

# **The Evolution of a Profession**

*On the Reclassification of New York State Court Interpreters*

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## Introduction

This report analyzes the changes and challenges presented by the current state of court interpreting<sup>1</sup>, and in the provision of access to justice for Limited English Proficient court users in New York State. In addition, it argues for a reclassification of the state's court interpreters to a judicial grade reflective of the complexity and difficulty of their job as well as their importance to the court system. In it, we discuss the profound changes in the profession of court interpreting over the last 40 years; we examine the nature of interpreters' work as compared to that of other titles in the courts, paying particular attention to questions of equitable compensation; we compare New York's compensation scheme against cost of living vis-à-vis those of other states and the federal government; and we look at the fierce competition the Unified Court System faces in recruiting and retaining qualified candidates. Most importantly, we present an analysis of how all of these factors have resulted in a scarcity of qualified interpreters, a scarcity which has been well documented in the press, and by government, legal, and community agencies. Our report cites those same sources in pointing out the difficulties this scarcity presents in providing all court users with meaningful access to justice. In the final section we make our recommendation for a reclassification of court interpreters which is consistent with equity, fairness, and the public interest.

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<sup>1</sup> Interpreting is the oral translation of one language into another or the communication by sign language to or from an oral language or another sign language. The standard sign language in the US is American Sign Language, but many exist. See European Union of the Deaf, "Sign Language Interpreter Guidelines For international/European level meetings," accessed March 19, 2019, <https://www.eud.eu/about-us/eud-position-paper/sign-language-interpreter-guidelines/>

The three modes of oral interpreting used in court are simultaneous, consecutive, and sight translation. See New York State Unified Court System, *Court Interpreter Manual and Code of Ethics*, (New York, 2018), 7. [http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/CourtInterpreterManual\\_1.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/CourtInterpreterManual_1.pdf)

## A Changed Reality: The Increasing Professionalization of Interpreters

The enactment of the Court Interpreter Act in 1978 is often cited as the seminal moment in the emergence and development of court interpreting as a profession.<sup>2</sup> Although the Act does not govern the state courts, it has served as the prototype for all subsequent language access laws and rules in the country. The Court Interpreter Act and all ensuing court interpreter canons are formulated in accordance with the standard of “legal equivalence,” which demands that all Limited English Proficient (LEP) defendants have the right to be in a legal position equivalent to that of a native English speaker possessing a similar level of education and intelligence.<sup>3</sup> This means that court interpreters have to interpret both idiomatically and verbatim, with due attention to the linguistic register of the speaker, and without omissions or embellishments.<sup>4</sup> This extremely ambitious standard has led to the ever-increasing professionalization of court interpreters over the 40 years since the Act became law. Nevertheless, at the same time that the State of New York and the profession in general have come closer and closer to realizing the ideal of legal equivalence (with the foreseeable consequence that the demand for court interpreters able to meet that standard has risen dramatically), compensation for interpreters in the state’s court system, when adjusted for inflation, has stagnated (see figure 1 below).

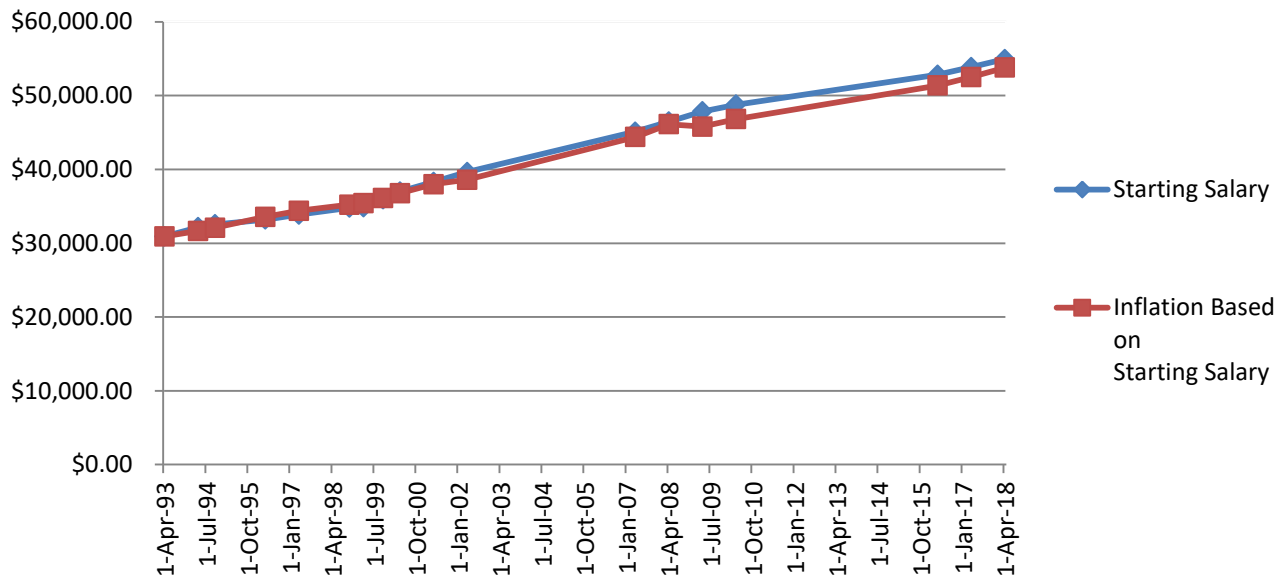
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<sup>2</sup> Susan Berk-Seligson. *The Bilingual Courtroom*. Second Edition (University of Chicago Press, 2017), 1.

<sup>3</sup> Roseann Dueñas González, Victoria F. Vásquez, and Holly Mikkelson, *Fundamentals of Court Interpretation: Theory, Policy and Practice*, 2nd ed. (Durham: Carolina Academic Press, 2012), 14.

<sup>4</sup> *Code of Ethics*, 7.

**Figure 1: New York State Court Interpreter Salaries Compared to Inflation<sup>5</sup>**



The notion that bilingualism in and of itself enables one to interpret is an unfortunate and persistent myth. Yet this notion is best dispelled by the fact that, of 1,495 approved applicants who participated in the 2015-2016 New York State Spanish court interpreter exam cycle, only 106 passed, or 7% of the total—and that only after the written and oral exams were graded on a curve to furnish enough candidates to allow the state to fill interpreter vacancies (before the curve, the number of successful

<sup>5</sup> According to the salary tables for New York State Court interpreters as published in successive collective bargaining agreements, the minimum starting salary for court interpreters as of April 1, 1993 was \$30,923, while the maximum was \$43,463; as of April 1, 2018 they were \$54,947 and \$80,084, respectively. This entails a 184% increase, while the rate of inflation in New York State over the same period was 177%. Salary Schedules under JG-518 from April 1, 1993 to April 1, 2018, “AGREEMENT between the STATE OF NEW YORK UNIFIED COURT SYSTEM and DISTRICT COUNCIL 37...LOCAL 1070.”

U.S. Dollar Inflation Calculator, “New York inflation in 1993,” accessed June 8, 2019, <http://www.in2013dollars.com/New-York/price-inflation/1993-to-2018?amount=20>

examinees was dramatically lower).<sup>6</sup> By way of comparison, the overall Certified Public Accountant (CPA) Exam pass rate hovers between 45% and 50%; 68% percent of the candidates for the New York State Bar Exam passed in 2017; and an average of around 90% of the U.S. Medical Licensing Examination (USMLE) non-foreign candidates to become practicing MDs passed in 2017. The fact that all of these professionals have to undergo rigorous formal training as a bar to taking the exam only underscores the fact that the 7% of interpreters who were able to pass the last test were, at minimum, bringing to the table the mastery of at least two languages in much more than their legal vocabularies. Indeed, as New Jersey's "Overview for the Oral Examination for Prospective Interpreters" states: "Court interpreters [...] must be extraordinarily bilingual, possessing a highly educated, native-like ability in both English and a second language." Obviously, this goes beyond a mere highly educated bilingualism.<sup>7</sup> However, due to

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<sup>6</sup> One of the authors of this report participated in the two exam cycles ending in 2011 and 2016, respectively, and found that the latter was markedly more difficult than the former. After the last exams, he participated in the so-called computational review in which the OCA explained the grading methodology. The civil service list of candidates who passed the exam was published online, where it remained several months until it was apparently taken down.

<sup>7</sup> Language Services Section (LSS), Programs and Procedures Unit Office of Management and Administrative Services, Administrative Office of the Courts, "Overview of the Oral Examination for Prospective Interpreters," (Trenton: January 2019), 1, [https://njcourts.gov/forms/10294\\_oralexam\\_appl.pdf](https://njcourts.gov/forms/10294_oralexam_appl.pdf)

Simultaneous interpreting requires use of at least 22 cognitive skills at any given moment. Roseann Dueñas González, Victoria F. Vásquez, and Holly Mikkelson. *Fundamentals of Court Interpretation: Theory, Policy and Practice*, 1st ed. (Durham: Carolina Academic Press, 1991), 176.

See also New Jersey Courts, "Knowledge, Skills, and Abilities (KSAs) for the Profession of Court Interpretation," accessed February 2, 2019, <https://www.njcourts.gov/public/assets/langSrvcs/ksa.pdf?cacheID=fxM2M7A>

Just in terms of vocabulary, as the Federal Court Interpreters Orientation Manual sets out, "While court interpreting may appear to be a field that primarily requires knowledge of legal vocabulary, the subject matter to be interpreted is often quite diverse. In an average criminal trial, sophisticated legal arguments will be interpreted, as well as the testimony of handwriting, ballistics, fingerprint, chemical, DNA, and drug experts. Interpreters must have a broad active and passive vocabulary and an excellent knowledge of regionalisms, idioms and dialectical variations of the countries in which their language is spoken. Court interpreters must have these variations of language readily available due to the diversity of witnesses and defendants." Court Services Office, Administrative Office of the United States Courts, "Federal Court Interpreter Orientation Manual and Glossary," last revised May 8, 2014, 23.

the particular versatility required to accurately interpret multiple lexicons, it is, paradoxically, only recently that interpreting has become an academic major or title, and that only at a few universities. While the expertise has, of course, existed since the first societies began to interact, the levels of ever-increasing specialization demanded to perform in more specific settings can only be certified by experts in the respective subfield. So while many judiciaries with less demanding exams also require that their court interpreters have a bachelor's degree of some kind, others, such as New York, are principally concerned that applicants be able to pass an examination designed by specialists in the field, while the educational requisite to take the exam is a high school diploma. An unfortunate side effect of this approach is the assumption that this means that New York court interpreters are only required to have a high school diploma and should be remunerated accordingly.

In reality, however, most interpreters are highly educated. An anonymous survey conducted among its members by the Interpreters' Chapter of Local 1070 of District Council 37 of the American Federation of State, County, and Municipal Employees, the union that represents interpreters in New York City courts, found that of 70 respondents to the survey, 60 held degrees in higher education. Of the 60, 7 held Associates Degrees. 53 more held at least a Bachelor's Degree, while of those 53, 14 had Master's Degrees, one had a PhD, and 3 held JD Degrees. The results of a second study conducted by the union among 40 interpreters in courts in New York County (about half the total interpreters in Manhattan courts) are even more emphatic: 36 advanced degrees, among them two Associate's, 34 Bachelor's, 13 Master's, and a PhD.<sup>8</sup> Meanwhile, it is patently obvious from these data that those interpreters who only have a high school diploma have acquired an extraordinary level of linguistic and cultural

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<sup>8</sup> Court Interpreter Chapter, AFSCME DC 37 Local 1070, "Interpreter Survey," questionnaire (New York: February 2018).

Court Interpreter Chapter, AFSCME DC 37 Local 1070, "New York County Interpreter Survey," questionnaire (Manhattan: September 2018).

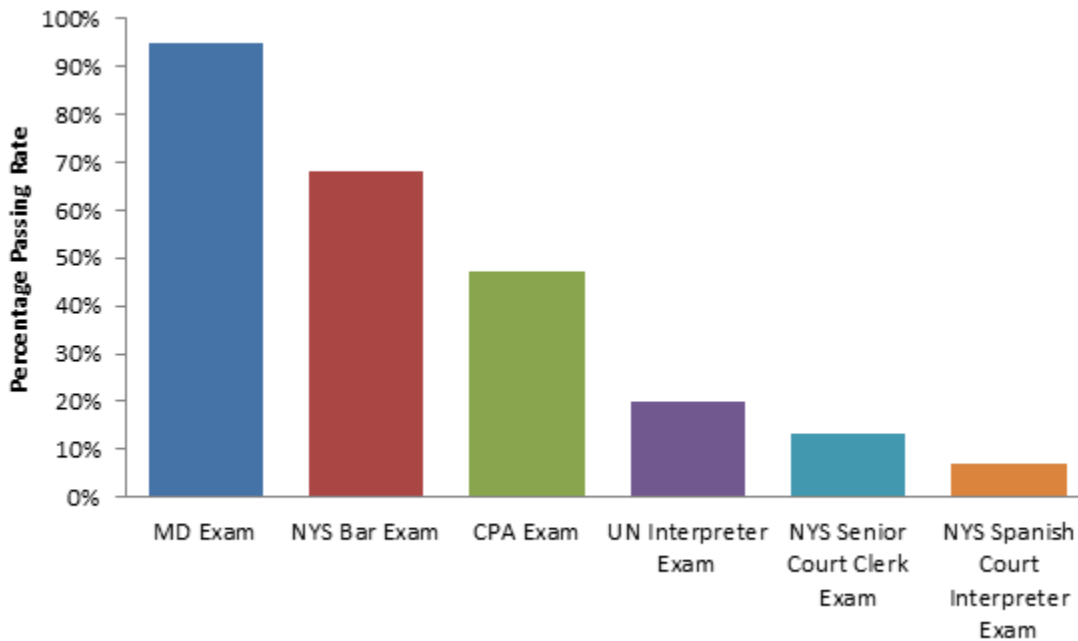
competence. As Dueñas González et al. observe, since “the prerequisite skills and formal learning are so complex and extensive, professional interpreters and translators are reputed to have ‘the longest apprenticeship of any profession’.”<sup>9</sup> This is the reality of the court interpreter’s profession, with which the Unified Court System has struggled to come up to date.

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<sup>9</sup> M. Baker, *In Other Words: A Coursebook on Translation*, 2<sup>nd</sup> ed. (New York: Routledge, 2011). In *Fundamentals*, 2nd ed.



Figure 2: Passing Rates of Major Professional Exams<sup>10</sup>



<sup>10</sup> United States Medical Licensing Examination, “2017 Performance Data,” accessed February 2, 2019, <https://www.usmle.org/performance-data/default.aspx>

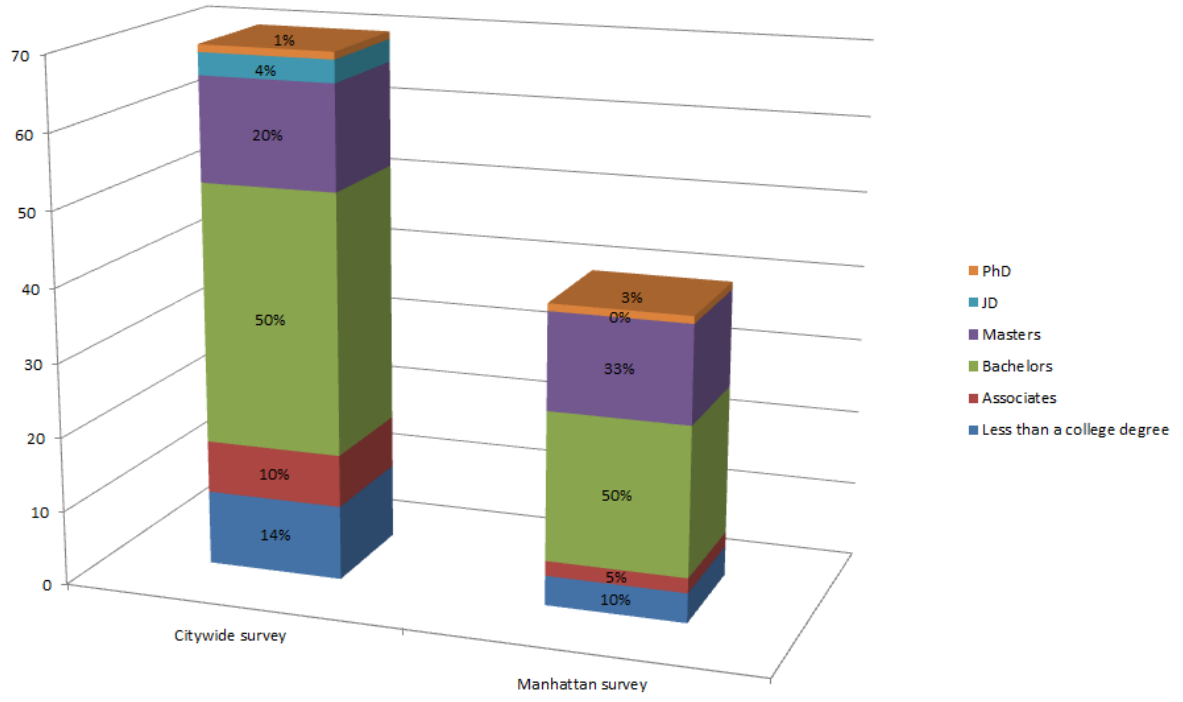
68% percent of the candidates for the New York State Bar Exam passed in 2017. Staci Zaretsky. “The New York Bar Exam Results Are Out! (July 2017): How did test-takers fare on this summer’s exam?” *Above the Law*, October 24, 2017, <https://abovethelaw.com/2017/10/the-new-york-bar-exam-results-are-out-july-2017/>

“2018 CPA Exam Pass Rate – Q3 Numbers are In,” Gleim Exam Prep, January 9, 2019, <https://www.gleim.com/cpa-review/blog/2018-cpa-exam-pass-rate/>

Maha El-Metwally, “United Nations: The Language Competitive Examination (LCE),” ATA Interpreters Division, August 16, 2017, <http://www.ata-divisions.org/ID/el-metwally-un-lce/>

Senior court clerk passing rate obtained from exam eligible list. New York State Unified Court System, “Title: Senior Court Clerk, Exam No: 55-803,” date established: Thursday, June 14, 2018.

Figure 3: New York State Court Interpreter Education Levels



## A Question of Fairness: Interpreters Compared to Other Court Titles

The last time that court interpreters were reclassified by the Unified Court System was in 1994, when they were raised from a judicial grade of 16 to their current line 18. Given the above analysis of the changing nature of the job and its rapidly increasing professionalization, it is well past time to consider the title in relation to other court titles. All of the titles we will consider—court officer and court reporter in this section, and court clerk in the following section—are currently remunerated at higher rates than court interpreters. We do not dispute that these titles deserve the compensation they receive. What we ask is whether, for example, using the legal criteria for comparing titles in arbitration as set out in the Taylor Law, it is fair for all of those non-judicial employees to be classified at a higher line than court interpreters. The law states that an arbitrator should take into account “...comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills...” While this passage is taken from the section of the statute dealing with impasses in collective bargaining negotiations, that does not detract from its validity as a guide to the state’s points of reference when determining relative salary levels. Similarly, Chief Administrative Judge Lawrence K. Marks posited “fairness, objectivity, regularity, and institutional integrity” as the guiding principles for New York State judges’ successful request for a salary readjustment in 2015.<sup>11</sup>

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<sup>11</sup> Public Employees’ Fair Employment Act (The Taylor Law), “§ 209 Resolution of Disputes in the Course of Collective Negotiations...(4)(c)(v)(c) comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills...” accessed March 1, 2019, <https://www.perb.ny.gov/taylor-law/>

Lawrence K. Marks, Chief Administrative Judge of the State of New York, *Submission to the 2015 Commission on Legislative, Judicial and Executive Compensation*, table of contents, 13.

Also compare: David B. Rottman, Ph.D. et al. *Judicial Compensation in New York: a National Perspective, A Report to the Chief Judge of the State of New York*, National Center for the State Courts, May 2007. “The most relevant standards for purposes of this report are:

The first case we will examine is that of court reporters, who perform a task similar to court interpreters in that they are also required to “transfer” information, although interpreting entails additional levels of complexity. As the authors of *The Fundamentals of Court Interpretation* (generally considered to be the standard authority on the field) put it:

A court reporter must listen, transcribe, and engage in a number of complex listening and comprehension tasks in order to transcribe the source message into the record verbatim (Walker, 1987). During that same period of time, the court interpreter must listen, comprehend, abstract the message from the words and word order of the message, store the ideas into memory, and then set about searching for conceptual and semantic matches to reconstruct the message in the other language, all this within the cultural and linguistic constraints and operating rules of that language. This takes place while the interpreter is listening for the next “language chunk” to process while simultaneously monitoring his or her own output.<sup>12</sup>

This is clearly recognized by other state judiciaries and especially the federal government, who pay interpreters much higher salaries. One of the reasons court reporters in New York State were classified, quite correctly, at the fairly high judicial grade of 24 (and 27 in Supreme Court!) at the time of the publication of their original title standards in 1988, is that they are required to have either three years of “recent general verbatim reporting experience” or the completion of a course in court reporting plus two years of experience in order to qualify to test for the position. Interpreters, as mentioned previously, must fulfill no such requirement. Nevertheless, in practical terms, the fact that 86% of surveyed interpreters (90% in Manhattan) possess advanced degrees is testament that much more than a high school education, be it achieved in or out of academia, and even more than a course and two years’ experience, is necessary for court interpreters to perform their profession effectively. Experts

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- The level of compensation must be high enough to attract competent and highly qualified lawyers to seek judicial office.
  - The level of compensation should be reviewed and adjusted on a regular, periodic basis to assure that it remains high enough to retain able and experienced judges on the bench,” 17.
- “We note additionally that compensation should bear some reasonable relationship to the value of a particular occupation,” 22.

<sup>12</sup> *Fundamentals*, 1st ed., 23.

agree that the most elemental skill an interpreter brings to the job, that is, fluency in more than one language, takes an average adult between four and seven years to acquire. How much greater an investment, then, in time, effort, and financial resources, for an average adult to acquire the level of fluency and specialization required for court interpreting.<sup>13</sup>

With respect to court officers, interpreters are as aware as other court personnel of their essential role in assuring security and an orderly process in the courtroom. Nor should one overlook the fact that they must at times put themselves in harm's way in carrying out their duties; yet it appears obvious that those duties do not require the same mental and educational preparation as court interpreting. Even as regards the potential risks and dangers of the two positions, by no means should one consider that of the interpreter as safe or risk-free. For one thing, interpreters are frequently in closer proximity to defendants, some of whom may be dangerous people accused of violent crimes, than any other court personnel—and, unlike court officers, interpreters are unarmed. More than this, however, interpreters inevitably incur vicarious trauma due to the subject matter they deal with. The American Counseling Association (ACA) provides a lay description of vicarious trauma as the “emotional residue of exposure that counselors have from working with people as they are hearing their trauma stories and become witnesses to the pain, fear and terror that trauma survivors have endured.” Indeed, interpreters not

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<sup>13</sup> Kenji Hakuta, Yuko Goto Butler, and Daria Witt, “How Long Does it Take English Learners to Attain Proficiency,” paper (Stanford University, 2000), 13, <https://web.stanford.edu/~hakuta/Publications/%282000%29%20-%20HOW%20LONG%20DOES%20IT%20TAKE%20ENGLISH%20LEARNERS%20TO%20ATTAIN%20PR.pdf>

According to Miguel A. Jiménez-Crespo, PhD, Associate Professor and Coordinator of the Translation and Interpreting Program in the Department of Spanish and Portuguese at Rutgers University, besides the general language acquisition involved in coming up to speed as a court interpreter, the latter has to become a “member” of the “specialized discourse community,” familiar with both the general and specialized language that judges and lawyers know. Miguel A. Jiménez-Crespo, PhD, e-mail message to author, January 3, 2019.

Dueñas González et al. argue that given “the vast amount of knowledge and the highly technical skills that are required of court interpreters, ideally they should be trained in a one- or two-year postgraduate program, as are conference interpreters.” They later go on to say that at “this stage in the development of the profession, however, it is still unrealistic to expect all candidates for interpreter certification to have graduated from degree programs...” *Fundamentals*, 2nd ed., 1148.

only hear traumatic stories, they must carefully focus on them, then reproduce them in their brains while choosing and reconstructing the most appropriate rendering in the target language, and finally articulate them, in the first person. This physiological re-enactment involves not only the cerebral organs generally understood to relate to speech perception, comprehension, and production, but even the brain's basal ganglia.<sup>14</sup> It is no wonder, then, that one author states, "since interpreters usually repeat clients' trauma stories in the first person, the impact of the trauma could be compounded for them."<sup>15</sup>

However, despite the potential for stress<sup>16</sup>, and despite the fact that both from the cognitive and the learning-acquisition standpoints, court interpreting is on par with the most demanding tasks of the courts' non-judicial staff<sup>17</sup>, New York's court interpreters are ranked at much lower judicial grades than

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<sup>14</sup> Also known as the "reptilian brain," it is the oldest of the three brains and controls the body's vital functions. Narli Golestani, "The Neuroscience of Court Interpretation," Academia Edu, 2018, [https://www.academia.edu/19573817/The\\_Neuroscience\\_of\\_Simultaneous\\_Interpretation](https://www.academia.edu/19573817/The_Neuroscience_of_Simultaneous_Interpretation)

See also Rinne, Tommola, Laine, et al., "The Translating Brain: Cerebral Activation Patterns During Simultaneous Interpreting," *Elsevier Neuroscience Letters*, September 19, 2000, [https://www.academia.edu/32368854/The\\_translating\\_brain\\_cerebral\\_activation\\_patterns\\_during\\_simultaneous\\_interpreting?email\\_work\\_card=thumbnail-desktop](https://www.academia.edu/32368854/The_translating_brain_cerebral_activation_patterns_during_simultaneous_interpreting?email_work_card=thumbnail-desktop)

American Counseling Association, "Vicarious Trauma," Fact Sheet # 9, 10-11, accessed February 2, 2019, <http://www.counseling.org/docs/trauma-disaster/fact-sheet-9—vicarious-trauma.pdf?sfvrsn=2>

<sup>15</sup> R. Becker & R. Bowles, "Interpreters' experience of working in a triadic psychotherapy relationship with survivors of torture and trauma: Some thoughts on the impacts on psychotherapy." In B. Raphael & A. Malak, Eds., *Diversity and mental health in challenging times* (Culture and Mental Health: Current Issues in Transcultural Mental Health Monograph No. 8, 2001 [pp. 222–230]. Sydney, Australia: Transcultural Mental Health Unit), 224.

<sup>16</sup> See Mirta Vidal, "New Study on Fatigue Confirms Need for Working in Teams," *Proteus (NAJIT)*, Winter 1997.

<sup>17</sup> As the National Institute of Health recently published: "Interpreting, especially simultaneous interpreting (SI), is a particularly demanding language processing task for the cognitive system underpinning language abilities. Such difficulties include the intensity and continuity of new speech input (Christoffels et al., 2006; Dong and Zhong, 2017), the general temporal overlap (simultaneity) of listening, retaining, comprehending (sometimes referred to as encoding) the input (Seeber and Kerzel, 2011), orally rendering the production, and the conflict and intervening effect of the concurrent activation of two languages (Gerver, 1976; Lambert, 1992; Padilla et al., 1995; Christoffels and De Groot, 2004; Christoffels et al., 2006; Dong and Liu, 2016). It is postulated that these cognitive underpinnings of interpreting require types of attention-sharing and overloading of working memory that people generally find very difficult (Cowan, 1995; Gile, 2008)." Junying Liang, Yuanyuan Fang, Qianxi Lv, and Haitao Liu,

reporters or officers, as well as clerks (a concrete problem for the Office of Court Administration as well; see *A Question of Responsibility*, below). This is in stark contrast to the situation in the federal courts, which have recognized, in concrete and monetary terms, the value and the difficulty of the interpreter's job. Interpreters in the federal system are compensated at a higher rate than reporters, clerks, and officers. Nor should one suppose that, due to more stringent hiring practices, the federal system's salaries are higher in general. Every title we have discussed has a higher maximum salary in the New York State court system than in the federal system (and all but reporters have a higher starting salary); all, that is, *except court interpreters*, whose maximum salary in New York State (\$84,084) comes to roughly *half* of what federal interpreters are paid in the same localities (\$153,510). Surely this flies in the face of the tenets of equity and fairness as set forth in the Taylor Law, not to mention the principles of fairness, objectivity, regularity, and institutional integrity set forth by New York State judges in their 2015 proposal.

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"Dependency Distance Differences across Interpreting Types: Implications for Cognitive Demand," *Frontiers of Psychology*, US National Library of Medicine, National Institute of Health, December 12, 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5733006/>

**Figure 4: New York State and Federal Court Salary Comparison<sup>18</sup>**

TITLE	MAXIMUM SALARY	
	NYS	Federal
Court Reporter	\$129,218	\$107,539
Court Clerk	\$96,996	\$82,984*
Court Officer	\$88,275	\$62,400**
Court Interpreter	\$84,084	\$153,510

\*The rough equivalents to court clerks in the federal system are “docket clerks,” who earn up to \$75,358, and “courtroom deputies,” who earn up to \$82,984

\*\*Court officers in the federal system are independent contractors and fall outside of the salary schedules.

### **A Question of Responsibility: Interpreter Recruitment and Retention and the Provision of Language Access**

In the end, the basic responsibility of the Office of Court Administration is the provision of unbiased, objective justice to the extraordinarily diverse population of the state of New York. In regard to language access, that responsibility is daunting. According to the Migration Policy Institute, almost 25% of New

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<sup>18</sup> See United States Courts, “Careers,” accessed March 18, 2019, <https://www.uscourts.gov/careers>. The federal courts use five different salary schedules, broken down further by region. One can ascertain salary levels in New York City either by job vacancies in New York City or by extrapolating from vacancies in other regions based on the respective salary grade.

The federal court officer salaries here are based on a \$30/hr rate maximum paid by Akal Security, Inc. paid to contractors in the 2<sup>nd</sup> US Court District, which includes New York City. See US Marshal Service, “Court Security,” accessed March 19, 2019, [https://www.usmarshals.gov/judicial/court\\_security\\_officer.htm](https://www.usmarshals.gov/judicial/court_security_officer.htm) as well as Glass Door, “Akal Security,” accessed March 19, 2019, <https://www.glassdoor.com/Salary/Akal-Security-Salaries-E33845.htm>



York City residents over the age of five (in a city of 8.5 million!) have limited English proficiency (LEP).<sup>19</sup> Not only that—one sixth of New York City households “contain no English-proficient adults over the age of 14.”<sup>20</sup> What these statistics reveal is a huge group of people—or rather, a huge group of diverse communities—whose access to justice depends on the court system’s ability to hire and maintain a large staff of qualified court interpreters (and this only in the five boroughs, without taking into account the considerable need for language access services in upstate courts). New York State has also made the legal commitment to provide an interpreter to any “party or witness, or interested parent or guardian of a minor party in a Family Court proceeding” as well as to any person “with limited English proficiency seeking assistance at the court clerk’s office.”<sup>21</sup> In concrete terms this means that in New York State courts, interpreters interpret for witnesses, plaintiffs, defendants, and parents or guardians of minors at trials, conferences, and hearings; assist the clerk in providing information or receiving answers, motions, complaints, or any other judicial processes; interpret between attorneys and their clients in criminal,

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<sup>19</sup> Migration Policy Institute, “The Limited English Proficient Population in the United States,” July 8, 2015, <http://www.migrationpolicy.org/article/limited-english-proficient-population-united-states>

Indeed, “according to the most recent federal census [...] nearly 30 percent of New Yorkers—two and a half million people—primarily speak a language other than English at home, a rate more than 50 percent higher than the national average, and over two million New Yorkers are not fluent in English at all.” In Wendy N. Davis, “Justice Moves Slowly for Those Who Need Interpreters,” *ABA Journal*, March 1, 2016, [http://www.abajournal.com/magazine/article/justice\\_moves\\_slowly\\_for\\_those\\_who\\_need\\_interpreters](http://www.abajournal.com/magazine/article/justice_moves_slowly_for_those_who_need_interpreters)

<sup>20</sup> Legal Services NYC, “Interpreting Justice: Language Access in the New York Courts,” accessed February 2, 2019, <http://www.legalservicesnyc.org/what-we-do/practice-areas-and-projects/civil-rights-initiative/interpreting-justice-language-access-in-the-new-york-courts/introduction>

<sup>21</sup> PART 217, “Access to Court Interpreter Services for Persons with Limited English Proficiency,” *Uniform Rules for N.Y. State Trial Courts*, effective June 1, 2016, <http://ww2.nycourts.gov/rules/trialcourts/217.shtml>

Judiciary Law - JUD § 390, “Equal access to court proceedings for deaf or hard of hearing person,” accessed February 2, 2019, <https://codes.findlaw.com/ny/judiciary-law/jud-sect-390.html>

See also Title VI of the Civil Rights Act of 1964, SUBCHAPTER V—FEDERALLY ASSISTED PROGRAMS: §2000d. “Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin,” accessed February 2, 2019, <https://www.gpo.gov/fdsys/pkg/USCODE-2008-title42/html/USCODE-2008-title42-chap21-subchapV.htm>. Several other federal and New York State interpreter canons exist.

civil, housing, and family courts; and interpret between pro se litigants and opposing parties in housing and civil courts, among other duties.

Despite the commendable intentions demonstrated by the above-quoted sections of the Uniform Rules for N.Y. State Trial Courts and other regulations, since 2009 the number of staff interpreters employed by the Office of Court Administration has dropped steadily, from 335 in 2009, to 270 in 2013, to 246 today.<sup>22</sup> The decline in personnel has not gone unperceived by court users and community stakeholders. A 2014 article in the *New York Law Journal* quotes the supervising attorney at MFY Legal Services as saying that “attorneys and their clients sometimes have to wait hours, or longer, for an interpreter to arrive.”<sup>23</sup> A year later, New York City Comptroller Scott Stringer found much the same thing. According to the comptroller, “wait times for interpreters can often extend to many hours on any day, and...postponements of cases to another day because of a lack of interpretation services are not uncommon.”<sup>24</sup> Even more recently, a 2017 report on language access by Legal Services of New York states that 74% of attorneys representing LEP clients had experienced interpreter-related adjournments.<sup>25</sup> Given the state’s responsibility to serve the needs of LEP court users, under Title VI of the Civil Rights Act of 1964, as well as under state law and the rules of the New York State judiciary, the former executive director of OCA, Ronald Younkings, put it quite aptly when he said, “It’s an access to

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<sup>22</sup> Christine Simmons, “Finding Court Interpreters Poses Challenge for State Courts,” *New York Law Journal*, October 28, 2014, 3.

Office of Court Administration, “Personnel list” given to District Council 37 Local 1070 Court Interpreter Chapter, AFSCME DC 37 Local 1070.

District Council 37 Local 1070 Court Interpreter Chapter, AFSCME DC 37 Local 1070, “Former Interpreters in Senior Clerk Title,” questionnaire, November 2018.

<sup>23</sup> “Finding Court Interpreters,” 2-3.

<sup>24</sup> Scott Stringer, “Language Access in New York City Housing Courts,” letter to Gail Prudenti, February 20, 2015, <https://comptroller.nyc.gov/wp-content/uploads/2015/02/Prudenti-Housing-Court-Letter.pdf>

<sup>25</sup> “Interpreting Justice,” 10.

justice issue. People have to be able to understand what is going on in their procedures.”<sup>26</sup> To be even more direct: the Unified Court System endangers the due process rights of LEP court users when it fails to provide adequate interpretation services.

The question then becomes: why hasn’t the Office of Court Administration been able to maintain adequate staffing levels for interpreters? Certainly, some effort has been made. Civil service tests for Spanish interpreters were given in 2009, 2015 and 2018—with the last moved up by two years, presumably to try and alleviate some of the difficulties outlined above. Nevertheless, the courts have not been able to recruit anything like the number of interpreters currently needed; and it has been even more difficult to keep them. The Court Interpreter’s Chapter of Local 1070 of AFSCME District Council 37 has identified at least 46 senior court clerks in New York City courts who were formerly interpreters.<sup>27</sup> That number alone would account for almost half of the interpreters lost since 2009. When the chapter interviewed a number of those clerks to inquire as to their reason for changing professions, every one of them stated that their preference would have been to continue working as interpreters, but that economic considerations took precedence. Clearly, as long as senior court clerks are at judicial grade 21, three lines above court interpreters, this very serious drain on language access resources will continue to occur. In fact, six interpreters, including one supervisor or “senior,” have already taken clerk positions based on the latest exam for the senior court clerk title, and a number of other interpreters are currently receiving offers of employment as clerks based on the same exam.

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<sup>26</sup> “Finding Court Interpreters,” 1.

Justice Mariano Florentino Cuéllar, of the California Supreme Court, who chairs the Language Access Plan Implementation Task Force of the Judicial Council of California, agrees: “This is about rights. We can’t simply say this is optional.” In Wendy N. Davis, “Justice Moves Slowly for Those Who Need Interpreters,” *ABA Journal*, March 1, 2016: [http://www.abajournal.com/magazine/article/justice\\_moves\\_slowly\\_for\\_those\\_who\\_need\\_interpreters](http://www.abajournal.com/magazine/article/justice_moves_slowly_for_those_who_need_interpreters)

<sup>27</sup> Court Interpreter Chapter, AFSCME DC 37 Local 1070, “Former Interpreters in Senior Clerk Title,” questionnaire (New York: November, 2018).

## **New York State Court Interpreter Salaries Compared with Court Interpreters in other Jurisdictions**

With increasingly more difficult certification exams in New York State, the Office of Court Administration is demonstrating the intention to treat language access just as seriously as the federal courts.<sup>28</sup>

Nevertheless, as has already been established, federal court Interpreters earn double the income of their peers in the State of New York. California Court Interpreters also, depending on the region they work in, earn salaries of between \$76,419.20 and \$92,892.80. Even other judiciaries with a heightened demand for court interpreters, a substantially lower cost of living and traditionally much lower wages, such as Florida and Texas, pay their court interpreters salaries similar to those of New York, or in the vicinity of \$55,000 and up.<sup>29</sup> As the chart in Figure 5 below shows, New York City has the largest disparity by far between interpreter salaries and cost of living—to the point that, as mentioned in the section on the professionalization of court interpreting above, New York staff court interpreters’ salaries have not kept pace with their own state’s cost of living, despite two reclassifications (in 1986 and 1994) and minor contractual raises.

Most significant for the New York courts is that court interpreters in the neighboring state of New Jersey earn starting salaries of between \$63,106.91, at the “Journeyman” level of the state’s two-tiered

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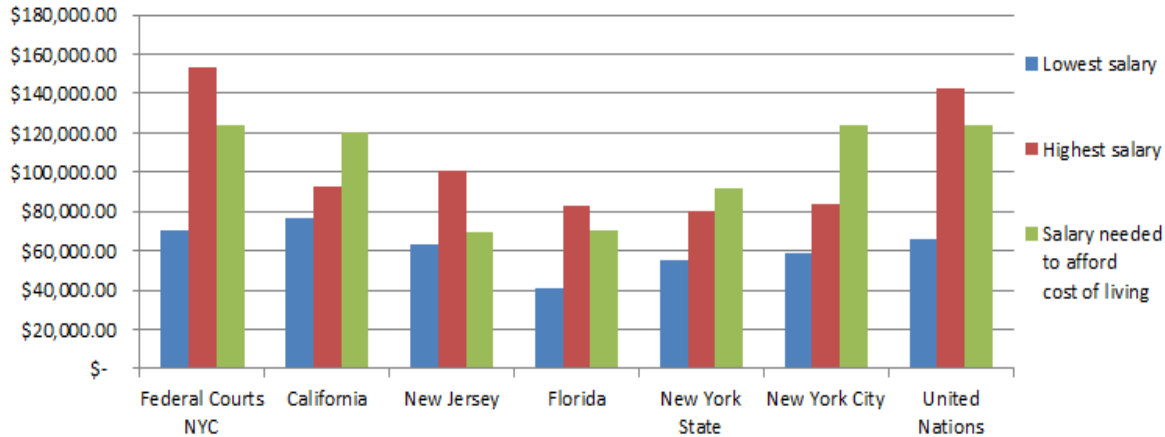
<sup>28</sup> See New York State Unified Court System, *Ensuring Language Access: A Strategic Plan for the New York State Courts*, March 2017, <http://ww2.nycourts.gov/sites/default/files/document/files/2018-06/language-access-report2017.pdf>

<sup>29</sup> For Florida, Robert Joe Lee and Francis W. Hoeber, ed., “Chapter 3: State Administrative Offices of the Courts,” *United States Court Interpreter Compensation Database*, updated November 11, 2016, <http://nebula.wsimg.com/a89b7e3e28f1af51fce37b5f81da58fa?AccessKeyId=FE1E7E5FD3E91C6D930E&disposition=0&alloworigin=1>

Interpreter vacancy, County of El Paso Juvenile Probation Department, accessed March 3, 2019, [https://agency.governmentjobs.com/elpasocounty/job\\_bulletin.cfm?jobID=2011306&sharedWindow=0](https://agency.governmentjobs.com/elpasocounty/job_bulletin.cfm?jobID=2011306&sharedWindow=0)

system, and \$66,893.91 at the “Master” level, with maximum salaries of as much as \$100,971.03 per year.

**Figure 5: Interpreter Salaries Compared to Cost of Living<sup>30</sup>**



It should be remembered, as well, that in spite of New Jersey’s higher salaries, New York interpreters have to take a more difficult exam—11% of the candidates for the last test given in New Jersey passed,

<sup>30</sup> Kathleen Elkins, “Here’s how much it costs a 4-person family to live in the 15 largest US cities,” CNBC, March 15, 2018, <https://www.cnbc.com/2018/03/15/how-much-a-4-person-family-needs-to-live-in-the-15-biggest-us-cities.html>

Economic Policy Institute, “Family Budget Calculator,” accessed February 2, 2019, <https://www.epi.org/resources/budget/>

Lizzy Francis, “This Map Shows How Much You Need to Make to Afford The Average Home in Every State: Look at your own risk,” *Fatherly*, April 6, 2018, <https://www.fatherly.com/news/map-average-cost-house-each-state-us/>

United States Courts, “JUDICIARY SALARY PLAN: New York-Newark, NY-NJ-CT-PA - Table NY,” effective January 7, 2019, [https://www.uscourts.gov/sites/default/files/jsp\\_new\\_york\\_2019\\_0.pdf](https://www.uscourts.gov/sites/default/files/jsp_new_york_2019_0.pdf) Federal court interpreters are classified JS 11-14.

California job vacancy, “Court Interpreter - Spanish,” Government Jobs, accessed February 2, 2019, [https://www.governmentjobs.com/jobs/2060329-0/court-interpreter-spanish?utm\\_campaign=google\\_jobs\\_apply&utm\\_source=google\\_jobs\\_apply&utm\\_medium=organic](https://www.governmentjobs.com/jobs/2060329-0/court-interpreter-spanish?utm_campaign=google_jobs_apply&utm_source=google_jobs_apply&utm_medium=organic)

New Jersey job vacancy, “Court Interpreter 1 / Court Interpreter 2 (Spanish),” Government Jobs, accessed February 2, 2019, <https://www.governmentjobs.com/careers/njudiciary/jobs/2271801/court-interpreter-1-court-interpreter-2-spanish?page=3&pagetype=jobOpportunitiesJobs>

*Compensation Database* (Florida)

as compared to only 7% in New York, as previously noted. In terms of retention, what this means for the New York judiciary is that of its ten best-ranked candidates in the 2015-16 exam, only two work as court interpreters in New York State. The first ranked candidate is currently working as chief court interpreter in Jersey City, and another spent over a year as a court interpreter in Newark, NJ, before taking a job with the California courts. Another is a college professor. In fact, only a handful of the thirty best-ranked interpreters applied to work with the New York courts.<sup>31</sup>

### **The Private and NGO Market in New York**

New York is host to the United Nations, to perhaps the largest number of interpreting agencies and multilingual conferences in the world, and to a rapidly expanding market in medical interpretation.<sup>32</sup>

Given this, and despite the fact that many experts consider court interpreting to be the most challenging subsector of the interpreting industry<sup>33</sup>, it is surprising that New York court interpreters earn a starting salary that is a fraction of what UN conference interpreters can make (up to \$142,771.27).<sup>34</sup> According

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<sup>31</sup> Personal interviews with candidates and examination of eligible list, September 2018-February 2019.

<sup>32</sup> According to the Bureau of Labor Statistics, "...job opportunities should be plentiful for interpreters and translators specializing in healthcare and law, because of the critical need for all parties to understand the information communicated in those fields." It projects an 18% increase in interpreter and translator jobs in the period from 2016-2026. Bureau of Labor Statistics, U.S. Department of Labor, "Interpreters and Translators," *Occupational Outlook Handbook*, last modified April 25, 2018.

<sup>33</sup> See *Fundamentals*, 1st ed., 27, "Although precision and accuracy are facets of conference interpreting, the goal is to communicate on the macro or global level rather than on the micro level as do court interpreters. Relaying the conceptual message in conference interpreting is sufficient, while court interpretation demands that all facets of the original message be mirrored, thus realizing the legal equivalent."

<sup>34</sup> UN interpreters make up to \$210,000. Nikola Krastev, "UN Interpreters Make Sure Nothing Is Lost In Translation," Radio Free Europe/Radio Liberty, March 30, 2010, [https://www.rferl.org/a/UN\\_Interpreters\\_Make\\_Sure\\_Nothing\\_Is\\_Lost\\_In\\_Translation/1995801.html](https://www.rferl.org/a/UN_Interpreters_Make_Sure_Nothing_Is_Lost_In_Translation/1995801.html)

to the Southern District of New York Interpreter Office, “freelance interpreters and translators can earn over \$100,000 per year.”<sup>35</sup> Medical interpretation, which is probably the most quickly expanding segment of the profession, has also become increasingly competitive. It is in the context of expanding opportunities for qualified candidates, and a neighboring court system which pays substantially more, that New York must compete for the 7% of candidates able to pass its increasingly difficult civil service exam.

Clearly then, Comptroller Stringer appears to be on the right track when he recommends “allocating additional resources to make interpreters available.”<sup>36</sup> He is seconded by Legal Services, who state in their 2017 report that “The court system needs more interpreters, particularly in Urdu, Bengali and Arabic, but also in more common languages—a single Spanish speaking interpreter for a high volume court is insufficient.”<sup>37</sup> Can one imagine that the process of correcting this scarcity would not involve an increase in compensation for New York State court interpreters? Indeed, maybe we shouldn’t be asking ourselves why interpreter numbers have dropped steadily as the need for interpreters has grown. Instead, in a city which is probably the most competitive market for interpreter services on the planet; with the courts in the state next door starting their own interpreters at \$12,000 more per year than New

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Nahum Hahn, a former supervising interpreter at the UN, explained to one author of this report the peculiarities of how UN interpreter salaries are calculated in terms of insurance, pension, and other adjustments, which explains the discrepancy here. It is obvious, however, that by either method of calculation UN interpreter salaries are far above what New York State court interpreters earn.

Interestingly, although a handful of universities teach courses in conference interpretation, only one master’s degree in the subject (and no bachelor’s) is awarded in the US, that of the renowned Middlebury Institute of International Studies at Monterey, California. Usually graduates from that institution and the best-qualified and best-connected interpreters from other subfields perform the job. Two of the authors of this text have been interpreters in a wide range of conferences.

<sup>35</sup> Court Interpreters Office, SDNY, “Frequently Asked Questions,” accessed March 19, 2019, <https://sdnyinterpreters.org/faq>

<sup>36</sup> “Language Access in New York City Housing Courts,” 4.

<sup>37</sup> “Interpreting Justice,” 17.



York; with another highly accessible title within the state's own court system classed three judicial grades higher than interpreters; with a test that has become increasingly difficult to pass; and with a starting salary of \$54,947 a year, perhaps the Unified Court System should be commended for having been able to recruit or retain any of the highly qualified interpreters that make up its current, numerically inadequate, staff.

### **Conclusion**

In this report, we have attempted to look at the question of compensation for New York State court interpreters realistically and pragmatically, balancing questions of equity and fairness with those of the public interest. We have seen that the State of New York has, appropriately and in the best interests of New Yorkers, adopted more and more demanding standards for its interpreter exams and language access policy. We have also seen that, given those standards, court interpreters come to the job with substantial academic qualifications. We have demonstrated that the tasks those interpreters carry out are at least as taxing and complex as any carried out by their fellow court employees who are compensated at higher rates than are interpreters, and we have seen the glaring disparity in salary schedules between the federal courts and New York State courts.

We have also looked at the concrete effects of the low level of compensation in the State's courts in the exodus of quality interpreters, either to the senior court clerk title, the court systems of neighboring states, or the private sector. We have documented the level of competition which the state faces in the recruitment and retention of high-quality interpreters, especially in the particular situation created by the New York job market in the field. Finally, we have cited two important reports, from sources well acquainted with the court system and with public labor relations in New York, both of which bemoan

the impact of interpreter scarcity on language access, and recommend the allocation of greater resources to court interpreter services.

We propose a reclassification to a judicial grade in the mid- to high-twenties, which would put court interpreters at the top of salary levels for non-judicial court staff (although one should note that, if we base ourselves on the comparison with relative salaries in the federal courts, a much larger increase is, in fact, called for). Making salaries in the state's court system competitive with the overall market for interpreters, in the public, private, and NGO sectors, will help to ensure that New York State has a sufficient number of highly qualified interpreters both to meet its considerable needs and to satisfy its ambitious standards. At the very least, it could justify the considerable educational expense that such demanding standards make necessary. We believe that, for reasons of equity, the state owes its interpreters (whom the Office of Court Administration has repeatedly acknowledged are vital to the judicial process) such a reclassification—one which has been a quarter-century in the making. More important, though, in the final analysis, is that the state has a responsibility to allocate the resources necessary to meet the needs of LEP court users, their legal providers, and their communities.

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