

BRENNAN

CENTER

FOR JUSTICE

LANGUAGE ACCESS
IN STATE COURTS

Laura Abel

ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. Our work ranges from voting rights to redistricting reform, from access to the courts to presidential power in the fight against terrorism. A singular institution – part think tank, part public interest law firm, part advocacy group – the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

ABOUT THE BRENNAN CENTER'S ACCESS TO JUSTICE PROJECT

The Access to Justice Project at the Brennan Center for Justice at NYU School of Law is one of the few national initiatives dedicated to helping ensure that low-income individuals, families and communities are able to secure effective access to the courts and other public institutions. The Center advances public education, research, counseling, and litigation initiatives, and partners with a broad range of allies – including civil legal aid lawyers (both in government-funded and privately-funded programs), criminal defense attorneys (both public defenders and private attorneys), policymakers, low-income individuals, the media and opinion elites. The Center works to promote policies that empower those who are vulnerable, whether the problem is eviction; predatory lending; government bureaucracy (including, in some instances, the courts themselves); employers who deny wages; abusive spouses in custody disputes or in domestic violence matters; or other problems that people seek to resolve in reliance on the rule of law.

ABOUT THE AUTHOR

Laura K. Abel is Deputy Director of the Justice Program at the Brennan Center for Justice at NYU School of Law, where she has worked since 1999. Her work is aimed at enhancing the ability of low-income families and individuals to obtain legal counsel and access to the courts, and at securing the freedom of nonprofit organizations to exercise their First Amendment rights in the course of assisting low-income communities. Prior to joining the Brennan Center, Ms. Abel was a Gibbons Fellow at Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C. where she litigated on behalf of low-income people in a wide variety of cases. In preceding years, she was a staff attorney fellow for the ACLU Reproductive Freedom Project and clerked for Judge Robert Carter of the U.S. District Court for the Southern District of New York. Ms. Abel received her J.D. from Yale Law School in 1994.

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EXECUTIVE SUMMARY

Across the country, people are stuck in a Kafkaesque nightmare: they must go to court to protect their children, homes or safety, but they can neither communicate nor understand what is happening. Nearly 25 million people in this country have limited proficiency in English (LEP), meaning that they cannot protect their rights in court without the assistance of an interpreter. At least 13 million of those people live in states that do not require their courts to provide interpreters to LEP individuals in most types of civil cases. Another 6 million live in states that undercut their commitment to provide interpreters by charging for them. And many live in states that do not ensure that the “interpreters” they provide can speak English, speak the language to be interpreted, or know how to interpret in the specialized courtroom setting. Many of those states are violating Title VI of the Civil Rights Act, which requires state courts receiving federal assistance to provide interpreters to people who need them.

When state courts fail to provide competent interpreters to LEP people in civil cases, the costs are high. People suffer because they cannot protect their children, their homes, or their safety. Courts suffer because they cannot make accurate findings, and because communities lose faith in the justice system. And society suffers because its civil laws – guaranteeing the minimum wage, and barring domestic violence and illegal eviction – cannot be enforced.

For these reasons, the federal Civil Rights Act requires state courts that receive federal funds to provide interpreters to LEP individuals in all civil and criminal cases. The constitutional guarantees of access to the courts, due process, equal protection and the right to counsel also require that interpreters be provided. The interpreters must be provided without charge. Courts must ensure that interpreters have essential language and interpreting skills. Judges and other court personnel must know when and how to use interpreters. And, courts must accord LEP individuals the same treatment they accord other individuals.

Despite these legal requirements, across the nation courts are shirking their responsibilities. We examined interpretation services in 35 states and found:

1. 46% fail to require that interpreters be provided in all civil cases;
2. 80% fail to guarantee that the courts will pay for the interpreters they provide, with the result that many people who need interpreters do not in fact receive them; and
3. 37% fail to require the use of credentialed interpreters, even when such interpreters are available.

These failings take a heavy human toll. Often, they violate federal law. Fortunately, the picture is not entirely bleak. Each of the failings is avoidable. In the last decade, the states have begun to develop programs to recruit, test, and assign court interpreters. At least 40 states have joined the Consortium for State Court Interpreter Certification, to obtain access to exams assessing the competence of their interpreters. As a result, states seeking to improve their interpreter programs have examples to follow. A revitalized federal Department of Justice is now energetically enforcing civil rights laws. And, federal legislators are looking for ways to provide state court systems with additional funding for essential court interpreter services. With this report, we hope to facilitate and accelerate all of these efforts, to help states meet their obligations, and to ensure that, in the end, justice will speak.

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