



What Does the Intersection of Language, Culture, and Immigration Status Mean For Limited English Proficiency Assistance in the State Courts?

John A. Martin, Steven Weller, Angie Lederach, Jeff Yoder, and David A. Price¹

October 2, 2012

I. Background

Over the next decade, hundreds of thousands of people living in the United States are going to need language assistance when they appear in our state courts either as litigants, victims, witnesses, or jurors. Recent U.S. Census figures, buttressed by more specialized assessments from a variety of organizations, reveal that:²

- Over 58 million U.S. residents 5 years of age or older – about 20 percent of the entire U.S. population in that age group – speak a language other than English at home, and this total increased by 8 million people just in the last decade.
- While nearly 36 million Spanish speakers account for over 60 percent of this total, over 2.6 million Chinese, 1.5 million Tagalog, and 1.25 million Vietnamese speakers, along with over 4.5 million Korean, French, German and Arabic speakers account for another 17 percent of the total. At the same time, the numbers of other U.S. residents representing hundreds of other languages have increased by many tens of thousands in the past decade.
- 85 percent of the foreign-born population speaks a language other than English at home and 52 percent say they speak English less than “very well.”
- Many of the nation’s fastest growing immigrant groups also are more likely to have language assistance needs. For example, a majority (74%) of Asian-American – the nation’s fastest growing minority – adults are born abroad, and nearly one-half say they do not speak English very well.

Moreover, the need for language assistance has increased dramatically in the past decade or so, and is likely to continue to increase substantially in the coming decades not only as a result of the many social and economic trends fueling immigration to the U.S., but also because of unprecedented federal government precipitated changes in language access law and policy and assistance expectations. In particular, with regard to immigration trends it is well documented that:³

- About 40 million people living in the U.S. are foreign born.
- Over one-half of the foreign born population arrived in the U.S. after 1990 with one-third of all the foreign born population arriving in 2000 or after.
- As of 2010, 44 percent of all the foreign born were naturalized citizens.
- The legal permanent resident (LPR) immigrant population in the U.S. is about 12.6 million people. About 8.1 million of these people meet the residency requirements to become U.S. citizens.
- An additional 11.2 million people living in the U.S. are undocumented, illegal immigrants.
- Nearly two-thirds of the 10.2 million undocumented adult immigrants living in the United States have lived in the country for at least 10 years. Specifically, 15 percent of the undocumented adult population have lived in the U.S. less than 5 years, 22 percent 5-9 years, 28 percent 10-14 years, and 35 percent 15 years or more.
- About 12 million people living in the U.S. are naturalized citizens.

- An additional 1.3 million people in the U.S. are temporary legal migrants such as students and temporary workers.
- The percentage of U.S. residents who are foreign born, about 13 percent of the total U.S. population today, is expected to reach nearly 20 percent by 2050. This percentage will far exceed the historic highs recorded in 1890 (14.8%) and 1910 (14.7%).
- 73,293 refugees and 21,113 asylees were admitted to the U.S. in 2010.
- While California, New York, Texas, Florida, and Arizona remain leading centers for new immigrants, states with historically smaller immigrant populations – Georgia, Minnesota, Washington, and North Carolina – are also experiencing rapid immigrant population growth.

With regard to federal government precipitated language access law, policy, and practice, over the last few years it has become clear that expectations for court language assistance have expanded greatly to include providing assistance:

- in all court proceedings, including civil, criminal, family and juvenile, and administrative matters;
- during all hearings, trials, and motions;
- to non-party limited English proficiency (LEP) individuals whose presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime or of juveniles and family members involved in delinquency proceedings;
- during procedures handled by officials such as magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers, as well as judges;
- at court functions conducted outside, as well as in, the courtroom; and
- at no cost to the persons involved.
- The purpose of this article is to show why and how state courts across the nation must consider the complicated nexus of language, culture, and immigration status (CLI) as they attempt to accommodate both:
- the increasing numbers of limited English proficiency litigants, witnesses, victims, and jurors appearing in court; and
- the greatly expanded expectations for the types and extent of the assistance courts increasingly are mandated to provide.

We begin in Section II with an examination of how contemporary thinking and research about procedural justice provides a framework for helping to address the implications on the state courts of the complicated nexus of language/culture/immigration status. We then use the framework to help us summarize why, how, and where consideration of, first, language, then culture, and finally immigration status matter so much in the state courts. Our examination of language, culture, and immigration status will show that:

- standard U.S. English and the culture of the courts have preferred ways of organizing and presenting ideas both verbally and non-verbally, that may differ greatly from the languages of many LEP court participants;

- the complexity of communications across languages in the courts, suggests the need for very high standards of language assistance, specifically standards that produce legal and dynamic language equivalence;
- notions of procedural justice and fairness are embedded in and reinforced by both the ABA language access standards and federal government Title VI expectations for state court performance;
- culture profoundly affects how people define justice, conflict, and disorder, determine when and how it is appropriate to involve the courts, fashion responses or solutions to problems and conflicts, and how they communicate;
- immigration status can complicate many aspects of criminal, civil, family, juvenile, and dependency case processing, including aspects of case processing that might be typical or routine in cases involving U.S. citizens; and
- state court action can profoundly affect an immigrant individual and their family's ability to be in the U.S. and be eligible for benefits both in the short term and the long-term.

We end Section II with a review the implications of the language, culture, and immigration status nexus on language access and litigant assistance in the courts. This review will reveal that to address the goals suggested in recent language standards as well as move towards the goals of procedural fairness, courts need to consider providing both language and cultural assistance to help litigants navigate the complexity of today's court.

Finally, in our conclusions presented in Section III we stress that three things should be included in court efforts to improve access to justice and procedural fairness for LEP participants, while also meeting the high standards for language assistance outlined by the U.S Department of Justice and the American Bar Association. First, courts should not focus on addressing language issues alone if they are interested in assuring access to justice. Language attention separated from culture and immigration status, dramatically limits understanding between the courts and what is likely the growing majority of court LEP participants about what is happening, what is expected, and what are the consequences of state court action.

Second, to address the high expectations for court performance embedded in notions of procedural justice, efforts to improve language access in the courts must simultaneously include efforts to become increasingly culturally competent and immigration status sensitive. Much of the nuance associated with the key components of procedural justice are influenced as much by culture, and in many instances, culture combined with immigration status, as they are LEP court participant access to excellent interpreters and other language specialists in all state court matters.

Third, court practitioners need better tools and supporting organizational and community infrastructure to help them assist individuals, regardless of their particular ethnic/national culture and immigration status. In short, as courts develop and implement improved approaches to providing language services, they also need to develop tools to help the increasingly diverse population of court participants successfully navigate the courts and justice system,

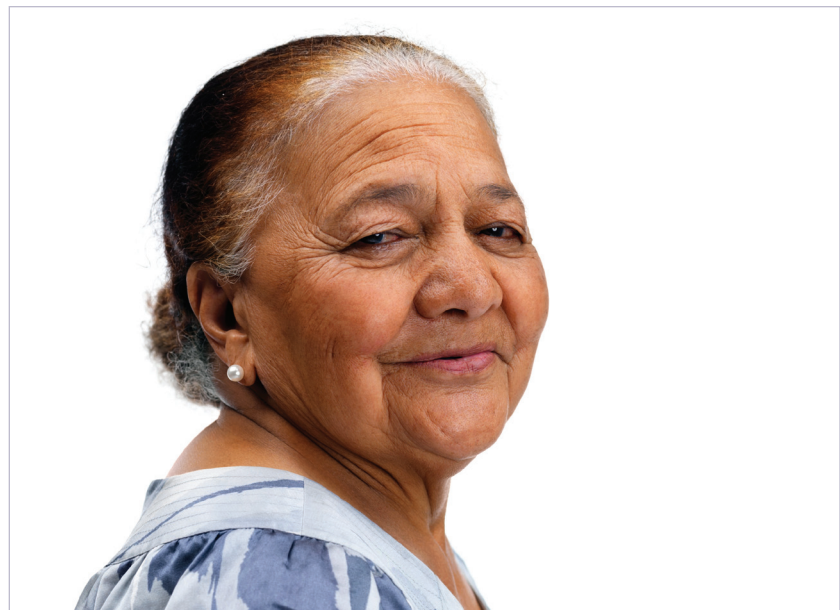
process information, make wise decisions, and understand and comply with court orders.

II. Understanding the Language, Culture, and Immigration Status Nexus

By now it is generally acknowledged by court practitioners that the numbers of LEP state court participants are increasing substantially in proportion to total caseloads. However, less understood or acknowledged is the reality that the complexity of LEP court user need is also increasing, likely increasing dramatically. This increase in the complexity of the types of needs for LEP assistance is, in large part, fueled by immigration based cultural diversity. As one result, courts across the nation now find themselves having to confront the challenges of the interplay of immigration status, culture, and language, in their attempts to provide LEP services.

In particular, as we will show in this section, the complexity, as well as the magnitude, of demand for LEP focused services have increased because:

- use of language is not only the primary tool for communication between court participants and the court but is also the essential tool for providing insights about culture and immigration status;
- differences between the culture of the courts and culture of litigants can greatly complicate communications and understanding of court processes, case outcomes, expectations for performance, and compliance with court orders;
- state court action can profoundly affect an immigrant's legal status, including the opportunity to work, remain in the United States, or become a United States citizen; and
- a litigant's immigration status can profoundly affect a state court's ability to locate and gain access to litigants and their family members, victims, and witnesses; provide services; and allow immigrants the opportunity to comply fully with court orders.



Procedural Justice

Contemporary views about procedural justice provide important insights to help understand the immigration status, culture, and language nexus. In particular, procedural justice provides empirically-based criteria for helping us to determine the challenges immigration status, culture, and language raise for courts. Procedural justice stresses that peoples' perceptions about how they are treated in court are as important as the outcomes of cases when it comes to their satisfaction with their court experience and willingness to comply with case outcomes.

Dr. Brenda J. Wagenknecht-Ivey, in her work with the California Administrative Office of the Courts, has produced a concise synthesis of a great deal of writing about procedural justice – including the extensive writings of Tom Tyler and David Rottman – in what she labels the four dimensions of procedural fairness.⁴ As shown in Figure 1, procedural fairness/justice emphasizes that in court people want to have a **voice**, that is the chance to tell their story in their own words, and be treated with politeness, dignity, and **respect**, as they participate in court processes where authorities are, and appear to be fair and **neutral**, and where court participants can **trust** the character and sincerity of authorities.

We will examine the potential implications of language, culture, and immigration status on procedural fairness in general and voice, respect, neutrality, and trust in particular, in the remaining portions of this section.

Why Language is Important

Language matters in the state courts because perhaps the most fundamental assumption of our contemporary system of justice is that parties involved with the courts will be able to communicate, understand, and participate in all types of court proceedings and processes, including pre-adjudication, adjudicative, and post-adjudicative proceedings. Moreover, our system is heavily based on both oral and written communication as essential to providing opportunities for understanding between court practitioners and users. Language also is the single most visible and one of the most important manifestations of culture. As one consequence, adequate and comprehensive language assistance in the court and justice settings is the key to working across cultures in court and providing an opportunity for all court participants to access justice. In short, communication across languages is a key element for making court participation meaningful.

Yet, as anyone who has spent even five minutes involved with the courts – either in or outside of a courtroom – is aware, communication to the point of offering opportunities for understanding and meaning is difficult enough when all court participants share a common language. Differences in vocabulary, literacy and comfort levels among court participants, to name but a few of many factors, make communication, much less understanding, difficult even among those using the same language. When working across multiple languages, even the most casual observer begins to suspect that there is more going on than the simple exchange of words across languages. That's because there is a lot more going on – language is about the

use of symbols in the form of words, actions, or objects that represent a unit of meaning. Moreover, unfortunately for communication across languages, the relationships between symbols and what they represent are highly arbitrary and vary dramatically from language to language and culture to culture. Varying dramatically too are the very complicated and interrelated sets of rules regarding the use of symbols to create language. Finally, the reciprocal relationship among language, thought, and culture are so interconnected that for meaning and understanding to occur across languages, working with language means working with far more than words.⁵

Although an adequate description of the details about what must happen to communicate across languages and cultures is well beyond the scope of this effort and are topics covered well elsewhere, two things about language, how it works, and the desired role of interpreters and language specialists are described here because they greatly affect language access in the courts and procedural fairness.

First, languages, and every culture connected with a particular language, have preferred ways of organizing and presenting ideas both verbally and non-verbally. According to cross-cultural communications experts Lustig and Koester, in the standard form of U.S. English – especially when modified by the specialized vocabulary and organization of the so-called “legalize” that is part of the court culture – there are numerous expectations about how to organize and present thoughts, styles of persuasion, the validity of types of evidence, and the value and meaning of talk and silence.

For example, Lustig and Koester indicate that organization and presentation in standard U.S. English is linear:

- a specific theme attached to a clear specific thesis statement is the foundation for organizing ideas that should be presented in a clear, straight forward, unambiguous manner;
- theses are stated at the beginning of a presentation;
- main points are outlined early on and supporting ideas are linked directly to the main idea;
- topics are developed fully before moving on to a new topic;
- persuasion, that is the ability to use symbols to influence others to accept ideas or engage in some behavior, is direct, “fact” evidence and formal authority based; and
- what is reasonable or correct is derived from a series of values, processes, and empirical science based information derived in large part from the testimony of objective experts.

All of these preferences can vary greatly from language to language and culture to culture. For example, in many of the numerous other than Anglo-European languages where language assistance is being frequently sought in courts around the nation:

- there might be no equivalents to standard U.S. English concepts of thesis statements and paragraph topic sentences;
- thesis statements are often buried deep within a presentation;
- the organization and presentation of ideas is often indirect and implication dependent; and

- persuasion and reasonableness, including what is logical and rational, is often based on types of evidence and authority that are considered unscientific, biased, irrational, unprofessional, and indirect by U.S. English thinkers and speakers.

Second, the complexity of communications across languages in the courts, suggests the need for very high standards of language assistance, specifically standards that produce legal and dynamic equivalence across languages. The Fundamentals of Court Interpretation: Theory, Policy, and Practice, the so-called Bible of court interpretation, indicates that “the goal of court interpreting is to produce a legal equivalent, a linguistically true and legally appropriate interpretation of statements spoken or read in court, from the second language into English or vice versa.” Moreover, the interpretation cannot be a mere summary or approximation of what is said or written but instead, “the court interpreter is required to interpret the original source materials without editing, summarizing, deleting, or adding while conserving the language level, style, tone, and intent of the speaker.”⁶

This is indeed a very high set of expectations, especially in light of the complexities of the interconnections among thought, language, and culture summarized previously. In addition, Fundamentals of Court Interpretation, stresses that legal equivalence encompasses dynamic equivalence, that is “the notion that the message should have the same effect on the target language audience as the message had on the source language.” As one consequence, seeking the true message may be as much about non-verbal communication, and how something is said as it is about what is said.

Moreover, as shown in Figure 2, recent federal government-precipitated language access law, policy, and practice, along with the new American Bar Association Language Access Standards have stressed that expectations for court language assistance have expanded greatly to include providing assistance:

- in all court proceedings, including civil, criminal, family and juvenile, and administrative matters;
- during all hearings, trials, and motions;
- to non-party limited English proficiency (LEP) individuals whose presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime or of juveniles and family members involved in delinquency proceedings;
- during procedures handled by officials including judges, magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers;
- at court functions conducted outside, as well as in, the courtroom; and
- at no cost to the persons involved.

Not surprisingly, there are many important implications of language on procedural fairness. For example, with regard to **respect and voice**, language matters because even though participation by litigants, witnesses, victims, and others in state court processes is highly valued, it is extremely difficult to convey across languages the verbal and non-verbal expressions that indicate participation, such

as expression of respect, understanding, dignity and strong emotions including sincerity, anger, contrition, remorse, hurt, and many more.

In addition, telling one’s story in the numerous courtroom and non-courtroom settings that make up the state court system, and having that story actually heard, is very difficult across languages. In large part this is a result of differences between the linear, explicit, empirical “fact” driven preferred forms of the standard U.S. English of the courts and the preferred forms of many LEP court participants. For example, even when working with the assistance of the most skilled interpreter, it is likely that more than a few probation workers, judges and juvenile, child welfare, and family court practitioners have been frustrated by the amount of time and effort witnesses, litigants, and their families require to be able to tell their story and the amount of time and effort court practitioners must exert to understand and react to that story. As in most court-related cross language conversations, story telling in particular about understanding expectations for compliance, why compliance might have been violated, and what might be done to get back into compliance often are hardly linear but rather include extensive back and forth, back-tracking, and “reading between the lines” and interpreting the silences that form part of the story telling.

With regard to **neutrality and trust**, when working with non-English speaking participants and attempting to appear neutral and build trust, state courts are at a disadvantage simply because the dominant, preferred, language is English and all other languages are secondary. It has long been known that in many and likely most language groups – and the national/ethnic cultures associated with language groups – there is often suspicion that those who speak another language not only might not be able to understand what I might be trying to express but, also to my potential disadvantage, might also somehow favor those who speak the same language they do. Bi-lingual state court judges, counter clerks, and court staff throughout the system for example, routinely report very different levels of participation, changes in demeanor, and in general a different climate when working with court participants who realize that the practitioner speaks “their” language. Further, and unfortunately for our courts, many LEP court participants are from parts of the world with poor histories regarding the exercise of power and language dominance. Interpreters, along with increasing numbers of court practitioners, likely have become aware of these challenges as they try to find language specialists who not only act in a neutral fashion but are perceived as being neutral and trustworthy.

Furthermore, as noted previously, standard U.S. English, when combined with the culture of the courts, is a very “wordy” language, where ideas are spelled out directly, explicitly, and in detail. This is true even in instances regarding the most intimate and difficult aspects of someone’s behavior and life that in other languages and cultures may never be appropriate to talk about – unless required to in the court system setting – and may even lack a way to communicate verbally about the behavior at all. In addition, non-verbal messages in the culture of the courts are often less important for communication than they might be in other languages and cultures.

Figure 3 provides a summary of the procedural fairness implications of language, as well as for culture and immigration status, the topics we examine next.

Why Culture is Important

Culture matters in the state courts because notions of culture profoundly affect how people:

- define justice, conflict, and disorder;
- determine when it is appropriate to involve third parties – including the courts and justice organizations – in resolving problems and conflicts;
- describe events or “what happened;” and
- fashion responses or solutions to problems and conflicts.

Culture also matters because it greatly influences:

- the ways people communicate;
- perceptions about the sources of legitimate authority
- beliefs about individual and group responsibility;
- beliefs about what are fair processes;
- fundamental, underlying beliefs about cause and effect – such as the causes and treatment of illness; and
- beliefs about people and their motivation.

In addition, today, understanding and working with culture matters likely more than ever in state courts not only because of the great diversity of cultures now represented in courts across the nation but also because of the often vast differences between the behaviors, values, and fundamental beliefs and assumptions of many court participants and the key aspects of court culture.⁷ Moreover, both increased opportunities for misunderstanding and opportunities for creative, more effective solutions to complicated justice problems, are one result of the differences between court culture and a court participant’s ethnic/national culture.

For example, the behavior for helping ill children which one culture might define as appropriate use of herbal and other forms of traditional healing – such as the use of the mix of spiritual and organic remedies facilitated by a curandero or other form of healer – might be defined in another culture as child neglect and even abuse. Notions of extended family inherent in some cultures might provide opportunities to link troubled family members with far more extensive family-based support resources than might be available in cultures where family is more narrowly defined. For people of some cultures, attending batterers’ classes conducted by a highly-trained outsider professional might be an effective technique for addressing some aspects of domestic violence, while being counseled by a “non-professional” insider, a respected peer, might be more appropriate for people of another culture.

Elsewhere we have written in detail about the types and sources of disparity among state court culture coupled with professional culture and the ethnic/nationality based cultures of increasing numbers of court participants.⁸ Consequently, here we will merely offer a few examples of differences and suggest why they might matter. For example, “time” in the traditional model of American courts is viewed as highly structured and valuable, and thus subject to being managed and controlled by a variety of techniques such as careful scheduling and detailed compliance monitoring that expects appropriate

performance to occur within standardized time frames. In contrast, in other cultures, time may be far more flexible, endless, and ongoing, stressing the need to respond to circumstances and individuals rather than adhere to a schedule. A few other more obvious examples of the numerous culturally-based assumptions embedded in the court and justice systems include notions that:

- illness is largely organically based and thus can be treated medically;
- knowledge can be gained by a combination of structured educational sessions such as parenting or anger management classes by following the directions and counsel of judges, probation, and treatment providers, and by observing the successes of peers;
- individuals are in control of and responsible for their own actions;
- gender roles in child-rearing should be centered on equal parenting responsibilities between partners;
- people can be motivated to alter behavior by punishments and rewards;
- judges and other persons of authority within the court and justice system should be listened to and obeyed because of the positions they hold and the important roles society has assigned to those positions;
- people should show respect for court and justice officials;
- neutral, objective, third parties unrelated to litigants involved in a dispute can be effective in resolving disputes;
- written communication is an effective way to communicate; and
- determining when someone is truly sorry for what they have done and would like to make amends is important.

Each of the assumptions, beliefs, values, or behaviors listed above is largely steeped in Anglo/European cultures as well as the organizational and professional cultures of the courts and justice system. Yet increasingly, there is a gap between the Anglo/European



culturally-based foundations of the courts and justice systems and the fundamental assumptions and beliefs, values, and behaviors of increasing numbers of people using the courts.

For example, the increased presence in state courts across the nation of greater numbers of people with extremely diverse sets of cultural origins in the Middle East, Africa, Latin America, Asia, or the Pacific, as well as increased awareness of the cultural foundations of numerous Native Americans and indigenous people from nations across the globe, have resulted in the need to work, routinely, with litigants who might:

- emphasize a spiritual or cosmic foundation for the origins and responses to illness and health;
- view gender roles as being very clearly differentiated and unalterable;
- maintain that behavior cannot be modified by the forms of rewards and punishment routinely used by the courts and justice system;
- demonstrate deference, respect, and contrition in ways at odds with expected behaviors in courtrooms, probation offices, and treatment sessions;
- emphasize group responsibility over individual responsibility;
- misunderstand the authority in family matters assigned to outsiders; and/or
- have limited exposure to written language generally, and even less exposure to the official language of the courts and justice system.

There are numerous implications on procedural fairness of culture, or more accurately, of having multiple ethnic/national, professional, and organizational cultures participating in the state courts. In fact, as suggested above, working across cultures perhaps is the most important challenge facing the courts if they are going to move closer to assuring access for all court participants much less reach the overarching vision embedded in notions of procedural justice. All aspects of procedural justice – respect, voice, neutrality, and trust – fundamentally are shaped by one’s ethnic/national cultural origins. At the same time, the expectations for communications and behavior, the key values, and the fundamental beliefs of the culture of the courts, buttressed by the professional culture of the U.S. legal system, for the most part are Anglo/European in origin. As one result, as a quick look at Figure 4 should reveal, there is often a gap between litigant and court cultures. Thus, many cross-culture barriers between the culture of court participants and the culture of the courts will need to be addressed to approach the goals of procedural justice.

For example, as summarized in Figure 2, with regard to **respect**, culture complicates the work of the state courts because definitions, perceptions and verbal and non-verbal forms of expression of key aspects of respect, such as politeness and dignity, vary widely across cultures, and thus between the culture of the courts and increasing numbers of litigants. Also, as will be described in greater detail in the next section, even the presence of skilled interpreters and other language specialists alone cannot address the complicated barriers inherent in working across cultures. Similarly, if “understanding” court procedures and outcomes is to be an essential component of respect,

additional barriers might need to be considered because culture profoundly shapes views about the meaning of facts, ways to know, and ways to gain and use knowledge.

The issues culture raises for voice are many in large part because culture profoundly shapes the forms and styles; that is, shapes the ways people effectively tell their stories, and to whom. Although the notion of voice is itself a sub-field in many disciplines, to simplify things here, communications expert Edward T. Hall’s high and low context culture taxonomy provides a tool for highlighting some of the sources of cultural variation with regard to voice and the source’s potential impacts on the courts and justice system. As shown in Figure 5, Hall maintains that high-context cultures prefer to use high-context messages where most of the meaning is implied by the physical setting or is assumed to be part of an individual’s internalized beliefs, values, norms, and social practices. Note also that in high-context cultures very little of the content of the message is provided in the coded, explicit, transmitted part of the message. In contrast, for low-context cultures the majority of information contained in a message is in the explicit code. Examples of high-context cultures frequently identified in the research literature include Japanese, African American, Mexican, and Latino, while low-context cultures include German, Swedish, European American, and English. Increasingly, then, given long-term immigration trends alone, essentially the low-context culture-oriented state courts have been and will continue to be having to work more and more with litigants from high-context cultures.

With regard to **neutrality and trust**, the culture of the courts has very clear notions of trust, what is fair and neutral, and how to express those notions. These notions of the culture of the courts may or may not align with the views of court participants and consequently additional efforts might be needed when working across cultures. For example, as indicated in Figure 4, the culture of the court’s heavy emphasis that neutrality is demonstrated structurally because authority is based on the formal positions held by highly



trained people consistently following established processes, might not clearly align with the views of court participants. At the same time, the demeanor of court participants, especially how they express interest (or non-interest) and understanding, or key behaviors such as contrition, might not meet the expectations of court personnel.

Why Immigration Status is Important

At its most basic, immigration status refers to the classification under federal law that allows an individual to be in the United States lawfully. All persons present in the United States are considered under federal law as either U.S. citizens or aliens. U.S. citizens are individuals who were either born in the United States or to United States citizen parents or went through a rigorous naturalization process to be granted U.S. citizenship. The alien classification includes legal aliens who are present in the United States under non-immigrant temporary visas or, more frequently, legal aliens classified under one of numerous other lawful immigrant statuses. The alien classification also includes unlawful aliens – often referred to in the popular media as illegal immigrants or unauthorized immigrants – who are present in the United States unlawfully.

As noted previously, typically at any one moment in time over the past few years, over one-third of all foreign born persons in the United States are naturalized citizens, an additional one-third are lawful immigrants, with unlawful aliens making-up the remaining just under one-third of the total. In addition, complicating matters even more for language assistance in state courts, in 2011 over 62 million foreign nationals from abroad visited the U.S. for some period of time.⁹ While the total number of foreign national visitors may vary from year to year, it is likely that significant numbers of these visitors are going to have contact with our state courts as victims, litigants, witnesses or the accused.

In recent years, state courts around the nation increasingly have become aware of the immigration status complications for not only criminal case processing but also in other matters as a result of the mix of court participants with different citizenship and immigration statuses. For example, family and juvenile court practitioners in particular have had to learn how to work with families that include naturalized and native born U.S. citizens, lawful aliens, and unlawful aliens because:¹⁰

- 16.6 million people in the U.S. live in unauthorized families where the head of the family or the spouse of the head of the family is undocumented.
- 8.8 million people live in unauthorized families with U.S. citizen children.
- In 2008, 5.5 million children lived in unauthorized families. Of these children, about 1.5 million were undocumented, but an additional 4 million were U.S. citizens by birth.

Similarly, recent Supreme Court decisions about the importance of the role of representation in criminal cases involving immigrants have increased awareness about the complexities of immigration status. In short, for many court practitioners aggregate statistics and media stories about immigration have taken on practical meaning every day as they work with the individuals and especially families before them.

Elsewhere we have written in detail about the complexities of federal, state, and local immigration law and the many effects they have had on the state courts, so here we will only highlight the aspects of Immigration status that most affect state court language and litigant assistance needs.¹¹

First, immigration status matters in state courts because a litigant's immigration status can complicate greatly many aspects of criminal, civil, family, juvenile, and dependency case processing, including aspects of case processing that might be more typical or routine, and risk few unintended consequences in cases involving U.S. citizens. For example in criminal cases, immigration status cases can:

- limit eligibility for the services and benefits associated with many sentencing options;
- limit eligibility to work;
- limit timely state court access to defendants, victims, and witnesses because of federal immigration detention policies and practices;
- make participation by lawful and unlawful aliens in drug courts highly risky, regardless of drug court model used;
- create a need for state court practitioner awareness of the role state courts can play in facilitating eligibility for federal immigration status protections for immigrant victims, such as "U" and "T" visas for victims of trafficking and violence; and
- greatly increase the need for complete and readily accessible state court records.

In state court civil, family, juvenile, and dependency case processing, immigration status can:

- complicate custody decisions and the ability to pay maintenance and child support;
- complicate name changes;
- complicate planning for foster care and family reunification;
- complicate housing and tenancy eligibility and disputes;
- introduce new areas of law to many court practitioners, such as international laws relative to access to children;
- create a need to align state court processing timelines with federal immigration event standards, such as in custody planning, reunification, independent living, and adoption;
- create a need to coordinate dependency and juvenile case status to facilitate eligibility for federal immigration benefits, such as special immigrant juvenile status;
- limit eligibility for benefits and services;
- create conflicts because of the fundamental difference between federal immigration law and state law conceptions of "child" and "family," and best interest of a child; and
- greatly increase the need for complete and readily accessible state court records.

Second, state court action involving immigrants can profoundly affect an immigrant individual and their family's ability to be in the U.S. and be eligible for benefits both in the short term and the long-term. In particular, criminal convictions – and in some instances arrests

without conviction – can affect the ability of lawful immigrants to:

- remain in the United States;
- remain eligible to become a naturalized U.S. citizen;
- remain eligible to return to the United States; and
- be eligible to work and obtain other benefits.

In addition, state court criminal convictions can make unlawful immigrants ineligible for a change to a status that would allow them to go through a process for becoming lawful, such as eliminate eligibility for “U” or “T” visas, federal immigration mechanisms designed to protect victims of crime, including human trafficking victims.

In fact, the reality that the potential severity of the implications on immigration status of state court action in criminal cases are significant, was underscored by the U.S. Supreme Court’s decision in *Padilla v. Kentucky*, announced on March 31, 2010. Briefly, the *Padilla* decision said that:

- advice of counsel regarding deportation risks of a criminal conviction falls within the scope of the Sixth Amendment’s right to counsel;
- failure to advise a defendant that a guilty plea might carry a risk of deportation denies the defendant of effective representation under the Sixth Amendment;
- deportation is an integral part of the penalty that could be imposed on non-citizen defendants who plead guilty to specific crimes;
- deportation is not a collateral consequence that does not fall within the defense attorney’s scope of representation; and
- defective representation includes failure to advise as well as misadvise.

In the civil, family, juvenile, and dependency arenas, state court actions can:

- jeopardize lawful status because of findings about mental illness, drug use, or sexual activity, or as a result of uncontested protection orders, or as a result of failure to pay child support;
- make people ineligible to work or remain in the U.S. as a result of a divorce;
- end a step parent-child relationship;
- limit eligibility to receive benefits;
- affect the ability to obtain a drivers license where parental consent is required; and
- jeopardize eligibility to obtain federal immigration protections, such as special immigrant juvenile status.

(Note again that all of the items listed above are merely examples, not an exhaustive listing of the numerous potential impacts of federal immigration status on the state courts and the consequences of state court action on an individual’s immigration status.)

As suggested above, when the connections between immigration status and the work of the state courts are looked at from the perspective of procedural justice, it is apparent that with regard to respect the complexity of federal immigration law, policy, and practice

– coupled with the potential negative status consequences state court actions can have – creates some very high barriers to overcome if we are going to have state courts where immigrants typically feel respected. For example, it is challenging enough for state court practitioners to understand the connections between the work they do – including what is happening, why, and what the consequences of that work might be – and the implications of that work for immigration status, much less communicate their understanding in polite and respectful ways that make sense to immigrants from diverse cultural backgrounds.

Similarly, with regard to **voice**, the potential effects of state court action on immigration status and the practical consequences on immigrants and their families of that action, can often be far more complicated than the consequences are for U.S. citizens. Consequently, even in what might appear to be relatively straightforward state court cases, the stories immigrant victims, witnesses, and litigants need to tell are often very complicated and might require greater patience, knowledge, and assistance by state court authorities than the same type of case might require for U.S. citizen litigants. Moreover, as suggested in the *Padilla v. Kentucky* decision outlined previously, the U.S. Supreme Court recognized the additional burdens immigration status might pose for defense attorneys. Other burdens on court and justice personnel not addressed by the Supreme Court are present too for immigrants to have a voice in family and civil court setting where there often is not representation or in the many types of limited jurisdiction cases where attorneys may not be present in matters that can have serious consequences for immigration status.

The possibility for greatly disproportionate impacts from state court actions between U.S. and non-U.S. citizens in essentially similar cases due to immigration status issues also creates challenges with regard to **neutrality**. For example, routine case outcomes in criminal, family, juvenile, and dependency cases, such as typical plea deals that seem fair and neutral to U.S. citizens, may not seem fair and neutral to non-U.S. citizens because similar case outcomes can dramatically affect immigration status. As indicated previously, the results of typical “good” plea deals, divorce decrees, or child unification performance requirements can look very different for immigrants in court rather than for U.S. citizens when the state court result might, in the concurrent federal immigration arena, mean deportation, ineligibility for naturalization, or separation from a child because one’s right to work or even stay in the United States might have been derived from the marriage and thus attached to the immigration status of a now former spouse. Compliance with court orders might be difficult because remedies and solutions available to U.S. citizens, such as eligibility to work or receive public supported services, might not be available to some immigrants.

With regard to **trust** and immigration status, many immigrants come from countries where authorities, justice institutions, and courts can’t be trusted and thus many immigrants to the U.S. have low levels of trust of these institutions until shown otherwise. Assessments of the attitudes of Latino immigrants in particular, the nation’s largest immigrant population accounting for over 50 percent of the entire immigrant population, consistently reveal not just mistrust but fear of justice institutions. These skeptical views likely are reinforced by the direct and indirect contact with federal immigration agencies

that might have a different mission than the state courts, such as Immigration and Customs Enforcement, or might lack the same level of due process protections as the state courts, such as is the case in Federal Immigration Court or when appearing before U.S. Citizenship and Immigration Services.

Finally, immigration status not only challenges notions of procedural fairness but also greatly complicates language access because it so profoundly raises the stakes involved if language errors are made. For example, small nuances in what a criminal defendant is admitting or pleading to, including nuances that may make no difference to the outcome of the criminal case under state law, can have great significance for an individual's rights and status under Federal immigration law. Indeed, what might be a very minor offense in state law might also be a crime involving moral turpitude in Federal immigration law, when the aspect of moral turpitude is a necessary element of the crime as defined by state statute. Where the crime as defined by statute includes both crimes that qualify as moral turpitude and crimes that do not, an immigration court or administrative hearing body may look to the record of conviction, including the contents of a plea entered by the defendant, to determine if the crime has the necessary elements to make it a deportable offense. Those elements may be difficult for an interpreter to translate in a way that assures the defendant truly understands what he or she is admitting or pleading to, and inaccurate interpretation can lead to serious mistakes by an immigrant defendant.

Language Assistance and the Language, Culture, and Immigration Status Nexus

To provide adequate language assistance, courts everywhere need to develop individual, organizational, and system capacity for culturally-appropriate, and immigration status-sensitive service approaches that help all individuals, regardless of their language and particular ethnic/national culture, successfully navigate the courts and justice system, process information, make wise decisions, and understand and comply with court orders.

All of the above discussion should make it clear that litigants with limited English proficiency, and particularly those who come from other cultures or are non-citizens, may need far more than traditional interpretation and translation to understand what is happening once they find themselves in contact with the legal system. They need a much broader type of language assistance, assistance that is aimed at creating true understanding between them and the courts, including:

- guidance as to what is expected from them and how they will be perceived by different officials they will encounter in the justice system and the potential consequences of not meeting those expectations;
- information about what is happening or has happened at each stage of the legal process, to assure that LEP litigants understand court orders and other conditions imposed on them; and
- assistance in understanding the legal consequences of different strategies or courses of action, such as entering a plea, agreeing to a settlement, or admitting to certain behavior or facts.

The following are five of the most important issues that we see underlying the types of language assistance LEP litigants need, incorporating the effects of culture and immigration status, to understand and be understood effectively in the courts.

First, communication can be both verbal and non-verbal, and the non-verbal components may be subject to the greater misunderstanding. For example, a person's demeanor – and perhaps the demeanor of those accompanying a court participant – may be read by justice system officials as indicating an attitude that was not intended by the individual. Demeanor, which in one culture might signify acceptance of one's fate and shame for one's action, might be viewed as showing disinterest and disrespect by another culture.

Second, the message communicated and received can be a function of both the culture of the litigants and the culture of the justice system, and the clash of those cultures can cause misunderstandings. Judges and other justice system officials need to be aware of the ways in which the courts and justice system embody the values and expectations of the dominant Anglo-European culture, including expectations regarding behavior and demeanor. Those values and expectations may attach significance to behavior that was not intended or understood by the litigant or witness. As one example, people are typically expected to dress in a manner that reflects respect for the court, and dress considered culturally appropriate to show respect for the court by a litigant might be viewed as showing disrespect by justice system officials.

Third, understanding the modes of communication of a particular culture can provide justice system officials with useful information about both the context of a case and the potential for shaping appropriate responses to effectively yield desired outcomes. For example, for people of some cultures, family counseling conducted by a highly trained, "objective" professional might be an effective technique, while being counseled by a "subjective" but respected peer might be more appropriate for people of another culture.



Fourth, the immigration status of a litigant can increase the importance of nuances in the meaning of words, as words that do not have any particular significance to the outcome of a state court case may have a significant effect on immigration status. Further, communications to justice system officials outside of court, such as law enforcement officers, may affect the rights of an immigrant.

Fifth, developing responses to the language assistance needs of litigants from different cultures and with different immigration statuses encompasses two related tasks:

- individual justice system practitioners need to increase their understanding of different cultures so that they might have a better sense of what is going on in a particular case and can help shape better responses to the problems arising in that case; and
- justice systems need to develop and implement improved infrastructure for responding to the needs posed by immigration status and culture generally. Developing culturally competent responses to the needs of different cultures requires improving the entire justice system infrastructure, as well as increasing the awareness of all personnel supported by that infrastructure.

From Interpretation to Language Assistance: The Function of an Intermediary

In moving from interpretation to more comprehensive culturally sensitive language assistance, we recognize that there are strict ethical guidelines for court-qualified interpreters, including the requirement that the interpreter render a complete and accurate interpretation without altering, omitting, or adding anything to what is stated. Yet, as the discussion in this article has shown, adequate language assistance may indeed require that the person explaining what was meant may have to alter, omit, or add to what was stated.

As a result, LEP litigants need more than interpreters; they need intermediaries to serve as a bridge to the justice system. The intermediary may have to take an assertive role, as mediator, counselor, educator, translator, spokesperson and guide. The most common sources for the above assistance might include friends and family, community organizations, advocates, attorneys, as well as court staff skilled in both language and culture.

Some of the roles that the intermediary could assume include:

- serving as a cultural go-between to help the litigant deal with officials in the justice system, including law enforcement officers, social workers, treatment providers and counselors, court clerks, and judges;
- assisting the litigant to communicate with his or her attorney as legal action progresses, particularly in helping the attorney understand the cultural lens through which the client is viewing the American justice system; and
- assisting the litigant's family members in understanding what is happening in the legal process, what to expect as the process progresses, and how they can assist the litigant.

We believe that interpreters may be able to work with intermediaries to promote genuine understanding through accurate translation, cultural equivalence, and an understanding of the nuances in a legal case that affect legal rights not under consideration in the state court case.



III. Conclusions

As courts address the problems of language access they should focus on helping the people who work for the courts and justice system to increase their awareness and understanding of immigration status and culture in general and of particular statutes and cultures. Doing this would help courts to better assess the individual circumstances of a specific case and to help develop appropriate responses in a case. This includes, in specific cases, understanding the characteristics, nuances, and implications of one's own professional, organizational, and ethnic cultures. Similarly, on the level of courts as institutions, to provide procedural fairness requires courts to understand and embrace the cultural and immigration status diversity of the communities they serve and transform into action the enduring values long associated with doing justice in American society in innovative ways that better serve those communities.

In short, as they address the challenges of language access, many courts also likely need to re-think how the English language and Anglo-European cultural-based core assumptions, values, and behavioral expectations they have about American justice and how the courts are supposed to work can be merged with the assumptions, values, and expectations of additional languages and cultures to result in more court-user responsive and likely more effective day-to-day practices and work processes. This re-thinking likely includes scrutiny of every aspect of court structure, management, and operations.

In particular, three things should be included in court efforts to improve access to justice and procedural fairness for LEP participants, while also moving towards the high standards for language assistance outlined by the U.S Department of Justice and the American Bar Association.

First, courts should not focus on addressing language issues alone if they are interested in assuring access to justice. As we have shown throughout this document, language attention separated from culture and immigration status dramatically limits understanding between the courts and what is likely the growing majority of court LEP participants about what is happening, what is expected, and what are the consequences of state court action.

Second, to address the high expectations for court performance embedded in notions of procedural justice, efforts to improve language access in the courts must simultaneously include efforts to become increasingly culturally competent and immigration-status sensitive. Much of the nuance associate with the key components of procedural justice are influenced as much by culture, and in many instances, culture combined with immigration status, as they are LEP court participant access to excellent interpreters and other language specialists in all state court matters.

Third, court practitioners need better tools and supporting organizational and community infrastructure to help them assist individuals, regardless of their particular ethnic/national culture and immigration status. In short, as courts develop and implement improved approaches to providing language services, they also need to develop tools to help the increasingly diverse population of court participants to successfully navigate the courts and justice system, process information, make wise decisions, and understand and comply with court orders.



FIGURE 1: FOUR DIMENSIONS OF PROCEDURAL FAIRNESS*

Respect + Voice + Neutrality + Trust = Procedural Fairness (PF)

Procedural fairness is defined as court users having a sense decisions are made through court processes that are fair. PF included perceptions about (1) how cases are handled and (2) the quality of treatment people receive throughout the court process. Perceptions of PF are the strongest predictor of public satisfaction, approval, and confidence in the courts irrespective of why people are at court, whether they won or lost their case, and their ethnicity, race, and economic or social status, according to a body of national research. Thus, increased perceptions of PF can lead to greater public support for the courts. In addition, people who perceive that court processes are fair and they have received quality treatment are more likely to see the court's authority as legitimate, and in turn are more likely to comply with court orders.

Respect – People react positively when they feel they are treated with politeness, dignity, and respect, and their rights are respected. In addition, helping people understand how things work and what they must do are strongly associated with respect and court user satisfaction.

Voice – People want the opportunity to tell their side of the story, explain their situation/views, or have their stories told to an authority who listens carefully.

Neutrality – People are more likely to accept court decisions when those in authority do things that both are, and are perceived as, fair and neutral (e.g., they have been treated equally; legal principles, court procedures, and assistance from court have been consistent.). People also respond more positively to court decisions when the importance of facts is clearly emphasized and the reason for a decision have been clearly explained.

Trust – People observe behavior or look for actions to indicate they can trust the character and sincerity of those in authority, and those in authority are aware of and sincerely concerned with their needs (e.g., they look for conduct that is benevolent, caring, seeking to do right).

*Copyright PRAXIS Consulting, Inc.; Denver, Colorado. All rights reserved.



FIGURE 2: SUMMARY OF EXPECTATIONS FOR LANGUAGE ASSISTANCE

United States Department of Justice*

- Failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI of the Civil Rights Act and the Safe Streets Act of 1968.
- Access to all court proceedings is critical, including civil, criminal, and administrative matters.
- There should be competent interpretation for LEP individual during all hearings, trials, and motions.
- Courts should provide language assistance to non-party LEP individuals whose presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime or of juveniles and family members involved in delinquency proceedings.
- Procedures handled by officials such as magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers should also include professional interpreter coverage.
- When meaningful access requires interpretation, courts will provide interpreters at no cost to the persons involved.
- Language services is not restricted to courtrooms – meaningful access requirements extends to court functions that are conducted outside the courtrooms, such as court-managed offices, operation, and programs can include information counters; intake and filing offices; cashiers; records rooms; sheriff's offices, probation and parole offices; alternative dispute resolution programs; pro se clinics; criminal diversion programs; anger management classes; detention facilities and similar offices, operations, and programs.
- Criminal defense counsel, child advocates or guardians ad litem, court psychologists, probation officers, doctors, trustees, and other such individuals who are employed, paid, or supervised the courts, and who are required to communicate with LEP parties or other individuals as part of their case-related function, must possess demonstrated bilingual skills or have support from professional interpreters.
- Language services expenses should be treated as a basic and essential operating expense not as an ancillary cost.

* *Summary of memo to Chief Justices and Court Administrators from Thomas E. Perez, Assistant Attorney General, United States Department of Justice, August 16, 2010.*

American Bar Association Standards**

1. **Fundamental Principles.** As a fundamental principle of law, fairness, and access to justice, and to promote the integrity and accuracy of judicial proceedings, courts should develop and implement an enforceable system of language access services, so that persons needing to access the court are able to do so in a language they understand, and are able to be understood by the court.
2. **Meaningful Access.** Courts should ensure that persons with limited English proficiency have meaningful access to all the services, including language access services, provided by the court.
3. **Identifying LEP Persons.** Courts should develop procedures to gather comprehensive data on language access needs, identify persons in need of services, and document the need in court records.
4. **Interpreter Services in Legal Proceedings.** Courts should provide interpreters in legal proceedings conducted within courts and court-annexed proceedings.
5. **Language Access in Court Services.** Courts should provide appropriate language access services to persons with limited English proficiency in all court services with public contact, including court-managed offices, operations, and programs.
6. **Language Access in Court-Mandated and Offered Services.** Courts should ensure that persons with limited English proficiency have access to court-mandated services, court-offered alternative services and programs, and court-appointed professionals, to the same extent as person who are proficient in English.
7. **Translation.** Courts should establish a system for prioritizing and translating written information to persons with limited English proficiency to ensure meaningful access to all court services.
8. **Qualifications of Language Access Providers.** The court system and individual courts should ensure that interpreters, bilingual staff, and translators used in legal proceedings in courthouse, court-mandated and court-offered services are qualified to provide services.
9. **Training.** The court system and individual courts should provide all judges, court personnel, and court-appointed professionals with training on the following: legal requirements for language access; court policies and rules; language services provider qualifications; ethics; effective techniques for working with language services providers; appropriate use of translated materials; and cultural competency.
10. **State-Wide Coordination.** Each court system should have a Language Access Services Office to coordinate and facilitate the provision of language access services.

** *American Bar Association Standards for Language Access in Courts, February, 2012.*

FIGURE 3: SUMMARY OF PROCEDURAL FAIRNESS IMPLICATONS OF IMMIGRATION STATUS, CULTURE, AND LANGUAGE

	Immigration Status	Culture	Language
<p>Respect – People react positively when:</p> <ul style="list-style-type: none"> they feel they are treated with politeness, dignity, and respect; their rights are respected; and they understand how things work and what they are expected to do. 	<p>Literacy levels, in any formal, written, language and familiarity with the way the courts work and expect tend to be lower among many immigrant groups than in the U.S. non-immigrant population.</p> <p>The nexus of federal immigration law, policy and practice, and state law greatly complicates preservation of immigration options and rights.</p>	<p>Definitions, and verbal and non-verbal expressions of respect can differ widely across cultures and between the culture of the courts and court participants.</p> <p>Views about the meaning of facts, ways to know and gain knowledge, and the sources of knowledge differ across cultures.</p>	<p>Although active litigant participation in state court processes is highly valued, it is extremely difficult to convey across languages the verbal and non-verbal expressions that indicate participation, such as expression of respects, understanding, dignity and strong emotions including sincerity, anger, contrition, remorse, hurt, and many more.</p>
<p>Voice – People want the opportunity to:</p> <ul style="list-style-type: none"> tell their side of the story; explain their situation/views; and have their stories told to an authority who listens carefully. 	<p>The potential effects of state court action on immigration status and the practical consequences on immigrants and their families, can often be far more complicated than for U.S. citizens and thus the stories immigrant victims, witnesses, and litigants need to tell are often very complicated and require greater awareness by court authorities.</p>	<p>Story telling is difficult because the low-context culture of the courts might differ greatly from the high-context cultures of many court participants.</p> <p>For example, for many, the messenger might be more important than direct content of message; demeanor might mask emotion; and the amount of time required to communicate might differ greatly.</p>	<p>Story telling is difficult because of differences between the linear, explicit, empirical “fact” driven preferred forms of the standard U.S. English of the courts and the preferred forms of many LEP court participants.</p> <p>Story telling often includes extensive back and forth, back-tracking, and “reading between the lines” and interpreting the silences that form part of the story telling.</p>
<p>Neutrality – People are more likely to accept court decisions when those in authority do things that both are, and are perceived as, fair and neutral.</p>	<p>Routine case outcomes, such as typical plea deals that seem fair and neutral to U.S. citizens, may not seem fair or neutral to non-U.S. citizens because similar case outcomes can dramatically affect immigration status.</p> <p>Compliance with court orders may be difficult because remedies and solutions available to U.S. citizens, such as those based on eligibility to work or receive government supported services, may not be available to immigrants.</p>	<p>Court culture notions of fairness and neutrality – such as (1) following the law using established consistently applied processes to reach just outcomes; (2) authority is based on the formal position one holds in court and justice system; and (3) knowledge is generated by professionals and experts – all might differ from court participant notions of neutrality and fairness.</p>	<p>Among many LEP court participants, there may be suspicion that those who speak another language not only might not be able to understand what I might be trying to express but to my potential disadvantage, might also somehow favor those who speak the same language they do.</p> <p>Many LEP court participants likely are from parts of the world with poor histories regarding the exercise of power relative to language by justice officials.</p>
<p>Trust – People observe behavior or look for actions to indicate they can trust the character and sincerity of those in authority, and those in authority are aware of and sincerely concerned with their needs.</p>	<p>Many immigrants come from countries where authorities, justice institutions, and courts can’t be trusted and have low levels of trust of these institutions in the U.S. until shown otherwise.</p> <p>Many immigrants have direct or indirect contact with federal immigration agencies that lack the same level of due process protections as the state courts.</p>	<p>Court culture and court users notions of trust and how trust is indicated might differ about:</p> <ul style="list-style-type: none"> the importance and forms of expressions of contrition; if and how people fundamentally change the circumstances of their lives; and that complying with the directions of court authorities should help improve your lives and the lives of others. 	<p>Court language is very “wordy,” with ideas spelled-out directly, explicitly, and in detail, even in instances regarding the most intimate and difficult aspects of someone’s behavior and life that in other languages and cultures may never be appropriate to talk about.</p>

FIGURE 4: CRITICAL CULTURALLY BASED ATTRIBUTES IN AMERICAN COURTS

Level of Culture	Traditional American Courts Characteristics
<ul style="list-style-type: none"> ● Behaviors ● Appropriate Attire/Dress ● Body Art and Decoration ● Engagement ● Deference ● Styles of Oral and Written Communication ● Contrition ● Coercion ● Time Management/Scheduling ● Use of Technology ● Public Displays of Affection ● Expressions of Anger ● Expressions of Disagreement 	<ul style="list-style-type: none"> ● Preferred forms of engagement include eye contact, active listening, dialog, and direct expression, including expression of understanding. ● Oral communication should be on-point, organized, and concise. ● System participants should express deference and respect for system officials. ● System personnel should express deference and respect for hierarchy of positions within system. ● Written communication should be structured and on-point. ● All official communication should be carefully documented in a written form. ● Time should be carefully managed. ● Being on-time and prompt are important. ● Time-frames should be established and followed around a series of predetermined events. ● Behavior can be modified by learning the correct way to do things. ● Expressions of contrition are important, and should include clear acknowledgement of responsibility for wrongdoing. ● Improvement is demonstrated by completing activities. ● Technology provides useful tools for increasing the efficiency of communication.
<p>Key Values Regarding:</p> <ul style="list-style-type: none"> ● Respect ● Dignity ● Fairness ● Integrity ● Honesty ● Justice ● Punishment/Rewards ● Family ● Obedience ● Compliance ● Reciprocity ● Intervention ● Community 	<p><i>Respect and dignity</i> – listen to people carefully and attempt to respond to their needs. Be polite and explain processes and outcomes. Explain one’s motivations and actions.</p> <p><i>Fairness and integrity</i> – follow the law using established, consistently applied processes. Be impartial, and treat people equally while doing individual justice in individual cases.</p> <p><i>Honesty</i> – Provide full picture, and reveal intent and reasons for behavior.</p> <p><i>Justice</i> – following established processes carefully should result in best outcomes for all involved.</p> <p>Punishment and rewards – fines, confinement, education, mentoring and other sanctions are techniques to be used to deter negative behavior and encourage positive behavior.</p> <p><i>Family</i> – parents, children, siblings, spouses, and other intimate relatives are defined by blood and marriage, or adoption and other court action.</p> <p><i>Obedience</i> – Follow the directions of judges and other formal authorities. Authorities are working to help you.</p> <p><i>Compliance</i> – Follow the directions of court and justice system personnel; following their directions will improve your life and the lives of others.</p> <p><i>Reciprocity</i> – The system will reward people who make an honest effort to meet system expectations.</p> <p><i>Intervention</i> – The system is doing things and asking you to do things for your own good. Officials have the authority to intervene in all aspects of people’s lives, including the intimate aspects of people’s lives.</p> <p><i>Community</i> – A community is defined largely by geographic boundaries shared by people with a common civic interest, in contrast to interest defined by ethnicity, clan, family, or other social groupings that might transcend geography.</p>
<p>Fundamental Assumptions and Beliefs About:</p> <ul style="list-style-type: none"> ● Time ● Causality ● Illness ● Gender Roles ● Authority ● Human Nature ● Motivation ● How to Learn/Gain Knowledge ● Life Partners ● Same Sex Partners 	<ul style="list-style-type: none"> ● People can, and sometimes should, change the circumstances of their lives. ● People are responsible for their actions. ● People are fundamentally equal. ● Authority is based on the formal position one holds in the courts and justice system. ● The courts and justice system are involved in problem-solving; the system helps to identify, clarify and solve problems in peoples’ lives. ● Time is linear, structured, and can be managed. ● The causes of behavior are based in the physical world and subject to modification. ● The causes of illness are organic and can be modified. ● Individuals can change their behavior in part by changing their responses to negative environments or controlling their environment. ● People are motivated by material rewards and punishments. ● The role differences between men and women are flexible; men and women should be equally responsible for family well-being and child rearing. ● Knowledge is generated by professionals and experts and transmitted through classes and other forms of education and experience based on tangible rewards and punishments. ● Most people are fundamentally good and can improve their lives. ● One’s presence in court is defined by being a party or an official. (Not by who you are or who you know.)

FIGURE 5: HIGH AND LOW-CONTEXT CULTURES AND THE COURTS

Characteristics		Implications for the Courts and Justice System
High Context Cultures	Low Context Cultures	
Much covert and implicit	Much overt and explicit	<ul style="list-style-type: none"> • Messenger might be more important than direct content of message. • Form and structure of oral communication might be more important than written communication. • Demeanor might mask emotion. • Decision-making about what might superficially appear to be circumstances of an individual might require extension group interaction. • The amount of time required to communicate might differ greatly, especially across high and low context groups. • Degree of respect, trust, and confidence in government institutions and officialdom might differ.
Internalized messages	Plainly coded messages	
Much nonverbal coding	Verbalized details	
Reserved reactions	Reactions on the surface	
Distinct in and out groups	Flexible in and out groups	
Strong people bonds	Fragile people bonds	
High commitment	Low commitment	
Open and flexible time	Highly organized time	

Endnotes

¹ John Martin is the Director of the Immigration and the State Courts Initiative of the Center For Public Policy Studies. The Initiative is supported by a grant from the State Justice Institute. Steve Weller and David Price are Senior Consultants to the Project. Angie Lederach and Jeff Yoder are the project Research Associates.

² Grieco, Elizabeth M. and et. al. (May 2012). The Foreign-Born Population in the United States: 2010. America Community Survey Reports, U.S. Census Bureau. Retrieved from: <http://www.census.gov/prod/2012pubs/acs-19.pdf>

Pew Research Center. (July 2012). The Rise of Asian Americans. Pew Research Center. Retrieved from: <http://www.pewsocialtrends.org/2012/06/19/the-rise-of-asian-americans/>

Shin, Hyon B. and Robert A. Kominski. (April 2010). Language Use in the United States: 2007. U. S. Census Bureau. Retrieved from: <http://www.census.gov/prod/2010pubs/acs-12.pdf>

³ Grieco, Elizabeth M. and et. al. (May 2012). The Foreign-Born Population in the United States: 2010. America Community Survey Reports, U.S. Census Bureau. Retrieved from: <http://www.census.gov/prod/2012pubs/acs-19.pdf>

Martin, Daniel C. (May 2011). Refugees and Asylees: 2010. Department of Homeland Security. Retrieved from: http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_rfa_fr_2010.pdf

Passel, Jeffrey and D'Vera Cohn. (February 2008). U.S. Population Projections: 2005-2050. Pew Hispanic Center. Retrieved from: www.pewhispanic.org/files/reports/85.pdf

Passel, Jeffrey. (March 2006). The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates Based on the March 2005 Current Population Survey. Pew Hispanic Center. www.pewhispanic.org/files/reports/61.pdf

Taylor, Paul, Mark Hugo Lopez, Jeffrey Passel and Seth Motel. (December 2011). Unauthorized Immigrants: Length of Residency, Patterns of Parenthood. Pew Hispanic Center. Retrieved from: <http://www.pewhispanic.org/files/2011/12/Unauthorized-Characteristics.pdf>

Rytina, Nancy. (July 2012). Estimates of the Legal Permanent Resident Population in 2011. Department of Homeland Security. Retrieved from: http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_lpr_pe_2011.pdf

⁴ See for example, Tom R. Tyler. (2004) "Procedural Justice and the Courts," 44 *Court Review*, pp. 26-31.

⁵ This section relies heavily on the work of Myron Lustig and Jolene Koester (2006) *Intercultural Competence: Interpersonal Communication Across Cultures*. Boston: Pearson Education, Inc. pp. 183-196, and 235-242.

⁶ See for details, Roseann Duenas Gonzalez, Victoria F. Vasquez, and Holly Mikkelsen. (1991) *Fundamental of Court Interpretation: Theory, Policy, and Practice*. Durham, N.C.: Carolina Academic Press, pp. 16-18.

⁷ The notion of culture refers to the commonly shared, largely taken for granted assumptions about goals, values, means, authority, ways of knowing, and the nature of reality and truth, human nature, human relationships, and time and space, that a group has learned throughout its collective history. Ethnic/national culture refers to groups whose individual members common affiliation is defined by reference to ethnicity or nation. Professional culture refers to groups of people with affiliations defined by occupation and profession, such as judge, court administrator, probation or social worker. Organizational culture refers to groups of individuals interacting within particular administrative units and agencies that together form the institutions of justice within a society such as courts, district attorneys, police departments, and child protection agencies.

⁸ Martin, John, Marcus Reinkensmeyer, Barbara Rodriguez Mundell, and Jose Guillen. (2008). "Becoming a Culturally Competent Court", 22/4 *Court Manager*, 6-24. In addition, this section on culture is based heavily on the work completed over the decades by Edward Hall (1966) *The Hidden Dimension*. New York: Doubleday; and Myron Lustig and Jolene Koester (2006) *Intercultural Competence: Interpersonal Communication Across Cultures*. Boston: Pearson Education, Inc.

⁹ Bryson, John and Ken Salazar. (2012). National Travel & Tourism Strategy. Task Force on Travel and Competitiveness. Retrieved from: <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=295021>

¹⁰ Passel, Jeffrey S. and D'Vera Cohn. (April 2009). A Portrait of Unauthorized Immigrants in the United States. Pew Hispanic Center. Retrieved from: www.pewhispanic.org/files/reports/107.pdf

¹¹ Weller, Steven and John A. Martin (2012) "The Risk to Immigrants For Drug Court Participation," 27/2 *Court Manager*, 6-17.

Weller, Steven and John A. Martin (2011) "Uses of State Criminal Court Records in Immigration Proceedings," 26/4 *Court Manager*, 22-35.

Weller, Steven and John A. Martin (2011) "Implications of Padilla v. Kentucky for the Duties of State Court Criminal Judges and Court Administrators," 25/4 *Court Manager*, 46-52.

Weller, Steven and John A. Martin (2011) "Implications of Padilla v. Kentucky for the Duties of the State Court Criminal Judge," 50/1 *Judges Journal*, 13-17.

Martin, John A., Steven Weller, David Price, Angie Lederach, and Jeff Yoder (2010). "Immigration and the State Courts Assessment and Measurement Framework," 25/2 *Court Manager*, 36-47.

Martin, John A., Steven Weller, David Price, Angie Lederach, and Jeff Yoder (2009). "Addressing Immigration in the State Courts," 24/1 *Court Manager*, 16-37.

