ In the Summer of 2004, Portland courts posted a sign in five languages—Spanish, French, Somali, Vietnamese and English—indicating the courts’ reduced hours for the summer;
- ❖ The Administrative Office of the Courts purchased “The Interpreter’s Code of Ethics & The Role of the Interpreter in the Courtroom,” a video that can be used as a training tool and also be required as part of a future qualifications screening process for interpreters who wish to work in Maine’s courts;

⁴³ See copy, App. R.

⁴⁴ The new Policy Concerning Standards of Professional Conduct for Interpreters Providing Services in Judicial Proceedings is largely based on the Model Code prepared by the National Center for State Courts (see Model Guides, App. H at 195-211) and is available at the Maine Court website at <http://www.courts.state.me.us/index.html>. A copy of the Policy is also provided with this Report, see App. X.

⁴⁵ See App. T for a list of certified interpreters for the deaf and hard of hearing, showing how few there are in Maine.

⁴⁶ See copy, App. T. Note that only two of the Maine interpreters on this list are actually federally certified.

- ❖ Jeffrey Henthorn, the new Director of Court Services and Programs, collaborated with other entities in Maine in an effort to improve the pool of available interpreters and the quality of interpreter services through the establishment of the LANA (Language Access for New Americans) Program;⁴⁷
- ❖ The court system is collaborating with LANA (referenced above) to sponsor a “Basics of Legal Interpreting” training in the Spring 2005 to be followed by Advanced legal interpreting trainings conducted annually.

Documents drafted by the Committee for consideration for use by Maine courts:

- ❖ A summary protocol advising court personnel how to respond when LEP individuals appear in the Maine courts;⁴⁸
- ❖ A synopsis of the Code of Professional Responsibility to be used to advise *Chance interpreters*⁴⁹ of their ethical obligations, which they must agree to follow when serving as interpreters in Maine’s courts;⁵⁰
- ❖ Sample “English Proficiency” voir dire questions to determine if a party or witness requires an interpreter;⁵¹
- ❖ Sample “Chance Interpreter” voir dire questions to be used during court proceedings to determine a chance interpreter’s qualifications and ability to communicate with the party needing interpretation and whether any conflicts of interest or any other impediment to serving as an interpreter exists;⁵²
- ❖ Sample “Professional Interpreter” voir dire questions to be used during court proceedings to determine whether a professional interpreter can communicate with the party needing interpretation, and whether any conflicts of interest or any other impediment to serving as an interpreter exists in a given case;⁵³
- ❖ Sample interpreter oath to be used to swear in interpreters by the court;⁵⁴
- ❖ A new bench book section that provides guidance for conducting proceedings involving LEP individuals for use by judges;⁵⁵
- ❖ A draft of a Clerk’s Manual dealing with interpreter issues;⁵⁶

⁴⁷ This project was launched on October 1, 2004, with several grantors making 3-year funding commitments towards the project. It will begin functioning in earnest in January 2005 with the recent hiring of the LANA Coordinator, and will be housed at United Way of Greater Portland.

⁴⁸ See draft, App. U.

⁴⁹ A *Chance Interpreter* is one who has no specialized training as an interpreter, nor screening as to bilingualism, who may appear with a LEP individual and function as an interpreter, or be pressed into service as an interpreter from the general public (i.e., “Does anyone here speak _____?”). Chance interpreters should only be utilized as a last resort and must be subjected to an abbreviated screening procedure that informs the court at some minimal level of the person’s qualifications and any potential conflict of interest that may bar him or her from acting as an interpreter in a given situation.

⁵⁰ See draft, App. W.

⁵¹ See sample, Model Guides, App. H at 147.

⁵² See samples, Model Guides, App. H at 148 and App. I.

⁵³ See App. I.

⁵⁴ See App. E at 18-19 (Wisconsin), App. G at 67 (Vermont), App. H at 149 (Model Guides), App. K (Texas), App. L (New Jersey).

⁵⁵ See App. E (Wisconsin), App. G at 42 (Vermont), App. M (drafted by LEP committee).

- ❖ A draft Interpreter Request form;⁵⁷
- ❖ A Power Point presentation and handouts that can be used to educate court staff on basic issues regarding communicating through interpreters with LEP individuals.⁵⁸

VII. Recommendations for Improvements in Maine Courts

While positive steps have been taken, a great deal remains to be done. To that end, the Committee recommends that specific changes be implemented to improve access to the court system for LEP individuals. Some improvements can be made almost immediately, while others require long-term planning. Some require substantial funding, such as the increased rate of use of professional interpreters or provision of interpreter training programs throughout the state,⁵⁹ while others cost little, such as the adoption of specialized court documents or forms.⁶⁰ Still others will require changes in state law. The Committee has divided its recommendations into five categories: short-term/minimal funding required, short term/funding required, long-term/minimal funding required, long-term/funding required, and long-term/legislation necessary. These are not meant to be qualitative judgments on the importance of each recommendation. Instead, they are intended to provide court administrators with a pragmatic means of assessing and organizing the tasks ahead.

A. Recommendations: Short Term/Minimal Funding Required

- ❖ Adopt a one-page protocol for court clerks that details procedures to follow when serving LEP individuals;⁶¹
- ❖ Create and distribute to all persons identified as needing interpreter assistance an “I speak [write-in which language]” business card containing the Language Line[®] 800 number for the court system, that the person can present each time s/he comes to the clerk’s window;⁶²

⁵⁶ See App. E (Wisconsin), App. M (drafted by LEP Committee).

⁵⁷ See App. X.

⁵⁸ See App. V.

⁵⁹ As court personnel become more sensitized to this issue and begin hiring qualified interpreters for LEP individuals in all appropriate court encounters, and/or begin utilizing Language Line[®] whenever necessary, the amount spent by the court system on interpreter services will likely rise significantly. In fact, this amount has already risen. Between 1999 and 2004, expenditures for provision of interpreter services nearly tripled. See table, App. CC, for a financial breakdown by fiscal year provided by the Administrative Office of the Courts.

⁶⁰ To help facilitate implementation of several of the short-term recommendations, the Committee has created drafts of some of the documents it recommends that the court system adopt, or has included samples obtained from other states, in the hope that these can be reviewed by court personnel and a version be adopted in the near future. In addition, the Committee envisions that any documents and/or forms adopted in the short-term also will be incorporated into a bench book and a handbook for court personnel. See Recommendations: Long-term/Minimal Funding Required at Section VII.C, *infra*.

⁶¹ See draft protocol, App. U.

⁶² See example used by Maine Medical Center, App. X.

- ❖ Create and maintain a database of interpreters across the state, including those used by federal and state courts, nonprofit agencies, and businesses, and distribute that list to court staff;⁶³
- ❖ Develop screening mechanisms to ensure that those people who regularly interpret in the Maine courts meet certain minimum qualifications and understand an interpreter's role and ethical obligations;⁶⁴
- ❖ Establish uniform state-wide interpreter payment policies;⁶⁵
- ❖ Adopt an "Interpreter Request" form to include a section for requesting an interpreter;⁶⁶
- ❖ Modify databases maintained by the Administrative Office of the Courts to accurately track the frequency of need for interpreters and the languages requested, in order to be able to collect data for current and future budget and interpreter resource planning, and to track changing language access needs by county and over time;
- ❖ Adopt and distribute English proficiency voir dire questions to judges so that they may adequately assess the comprehension level of parties or witnesses who appear to speak English but may still require an interpreter to fully participate in court proceedings;⁶⁷
- ❖ Adopt a standard oath to swear-in interpreters in all court proceedings;⁶⁸
- ❖ Adopt and disseminate interpreter voir dire questions to judges and recommend that such questioning be undertaken in all appropriate court proceedings;⁶⁹
- ❖ Purchase additional professional training videos to educate court personnel and judicial officers on the effective use of interpreters in the courts;⁷⁰
- ❖ Designate one contact person and an alternate in the larger clerks' offices for interpreters to contact with questions and concerns;

⁶³ See App. T for some of the interpreter lists collected by the Committee that can be a starting point for creating the database.

⁶⁴ See Standards and Procedures for the Office of Court Interpreter Services, for a discussion of screening and certification processes and criteria in Massachusetts, App. Z at 28-40. Any screening mechanism adopted by the courts must address three levels of interpreters: 1) *chance interpreters* who can be screened via voir dire and signing the short form code of ethics; 2) interpreters who submit their resume in advance seeking employment with the courts; and 3) interpreters with legal training and/or court experience (who will be issued badges, see system-wide badge system referenced below).

⁶⁵ Policies should address, among other issues, setting the minimum amount of time for which an interpreter may be hired, and the amount of billable travel time and expenses (mileage at the state reimbursement rate, tolls and parking) for interpreters.

⁶⁶ See sample Interpreter Request form, App. X.

⁶⁷ See sample, App. H at 147.

⁶⁸ See sample oaths, App. E at 18-19, App. G at 69, App. H at 149, App. K, App. L, and App. Z at 57.

⁶⁹ See sample "chance interpreter" and "professional interpreter" voir dire questions, App. H at 148, App. G at 68, App. I, and App. M.

⁷⁰ The Court has purchased a sample training video, entitled "The Interpreter's Code of Ethics & the Role of the Interpreter in the Courtroom," that may be viewed upon request to the Administrative Office of the Courts.

- ❖ Develop a feedback form for interpreters to assist courts in improving interaction with interpreters and LEP individuals;
- ❖ Establish a process whereby interpreters are briefed in advance of a court hearing about the subject matter of the case so that the interpreter can have awareness of any specialized terminology that might be used;
- ❖ Utilize the scrolling electronic message boards in courthouses equipped with them to announce in multiple languages the availability of and right to interpreter services;
- ❖ Publish all interpreter and LEP voir dire questions, policy protocols, and other pertinent information on the Maine Court's website;
- ❖ Begin process of educating attorneys and court staff by publishing articles in journals such as Maine Lawyers Review, the Maine Bar Journal and any court staff newsletters, regarding the law and practice of achieving language access;
- ❖ Form a committee or other appropriate mechanism to continue the work begun by the LEP Committee and others during this Committee's tenure, to further develop issues that require detailed analysis.⁷¹

B. Recommendations: Short Term/Funding Required

- ❖ Prepare and affix non-removable signage in all courthouses that inform court users in the most commonly spoken foreign languages of their right to an interpreter;⁷²
- ❖ Translate critical documents⁷³ into Maine's most commonly spoken languages (currently Spanish, French, Somali, Arabic, Vietnamese and Khmer);⁷⁴
- ❖ Obtain two-handset phones to place at the clerks' windows in every courthouse, to assist in providing telephonic interpreting services in a more confidential manner;⁷⁵
- ❖ Purchase legal dictionaries in multiple languages (hard copy or on-line) for use by court clerks, interpreters, and for training.

C. Recommendations: Long Term/Minimal Funding Required

- ❖ Design and conduct on-going trainings for courthouse staff on how to respond to LEP individuals and how to locate and secure adequate interpretation services for them;⁷⁶
- ❖ Design and conduct on-going trainings for judges regarding how to best serve LEP individuals in the courtroom;

⁷¹ Such as the method of screening interpreters, appropriate voir dire questions, as well as other issues such as those raised at Section VIII, "Future Considerations," *infra* p. 32.

⁷² Current signage in most courthouses consists of paper posters, which apparently are frequently damaged or ripped down.

⁷³ Critical Documents include, for example, Protection from Abuse materials.

⁷⁴ The predominant languages must be monitored because they may fluctuate over time.

⁷⁵ The Maine courts currently use Language Line[®] when telephonic interpreters are used; the dual handset phones are currently available at minimal cost to Language Line[®] subscribers.

⁷⁶ A Powerpoint presentation has already been developed for this purpose (*see* App. V).

- ❖ Create a benchbook section for judicial officers that contains, among other things, many of the documents referenced above, including instructions and protocol on how to work with interpreters during court proceedings, voir dire questions applicable to various situations, and interpreter oaths;⁷⁷
- ❖ Create a handbook for clerks that contains, among other things, many of the documents referenced above;⁷⁸
- ❖ Design and conduct trainings for interpreters regarding how to properly meet their duties to the court and to LEP individuals;
- ❖ Create a handbook for interpreters that contains, among other things, many of the documents referenced above, including the interpreter code of ethics, parking policies, interpreter pay rates and reimbursement procedures, and other court policies;
- ❖ Work with professional associations, such as Maine State Bar Association, Maine Trial Lawyers Associations, Maine Association of Criminal Defense Lawyers, and the Maine Association of Alternative Dispute Resolution Professionals, as well as with the University of Maine School of Law to produce trainings or curricula and materials to increase awareness of the rights of LEP individuals to language access in the Maine courts and to ensure that attorneys assist the courts in identifying when their clients will need interpreter services in a court proceeding;
- ❖ Collaborate with community organizations, such as the new LANA Program that is getting under way at United Way of Greater Portland in January 2005, to ensure that professional development workshops specializing in legal interpretation are accessible statewide, in order to increase and improve the pool of qualified interpreters available to Maine Courts.

D. Recommendations: Long Term/Funding Required

- ❖ Create and staff an Office of Interpreting Services to manage all aspects of court access for LEP individuals, including the hiring, screening, training, and monitoring of interpreters;⁷⁹
- ❖ Conduct outreach throughout the state of Maine to identify those with second language capabilities in order to recruit and train professional legal interpreters;

⁷⁷ See sample handbooks, App. E (Wisconsin), App. G at 42 (Vermont), App. L (New Jersey), App. M (drafted by the LEP Committee).

⁷⁸ See examples at App. E (Wisconsin), and App. M (drafted by LEP Committee).

⁷⁹ This position would be responsible for ensuring full access to the courts for LEP individuals, including monitoring compliance with federal and state laws regarding language access; tracking changes in demographic trends in the State; administering screening criteria to ensure that interpreters employed in the courts are qualified; collaborating with other entities to ensure proper training is available for legal interpreters; providing recurring trainings for courthouse personnel regarding proper ways of serving LEP individuals, and the effective management of interpreter services; monitoring the use of interpreters in the courts, including the shifting demand for certain languages; managing problems or grievances when they arise; and assessing the performance of interpreters in the courts. See sample job description of a Coordinator of Interpreting Services, App. DD, developed for the LEP Committee by Holly Maniatty, Staff Interpreter at the Governor Baxter School for the Deaf.

- ❖ Improve the quality of interpreter services in Maine by working in collaboration with Maine colleges and universities, community colleges, and adult education programs to encourage creation of interpreter training programs;⁸⁰
- ❖ Develop a reasonable compensation scheme for interpreters, tied to qualifications;
- ❖ Review and consider whether the court system should hire staff interpreters or bilingual clerk staff in certain languages for certain counties;⁸¹
- ❖ Translate court postings and vital documents into the most commonly spoken languages in Maine;
- ❖ Utilize the Maine State Courts website to provide access to multilingual information;
- ❖ Ensure that all courthouses have speakerphones or two-handset phones both in courtrooms as well as in clerks' offices in order to accommodate the appropriate use of telephonic interpretation services (currently these phones may be available in one but not necessarily both locations in courts);
- ❖ Join the National Center for State Courts (NCSC), or, in the alternative, develop a comparable group for Northern New England, in order to keep abreast of developing issues and solutions regarding access by LEP individuals to the courts;
- ❖ Establish a court interpreter certification program.⁸²

E. Recommendations: Long Term/Legislation Necessary

- ❖ Regulate the confidentiality of spoken language court interpreters;⁸³
- ❖ Consider creation of a statewide licensure system for all spoken-language interpreters parallel to that already in place for sign language interpreters.⁸⁴

VIII. Future Considerations

This Report represents the first step in what must be a sustained effort to ensure access to justice for LEP individuals. Many details with regard to institutional changes, protocols and overall funding mechanisms remain to be worked out. The Committee, therefore, recommends the formation of a standing committee on linguistic access to

⁸⁰ The Committee recommends that once Maine devises a testing process for legal interpreters it use a term other than "certified" to distinguish it from the array of programs purporting to graduate "certified" interpreters from 3-day workshops.

⁸¹ There are few staff interpreters anywhere, in any language, in Maine (except for a few sign language interpreters in schools); however, many organizations have bilingual staff.

⁸² See, e.g., "Improving Interpretation in Wisconsin's Courts," App. F at 20 for a more detailed explanation of this type of program.

⁸³ Comparable legislation already exists governing interpreters for the deaf and hard-of-hearing. See 5 M.R.S.A. § 48.

⁸⁴ See App. BB, Report of the Commissioner of the Department of Professional and Financial Regulation to the Joint Standing Committee on Business, Research and Economic Development. Sunrise Review of L.D. 909. "Resolve, Directing the Department of Professional and Financial Regulation to Conduct a Sunrise Review for the Regulation of Spoken Language Interpreters," January 15, 2004.

the courts to continue this important work and to guide the implementation of the recommendations in this Report. Such a committee would also monitor and adjust policies and procedures as necessary to ensure the highest, most efficient services are being delivered to LEP individuals.⁸⁵

The Committee also recognizes that justice is not administered from the courthouse alone. LEP individuals confront the legal system in many other contexts, including but not limited to civil commitment proceedings, administrative agency hearings, arbitration proceedings, court-ordered mediation, meetings with Maine Pretrial Services, meetings between parents and court-appointed guardians ad litem, and court-ordered counseling sessions. The provision of interpreter services for LEP individuals in these settings, as well as who should pay for these services, must be studied. These non-courtroom contact points between LEP individuals and the justice system are an important consideration for the courts because they can have a significant impact on the administration of justice. The standing committee referenced above should also be charged with studying these issues.

IX. Conclusion

Maine's demographics are changing to include increasing numbers of LEP individuals. A strong and effective justice system is one of the hallmarks of our society. Maine's courts must therefore be accessible to all Maine residents regardless of their English skills.

The LEP Committee would like to thank the JAG for taking the lead in recognizing the importance of the issue of linguistic access to Maine's state courts and for forming this Committee to examine the enormous challenges this issue presents. This Report represents a positive step forward, and the Committee is confident that the changes recommended, if and when implemented, will assist the courts in their continued efforts to administer justice fairly and efficiently throughout the state.

⁸⁵ The Model Guides (App. H) include useful information and guidance with regard to the provision of interpreter services in the courts and should be regarded as an essential resource for this new committee.