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## Importance of Bilingual Lawyers in the American Legal System

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# **Importance of Bilingual Lawyers in the American Legal System**

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**Signature Page**

**Importance of Bilingual Lawyers in the American Legal System**

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## Table of Contents

Title Page.....	i
Signature Page.....	ii
Acknowledgments.....	iii
Table of Contents.....	iv
Abstract.....	v
Introduction.....	6
Language Diversity and Spanish Presence in the United States.....	7
Legal Systems in the United States and Spain/Latin America.....	10
Language: Jargon and Fluency.....	16
Standardized Language Testing.....	20
History of Bilingualism in the Law.....	22
Detriments of Not Having Bilingual Representation.....	25
Benefits of Having Bilingual Representation.....	29
Conclusion.....	32
Bibliography.....	33

## **Abstract**

This research thesis project focuses on the benefits of legal professionals being bilingual and my support of utilizing bilingual legal professionals over language translators. This focuses on the communities they support, including their clients, other legal professionals, and all American citizens. There are analyses of language used in English-speaking and Spanish-speaking legal systems, as well as previous bilingual integration attempts. As a pre-law student that speaks both Spanish and Portuguese, I want to know how to advocate for myself as a future attorney and how to advocate for future clients who will need the assistance of a bilingual legal professional. To understand why this is so important, I researched bilingual communities, how Spanish-speaking countries compare to the United States in the legal field, and how bilingualism has been represented in the legal field in history.

## Introduction

There are many aspects to analyze to completely understand the dynamics of the Spanish language in the American legal system. Looking at Spanish-speaking individuals in the United States and how their language affects the American culture shows the integration of Spanish culture and language in the US. There is a large and continually growing population of non-native English speakers in the US. It is also important to understand the legal systems of both the United States and Spain/Latin America. Each nation, or group of nations, has its own legal system, proceedings, and rules that make up its own culture which feeds into the dynamics of Spanish speakers in the United States. In language, there is jargon that needs specialized education to understand. There are also varying levels of fluency in each language including reading, writing, speaking, and listening. These aspects of language in non-native speakers can be assessed with standardized language tests to test for proficiency. This assessment will give lawyers insight into what type of bilingual assistance the individual would need.

In learning about bilingualism, there have been some attempts to create a fluent bilingual legal system in the US that is important to acknowledge when assessing how bilingualism should be worked into the legal system. Further, there is evidence from research and interviews that show that there are benefits of having bilingual representation and without it, a client can truly suffer. With all the research done on the aforementioned topics, the research shows that bilingual legal professionals are more beneficial to the legal system than any other type of translating professional due to their specific knowledge of the language, culture, and the law. We need more bilingual lawyers because they are better equipped to handle all aspects of the legal process while non-specialized language professionals are not.

## **Language Diversity and Spanish Presence in the United States**

Beginning in the 1950s, following the end of World War II, Latinx<sup>1</sup> people began coming to the United States in larger groups and situating themselves in little communities within larger US cities. New England, a region of the US comprised of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut and one of the furthest points from Latin America, was no different than the rest of the United States. New England has an increasing population of Latinx people coming in and settling into the community.

New England is much further North than the states that border Mexico and are near Latin America, meaning that the weather is much colder than the tropical weather some of them are used to and the trip can take much longer. However, New England is a traditionally Democratic-leaning region, considered one of the more liberal areas in the United States, allowing for more acceptance of immigrants into this area than in other areas. New England has continued to be a popular settling home for immigrants during mass migrations for these reasons. As a result, the Latinx population in New England has begun to grow higher than in other states in the US. Puerto Ricans have been the largest group of Latinx people that live in New England but other groups have grown in size and percentage since the rise of Latinx people coming to the US in the 1950s.

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<sup>1</sup> Many sources I used use Latino/Latina in their writings. To be more inclusive in my writing, I will be using Latinx to substitute for Latino/Latina. Latinx has more recently been used to refer to all people from Latin American countries who live in the United States and has been deemed more inclusive as it does not limit the group to the strict binary gender.



However, an unprecedented increase took place between the 1990s census to 2000s, the Latinx population grew 60% (545,000 to 871,000 people) in New England, with the states having a population of nearly one million Latinx combined (Torres 4). In Rhode Island overall, the state has increased its diversity by a total of 6.2 percentage points from 2010 to 2020 with 61.1% minority. More specifically, in 2000, Rhode Island's Latinx population was at 8.6%, jumping to 16.6% in 2020. In Providence, RI, the Latinx population grew by 108% from 1990 to 2000, more than doubling its Latinx population to 52,000 in 2000. More than 95% of Latinx people in New England live in Southern New England (Massachusetts, Connecticut, and Rhode Island) with a majority of them living in the Connecticut and Rhode Island area.

New England has been greatly influenced by Latinx culture and the new populators of its land. Latinx people have increased economic affluence because they bring their large families that have to spend money to live here. Even with their contributions to New England society, Latinx people are marginally distanced from their Anglo-New England counterparts. They are not able to get access to higher education, better and higher-paying jobs, and local resources. Even though Latinx communities are mostly natural-born citizens and are integrated into society, their generational history has separated them from the opportunities that people that have been in New England for several generations have had.

The attacks on the World Trade Center in New York City and the Pentagon in Washington DC on September 11th, 2001 were a big step back for immigrants, and their children, since nationalism became such a big part of American culture. Immigrants that had just arrived and even Latinx people who had lived in the United States for decades also experienced this discrimination. The government's restrictions on flying both in and out of the country prevented these people from being able to see their families (6 Torres). Going out into public ran

the risk that people would not treat them with respect due to them being “foreign”<sup>2</sup>. With housing and healthcare budgets cut and people on edge, Latinx people also suffered greatly from the attack even when those responsible were not from this area of the world.

Many groups of Latinx people come to the United States in search of a better life, speaking Spanish as their first language without enough proficiency in English. Consequently, the Spanish language is increasingly being used in the United States. In the United States, 13.6% of the population is foreign-born and 21.6% of households speak another language other than English. These facts show the diversity of non-English, or non-native English speakers, that are living in the United States. While this percentage is not specifically regarding Spanish speakers, there is also a population of 18.5% that self-identify as Hispanic or Latinx in the 2020 census. Not every person in that percentage speaks Spanish, but a majority of the native Spanish speakers are within that percentage. In my specific research, I looked at these populations in Rhode Island, specifically in the town of Bristol.

Bristol, RI is a small town of 44,812 people with an increasingly diverse community. The Hispanic population in Bristol increased the most in the state of Rhode Island, (39.4 percentage points) transforming it into a diverse town. Foreign-born residents of Bristol accounted for 10.9% of the population, while in the greater Rhode Island population, they accounted for 13.6%. 14.3% of the household in Bristol spoke another language other than English at home, while 22.4% of RI households spoke another language at home. These statistics show the diversity of Bristol and the greater Rhode Island population, specifically in the Hispanic and Latinx communities and non-native speakers.

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<sup>2</sup> The September 11th attacks had a great impact on all types of immigrants but specifically anyone that was, or appeared to be, Muslim or from the Middle East. These groups were significantly targeted since the attackers were of similar background and many generalized the perpetrators qualities to their nationalities. This was detrimental specifically for people with Muslim and/or Middle Eastern background, but many immigrants were targeted during this boom of American nationalism.

Additionally, the cities of Providence, Central Falls, and Pawtucket have become cultural hubs for Latinx people in Rhode Island. Latinx political activism has increased in Rhode Island with the increasing amount of Latinx diversity within the state. Most Latinx people start by living in Providence and then move out of the city, to places like Central Falls and Pawtucket, to grow their communities and connections. Religion, language, and culture help Latinx people to adapt to the community and become a part of the culture. This is similar to Hartford, Connecticut, where Latinx people moved to West Hartford and Waterbury and from Boston, Massachusetts to Cambridge and Framingham. Overall, the spread of Latinx people around New England has increased the cultural effect that they have on the people in New England and the surrounding communities.

### **Legal Systems in the United States and Spain/Latin America**

With so many immigrants coming into America, there has been an influx of people trying to gain citizenship. With Former President Trump's "Build the Wall" and deportation tactics, many new immigrants rushed into the legal system to secure their safety in the country that they want to stay in. It is a difficult process to go through so many immigrants reach out to lawyers for help and understanding of the legal process. They rely on the lawyer to navigate the legal field and explain to them the process, a legal system that is very different from the country they have come from. The legal system of America, mainly confrontational, directly contrasts with the cooperative legal system of Latin America and Spain.

In general, the legal system in the United States is confrontational and adversarial with little cooperation. "Rival" sides are brought in front of the judge to tell their side of the story and

convince the judge to believe their truth (Orts 808). However, not all cases brought to a court are heard since the legal system is overwhelmed with many cases that cannot reach settlements. This affects all states and at the federal level as there is a constant stream of cases being brought to the courts. There is no cooperation to tell a complete story that the judge will use to determine the case's decision, there are just conflicting facts and opinions from either side of the disagreement. The burden of proof is put on one of the sides during the legal process to prove beyond a reasonable doubt that their story is right. If they are not able to prove beyond a reasonable doubt, they lose the case because the responsibility falls on them. This type of environment and legal culture creates animosity between the parties and puts the case's decision completely on the judge, which can be difficult for the judge to decide when they are unsure of the truth of the story. With the level of animosity in the courtroom, the immigrant, who does not speak the native language, would feel a heightened level of stress. When these clients see that even native speakers are often dismissed in the legal system, they may worry about their own case throughout the process. The legal process, which is already extremely stressful, is worsened by the change of confrontational discussion in a different legal system.

In contrast, the legal system in Spain and Latin America is a cooperative effort between the parties. With Spain having control over Latin America and its legal systems until the early 19th century, the Latinx legal systems are based on the Spanish legal system. To this day, while the systems are separate, they are based on a similar legal process. The judge is the centralized authority and the judge upholds the full responsibility of following the legal procedure (Orts 808). All cases that are brought to court are heard and no cases are turned away as it is a thorough process to get up to the courts. The parties work to present a full story to the judge who decides the case. Each party presents all the information to each other to ensure that all sides are

knowledgeable of the case. This type of legal culture promotes collaboration and well-informed discussions to determine the case's decision.

Additionally, the American legal system uses specific types of charged language in its editorials. In American legal opinion and editorials, there are many instances of explicit judgment or appreciation in the language used, showing some type of bias in the writing (Orts 825). The author's presence is very heavily felt throughout the writing and the reader would walk away with the author's judgment on the case. Generally, the author's opinion comes in and out of perspective throughout the legal document, especially when it comes to the judgment of the case. The author will typically make their sentiments on the results of the case evident when they are writing, allowing the audience to get some perspective on their agreement with the decision. The American editorials are much more emotionally charged, using words with more evident connotations and denotations. While stereotypes and other derogatory language are not commonly used, nor allowed in most cases, there may be some inclusions of microaggressions<sup>3</sup> in the language used by the writers including descriptive words that do not directly use a stereotype but may assume the emotions or motivations of the individual. For example, assuming that a man said something more aggressively because he is a "man". Generally, it is not a large issue in American legal culture and does not pervade much of the writing. The overall emotions coming from American legal writing are quite evident based on the language used by the author and less on the details of the case hearings.

The Spanish and Latinx legal systems also use specific language in their legal editorials. Generally, the language is non-adversarial and focuses on the impersonality of the situation. The words and phrases used are more objective and passive, meaning that there is less emphasis on

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<sup>3</sup> "Microaggression: a comment or action that subtly and often unconsciously or unintentionally expresses a prejudiced attitude toward a member of a marginalized group (such as a racial minority)" (Merriam-Webster Dictionary definition).

the emotional charge of the case. There is more focus on building up the parties involved in the conflict, allowing the case to be explained more neutrally. Social sanctions and the esteem of the parties are emphasized in the editorials to portray the full scope of the case. However, the author's opinion is never included in the legal writing which seems as if it is written by an omniscient third party completely unaffected by the outcome. The language is much more institutional but it also uses personification to add some humanization to the process. Overall, the Spanish and Latinx legal systems focus on the impersonalization and seriousness of the legal case but ensure that the personal touch is added to the legal documentation to show that there are emotions behind the scenes.

As observed, the Hispanic and Latinx legal systems differ greatly from the American legal system but the greatest difference is the way that the two legal systems approach a conflict. In a study that compared the language in American and Spanish editorials, there were many differences shown between the countries' legal languages. When analyzing the lexicogrammar devices, the language was broken down into three main categories: impersonality, appraisal, and penumbra. Impersonality is defined by a mix of passive verbs, collocations, and objectivity. Appraisal is characterized by its explicit judgment of the case, with mood-based words, including harsh and/or approval words. Penumbra is a mix between impersonality and appraisal- there are some emotionally charged words and other objective, emotionless phrases (Orts 815-823).

When a research team studied the difference between the language use of Spanish and American editorials, they each analyzed 20 documents from each country and categorized them by nation<sup>4</sup>. Spanish documents were broken down into the categories, with 48% appraisal, 31%

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<sup>4</sup> This research was re-published in 2018 and the documents were pulled from 1994-2004. These documents were pulled on a random basis to allow for diversity. For more information on the breakdown of each category and how the documents were selected, refer to Orts' article (cited in the bibliography).

impersonality, and 21% penumbra, a document that includes elements of both impersonality and appraisal (Orts 825). This breakdown shows that about half of Spanish editorials are emotionally charged, while about a third of them are emotionless, and about a quarter of them are a mix of emotions. The American documents were broken down into 65% appraisal, 14% impersonality, and 21% penumbra (Orts 825). This shows that about two-thirds of the documents were emotionally charged, with about a fourth being a mix, and about 15% being emotionless. This statistic shows that out of the 40 editorials from each nation, most of the impersonal documents came from Spain. The impersonality of the Spanish documents shows that objectively, analyzing the language used in the documents, there are fewer emotionally charged words in Spanish editorials than in American documents. The statistics that include the penumbra and appraisal also show that even the impersonal Spanish legal system still has personal and emotionally charged language within its culture. On the contrary, the American legal system does not shy away from emotionally charged words and uses them a greater majority than Spain. America's impersonality was significantly lower as well, showing that the emphasis of the American legal system is emotions. There is a significantly harsher lens on the cases from an American writing standpoint than from a Spanish view.

An interesting aspect of the statistics is that both nations had a rate of 21% penumbra. With penumbra being a mix between appraisal and impersonality, it was interesting to see that they both had the same penumbra rate when their other categories were so drastically different. With about a quarter of each nation's editorials written as a mixture of emotional and emotionless, there are some similarities within the nation's legal systems, even if they do not look the same from the outside. The two legal systems, although they have different approaches to the cases that they hear, still have emotions attached to them. The emotion of the legal

officials and juries, a natural part of human life, especially in situations as delicate as situations brought to the courts, drives the focus on satisfying the emotions of the parties involved. Both nations prioritize the result of helping out as many people as they can throughout their case decisions, something that is evident in the language they use in their legal documentation.

Both the Spanish and Latin American courts mirror the American courts in the sense of stereotyping and microaggressions. With cultural differences and typical roles in each culture, there are many assumptions based on individuals. While both court systems attempt to remove the biases associated with the cases and analyze them with an objective lens, there may be some difficulty in doing so. As explained earlier, microaggressions may be present in the description or actions of a client, without the intention of describing them with some sort of prejudice. When the courts assume these stereotypes and do not reflect on the microaggressions and how they can muddle the path to justice. No court system has mastered a way to remove all prejudice and biases from the cases, but America's jury of peers has been a way to counter that process. Spain only implemented trial by jury in the mid-1990s and the first Latin American country to do so was Argentina in 2015. With these jury trials, individuals are selected to better represent the individual parties and best represent their interests at heart while avoiding any negative sentiments towards each party. The focus on jury trials has helped decrease the number of biases in the legal system but did not eliminate them. There will always be some sort of bias when humans are involved, however, there has been much progress in both court systems to eliminate biases.

Generally, Spain and Latin America's efforts to cooperate throughout the legal process results in some emotions, but a lower emotional rate than America's legal system. The competitive legal system in America makes the American documents more emotionally charged.



With the differences in the culture around each of these legal systems, it can be difficult for anyone to move from one system with specific rules, words, and culture to another one. Having a legal professional that speaks English and Spanish will benefit someone who comes into the legal system, unknowing of the rules, words, and culture in the new world they are in, specifically in the courtroom.

### **Language: Jargon and Fluency**

The legal system, regardless of where it is, has jargon that is specific to the language of the system and the type of law being practiced. Legal jargon can seem like a language all on its own or even an unfamiliar dialect to people who speak the same language. To be in another country and to speak a foreign language to get the help you may need to survive is a daunting task that deters many people from using the resources in the legal system to earn them the justice they deserve.

Diana Eades, a professional linguist and professor at the University of New England, analyzes the interaction of second language (L2)<sup>5</sup> and second dialect speakers (D2)<sup>6</sup> interacting in the legal system and how they can understand the legal process. Both L2 and D2 people have differences from the people that they are presenting for in court, meaning they may need someone to translate or interpret for them to truly understand their legal proceedings. Interpreters and translators are sometimes available for individuals to help ease the manner of communication between the different parties. In 1996, the International Covenant on Civil and

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<sup>5</sup> People who speak the language of the legal system that they are working in second to their native language are referred to as second-language speakers or L2.

<sup>6</sup> People who speak the same language of the legal system they are working in but a different dialect (Standard American English in the legal system but the person speaks African-American English Vernacular) are referred to as second dialect speakers or D2.

Political Rights (ICCPR) decreed that any person being accused of a crime in any international setting has the right to be informed in the language they understand and have free access to an interpreter. Although many nations signed off on this decree, they are not granting these people their civil and political rights when they prevent them from being able to understand the language of the legal proceedings. While in the US, there are many interpreters offered to people who use government attorneys, if someone goes to a private attorney, they will not have free access to a translator or interpreter.

The translator or interpreter has a great responsibility as their words are what holds up in a court of law, not the words of the client if they are unable to speak to the court on their own behalf. Jurors can be biased on the interpreters as well, making their judgments of the client based on the actions of their interpreter, even though the interpreter may not be able to convey the full emotion of the client's story. The decision to involve an interpreter falls on the shoulders of the judge who must determine if the client can work without an interpreter or if one is required. Sometimes a judge asks for the legal counsel's recommendation but the judge can also ask the client a few questions to see if they are fluent enough to speak and answer questions without an interpreter. This action is controversial as many people who speak another language may not have the necessary comprehension skills to answer the more complex questions that are asked in a courtroom, even if they can answer the basic questions that the judge asks them in their pre-trial interview. Not having access to an interpreter if they need it solely on the judge's quick assessment of a client can be detrimental to their case, especially if they have difficulties in comprehending questions and word their answers incorrectly, accidentally framing themselves in a bad light.

Additionally, fluency is a critical part of the understanding of language, especially in the legal system. f. With varying levels of fluency, from beginner to full immersion, comes varying levels of understanding. When a client does not have a higher level of fluency, they may be able to present themselves as native speakers based on their accent and their responses to questions, especially if they present themselves as more confident. On the contrary, an individual who is more fluent but less confident may present themselves as less fluent. The level of fluency can be hard to determine and most individuals have a sense of their fluency levels and can determine if they need assistance with interpreting or translating. This is not always the case, as there are always exceptions, such as individuals who over and underestimate their fluency level. They may need some outside assistance in determining their fluency level and how to proceed from there.

There is no standardized test<sup>7</sup> to ensure that a client is prepared to answer the questions that they may need to answer, something that has been considered to help prepare clients. Creating a standardized test may be difficult to really deem the understanding of the client since the jargon that they use can be hard to comprehend, especially in a test, and can be difficult to adapt to all the different types of law that a L2 or D2 person might encounter. However, a test like this may be incredibly helpful for not just the clients, but for all other parties involved in the case. The nuances of a standardized test like this are why there hasn't been much push to get it progressing.

For that reason, someone on the legal team must speak the language that their client speaks so the latter can be upfront about their experience and fluency in the court's language and

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<sup>7</sup> Standardized testing can be provided to get a basis of the language skills the individual has. There have been some oral "tests" used, such as asking the client generalized legal questions to see if they can use the legal jargon, but this is not required and is very rarely used. A general base test could better guide the judge into determining if the individual needs an interpreter or if they have the language skills to speak for themselves.

their comprehension level. Having someone the client can confide in will help the client feel at ease in the courtroom and get the justice they need and deserve on the same level as others in their country. When I interviewed a bilingual lawyer, J. Lewis<sup>8</sup>, he expressed that many of his clients came to them after working with an English-only attorney and they did not feel as if they were being heard. He noted that many of his clients are referrals from English-only attorneys to take their Spanish-speaking clients.

As Lewis speaks to his clients, he notices that many feel that they can confide in him, even sharing bad experiences with other lawyers. Lewis said that he has had “...many clients, or potential clients, who have been represented by other attorneys and complain that they have not been able to communicate with their English-speaking lawyers”. This example of clients confiding in Lewis show how their ability to communicate in the same language allows the clients to feel much more comfortable in their conversations with Lewis than with any other attorney.

Lewis also notes that Spanish-speaking and other non-English speaking people are underserved in the legal community, as well as other communities from what his clients tell him. When asked if other attorneys should learn another language, Lewis jokingly replied “Selfishly, no”. He clarified that while it is important for attorneys to be able to help their clients, and how language can do that, he is one of the only lawyers in his area and specialty that speaks Spanish, and without that edge on other attorneys, he would not get the same business that he gets now. Lewis’ ability to communicate with the Spanish-speaking population broadens his horizons on cooperation with potential clients.

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<sup>8</sup> To protect the identity of the lawyer, a pseudonym is used in place of his name. The use of the name “J. Lewis” does not refer to anyone living or deceased and any connection is an accidental coincidence.

## Standardized Language Testing

As mentioned earlier, there is no standardized testing to determine if a client has the level of fluency required to speak and comprehend a court case. As judges do not usually take more than a few minutes to ask these clients some basic questions in English, these questions are not a good judge of the client's ability to speak English fluently. There have been some attempts at forming a test for non-native English-speaking clients, however, it has received a lot of pushback. There are cost and accuracy concerns over this. There have been some attempts to at least create a test and see what it would look like, but there has not been any success in testing the exam.

The analysis of university language testing can be a good tool to better understand language testing. Universities that admit non-native language speakers must distribute some sort of test to determine if the student is fluent enough to take classes in the native language of that university. There are two types of tests that universities give out: proficiency orientation and preachievement tests. Proficiency orientation exams check for basic language proficiency, such as grammar and reading comprehension while preachievement tests check for insight into specific language skills in specific subjects (Wall 322). While both of these exams would be helpful for any client looking for legal assistance in the US where they do not speak English, the preachievement tests may better prepare them if they are to testify or sit in on a court hearing. Preachievement tests, such as the one used at Lancaster University since the 1970s, are at least 75% accurate at placing an individual at their proficiency level (Wall 326). This means that individuals who take this test will receive a result that exactly dictates their fluency in English, as well as English legal jargon. This is incredibly important because it identifies their English

proficiency from their legal proficiency, which are two different dialects of essentially the same language. Having the distinction between these two can help determine whether or not a client can understand basic English and if they can speak English at a high enough level to testify in court. Additionally, taking this test can help determine if a client will only need a translator when the court is in session or if they will need a translator when they are having a private meeting with their lawyers.

This distinction is crucial to the flow of the legal system. If a client unexpectedly needs a translator on the day of their trial, they may have to incur extra fees that they were not expecting. Also, they may be able to dismiss the interpreter if their language skills are high enough to comprehend without translation, saving costs on interpreting, something that many non-native speakers would appreciate. This can also make the client feel more empowered and comfortable in knowing that a test decides their fluency, having some sort of solid proof that they have some sort of proficiency in the language and that they can understand their own limitations.

On the contrary, the factors slowing down this standardized test process make it difficult to see how successful these tests could be for clients. The upfront cost of developing a test like this is astronomically high. Many individuals would have to take the time to create these questions, ensure that they are thorough, and see if they make sense. Then, the cost of printing and distributing the tests is another concern if they were to come to fruition; if non-native speakers may be charged to take this test, it may dissuade them from even wanting to take the test in the first place. The possibility of creating a test that would not be used (and spending hundreds of thousands of dollars to create it) is a hard sell.

Along with the cost, the accuracy factor is not one to be overlooked. Taking this test could help clients realize their fluency and acknowledge that they may need more help than they

believed. However, if a client feels that there is an error in the test, they may refuse to believe in its accuracy. As earlier stated, the Lancaster University English test had an accuracy of around 75%, which means that about one-fourth of the test takers were not placed in the correct proficiency level. Although it is a relatively small number, and most of the 25% were placed in a level just above or below their actual fluency<sup>9</sup>, the chance of the test not being 100% accurate can be worrisome. This may also dissuade clients from taking the test if they feel it is not necessary.

Testing for bilingual fluency can be difficult, not just in an academic setting, but in a legal setting as well. Tailoring a language fluency test to the English legal system proves difficult repeatedly for the heavy use of jargon and double-meaning words. While there have not been other suggestions to assess a client's understanding of the legal system's native language, the language proficiency legal test has not received enough support to be prevalent in these clients' and lawyers' lives.

### **History of Bilingualism in the Law**

There have been some attempts at integrating two languages into the legal system. In the United States, Louisiana ran its legal system in both French and English in varying levels of each language. The French legal system ended up being the basis of the American legal system because it helped to create the Louisiana legal system, which was replicated in many other states as the legal system began to develop in the United States.

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<sup>9</sup> When these non-native speaking students were taking their classes, they were assessed on their proficiency level by language tutors and professors. They were able to compare the test's results to the student's performance and make comments on how they believed the student did or did not reflect the level the test deemed them (Wall 342).

The Louisiana system was exclusively in French from the publishing of the first state Louisiana constitution in 1812 (Bermann 92). The United States federal government attempted to require that all documents be published in English as well, but it was difficult to enforce this when the documents were published in French and would have to be translated into English. In the early stages of the state, starting in the 1800s, many of the documents were published in either of the languages to appeal to the masses. However, many of the documents were not published in both languages, which made it difficult for monolingual individuals to read and understand what the laws and documents were about. This was especially difficult for individuals from other states that wanted to reference Louisiana laws and cases to get a better understanding of their legal decisions to use precedent for other legal cases. There was a lot of back and forth in deciding which language would be the official language of the state when the US' official language was English. This later led to many issues in interpreting laws and early decisions in the Louisiana legal system.

The idea of a bilingual legal system is helpful for people who speak a different language than the language native to the country they are in, but in actuality, it can be difficult to have a smooth, simple, bilingual legal system. In having laws written in both English and French, some words did not translate exactly into the other language. The slightly different meanings of the words in each language meant that both the French and English laws had to be presented and that the decision usually was made somewhere in the middle of the two laws. For example, in *DuFour v. Camfranc*, the judge determined that the French laws were clear on what the decision was to be, but the English language left room for interpretation so they could not make a definitive decision on the case (Bermann 94). This was a landmark case as many other cases that followed also had difficulty in determining decisions for the discrepancies between the French



and English laws. Each language's laws are so open to interpretation that they can be dangerous in a court. When the two laws are so different that they may contradict each other, it can make deciding cases much more complicated than if the laws translated one another exactly.

The Louisiana legal system also greatly favored the language in the French-written laws over the English-written legal laws. Since the laws were initially created in French, these laws had the exact language that was intended when they were written. The English language laws were just the translations made to appease the US government so for this reason, some translations were sloppy out of spite (Bermann 93). However, it was up to the judge's discretion on what laws would be interpreted for each case.

This difficulty in creating a completely fluent bilingual system is reflective of the legal systems and cultures in many countries. There is a need, especially in countries where there is more than one official language, but it can be difficult with interpreting translations, especially in the legal system, where every word carries great weight because it can determine the decisions of the case. There have been attempts at creating these legal systems, such as the bilingual nation of Canada, which has replicated the Louisiana legal system in its legal system, specifically in Quebec, where there is a majority French-speaking population. Their legal system is more fluid and has learned from the struggles of the Louisiana legal system. Although their system is not perfect, it is nearing the fluency that is needed for a bilingual legal system.

Attaining a completely fluent bilingual legal system is not simple but it is important for bilingual cultures. Finding the balance in interpreting the translated laws can help more people feel more welcomed into the legal system, an already daunting community, and strive for the justice that they deserve. Even with the legal system becoming more linguistically diverse, it is

important to have lawyers that speak the languages of the legal system to help these non-native speakers understand their cases and see how the lawyer is working with them to get them justice.

### **Detriments of Not Having Bilingual Representation**

Communication is the key to any sort of cooperation and organization so when two individuals speak different languages, they start working against each other with the intention of working together. When two parties cannot communicate, it is counterproductive. Even when two parties speak the same language, if they are not communicating, they are working against each other instead of with one another.

In the legal system, all parties involved in the case need to be able to communicate with one another. If one of the parties does not speak the native language of the court system, all parties are immediately at a disadvantage. If each of the parties can communicate within themselves though, this provides an advantage since they only need to communicate with one outside party. If the party is not able to communicate within themselves, that makes the process even more difficult. If the legal professional is not able to communicate with their client in their native language, but only speaks the native language of the court system, they are not a great resource to bridge the gap between the two parties to the legal system.

When a client cannot directly communicate with their legal representation, there can be some uncomfortability which can lead to many obstacles to their justice. If they do not feel comfortable with their legal representation, they may not reveal all information (including difficult and sensitive details) regarding the case that they are consulting their attorney about. This means that they may leave out some important information that they may feel embarrassed

about. Without the revelation of this information, the attorney will not get the full breadth of the case, meaning that they may be surprised by information brought by another party to court. For example, if a client does not tell their attorney that they were under the influence while committing some sort of infraction, the other party may reveal this information in court and blindsides the attorney of the Spanish-speaking client. Without the background knowledge of being under the influence, the attorney would be unprepared to retaliate against the other party and would not be able to defend their client reasonably. This client-attorney trust that was not established became a great detriment to not just the attorney, but the client in the end. Without the trust between the client and their representation, the party is not a true team working together, but against one another.

The client may be offered a translator or an interpreter to communicate with their lawyer, but they may not be willing to work with one for a variety of reasons including cost, trust, and understanding. With cost, individuals who need translating are given an interpreter free of cost at the court level; they are not always provided for individuals when they are at the interviewing level (Frankenthaler 152). When a client finds this out, they may be dissuaded from completing an interview because they may not be able to afford it. In New England, Latinx communities are mostly lower and working class, meaning unexpected expenses can be devastating to their daily lives (Torres 5-6). For these clients, deciding between paying for an interpreter or paying for their next month of rent is a real and difficult decision. It is not economically safe for them to take the time out of their working day to go speak to a lawyer that does not understand them without paying for another person to translate every sentence they say for the other person to understand them. While the cost of the lawyer can also be an obstacle for these individuals, the

additional cost of an interpreter can set them back and make them feel as if they are just not made to get the justice they deserve.

Along with the cost of translators and interpreters, there is a level of trust that both the client and the lawyer need to have in this individual to allow them to sit in on their confidential conversations. When lawyers work with a client, they are bound by confidentiality laws and ethics that prevent them from doing or saying anything that can potentially put their clients in danger. Translators and interpreters are not bound by the same confidentiality laws. While any translator or interpreter will typically sign some sort of confidentiality agreement, there is not the same level of ethical training that lawyers get regarding client confidentiality. Not only do both the lawyer and client have to trust that the translator or interpreter will keep their conversations confidential, but they must also trust that they translate their words completely, without any loss of the weight of what they are trying to express to one another. Sometimes in translating, it can be difficult to get across the exact emotions or ideas that one of the parties may feel. While the translators or interpreters go through intense training to ensure that they can express these sentiments, sometimes it is not always incredibly smooth or clear. The idea of inviting a middle person into a conversation can seem almost counterproductive in a client-lawyer relationship and can be another deterrent for the client.

There is typically a worry of understanding when a middle person is involved in a conversation. Individuals may worry that the translating could be like a game of Telephone, where the beginning message gets complicated before it reaches its final destination. The combination of trust and understanding is necessary for this relationship as all parties need to be willing to ask follow-up questions, clarify, and analyze the information they are taking in. This is not the most difficult part of translating, but it can be a complex task that requires more steps

than if all the parties involved were able to speak one language. This aspect of translating requires much more effort from all parties, which may be what truly determines the effectiveness of the translator.

Lawyers can deem themselves linguistically incompetent to prevent many of these issues from arising before they begin (Frankenthaler 157). When lawyers feel they are unable to properly communicate with their clients, taking themselves out of the equation is a reasonable and logical solution. However, this does not always mean that they will be able to find proper representation. The legal professional may refer the client to another attorney that can communicate with them in their native language, however, it is not a requirement to refer the client to someone that would be helpful to them. This can be difficult for clients who may have reached out to the only attorney they know, especially if their language skills are not up to the level to do research. When left by the only attorney they may know, they may not know where else to turn. They may be left feeling deterred and frustrated and may give up going through the legal process. This may push them away from the legal system and get them to not pursue legal justice, something that is already very difficult for many non-native English speakers. This deterrent is unjust and discriminates against the Latinx individuals that come to the US in search of a better quality of life.

When a native Spanish-speaking individual, regardless of their English fluency level, comes into the US legal system, many obstacles could prevent them from even reaching the legal system. For them to be discouraged once they finally find a pathway to the end goal they desire can be so pernicious to their goals. Clients should be encouraged through the legal system, not discouraged from using the resources to get the justice that they deserve, just because they do not speak the native language of the nation they are in.

## **Benefits of Having Bilingual Representation**

Throughout the whole legal process, the client must feel comfortable. Having someone that speaks the native language of the client, allows the client to be much more comfortable in an already uncomfortable setting. There are many times that clients, regardless of language or legal exposure, can feel uncomfortable talking to a lawyer. This can be due to feeling unknowledgeable, guilty, unsure, selfish, or just scared of what the outcomes could be. It is the lawyer's responsibility to ensure that the client is comfortable and knowledgeable in the legal process. If a lawyer does not speak the language of the client, it can be difficult to communicate and create a trusting relationship. This can lead to many complications throughout the process which leaves everyone involved uneasy. When a client can trust their legal representation, they will feel much more comfortable in the situation they are in and will be more willing to reveal all possible evidence in the case that could be brought up. This trust is imperative to the course of the case as it will ensure that the client works with their representation on the same, equal plane together to get the end goal that they strive for: justice for the client.

With the work of bilingual lawyers in the legal system, there are many benefits that the legal system receives from their assistance. With the direct communication of legal professionals with their clients, there should be a certain level of comfortability and trust between the two parties. Without this trust and comfort, a lawyer cannot properly represent their client. When a lawyer cannot properly represent their client, their client may not receive the justice that they deserve and strive for. When a client does not receive the justice they deserve, the purpose of the justice system has failed.

Legal decisions that are upheld by a judge or a jury become precedent<sup>10</sup> and determine all future decisions on similar issues. When an unjust decision is made, that decision cannot easily be changed in the court's eyes. There must be significant changes or new evidence to make the court dismiss the precedent, which is very unlikely. When an unjust decision is used to determine other people's cases, it restricts more people from getting the justice that they deserve as well.

Consequently, when a client is not able to communicate with their lawyer and does not get the justice they deserve, future clients of the legal system may encounter the same issue of an unjust decision based on the previous decisions made. This does not just affect the individual of the original case, but every client that is involved in future cases. The judge or jury of the future case will look to this precedent to make their decision and if it is an unjust decision, but they do not know the nuances of the case, they may believe that the decision was just and apply it to the current case. The lawyers of both sides, although most likely familiar with the case based on their previous research, may be frustrated that the unjust decision was upheld in the current case. Finally, the client would be disheartened to understand that their case was not given a fair analysis based on the unjust precedent that blocked their way to justice. Overall, once the precedent is established, it can be very difficult to overturn the decision, further doing wrong to many more clients that will come through the legal system, even if they are not personally connected to the individual in the initial court hearing that did not receive the justice they deserved because they could not effectively communicate their emotions or ideas. With the purpose of the justice system being to serve justice, not feeling a sense of justice by the end of the case means the system has not served its purpose.

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<sup>10</sup> "Precedent refers to a court decision that is considered as authority for deciding subsequent cases involving identical or similar facts, or similar legal issues. Precedent...requires courts to apply the law in the same manner to cases with the same facts. Some judges have stated that precedent ensures that individuals in similar situations are treated alike instead of based on a particular judge's personal views." (Cornell Law)

When a lawyer can effectively communicate with their clients, many opportunities arise for the lawyer and the client within the legal system. The legal system is present for individuals to strive for the justice they feel they deserve. If individuals do not get the justice they feel they deserve in the legal system, they will not go back to the legal system for help or answers. When people do not continue to return to the legal system, there will be fewer jobs for people searching for careers in the legal system. With no clients looking to discuss their case in court, there would be no need for attorneys to represent clients, no need for judges to deliver decisions, and no need for the millions of people employed from the “smallest” to the “biggest” jobs in the legal field. Without the people that support and create the legal system, there is no legal system. In giving non-native speakers the justice that they deserve, the legal system will continue to flourish as these satisfied clients will return to the legal system when another issue rises, continuing to promote business within the legal system.

Without a bilingual professional, there is not a clear line of communication between the professional and the client. While translators and interpreters are helpful, clients must be able to speak directly to their legal representatives, the person that understands the jargon, language, and emotions that are whirling around in a legal situation. Translators and interpreters do not get the same level of specialized jargon training as bilingual legal professionals do, as translators and interpreters get a more general understanding of the languages they translate and sometimes a few specialized words in the many fields that require translation. Having a legal professional that speaks the client’s native language allows there to be a direct line of communication that cannot be muddled by translations or misunderstandings. This positive bond of communication and trust between the lawyer and the client is what makes the legal system work, both with native and non-native speaking clients.



The legal system's basis on a clear line of communication is incredibly important to the preservation of justice for all clients that go through the legal system. The clients that follow the footsteps of non-native English speakers should promote and support the idea of bilingual lawyers and their importance in the culture of the legal system. The effect that these bilingual legal professionals have on the legal system is crucial to the full functioning of the system and justice for each individual that goes through the system.

## **Conclusion**

In analyzing all these different aspects of language, culture, and the legal system, it is evident that the legal field is in dire need of bilingual legal professionals, specifically Spanish-speaking lawyers. With the growing non-native English-speaking population in the United States, the demand for bilingual lawyers will only increase from the demand that is shown in the data throughout this thesis. The culture of the US needs to change to promote bilingualism and multilingualism to encourage more legal professionals to speak more languages, possibly by encouraging more legal courses in non-English languages (as few law schools do). Encouraging natively bilingual individuals to join the legal system in some capacity to help these individuals is another way to promote assisting these underserved populations. The support of non-native English speakers in the United States, specifically in the legal system, needs to be improved to help this underserved population.

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