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Do you speak English?: a study on English language proficiency testing of Hispanic defendants in U.S. criminal courts

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DO YOU SPEAK ENGLISH?:
A STUDY ON ENGLISH LANGUAGE PROFICIENCY TESTING OF HISPANIC DEFENDANTS IN U.S. CRIMINAL COURTS

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ABSTRACT

Hispanics are not only the largest language minority in the United States, but also in U.S. prisons. An increasing number of primarily Spanish-speaking defendants face the legal and linguistic challenges of a U.S. courtroom. Constitutional and statutory protections have been put in place to guarantee that non-native English defendants have access to a court interpreter during their trial. Yet, under these protections it is left to the presiding judge to determine whether a court interpreter is truly needed. Thus, the judge has to determine if the comprehension of the non-native English defendant is "sufficiently inhibited" as to require language assistance during trial.

What methods do judges use in order to determine the English proficiency of a primarily Spanish-speaking defendant? How good does the English of a non-native English defendant have to be in order to stand trial without an interpreter? Are the language needs of Hispanics truly an issue in U.S. courts? Would guidelines on how to determine English language proficiency facilitate the judges' work? In order to answer these questions, one hundred surveys were sent to federal and state criminal court judges in four states (CA, FL, NY, TX).

The analysis of the responses returned by the judges showed that language issues of Hispanics are an important issue in U.S. courts. In addition, the answers provided by the judges revealed that non-native English defendants must be able to understand "broadly," or "everything" that is said at trial, and that they must be able to answer questions in whole sentences in order to be able to stand trial without an interpreter. With regard to methods that judges use in order to determine the English proficiency of a non-native English defendant, the data showed that most judges choose to appoint an interpreter, if one is requested by the defendant. Also, many judges ask the defendant directly whether he/she needs an interpreter. As

most judges responded that the request by the defendant is sufficient for him/her to receive an interpreter, they do not agree that a set of guidelines to determine the English proficiency of the defendant would facilitate their work.

CHAPTER 1. INTRODUCTION

1.1 The Language Problem

When defendant Miguel Angel Gonzalez was asked by the judge whether he understood English, he answered, "little bit" (Gonzalez v. U.S. 1050). But neither the syntactical form of this response, nor its contents, which points to a lack of English on the part of the Hispanic defendant, prompted the judge to ask Gonzalez directly whether he needed a court interpreter to assist him during his trial. Instead, the judge continued his pre-trial interrogation and asked, if Gonzalez had "a problem, language problem" (Gonzalez v. U.S. 1050). Perhaps not willing to admit that he had "a problem," or perhaps simply not aware of the importance of this question, the defendant replied: "Well, no. I don't know how to read that much. I understand. I understand" (Gonzalez v. U.S. 1050).

But did Gonzalez truly understand? According to the court transcript the defendant was able to answer to simple "Yes" and "No" questions, but his responses to open questions were consistently lacking in structure. While a lack in verbal expression might have been an obvious hindrance to Gonzalez in his defense, the contents of some of his responses also support the assumption that his English language comprehension was somewhat limited. For example, when asked about the crime of which he was accused, Gonzalez replied, "I used the telephone" (Gonzalez v. U.S. 1050).

Although the defendant had indeed used the phone as a means to distribute narcotics, it was certainly not the use of the telephone alone that brought him his indictment. Nevertheless, at the end of the brief interrogation period led by the magistrate judge it was concluded that no English-Spanish interpreter was needed to assist Gonzalez in his trial, even though "both the magistrate judge and [later] the district court judge did quickly perceive that Gonzalez, whose

primary language is Spanish, had some difficulties with English" (Gonzalez v. U.S. 1050). Maybe the judges were satisfied with the fact that Gonzalez's wife was present to help her husband understand the proceedings—so why hire an interpreter?

Gonzalez, who was convicted of drug possession and the intent to distribute drugs, appealed his sentence partly on the grounds of judicial discretional abuse. He argued that he had been denied the right to a qualified interpreter during trial. Gonzalez based his argument on the Court Interpreters Act, 28 U.S.C. § 1827 (1988), which states that an interpreter shall be used, if the presiding judge determines that the defendant 'speaks only or primarily a language other than the English language…so as to inhibit… [his/her]…comprehension of the proceedings or communication with counsel or the presiding judicial officer …" (in Gonzalez v. U.S. 1049).

The Court of Appeals of the Ninth Circuit denied Gonzalez's appeal, however, and affirmed the district court's decision, by holding that no abuse of judicial discretion could be assessed. According to the appellate court, Gonzalez's comprehension was "not sufficiently inhibited as to require an interpreter"(Gonzalez v. U.S. 1051). While the court acknowledged that Gonzalez's answers were "brief and somewhat inarticulate" when asked by the magistrate judge, the court also found that these answers "were consistently responsive" (Gonzalez v. U.S. 1051). The appellate court based its decision on the facts that Gonzalez "had lived in Oregon for ten years, was buying his own home, and worked in the auto and truck sales business" (Gonzalez v. U.S. 1050).

But, what does this socioeconomic data say about the defendant's English proficiency? How reliable were the methods used by the judge to determine Gonzalez's level of English proficiency?

One of the appellate court judges who reviewed Gonzalez's case, Judge Reinhardt, dissented from the majority opinion of his court. He found that the way in which Gonzalez's English proficiency was assessed had been "cursory, half-hearted, and casual"(Gonzalez v. U.S. 1051). According to Reinhardt, "'fairness and due process' [have] take[n] an unnecessary beating" in Gonzalez's case (Gonzalez v. U.S. 1051).

Though many linguists might agree that the methods used by the district judges to assess the defendant's English language proficiency were inadequate, from a legal perspective the methods employed by the judges were deemed acceptable. The majority of the appellate court affirmed the conduct of the district court. According to current legislation, it is in the discretion of the presiding judge, and the judge alone, to determine whether or not a defendant needs an interpreter. There is nothing in this legislation, however, that instructs the judge on what methods to employ in order to determine language proficiency.

In fact, judges have been trusted to make the decision whether a defendant needs an interpreter or not. In every single case, they need to decide whether the language ability of the non-English native defendant they deal with is good enough or not. But, at what level of language proficiency should they draw the line? What methods should they use to determine the language proficiency of their defendants? While judges have been educated many years in reading and applying existing law, they have not been trained in linguistics. Although they should be aware of the importance of language in their profession, and in the legal domain, some judges might be insensitive to the language needs of non-native English defendants. In addition, time and budget constraints might influence the judges' decision negatively, or might simply affect their methods and procedures.

1.2 Research Purpose

A "flawed" linguistic call, and consequently the failure to appoint a court interpreter, can have devastating consequences for the defendant. The purpose of this study, then, shall be to create more awareness for the sometimes "hostile" linguistic situation in which Hispanic defendants, but also other non-English natives might find themselves, and to shed further light on the question of what methods and procedures judges should use to assess the language proficiency of a Hispanic defendant in criminal court in order to determine whether or not he/she needs language assistance during trial.

Originally, this study was designed to develop a set of guidelines that could help judges in their "linguistic call," but as the data collected here is rather limited, this study can be nothing but a first step towards the creation of such guidelines. Thus, it is hoped that this study will contribute to existing linguistic research in the legal domain, and that it might lead to some further research towards the development of English proficiency testing guidelines, which in the long run might be able to improve the language rights of non-native English defendants.

1.3 Importance of the Study

To Hispanics, the largest language minority in the U.S., language rights are of special importance. Unfortunately, this minority group is not only the largest ethnic minority in this country, but also in U.S. correctional facilities. For instance, the "Quick Facts" report issued by the Federal Bureau of Prisons in February 2005 shows that 32.2% of all inmates in federal prisons are of Hispanic ethnicity.

And, the number of Hispanics in the U.S. justice system is on the rise. According to the Bureau of Justice Statistics Report "Key Facts at a Glance: Jail Incarceration Rates by Race and

Ethnicity, 1990-2003" the number of Hispanic inmates has risen by about 10% from the beginning of the 1990s until the year 2003. More precisely, the number rose from 245 to 269 Hispanic inmates per 100,000 U.S. residents.

While the data presented here does not include information on the native language of the Hispanic defendants, some of the reports include some information on citizenship. For example, the "Quick Facts" report issued by the BOP shows that about twenty percent of the inmates are citizens of a country where the native language is Spanish (Mexico 17.2%, Colombia 1.9%, Cuba 1.1%). Consequently, one can assume that the defendants that come from these countries speak primarily, or as their first language, Spanish.

In sum, the U.S. justice system has to deal with a rising number of potentially Spanish speaking Hispanic defendants. This trend increases the need for clear language legislation, and for further linguistic research in the legal domain. Thus, the importance of this study becomes clear.

1.4 Focus and Limitations

As will be seen in Chapter 2 of this study, a variety of publications have dealt with language rights in the legal domain. Yet, no study could be found that deals entirely with the language rights of Hispanic defendants in criminal courts. This topic, then, shall be the focus of the study presented here.

Nonetheless, in the courtroom setting many other linguistic issues can be identified that deserve further investigation. Such issues are, for instance, the issue of court interpreter training, the challenges of court interpreting, the issue of language rights of non-native English jurors, or

those of non-native English witnesses. While some linguistic research has been done in the legal domain, there is still ample room left for further linguistic scholarship.

Further research in disciplines such as sociology is also needed to actually explain why the percentage of Hispanics in the U.S. justice system is so high, and why it keeps rising. Is it rising because the number of Hispanics in the U.S. in general is rising? Or, have the conditions, in which Hispanics find themselves here in the U.S. changed? What are the motivations for Hispanics to get involved in crime?

To give answers to these questions is not the purpose of this study. Yet, it shall be useful to look at some socioeconomic data that describes the current situation of Hispanics in the U.S. Maybe this data can provide us with insights of why Hispanics turn to crime.

1.5. Hispanics in the U.S.

The information presented in this chapter is, for the most part, based on the report "The Hispanic Population in the United States: March 2002," which was issued by the U.S. Census Bureau in June 2003. This report describes the Hispanic population in the U.S. at that time, providing "a profile of demographic and socioeconomic characteristics, such as geographic distribution, age, educational attainment, earnings, and poverty status" (Ramirez and de la Cruz 1).

The situation of Hispanics in the U.S. portrayed by this report is, compared to that of non-Hispanic whites, rather worrisome. The socioeconomic facts presented here might shed some light onto the question of why there is a relatively high number of Hispanics in the U.S. justice system. Yet, it is debatable to what extent there is a true relationship between concepts such as "poverty," "education," and "crime." To explain this relationship shall be the task of

other scholars. Here we will simply assume that such relationship, even if weak, exists. So, let's look at the data, which has been made available to us by the Census Bureau.

In 2002, about 37.4 million Hispanics lived in the United States (Ramirez and de la Cruz 1). This equaled 13.3 percent of the total U.S. population (Ramirez and de la Cruz 2). "Among the Hispanic population, two-thirds (66.9 percent) were of Mexican origin, 14.3 percent were Central and South American, 8.6 percent were Puerto Rican, 3.7 percent were Cuban, and the remaining 6.5 percent were of other Hispanic origins" (Ramirez and de la Cruz 2).

The Census Bureau report found that these different Hispanic groups were concentrated in different regions of the U.S. (Ramirez & de la Cruz 2). For instance, "Latinos of Mexican origin were more likely to live in the West (54.6 percent) and the South (34.3 percent); Puerto Ricans were most likely to live in the Northeast (58.0 percent); and Cubans were highly concentrated in the South (75.1 percent). Most Central and South Americans were found in three of the four regions: the Northeast (31.5 percent), the South (34.0 percent), and the West (29.9 percent)" (Ramirez and de la Cruz 2).

Also, Hispanics tended to be "more likely than non-Hispanic whites to live inside central cities of metropolitan areas [almost 50%]" (Ramirez and de la Cruz 2). In many of these cities, Hispanic minority groups have formed their own communities. In that way they are able to maintain their cultures and language. Yet, in some cases the concentration in cities can also have a negative impact on the members of the group. Meares writes: "Often racial and ethnic minority groups are segregated geographically from other groups. […] [G]eographical concentration of poverty, along with factors such as joblessness and family disruption, negatively impacts the ability of community-level institutions to mediate crime" (2917).

Another interesting finding by the Census Bureau was that two out of five Hispanics were foreign born (Ramirez and de la Cruz 4). This result does somewhat support our assumption that at least some of the Hispanic inmates in U.S. prisons have Spanish as their first language. If the inmate population follows the same pattern as the general Hispanic population, even more than half the inmates have Spanish as their native language.

With respect to education, the picture looks rather bleak: Ramirez and de la Cruz found that "more than two in five Hispanics age 25 and older have not graduated from high school" (4). More than one quarter (27 percent) did not even finish nine years of schooling (Ramirez and de la Cruz 4). Within the Hispanic population the scholars found considerable variation when it comes to educational attainment. For instance, Cubans were most likely, and Mexicans were least likely to be educated (Ramirez and de la Cruz 5).

When looking at the employment situation of Hispanics in the U.S. it turned out that this group was "much more likely than non-Hispanic Whites to be unemployed" (Ramirez and de la Cruz 5). Also, compared to non-Hispanic Whites, Hispanics were more likely to work in certain occupations, such as in the service industry, or in manual labor (Ramirez and de la Cruz 5-6). In their jobs, Hispanics earned less than non-Hispanic Whites: "Among full-time, year-round workers in 2002, 26.3 percent of Hispanics and 53.8 percent of non-Hispanic Whites earned $35,000 or more" (Ramirez and de la Cruz 6). Especially distressing is the finding that in 2002, 21.4 percent of Hispanic adults and 28 percent of Hispanic children were living in poverty (Ramirez and de la Cruz 6).

Of course, all the numbers presented here do not include the many Hispanic illegal immigrants that live in the U.S. If they were added to the picture, it would probably still look

much worse. Yet, as written above, the explanatory power of the facts given here regarding the individual's likeliness to commit crime is rather limited.

But, if in fact Hispanics do commit crime in the U.S., they have to deal with a legal system that might be entirely strange to them. Not only do Hispanic defendants have to deal with U.S. law, and legal procedures, but also with the English legal language. In the following chapter these challenges will be outlined briefly.

1.6 Courtroom Challenges

When a Hispanic defendant enters a U.S. courtroom he might find himself in a new and strange situation. This situation might trigger feelings such as fear, suspicion, and insecurity in the defendant. On the other hand, the jury and the judge might, due to cultural differences, perceive the appearance and behavior of the defendant, as "strange" or "suspicious".

Cultural misunderstandings might be an even greater obstacle to the courtroom procedures, if the defendant's English proficiency is limited, and if in consequence the defendant does not fully comprehend the legal proceedings. One commentator said that: '[n]owhere is the need for the protection of the language rights of minority groups more pointed than in contacts with the legal process. Many non-English speakers are recent arrivals to this country; here, they face not only a new language, but a complex criminal justice system that may be just as new and strange as the language. For a non-English-speaking person in criminal cases, the inability of the individual to understand fully the nature of the charges and testimony against him may cost him his liberty or even his life' (del Valle 165).

With life or liberty at stake, it is crucial for the defendant to be able to fully participate in the legal proceedings against him. Not only does the defendant have to be able to receive and

give communication in English, but he also has to be able to understand the special English language "jargon" used in U.S. courts—legal language.

As research on "jury instructions" has shown, even to a native English speaker this "sublanguage" is often difficult to understand (Charrow, Crandall and Charrow 176). So, what are the characteristics of legal language, that is, what makes it such a challenge to English native, and non-English native alike?

First of all, legal language is specialized, highly precise and complex (Chimombo and Roseberry 287). Based on the findings in Mellinkoff's book The Language of the Law Charrow, Crandall and Charrow summarize the following lexical features of this specialized language:

> 1. Frequent use of common words with uncommon meanings (using *action* for *lawsu*it, *of course* for *as matter of right*, etc.)
>
> 2. Frequent use of Old and Middle English words once used but now rare (*aforesaid, whereas, said* and *such* as adjectives, etc.)
>
> 3. Frequent use of Latin words and phrases (*in propria persona, amicus, curiae, mens rea*, etc.)
>
> 4. Use of French words not in the general vocabulary (*lien, easement, tort*, etc.)
>
> 5. Use of terms of art—or what we'd call jargon – (*month-to-month tenancy, negotiable instrument, eminent domain*, etc.)
>
> 6. Use of argot—in-group communication or "professional language"—(*pierce the corporate veil, damages, due care*)
>
> 7. Frequent use of formal words (*Oyez, oyez, oyez*, which is used in convening the Supreme court; *I do solemnly swear, and the truth, the whole truth, and nothing but the truth, so help you God*)
>
> 8. Deliberate use of words and expressions with flexible meanings (*extraordinary compensation, reasonable mean, undue influence*)
>
> 9. Attempts at extreme precision
>
> (Melinkoff in Charrow, Crandall and Charrow175/176)

On a syntactic level passive forms, phenomena such as misplaced phrases, which are injected into the middle of clauses, repetitions, pronoun anaphora, and extremely long and complex sentences, can be found in legal language (Charrow, Crandall and Charrow 176 ff.).

It is not only the legal jargon which makes the courtroom situation a special challenge to non-native English speakers, but the fact that there are several language varieties used in such a setting. William O'Barr and his colleagues (1976) studied these varieties and came to the conclusion that there are four language varieties used in American courts: Formal legal language, standard English, colloquial English, and subcultural varieties (e.g. Black English) (O'Barr 25). O'Barr found that most speakers present in the courtroom do use more than one variety, and that they shift from variety to variety according to the purpose of their speech act (O'Barr 25).

Thus, the language environment in the courtroom can be a difficult one even for a native English speaker. Several scholars have pointed out the level of difficulty of legal language: Moore and Mamiya write "court language is more difficult than conversational language. Several independent studies of the linguistic level of court language have concluded that it is at or beyond high school level, and legal terminology drives it up even further. For a [...] party to be considered bilingual in a legal proceeding, the party's language level should be at least at the 12th-grade level in both languages" (32).

Sandra del Valle presents the findings of a study conducted on behalf of the Director of the Administrative Office of the United States courts, which found the English language proficiency level that is needed to stand trial to be even higher than 12th grade. It was concluded that 'because of the sophisticated language level used in courts, it is necessary to have a minimum of fourteen years of education to understand what goes on in a criminal trial...'(del

Valle 169). Consequently, one might wonder if even some native speakers should be entitled to an interpreter, or if courtroom language should simply be changed.

That such change is difficult argue Charrow, Crandall and Charrow (186ff.): As the meaning of legal terms is determined by law, and not by the common usage of the word, one would need to change the law first. It would be very difficult to rewrite the law in terms that are easier to understand, but as precise as the "archaic" legal language. And precise is what legal language needs to be. On the other hand, legal language is also to a certain degree ambiguous. In that way, judges are able to fit the law to an unlimited number of different cases.

As we have seen in the case of Gonzalez v. U.S. this ambiguity of legal language can pose a threat to the non-native English defendant's language rights. The Federal Court Interpreter's Act states that the defendant's English language comprehension has to be sufficiently "inhibited" in order for him to be entitled to an interpreter. Yet, "inhibited" is not further defined; and the definition of what English level is sufficient is left to the judge.

Thus, it is possible that not only the courtroom situation, and the actual form of legal language represent an obstacle to the non-native English defendant, but also the "ambiguous" language legislation that was enacted to preserve the constitutional rights of the defendant. In the next chapter, this language legislation will be examined.

1.7 Language Legislation

In general, there are two types of protections for non-English speaking defendants under current U.S. law: constitutional protections, such as the Fifth, Sixth, and Fourteenth Amendments, and statutory protections, such as the Federal Court Interpreter's Act. In addition, by 2000 "nine states ha[d] enacted statuses guaranteeing the right to a court-appointed

interpreter, including Arizona, California, Colorado, Illinois, Massachusetts, Minnesota, New Mexico, New York, and Texas. California and New Mexico have demonstrated the highest commitment to ensuring that language is not a barrier in the courtroom, by making the provision of an interpreter a constitutional right. The remainder of the twenty-four states that provide for court interpreters do so by way of administrative or judicial regulation" (Reynoso 288).

Let's start with the constitutional protections, and thus with the Fifth, Sixth, and Fourteenth Amendments. In relevant parts the Fifth Amendment states that 'No person shall be deprived of life, liberty, or property, without due process of law...'(del Valle 165). The Sixth Amendment states that 'In all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the Assistance of Counsel for his defense' (del Valle 165). And, the Fourteenth mandates that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"(findlaw.com).

In sum, these Amendments "guarantee due process, fundamental fairness and equal protection under the law" (Benmaman "The Spanish Speaker," 82). Benmaman writes: "The Sixth Amendment "states that a defendant has the right to be 'meaningfully present' at his or her own trial. This presence implies not only the defendant's physical presence, but also his or her 'mental presence," i.e. direct knowledge about court proceedings" ("The Spanish Speaker," 82).

Based on this interpretation of the Sixth Amendment the case US ex rel. Negrón, v. New York (1970), in which the Hispanic defendant had been denied an interpreter, was rendered unconstitutional. "The Second Circuit found that Negrón's trial violated the […] right of a defendant to confront the witnesses against him. The court found that without the aid of

translation, Negrón was essentially not present at his own trial" (del Valle 167). Although this case has drawn closer attention to the language rights of non-English speaking defendants, it has left U.S. judges with two questions to answer: First, when is the non-native English defendant's English good enough to stand trial without an interpreter? Second, how should the defendant's English language ability be determined?

Already in 1907, in the case of Perovich v. US, it was decided that "the appointment of an interpreter 'is a matter largely resting in the discretion of the trial court.... " (del Valle 167). And, since that time judges have been in charge of determining which defendant is entitled to an interpreter, and which is not.

This burden was also not taken off the judges' shoulders, when in 1978 the Court Interpreter's Act was passed. The Act "mandates the presence of certified interpreters when a litigant has limited English language skills" (Benmaman "The Spanish Speaker," 84). In order to qualify for interpreting services under the Act, the language comprehension of a defendant has to be sufficiently "inhibited." How to interpret "inhibited" is up to the presiding judge. In consequence, judicial decisions of who qualifies for language assistance during trial vary from case to case. If the defendant feels that he has been treated unfairly, it is his responsibility to prove the discretional abuse by the judge. Due to limited court records that burden is hardly ever met.

State legislation concerning the language rights of the defendant in most cases is as ambiguous as federal legislation. In California's state constitution, article 1, section 14 it says: "A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings." But, what about defendants who understand a little English? The California Rules of Court, Section 18 offer some help. In relevant parts they state:

(a) An interpreter is needed if, after an examination of a party or witness, the court concludes that:
(1) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or
(2) the witness cannot speak English so as to be understood directly by counsel, court, and jury.

(b) The court should examine a party or witness on the record to determine whether an interpreter is needed if:
(1) a party or counsel requests such an examination; or
(2) it appears to the court that the party or witness may not understand and speak English well enough to participate fully in the proceedings.

(c) To determine if an interpreter is needed the court should normally include questions on the following:
(1) Identification (for example: name, address, birthdate, age, place of birth);
(2) Active vocabulary in vernacular English (for example: "How did you come to the court today?" "What kind of work do you do?" "Where did you go to school?" "What was the highest grade you completed?" "Describe what you see in the courtroom." "What have you eaten today?"). Questions should be phrased to avoid "yes or no" replies;
(3) The court proceedings (for example: the nature of the charge or the type of case before the court, the purpose of the proceedings and function of the court, the rights of a party or criminal defendant, and the responsibilities of a witness).

(Judicial Council of California)

Thus, California has been progressive compared to other states in that it not only made the right to an interpreter a state constitutional right, but in that it even offers guidelines on how to determine the language proficiency of a non-native English defendant.

The Texas government code is much less precise. In title 2, subtitle d, chapter 57.002 it says about the appointment of a court interpreter:

(a) A court shall appoint a certified court interpreter or a licensed court interpreter if a motion for the appointment of an interpreter is filed by a party or requested by a witness in a civil or criminal proceeding in the court.

> (b) A court may, on its own motion, appoint a certified court interpreter or a licensed court interpreter.

Yet, nothing is said about English language proficiency, or methods to determine the proficiency of the defendant. In Florida's Evidence code 90.606 it states

> (1) (a)When a judge determines that a witness cannot hear or understand the English language, or cannot express himself or herself in English sufficiently to be understood, an interpreter who is duly qualified to interpret for the witness shall be sworn to do so.

In other cases, as for example in the state code of New York the non-native English defendant's right to an interpreter is not explicitly stated. While New York's evidence code deals with the appointment of an interpreter for hearing impaired persons, it does not specifically deal with the language rights of a non-native-English defendant.

Whether the non-English native defendant's right to an interpreter is explicitly stated as part of a state's constitution, or whether it is simply assumed based on the rights guaranteed in the Fifth, Sixth, and Fourteenth Amendment, in practice the realization of this right in federal and state courts alike is everything but certain. In every case, it is up to the judge to decide whether a defendant is entitled to an interpreter or not, and no law exists that limits the judge's discretion in this matter. Thus, while it is advancement that the right to a court interpreter is widely recognized, in practice the realization of this right is not guaranteed.

1.8. Organization of the Study

That language legislation in U.S. courts is limited or insufficient is also the conclusion of many of the authors whose literature will be reviewed in the next chapter of this paper.

In order to improve the language rights of Hispanics, and other non-native English defendants a study was conducted to find out what methods judges actually use in order to determine whether a non-native English defendant needs an interpreter, or not. The judges were also asked what level of English proficiency they consider to be sufficient for a defendant to stand trial without the language assistance of an interpreter. The exact methods and procedures used to conduct this study will be outlined in Chapter 3 of this paper. The findings of the study will be presented in Chapter 4, and a discussion of the findings follows in Chapter 5.

CHAPTER 2. LITERATURE REVIEW

In this chapter, literature that deals with the language rights of non-native English defendants will be presented. Three different categories of literature will be introduced: First, publications will be presented that deal with a variety of problematic linguistic issues in the courtroom setting. Second, publications that provide an overview of recent court cases involving linguistic issues will be mentioned; and third, publications that deal with the question of language testing in the courtroom setting will be introduced. Let's start with the article that provided the idea for this study.

2.1 Language Issues in the U.S. Justice System

In 2000 Virginia Benmaman published her article "The Spanish Speaker + Interpreter Services= Equal Access to the Judicial System: Is this Equation Accurate?" in which the author addresses a variety of issues related to court interpreting. Topics dealt with are the quality of court interpretation, the difficulty of monitoring it, the roles of court interpreters, but also the actual problem of the appointment of a court interpreter.

When dealing with the latter issue, Benmaman writes about the current language legislation, that despite some improvements, "decisions about who qualifies for interpreter services […] are frequently arbitrary" (Benmaman "The Spanish Speaker," 84). Further, she writes: "All too often, th[e] determination of the litigant's [English language] ability is based on the personal perceptions of monolingual judges or English-speaking and even bilingual defense attorneys, rather than fact" (Benmaman "The Spanish Speaker,"85). Further the author states: "Although a judge may hold an evidentiary hearing to determine the litigant's English language skills, the questions asked often include a number of yes or no questions, instead of questions

which will elicit sufficient language on which to make a valid assessment of English language ability" (Benmaman "The Spanish Speaker,"85).

While Benmaman briefly discusses the failure to appoint an interpreter, the emphasis of her article lies on the quality of court interpreting and the problem of monitoring it. Due to the lack of voice recording, and the absence of the foreign language rendition in court transcripts, the defendant has little possibility to object to the interpreter's translation.

Also, chapter nine of the book Hispanics in the United States: An Agenda for the Twenty-first Century, which was published by David Wells Engstrom in 2000, deals with a variety of language issues in the legal system. The chapter with the title "Hispanics in the Criminal Justice System" was written by the honorable Cruz Reynoso. The author does not limit his discussion to the actual courtroom situation, but he also deals with topics such as Hispanics and the U.S. police, Hispanic representation in police and amongst court personnel, Hispanics in prisons, Hispanics as crime offenders and victims, and Hispanic juveniles and delinquency.

Reynoso argues that there is a "distrust of the institutions that form the criminal justice system […] in the Hispanic community" (277), and in his opinion language issues constitute an important reason for such negative feelings (277). According to Reynoso's research there is too little representation of Hispanics in law enforcement and court personnel—a fact that is changing slowly (286).

With respect to the situation in U.S. courts, Reynoso deals with the judge's failure to appoint a court interpreter, with the quality of court interpretation, and with the role of Hispanics as jurors in U.S. courts. Reynoso acknowledges that the federal government and some state governments have shown sensitivity to language rights of Hispanic defendants by enacting legislation, such as the Federal Court Interpreter's Act, but he criticizes these laws because they

are only limited to criminal courts and they leave the final determination as to whether an interpreter is needed or not up to the judge.

Sandra del Valle offers a perspective similar to that of the preceding two authors. In chapter five of her book Language Rights and the Law in the United States: Finding Our Voices (2003) Sandra del Valle discusses language rights in the context of civil, criminal and INS proceedings. In addition, she deals with language rights in jury service and prison.

With respect to criminal offenders del Valle starts her discussion with the language rights of the suspect during police interrogation and searches. She then deals with language rights of the defendant in the courtroom setting. Del Valle writes about the current language legislation: "Despite the simplicity of the concept of the need for interpretation during trials, this area has grown to be quite complex. Federal and state constitutional and statutory protections as well as old-fashioned common law parallel, overlap and intersect with each other creating a complicated pastiche of rights…"(165). The author writes further, that "[i]n determining whether a translator should be appointed, courts often [do] and should consider a variety of factors, such as the length of the defendant's residence in the US, the nature of his professional or social interactions while residing in the country, his occupations, education, intelligence and citizenship status. Some courts, however, will focus only on the defendant's fluency in speaking English" (165).

Del Valle points out that there is a debate on whether judges are able to determine the English proficiency of a defendant. According to her, some scholars argue that English-only judges lack the ability to do both—assess the language ability of the defendant, and the quality of the interpreter (once one is appointed) (172/173). Del Valle, just like Benmaman discusses the difficulty of the defendant to contest the quality of a translation after it was performed. Yet, the burden to prove that the translation was faulty is on the defendant.

Thus, del Valle, Benmaman, and Reynoso present the issue of language rights of non-native English defendants as one of many linguistic issues in the U.S. justice system. All of them conclude that current language legislation regarding these rights is insufficient. Furthermore, all of the authors find the judges' discretion over the decision as to whether a defendant is entitled to an interpreter or not as problematic.

2.2 Language Issues on Appeal

In a different context Benmaman deals with the topic of discretional abuse in her article "Interpreter Issues on Appeal," (2000). In this article the author examines court cases that deal with interpreter-related issues. She deals, for example, with cases involving the quality of interpretation, or the appointment of an uncertified interpreter. Benmaman also addresses the judge's failure to appoint a court interpreter. About this topic the author writes: "Bear in mind that no provision in the federal constitution guarantees the right to an interpreter" (Benmaman "Interpreter Issues," 1). She writes further:

> Since the Negrón ruling, several major events have bolstered the call for equal access to due process by linguistic minorities, such as the Court Interpreters Act of 1978 (amended in 1988); legislation in several states mandating the presence of interpreters in cases involving individuals with minimal English skills; and as of this writing, the required certification of practicing interpreters in twenty-two states. Yet we must not lose sight of the fact that the trial court has wide discretion in determining whether an interpreter is necessary for a defendant. Appellate opinions commonly hold that the appointment of an interpreter, as well as determination of who is qualified to serve as interpreter, is within the trial court's sound discretion. Such is the case in every state, and this judicial exercise is considered an abuse of discretion only if the defendant has thereby been deprived of some basic right.("Interpreter Issues,"2)

According to Benmaman, the "failure to appoint an interpreter was the most common grounds for appeals during the 1970's and early 1980's"("Interpreter Issues," 3). And it still

happens today ("Interpreter Issues," 3). The author then discusses a variety of recent court cases that deal with this issue, such as for instance, State v. Rodriguez N.J. (1996), or Ohio v. Fonseca (1997).

About the methods used by judges to assess the need for an interpreter Benmaman writes: "How monolingual or even bilingual judges can accurately assess language skills has not been fully debated, all the more curious given that foreign language educators are still grappling with developing an appropriate methodology for determining language proficiency"("Interpreter Issues," 3). Thus, Benmaman does not offer any ideas on how to determine language proficiency. Let's turn to literature that deals with language testing in courts.

2.3 Language Testing in Courts

The article "Lawyers, Linguists, Story-tellers, and Limited English-Speaking Witnesses" by Miguel A. Mendez "explore[s] the need to provide trial judges with an effective and efficient English assessment test that will help them determine whether a limited English-speaking witness requires the help of an interpreter" (79). Although the article deals with the rights of non-English native defendants to an interpreter only on the periphery, Mendez's criticism concerning current language legislation, and his thoughts on developing a language assessment test to determine the language proficiency of non native–English witnesses provide important insights for the topic of the study presented here.

Mendez examines the Court Interpreter's Act, and finds that nothing in this act helps the judge decide when to appoint an interpreter. The author writes: "Indeed, the legislative history completely bypasses the question of how the judge is to make the competency determination and entrusts the task, without guidelines, to the judge and counsel" (94). He further states: "The

absence of explicit competency measures or guidelines, combined with the virtual unreviewability of inferior court rulings, has left trial judges with the unenviable task of determining the linguistic competency of limited English-speaking witnesses on an ad hoc and linguistically unprincipled basis"(97).

Mendez explains that no English proficiency tests exist to decide whether non-native English witness needs an interpreter, and he calls on the linguists to "help the bench and bar develop language proficiency assessment tests"(97).)

Mendez names six features that those language tests should possess. For instance, the tests should be easy to administer. They should not to be too "subtle." If doubt about the competency of the witness remains, an interpreter should be appointed. Unfortunately, Mendez does not give any specifics on the contents of such proposed tests. What questions or items should such tests include?

A more detailed idea on language testing is provided by Joanne Moore and the Honorable Ron A. Mamiya in chapter three of the book Immigrants in Courts. This book was published by Joanne Moore and Margaret Fisher in 2000. The title of the relevant chapter is "Interpreters in Court Proceedings." In this chapter, the authors first deal with the issue of interpreting quality and certification and then with the actual appointment of a court interpreter.

The authors write: "As a result of language acquisition barriers, many immigrants, especially those who moved to the United States as adults, have mastered their second languages at a conversational level rather than at a "fully bilingual" level"(Moore and Mamiya 32). In order to test whether the immigrant's English proficiency is sufficient in court, "voir dire of the limited-English-speaking party should be undertaken [by the judge]. Open-ended questions are recommended, calling for explanatory sentences rather than monosyllables" (32). Also, the

authors recommend that the judge should "[w]atch for repeated vocabulary, grammar, and syntax errors in the party's answers. Those factors indicate a faulty grasp of English and an inability to fully participate in the proceeding without an interpreter"(Moore and Mamiya 32). In addition, Moore and Mamiya (32) suggest the following questions for assessing the English language ability in court:

1. Please describe when and how you learned English.
2. What is your educational history, in the U.S. and in your original country?
3. Do you read and write English? Please tell us the last book, magazine, and/or newspaper you read in English.
4. Where do you speak English, and where do you speak your other language?
5. Please define these legal terms: bail, arrest, prosecutor, charge, evidence, etc. (and/or other relevant legal terms).

While these proposed questions offer at least a starting point when it comes to English language proficiency testing in courts, the interpretation of the responses to these questions is still left up to the judge. Which answers are acceptable, which are not?

2.4 Conclusion

Thus, the dilemma is the judge's discretion over linguistic matters. All of the above mentioned texts deal with this dilemma in one way or another. When is the English proficiency of a defendant sufficient to stand trial alone? How do judges determine the language proficiency of the Hispanic defendants they deal with in court? In the following chapter the methods and procedures used to conduct a study that deals with answering these and other questions will be presented.

CHAPTER 3. METHODS AND PROCEDURES

3.1. Research Questions

The information and arguments presented in chapter one and two of this study paint a rather dark picture of the linguistic environment in U.S. courtrooms. In this environment a non-English native defendant's right to an interpreter is dependant on the "linguistic call" of the presiding judge over his/her case. The judge is free to determine the English proficiency level below which an interpreter is needed to assist the non-native English defendant.

A flawed "linguistic call" on part of the judge can have severe consequences for the defendant, as can be seen in the case of Gonzalez v. U.S. Such a call can be even more damaging if it sets precedents, which later can be used to "justify" other "flawed" court rulings. Nonetheless, appropriate legislature for the assessment of a defendant's English proficiency is lacking, and guidelines that could help judges in the proficiency assessment are rare, incomplete, and noncommittal.

This study's purpose is to contribute to the development of more complete guidelines, which might lead to an improvement of language proficiency testing standards in U.S. courts, and with this to more justice. This study seeks to answer the following four major research questions:

(1) Are the linguistic needs of the growing Hispanic population truly an issue in U.S. courtrooms?

(2) At what proficiency level does the English of a defendant have to be in order to be able to stand trial in criminal court without a court interpreter?

(3) What methods and procedures do judges use in order to assess the English proficiency of a Hispanic defendant?

(4) Do judges believe that guidelines would help them in making their "linguistic call"? How would they imagine such guidelines?

The first research question is based on the assumption that there is a high percentage of Hispanics that enter the U.S. justice system, and with this there is a true need for clear language legislation. The information provided in chapter one of this study regarding the growing number of Hispanics in the U.S., the growing percentage of Hispanics in U.S. correctional facilities, and the fact that two in five Hispanics are foreign born support this assumption. Yet, it remains to be seen whether this assumption holds true.

The second research question deals with the question at what level judges draw the line when it comes to the appointment of an interpreter. How good do verbal expression, and listening comprehension of a non-native English have to be in order to be able to stand trial without an interpreter.

Research question number three is the most important of all the questions posed here. What methods do judges use to determine the English proficiency of a defendant? Do they question the defendant as in the case of Gonzalez v. U.S., or do they simply wait for a request made by the defendant, or his attorney? Do they base their decision to appoint an interpreter on socioeconomic data, or do they ignore such data at all?

The answers to research question three are very valuable when it comes to the design of standards for English testing in U.S. courtrooms. But, would judges value such guidelines at all? According to them, what should be included in such guidelines?

3.2 Survey Design

In order to answer these research questions a survey was sent to one hundred judges. This survey is divided into five parts, which logically correspond to the research questions asked. Parts one to three of the survey correspond to research questions one to three; survey parts four and five correspond to research question four. In the following, the features of the survey are summarized. The entire survey can be found in Appendix A of this study.

In part I of the survey the judges were asked to respond to the following questions

1) What percentage of the defendants you deal with in criminal court are of Hispanic background?
2) What percentage of the Hispanic defendants have as their first (native) language Spanish?
3) How would you rate the average English proficiency of these defendants?
4) Do you consider language proficiency a barrier in the courtroom?

In order to answer these questions, the judges were asked to choose from five options ranging from "Few" to "Very many," "Very poor" to "Very good," or from "Never" to "Always." The purpose of these questions was to find out more about the current "linguistic" environment in U.S. courts, and to answer the research question whether linguistic needs of Hispanics are truly an issue in the setting of U.S. criminal courts.

Part II of the survey used in this study consists of two questions. In the first question the judges were asked to rate how good the defendant's listening comprehension has to be in order to stand trial without a court interpreter. In the second question the judges were asked to rate how good the defendant's English verbal expression has to be in order to perform the same task.

Again, the judges were given five different responses to choose from. For instance, in the case of the first question the possible answers were:

The defendant…

> -must be able to understand everything that is said in the court, including legal terminology
>
> -must be able to understand broadly what is said in the court room. He can consult his attorney, if there are questions regarding the proceedings.
>
> -must only be able to understand his attorney and his summary of the proceedings in the court room.
>
> -does not have to be able to understand any English, if his attorney speaks Spanish
>
> -does not have to be able to understand any English, even if his attorney does not speak Spanish, and no direct communication with the attorney is possible.

The purpose of these two questions was to answer research question two: At what proficiency level does the English of a defendant have to be in order to be able to stand trial in criminal court without a court interpreter?

In part III of the survey the judges were then asked to indicate the methods and procedures they use to assess the English proficiency of a Hispanic defendant. They were further asked to indicate the specific information they need to know about the defendant's background (e.g. years in U.S., education). This time the judges were not given any choices, but were asked to share their professional experiences. The information obtained from these survey questions will help to answer research question three:

Finally, the judges were asked about several interpreter-related issues, which will later be presented in the discussion of this study. More importantly, in the last two sections of the survey the judges were asked whether they thought that a set of guidelines would help them in the

decision about whether a defendant needs an interpreter or not, and what they would include in such guidelines. The latter question was an open question, and for the other questions choices from "I strongly agree" to "I strongly disagree" were offered. The information obtained here will help to answer research question four.

3.3 Data Collection

The one hundred surveys used in this study were sent to Federal and State court judges in California, Florida, New York, and Texas. More precisely, the surveys were sent to Los Angeles County, CA, Miami Dade County, FL, Bronx County, NY, and Harris County, TX. These four counties were chosen as they belong to the ten counties with the highest percentage of Hispanic population in the U.S.

In each of these counties there is a federal and a state court. Although the state judicial systems vary from state to state, an effort was made to find comparable state criminal courts.

Twenty-five surveys were sent to every federal court, and 20 surveys were sent to every state court. The federal courts received five more surveys than the state courts, as in federal courts magistrate judges as well as district judges are likely to deal with the appointment of an interpreter.

The judges to whom the surveys were sent were picked randomly from the courts' websites that can be found on the internet. All judges received the same survey, which was coded with a number or a letter according to its destination county and court in order to be able to group the surveys once they were returned.

3.4 Data Distribution

Although 38 judges participated in this study, only 37 cases can be included in the analysis, as one participant invalidated his/her survey by removing the county code.

Table 3.1. shows the frequency distribution of surveys returned by state. According to this table the highest number of surveys (12) was returned by judges in Florida, followed by judges in Texas (10), and judges in New York (8). The least number of surveys was returned by judges in California (7). One can only speculate about the reasons behind this distribution. Even though one explanation might be the proximity between Louisiana, the origin of this study, and the states Texas and Florida, many other reasons, such as personal interest of the judges, or their workload might be factors that have influenced the judges' decision to participate in this study.

Table 3.1: Frequency Distribution of Surveys Returned by State

State	Frequency	Percent
CA	7	18.9
FL	12	32.4
NY	8	21.6
TX	10	27.0
Total	37	100.0

The distribution presented above can be split up further into "state courts" and "federal courts." While relatively more surveys (2.5:2) were sent to federal courts, in two cases, namely in the cases of California, and New York, more surveys were returned by state court judges (4; 5) than by federal judges (3; 3). In the case of Florida an equal number of state and federal judges responded (6:6) to the survey. Texas is the

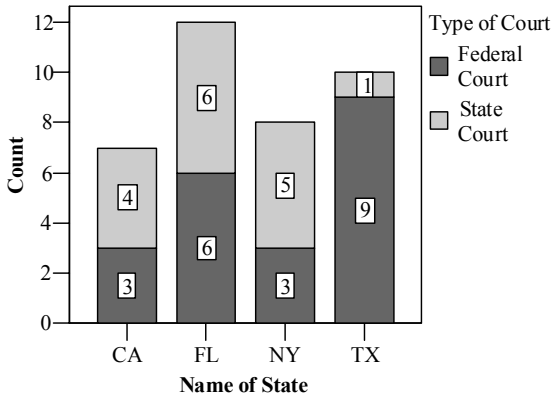

Figure 3.1: Frequency Distribution of Surveys Returned by State and Court Type

only case in which more federal judges than state judges returned the survey. While in all of the three other cases the state Court to federal Court ratio seems to be more or less balanced, surprisingly, in the case of Texas this ratio is 1:9. Again, one can only speculate as to why the distribution turned out in that particular way.

3.5. Data Analysis

The data obtained from the survey responses will be presented in Chapter 4 of this study. It will initially be compared by splitting it up into groups according to their state of origin. This will show regional differences. Then, the data will be further split up into "federal court" and "state court" responses. This will make it possible for us to compare differences within the states. Finally, we will look for differences with the group of State courts and within the group of federal courts.

3.6 Research Limitations

The research presented here is limited in several ways. First, the data collected here is confined to only four states (CA, FL, NY, TX), and more precisely to four counties. Thus, the findings here do not reflect the opinions and judgments of U.S. judges in the general, but rather those of judges that work in counties that have the most Hispanic population in the U.S. The linguistic situation in courtrooms in other parts of the country might be entirely different.

Second, the research here is limited by the number of responses. The findings here reflect the opinions and judgments of thirty-seven different judges. Compared to the many judges we have in the U.S. this number seems to be very small. Especially sparse were the responses

that came back from the selected Texas federal court, from which only one survey was returned. In consequence, one hundred percent in this case only reflects the opinion of one judge.

CHAPTER 4. FINDINGS

In this chapter the data collected for this study is presented, analyzed and summarized. The chapter is divided into four parts, each addressing a different research question. As described previously, the data pertaining to each of these questions is analyzed in three different ways: First, the results by states are compared; second, the data is split up further and state courts and federal courts in the four states are compared; and finally, the group of state courts is compared to the group of federal courts.

4.1 Research Question I: Are the Linguistic Needs of the Growing Hispanic Population Truly an Issue in U.S. Courtrooms?

In order to answer this research question the data from the first four survey questions is presented and analyzed in the three ways described above. The judges were asked about the percentage of defendants with Hispanic background, about the percentage of Hispanics that have as their native language Spanish, about the English language proficiency of these defendants, and whether or not they consider language a barrier in the courtroom. To answer these survey questions the judges had to choose between five different responses. In the analysis these responses were then assigned five numerical values (1-5).

The values of the chosen responses together resulted in the "Average Response," (mean) and the "Most Frequent Response," (mode) in each category (e.g. State, Court Type). Using these values, also the highest and the lowest response in each category (range) could be identified.

All tables used in this part of chapter four are identical in that they display the same types of information:

1) Survey Question

2) State/ Court (e.g. FL, or CA State)
3) Total
4) No. of Responses (total number of responses in that category)
5) Lowest Response
6) Highest Response
7) Average Response (mean)
8) Most Frequent Response (mode)

Underneath each table a legend shows what the numerical values used in the table represent. These values also appear in the text in brackets behind the expression they refer to. For instance, the expression "Very many" was assigned the value five, so (5) appears behind it every time it is mentioned in the text. Furthermore, figures are used to visualize the "Average Response" in each category.

4.1.1 Survey Question I: What Percentage of Defendants You Deal with in Criminal Court Are of Hispanic Background?

4.1.1.1 Analysis by State

Table 4.1 below presents a summary of the responses given to survey question one according to their state of origin. When asked about the background of the defendants they deal with in criminal court, the response most frequently given by judges in all four states was that "About half"(3) of the defendants are of Hispanic background.

Also, the average response values in the states New York and Texas reflect this answer; whereas in the two other states (CA, FL) the average responses show that between "About half"(3) and "Many"(4) of the defendants are of Hispanic background. Only in one state (NY)

did judges estimate that "some" (2) of their defendants are of Hispanic background. In all other states, the lowest response given was that "About half" (3) of the defendants possess this characteristic.

Table 4.1 Percentage of Defendants with Hispanic Background by State

Survey Question I:	State	No.of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
What % of defendants you deal with in criminal court are of Hispanic background?						
	CA	6	3.00	5.00	3.50	3
	FL	12	3.00	5.00	3.50	3
	NY	8	2.00	4.00	3.00	3
	TX	9	3.00	4.00	3.11	3
	Total	35	3.00	5.00	3.29	3

Possible Answers:
5 ="Very many" (100-80%)
4 ="Many" (19-60%)
3 ="About half" (59-40%)
2 ="Some" (39-20%)
1 ="Few" (19-0%)

In California and Florida the judges estimated that in between "About Half" (3) and "Very many"(5) of their defendants have a Hispanic background. In Texas, the judges estimated that in between "About Half" (3) and "Many" (4) of their defendants have this characteristic. And, the responses given by judges in New York show that between "Some" (2) and "Many" (4) of their defendants are Hispanics.

New York is the state with the lowest average response when it comes to the number of defendants with Hispanic background (3.0). Texas has a slightly higher average (3.11), and California, and Florida both have the highest average response (3.5). Figure 4.1 visualizes the differences and similarities in average responses.

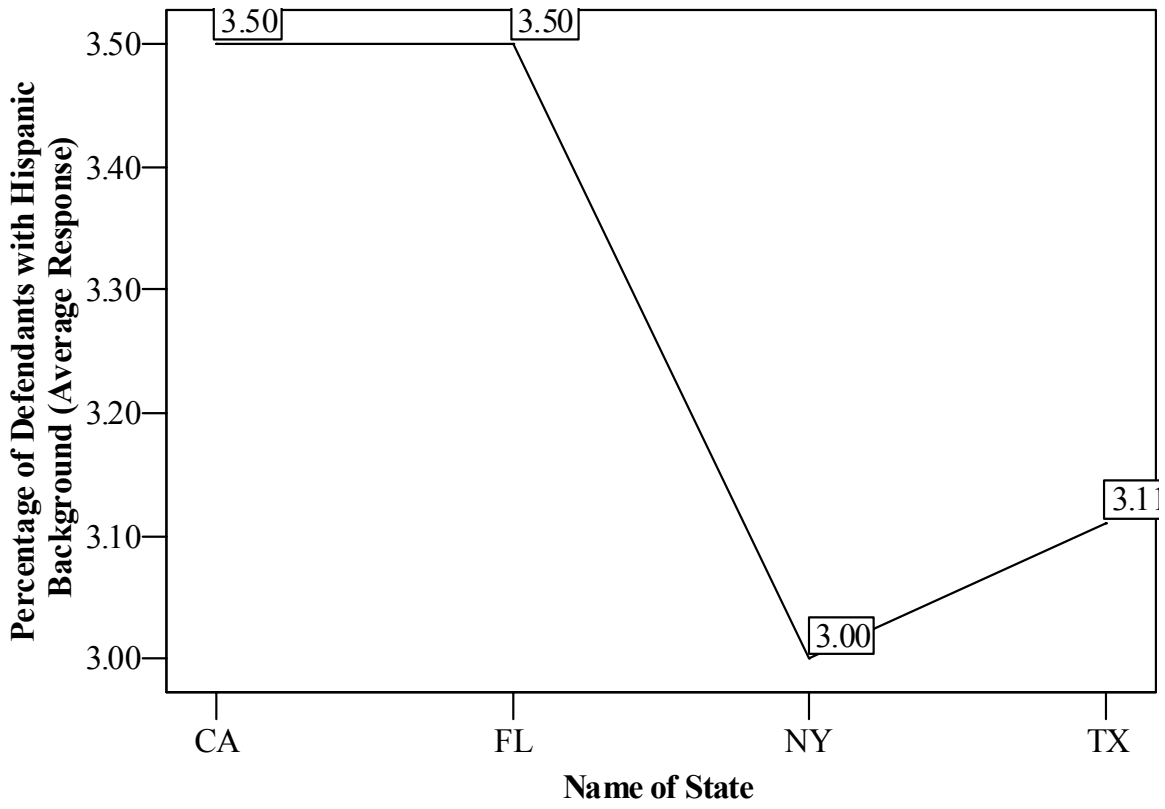

Figure 4.1 Percentage of Defendants with Hispanic Background (Average Response by State)

4.1.1.2 Analysis by Court and State

The analysis of the individual courts provides a more detailed picture. While the results in general do not seem to differ much from those "by state," it is now possible to determine differences between the state and the federal court in each state. Let's start with some general findings: Just as in the previous analysis, this analysis shows that in no case, that is in no court, the average response value is lower than three. This means that on average in each court "About half "(3) of the defendants are of Hispanic background.

Table 4.2 Percentage of Defendants with Hispanic Background by State and Court

Survey Question I:	State/ Court	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
What % of defendants you deal with in criminal court are of Hispanic background?	CA Fed	2	3.00	5.00	4.00	3/5
	CA State	4	3.00	4.00	3.25	3
	FL Fed	7	3.00	5.00	3.85	4
	FL State	5	3.00	3.00	3.00	3
	NY Fed	3	2.00	4.00	3.00	2/3/4
	NY State	5	2.00	4.00	3.00	3
	TX Fed	8	3.00	4.00	3.12	3
	TX State	1	3.00	3.00	3.00	3
	Total	35	3.00	5.00	3.29	3

Possible Answers:
5 ="Very many" (100-80%)
4 ="Many" (19-60%)
3 ="About half" (59-40%)
2 ="Some" (39-20%)
1 ="Few" (19-0%)

The analysis by state showed that both states California and Florida had a relatively higher score on the average response for this question. A closer look now reveals that both California (4.00) and Florida (3.85) federal court are responsible for this high score. All the other courts have a very similar average response value. Also, California and Florida federal courts have both a most frequent response that is higher than the value three. In the analysis by state all "Most Frequent Responses" had this same value (3.0).

Not only California federal court and Florida federal court have a higher most frequent response than the value three, but also one of New York federal court's "Most Frequent Responses" is a value higher than three (4.0). This value is balanced by the "Most Frequent Response" with the value two.

That is why despite this higher most frequent response value, New York Federal court has the exact same average response as New York State court. But this seems to be the exception. In the three other states the average response of the judges in federal court was in

every case higher than the average response resulting from the answers provided by the judges in state court. These differences in average responses can be seen below in figure 4.2.

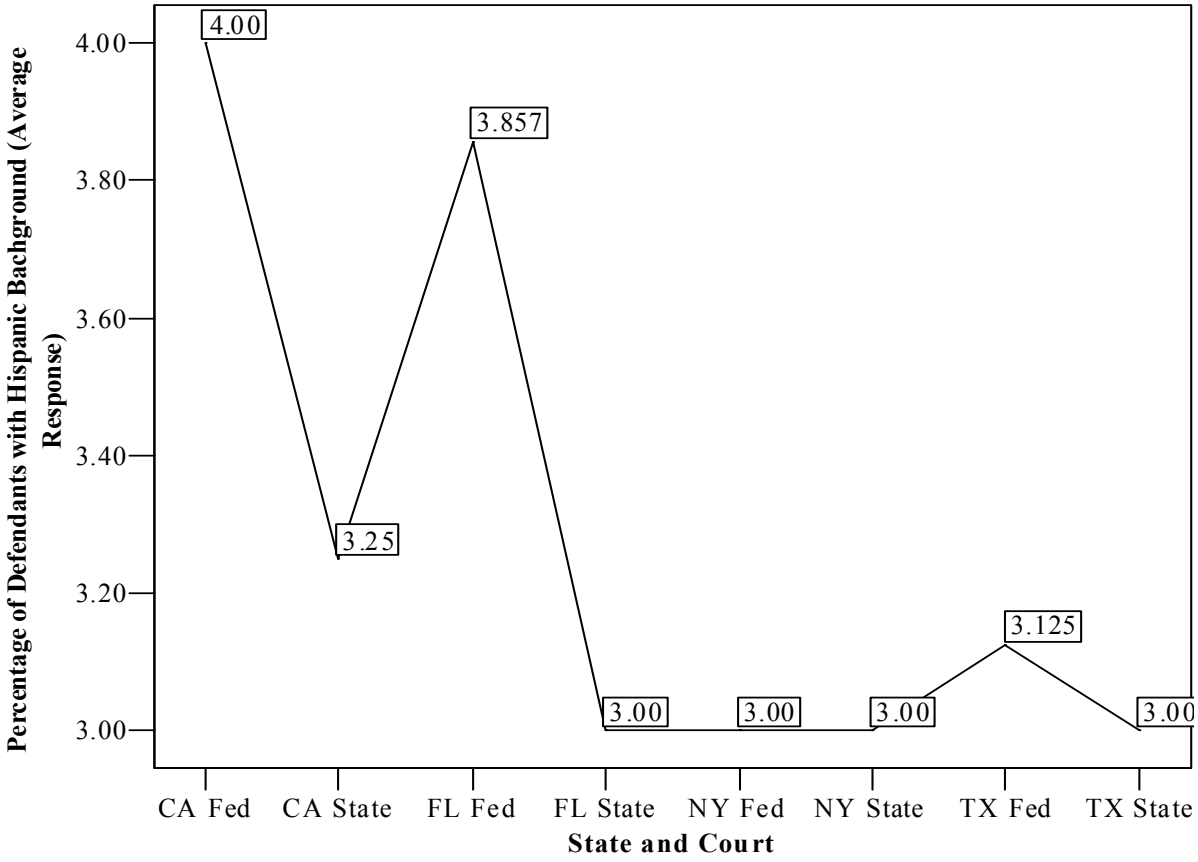

Figure 4.2 Percentage of Defendants with Hispanic Background (Average Response by State and Court)

4.1.1.3 Analysis by Court Type

Already the analysis by state and court (see figure 4.2) showed that except in the case of New York in each state the responses provided by the federal court resulted in a higher average response than those provided by the state court. This finds expression in table 4.3 below:

Table 4.3 Percentage of Defendants with Hispanic Background by Court Type

Survey Question I:	Court	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
What % of defendants you deal with are of Hispanic background?						
	Federal	19	2.00	5.00	3.42	3
	State	16	2.00	4.00	3.12	3
	Total	35	3.00	5.00	3.29	3

Possible Answers:
5 ="Very many" (100-80%)
4 ="Many" (19-60%)
3 ="About half" (59-40%)
2 ="Some" (39-20%)
1 ="Few" (19-0%)

The average response value for the federal courts is higher (3.42) than that for the state courts (3.12). Yet, as already pointed out in the preceding analysis the "Most Frequent Response" given by the judges to survey question one was that "About half"(3) of the defendants they deal with in criminal court are of Hispanic background. The range of responses provided by the judges is slightly broader for the responses returned by the federal courts than for those returned by the state courts. While federal judges used the full array of possible answers (1-5), the state judges only used four of the five possible choices (1-4).

4.1.1.4 Summary of Findings

Thus, when asked what percentage of defendants they deal with in criminal court are of Hispanic background, the judges responded most often with "About half"(3). Also, the average response values in Texas and New York reflect this answer, whereas the average responses produced by the judges from California and Florida indicate that between "About half" (3) and "Many"(4) of the defendants they deal with are of Hispanic background.

Especially high average response values resulted from the answers provided by the judges at California (4.00) and Florida federal courts (3.85). In both cases the average response

exceeds that of corresponding state courts. Also, the average response that resulted from the answers given by the judges at Texas federal court exceeds that produced by the answers provided by the judges at Texas state court slightly.

Only between the two courts in New York no difference can be found with regard to the average response values. The answers provided by judges at both courts resulted in an average of three. Also, the judges at these two courts are the only judges that responded to this survey question with "Some" (2). That is some judges there find that only "Some" (2) of the defendants they deal with in criminal court are of Hispanic background.

Finally, it can be said that the responses produced by the federal judges resulted in a slightly higher average response (3.42) than those provided by the state judges (3.12). Yet, in both categories the same most frequent response was given, namely that "About half" of the defendants the judges deal with in criminal court are of Hispanic background.

4.1.2 Survey Question II: What Percentage of the Hispanic Defendants You Deal within Criminal Court Have as Their First (Native) Language Spanish?

4.1.2.1 Analysis by State

When asked about the percentage of Hispanic defendants that have Spanish as their native language the results differ across the four states. In three out of the four states (CA, FL, NY) one of the most frequent responses given by the judges was that "Many" (4) of the Hispanics have Spanish as their native language. This was also the most frequent response for all categories. Still, in two states (NY, CA) there is more than one "Most Frequent Response," and the other frequently given answers indicate that less than "Many" (4) of the Hispanics actually speak Spanish as their first language. The average responses in all but one state (FL) can be

located somewhere in between the answers "About half" (3) and "Many"(4). In general, one can say that the answers provided by all judges vary greatly, which can be seen by the wide range of answers given within each state.

Table 4.4 Percentage of Hispanic Defendants with Native Language Spanish by State

Survey Question II:	State	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
What % of Hispanic defendants have as their native language Spanish?	CA	6	2.00	5.00	3.50	3/4
	FL	12	3.00	5.00	4.08	4
	NY	8	1.00	5.00	3.00	2/4
	TX	9	1.00	5.00	3.11	2
	Total	35	1.00	5.00	3.49	4

Possible Answers:
5 ="Very many" (100-80%)
4 ="Many" (19-60%)
3 ="About half" (59-40%)
2 ="Some" (39-20%)
1 ="Few" (19-0%)

The responses provided by the judges in Florida resulted in the highest average, and the highest "Most Frequent Response." According to both values "Many"(4) of the Hispanic defendants in Florida speak Spanish as their first language. In addition, Florida was the state with the least variation with regard to survey question two. All responses can be located with the range of the numerical values three and five, which means that these judges estimated that between "About half"(3) and "Very many"(5) of the Hispanic defendants have Spanish as their first language.

The second highest average response and most frequent response were produced by the answers given by the judges in California. According to these answers between "Some" (2) and "Very many" (5) of the Hispanic defendants have as their native language Spanish. The most frequent answers given were that "About Half" (3) and "Many" (4) of the defendants have

Spanish as their first language. The average answer (3.5) is also that in between "Many" (4) and "About Half"(3) of the Hispanic defendants are Spanish natives.

The responses returned by the judges in New York and Texas led to similar results when it comes to the range of responses, the most frequent response, and the average response. When asked what percentage of the Hispanics they deal with have Spanish as their first language, the judges in Texas answered most often with "Some"(2) and the judges in New York answered equally often with "Some"(2) and "Many" (4). Yet, in both states the answers varied greatly (between 1-5). The average response given by judges in both states was that "About half" (3) of the Hispanic defendants have Spanish as their first language. The responses from Texas resulted in a slightly higher average response (3.11) than the responses from New York (3.00). These averages together with the values for the average responses produced in California and Florida can be found in figure 4.3 below.

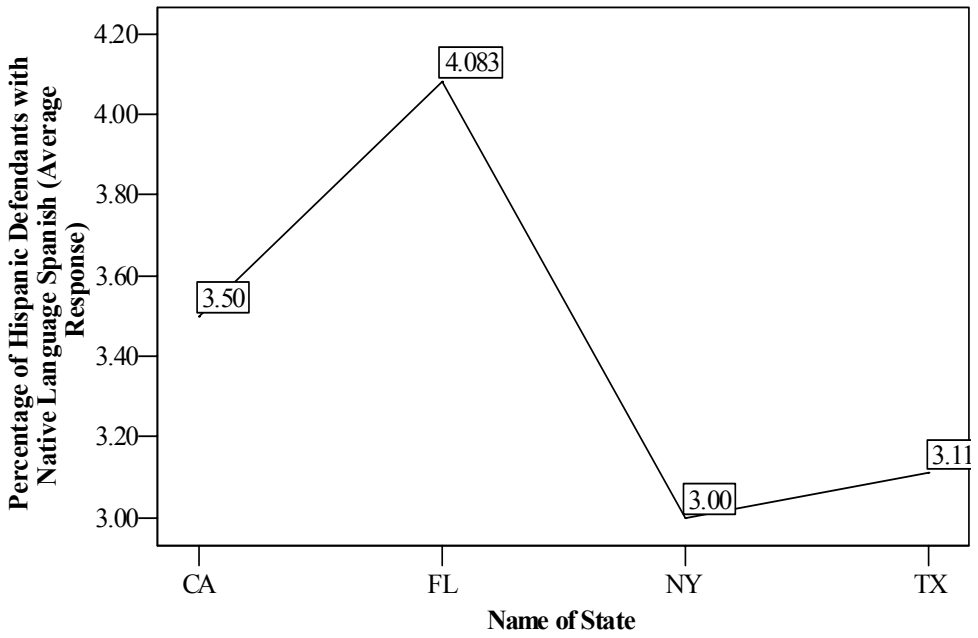

Figure 4.3 Percentage of Hispanic Defendants with Native Language Spanish (Average Response by State)

4.1.2.2 Analysis by State and Court

Once again, the analysis by state and court gives us a more detailed picture of the linguistic situation in the courts of the four states. For instance, we find that in three of the four states the federal courts have a higher average response than the state courts. An exception here is Florida, where the state court average exceeds that of the federal court.

Table 4.5 Percentage of Hispanic Defendants with Native Language Spanish by State and Court

Survey Question II:	State / Court	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
What % of Hispanic defendants have as their native language Spanish?	CA Fed	2	3.00	5.00	4.00	3/5
	CA State	4	2.00	4.00	3.25	4
	FL Fed	7	3.00	5.00	3.85	3
	FL State	5	4.00	5.00	4.40	4
	NY Fed	3	2.00	5.00	3.67	2/4/5
	NY State	5	1.00	4.00	2.60	2/4
	TX Fed	8	1.00	5.00	3.12	2
	TX State	1	3.00	3.00	3.00	3
	Total	35	1.00	5.00	3.49	4

Possible Answers:
5 ="Very many" (100-80%)
4 ="Many" (19-60%)
3 ="About half" (59-40%)
2 ="Some" (39-20%)
1 ="Few" (19-0%)

Florida state court has the highest average response value of all courts (4.4). The answers of the judges in this court varied only between "Many" (4) and "Very many" (5). Still, the most frequent response given was four.

A similar picture results from the answers given by judges at California federal court, which resulted in an average response of four. In this case the answers ranged between "About half" (3) and "Very many" (5). Florida federal court and New York federal court both have an average response value that approaches four, whereas California state court and Texas federal court have an average response value that is closer to three. Texas state responses resulted in an

average response of three, and New York state court responses produced the lowest average response with a value between two and three (2.60). The differences between the average responses can be found below in figure 4.4.

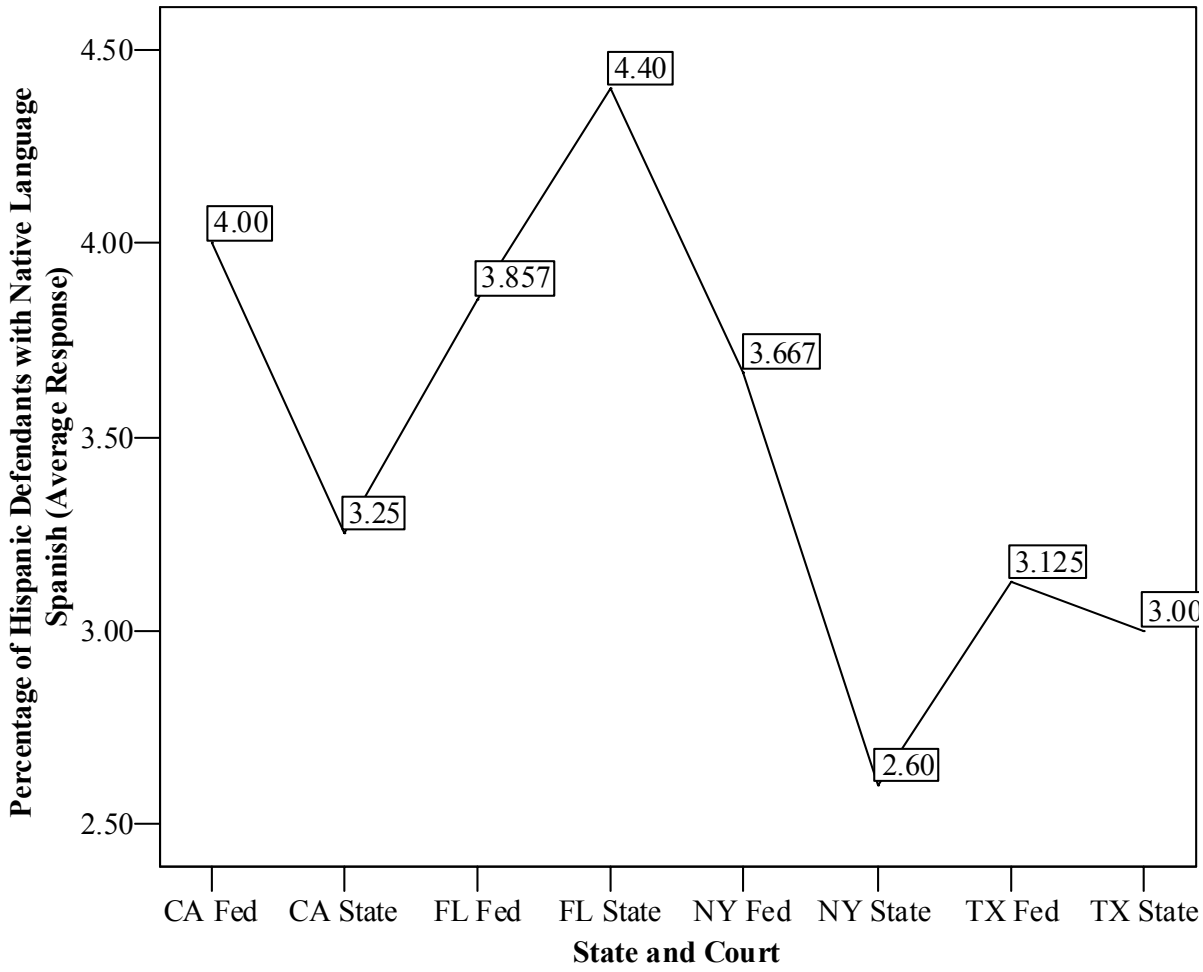

Figure 4.4 Percentage of Hispanic Defendants with Native Language Spanish (Average Response by State and Court)

Also, while in California and Florida courts the range of answers varies between two or three values, which mostly lie in the upper part of the scale, in New York and Texas courts the responses cover (almost) the entire scale. Certainly, for Texas state court we cannot make a valid statement about the range of values, as only one response was returned.

Just as in the analysis by state we can conclude that the majority of "Most Frequent Responses" lies somewhere between the values two ("Some") and four ("Many").

4.1.2.3 Analysis by Court Type

Table 4.6 Percentage of Hispanic Defendants with Native Language Spanish by Court Type

Survey Question II:	Court	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
What % of Hispanic defendants have as their native language Spanish?						
	Federal	19	1.00	5.00	3.57	5
	State	16	1.00	5.00	3.37	4
	Total	35	1.00	5.00	3.49	4

Possible Answers:
5 ="Very many" (100-80%)
4 ="Many" (19-60%)
3 ="About half" (59-40%)
2 ="Some" (39-20%)
1 ="Few" (19-0%)

As can be seen in table 4.6 the answers produced by federal and state court judges result in different values. The average response value for federal judges is slightly higher (3.57) than that for state judges (3.37). The range of answers is the same in both categories; the "Most Frequent Responses" vary slightly.

4.1.2.4 Summary of Findings

From the preceding analysis we can conclude that on average between "About half"(3) and "Many"(4) of the Hispanic defendants the judges deal with in court have Spanish as their first language. "Many" (4) was also the answer most often chosen by judges in all categories.

If we compare the different states, we find that Florida is the state with the highest average response for this question (4.08), followed by California (3.5) and Texas (3.11). The responses from New York produced the lowest average response value (3.00).

In three of the four states (CA, NY, TX) the average responses produced in federal court exceed those provided by the answers of the judges in state court. Florida is the exception. The responses from Florida state court resulted in an average value of 4.08, which is the highest average response value produced in any category.

As in most federal courts higher average values were produced, it is not surprising that the federal courts have a higher "Most Frequent Answer" (=5), and a slightly higher average response (3.57) than the state courts (3.37).

4.1.3 Survey Question III: How Would You Rate the Average English Proficiency of the Hispanic Defendants?

4.1.3.1 Analysis by State

Table 4.7 Average English Proficiency of Hispanic Defendants by State

Survey Question III:	State	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
How would you rate the average English prof. of the Hispanic defendants?						
	CA	5	1.00	3.00	2.40	2
	FL	12	2.00	4.00	2.75	2/3
	NY	7	2.00	4.00	2.57	2
	TX	8	1.00	5.00	3.00	2/3/4
	Total	32	1.00	5.00	2.71	2/3

Possible Answers:
5 ="Very good"
4 ="Good"
3 ="Fair"
2 ="Poor"
1 ="Very poor"

In survey question three the judges were asked to rate the average English proficiency of the Hispanic defendants they encounter. A brief glimpse at table 4.7 reveals that these ratings were on average everything but positive.

In all but in the case of Texas the average response of the judges was that the Hispanic defendants' English proficiency could be rated between "Poor" (2) and "Fair"(3). These are also the two responses most frequently given by all judges. With respect to the range of the answers provided for this survey question, one can say that the answers are spread out, and that they can mostly be located among the lower numerical values of the scale used here.

In the case of Texas the judges responses varied the most—the judges rated the proficiency of their defendants as somewhere in between "Very poor"(1) and "Very good"(5). Also the three different "Most Frequent Responses" that resulted (2, 3, 4) varied greatly. On average the judges rated the English proficiency of their Hispanic defendants as "Fair" (3.0)—the highest rating given by a state.

The second highest average rating was given by judges in Florida. The judges in this state rated the English proficiency of their Hispanic defendants most often as "Poor"(2) or "Fair" (3). In general, answers varied in between "Poor" (2) and "Good" (4), resulting in an average between "Poor" and "Fair" (2.75).

In both states California and New York the most frequent rating given by judges on the English proficiency of their defendants was "Poor." In New York the answers provided by the judges ranged between "Poor" and "Good," in California the answers ranged between "Very Poor" and "Fair." New York (2.57) has a slightly higher average than California (2.4). The values of these average responses together with the values of the other two states are visualized in figure 4.5 below.

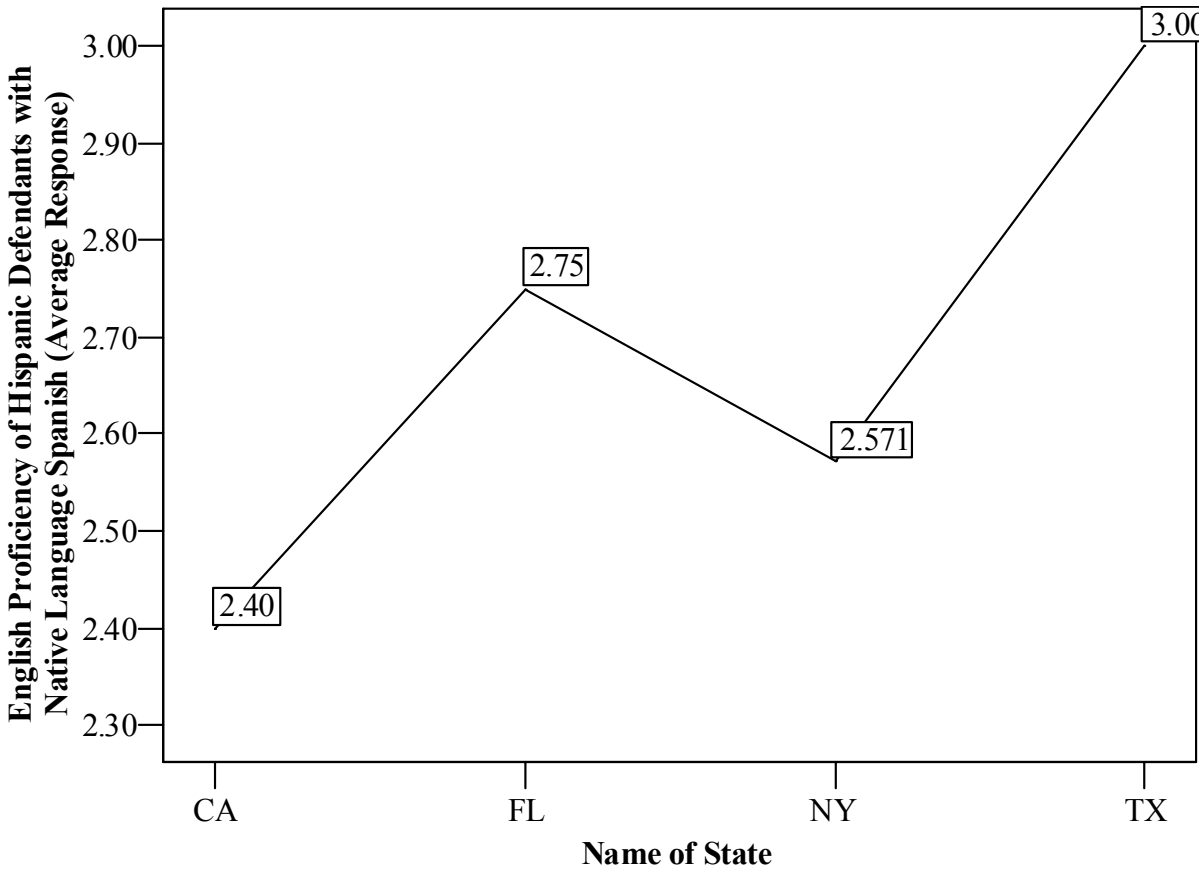

Figure 4.5 Average English Proficiency of Hispanic Defendants (Average Response by State)

4.1.3.2 Analysis by State and Court

The analysis by state showed that the judges rated the English proficiency of their Hispanic defendants on average as between "Poor" (2) and "Fair" (3). Although, this analysis provides us with more detailed results, the general picture changes only slightly.

Most of the average responses approach the numerical value three. Only one average response value exceeds three, and that is the value produced by the judges at Texas federal court (3.14). On the other hand, there is one average response value that lies far beneath three, and that

is the response produced at California federal court. There, the one judge that responded, answered with “Very poor” (1).

Table 4.8 Average English Proficiency of Hispanic Defendants by State and Court

Survey Question III:	State /Court	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
How would you rate the average English proficiency of the Hispanic defendants?						
	CA Fed	1	1.00	1.00	1.00	1
	CA State	4	2.00	3.00	2.75	3
	FL Fed	7	2.00	4.00	2.71	2/3
	FL State	5	2.00	4.00	2.80	2/3
	NY Fed	3	2.00	3.00	2.33	2
	NY State	4	2.00	4.00	2.75	2
	TX Fed	7	1.00	5.00	3.14	3/4
	TX State	1	2.00	2.00	2.00	2
	Total	32	1.00	5.00	2.71	2/3

Possible Answers:
5 =“Very good”
4 =“Good”
3 =“Fair”
2 =”Poor”
1 =“Very poor”

Also, the responses produced at Texas state court, and New York federal court both resulted in an average closer to the numerical value two, which translates into an average closer to “Poor” (2).

The answers to survey question three provided by each court in most cases vary between two or three values, usually somewhere between “ Poor”(2) and “Good”(2). The case of Texas federal court is an exception as there the answers given ranged between “Very good”(5) and “Very poor”(1). Texas federal court is also the only federal court that produced an average response that exceeded that of the state court. In all of the other three states the average response produced by the state court exceeds that of the federal court. The average responses can be found below in figure 4.6.

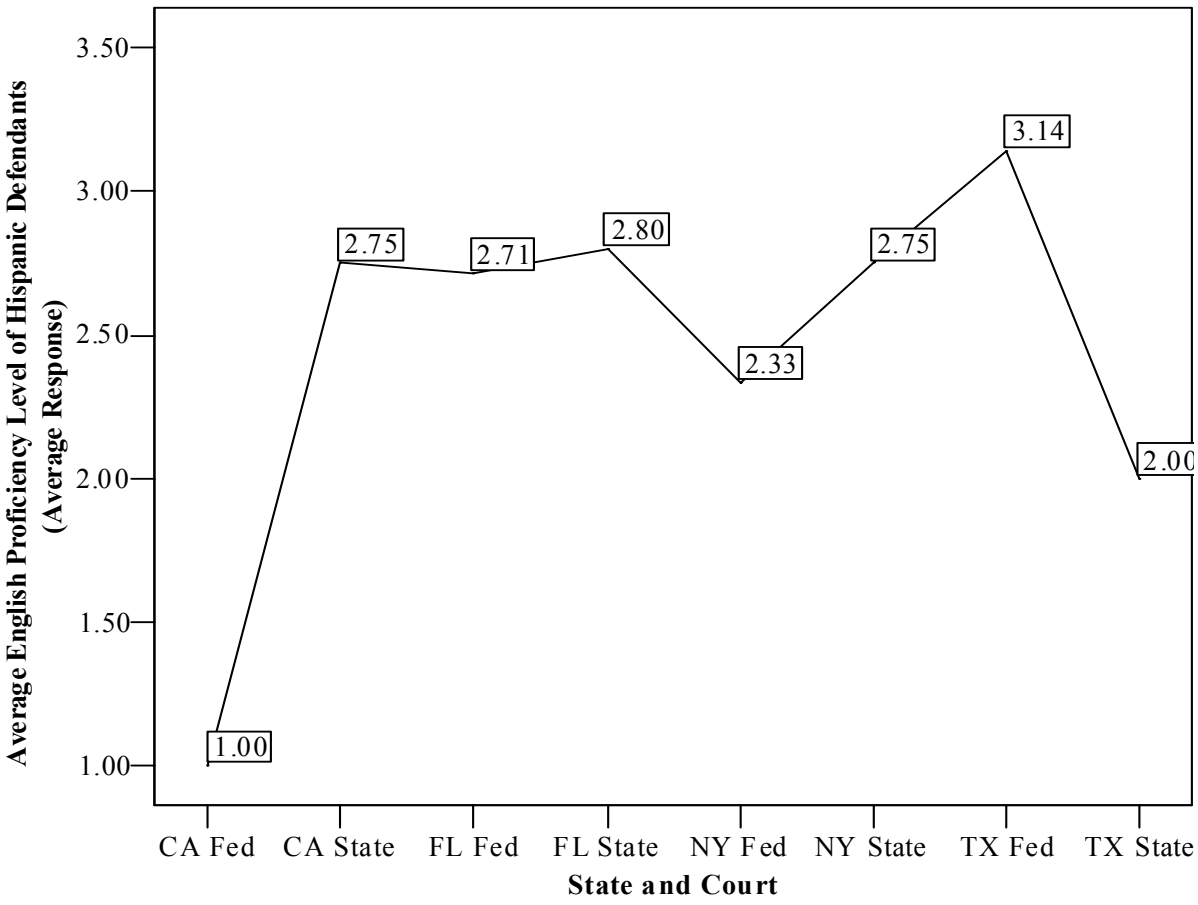

Figure 4.6 Average English Proficiency of Hispanic Defendants (Average Response by State and Court)

4.1.3.3 Analysis by Court Type

In the previous analysis we found that the state court average responses exceeded the federal court average responses in three states (CA, FL, NY). Yet, when looking at the federal and state courts as groups, the average responses are very similar (2.73; 2.70). While in the group of federal courts the most frequent response provided is lower than in the group of the state courts, the range of values is bigger in the former group. Thus in both groups the average response lies between "Poor" (2) and "Fair" (3), being slightly closer to "Fair" (3).

Table 4.9 Average English Proficiency of Hispanic Defendants by Court Type

Survey Question III:	Court	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
How would you rate the average English proficiency of the Hispanic defendants?						
	Federal	17	1.00	5.00	2.70	2
	State	15	2.00	4.00	2.73	3
	Total	32	1.00	5.00	2.71	2/3

Possible Answers:
5 =“Very good”
4 =“Good”
3 =“Fair”
2 =”Poor”
1 =“Very poor”

4.1.3.4 Summary of Findings

In summary, the average ratings given by the judges on the English language proficiency of their defendants was everything but positive. In almost every case the average rating lies between the numerical values two and three, which indicates that on average the judges rate the English proficiency of their defendants between “Poor”(2) and “Fair”(3).

Only in the state of Texas the average rating that resulted from the answers was at the value three. This was caused by the high average that was produced by the answers given by the judges at Texas federal court (3.14). In comparison to this average response value the averages that were produced by the judges at Texas State court (2.00) and California federal court (1.00) are very low.

In the comparison of individual courts it turned out that in three states (CA, FL, NY) the averages produced by the state courts were higher than those of the federal courts. The exception

here is Texas, where the federal court had the higher average response value.

When looking at the federal courts and the state courts as groups, it can be concluded that the averages resulting from the answers given by the judges in both groups are very similar (2.73; 2.70). In both cases the judges rated the English proficiency of their defendants on average as between "Poor" (2) and "Fair"(3), with a tendency of being closer to "Fair" (3).

4.1.4 Survey Question IV: Do You Consider Language Proficiency a Barrier in the Courtroom?

4.1.4.1 Analysis by State

Table 4.10 presents a summary of the responses given to survey question four. In this question the judges were asked whether they considered language proficiency a barrier in the courtroom. While the responses in all states are characterized by a wide dispersion, all average responses more or less reflect the same judgment—the judges see language proficiency between "Seldom"(2) and "Sometimes"(3) as a barrier in the courtroom. "Sometimes" (3) was also the most frequent response in three out of four States, and for all judges in general.

Table 4.10 Language as a Barrier in the Courtroom by State

Survey Question IV:	State	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
Do you consider language proficiency a barrier in the courtroom?						
	CA	6	1.00	4.00	2.50	2/3
	FL	12	1.00	5.00	2.83	3
	NY	7	1.00	5.00	3.14	3
	TX	9	1.00	4.00	2.44	2
	Total	34	1.00	5.00	2.73	3

Possible Answers:
5 ="Always"
4 ="Usually"
3 ="Sometimes"
2 ="Seldom"
1 ="Never"

The responses that resulted in the lowest average score were those given by the judges in Texas (2.44). The answers

provided for the question whether or not language proficiency is considered a barrier in the courtroom varied between "Never" (1) and "Usually" (4). The most frequent response for the responses from Texas was "Seldom" (2). The average response can be located somewhere between "Seldom" (2) and "Sometimes" (3).

Almost the same is true for the responses returned from Florida. The average response here (2.5) lies in the middle between "Seldom" (2) and "Sometimes" (3). The only difference to Texas is that the average is a little higher, and that there are two "Most Frequent Answers"—"Seldom" (2) and "Sometimes" (3).

The responses from Florida and New York create almost the same picture: In both states the answers to the question whether or not language is a barrier in the court room are widely dispersed, resulting in the average response 2.83 for Florida, and 3.14 for New York. Those averages can also be found in figure 4.4. The response most often given in both states was "Sometimes" (3).

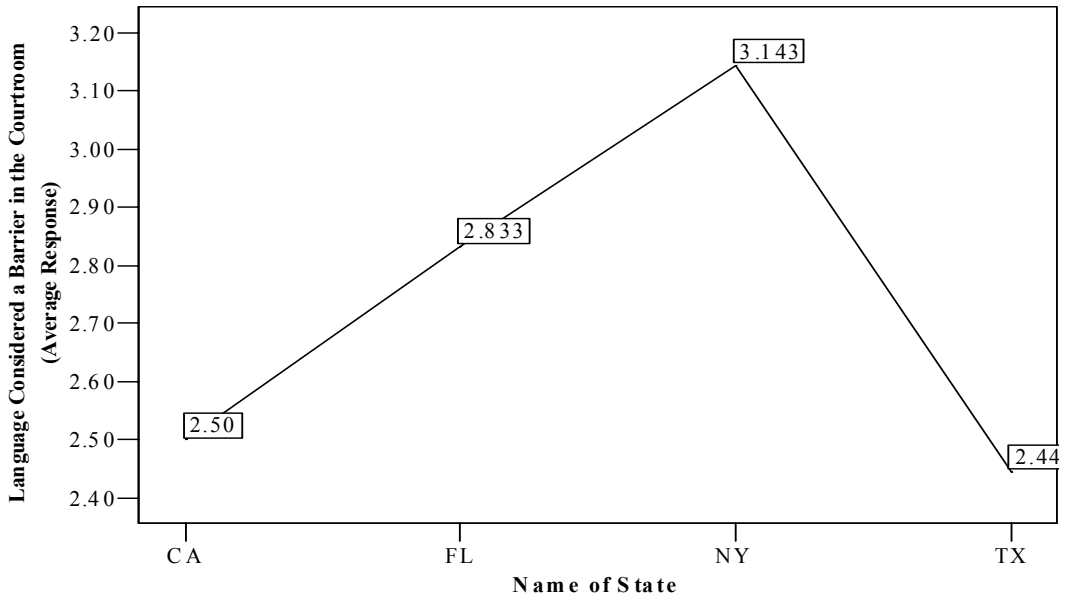

Figure 4.7 Average Rating on Language as a Barrier in the Courtroom by State

4.1.4.2 Analysis by State and Court

The responses to the question whether judges consider language a barrier in the courtroom are presented by state and court in the table below. Just as in the analysis by state the most frequent answer given to this question was "Sometimes" (3).

Table 4.11 Language as a Barrier in the Courtroom by State and Court

Survey Question IV:	State/ Court	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
Do you consider language proficiency a barrier in the courtroom?	CA Fed	2	2.00	4.00	3.00	2/4
	CA State	4	1.00	3.00	2.25	3
	FL Fed	7	1.00	5.00	2.85	3
	FL State	5	1.00	5.00	2.80	3
	NY Fed	3	3.00	3.00	3.00	3
	NY State	4	1.00	5.00	3.25	1/3/4/5
	TX Fed	8	1.00	4.00	2.50	2/3
	TX State	1	2.00	2.00	2.00	2
	Total	34	1.00	5.00	2.73	3

Possible Answers:
5 ="Always"
4 ="Usually"
3 ="Sometimes"
2 ="Seldom"
1 ="Never"

Also, just as in the analysis by state the courts in New York have the highest average response, which indicates that on average language is considered more often a barrier in this state than in the other states. Both New York federal court and state court have an average response value that is equal to three, or which exceeds three (3.25). While the responses given by the judges at New York federal court do not vary at all, the responses provided by the judges at New York State court vary widely.

Also, the responses produced by the judges at California federal court result in an average response of three. Here the responses ranged between "Seldom" (2) and "Usually"(4). In contrast, the answers given by the judges at California state court only resulted in an average value close to two (2.25). Here the answers varied between "Never" (1) and "Sometimes" (3).

More similar are the average responses that resulted from the answers given by the judges at the two Florida courts. Both values approach three (2.80/2.85). The answers given at both courts are spread out over the entire range of answers, the judges at both courts most often answered that they "Sometimes" (3) see language as a barrier in the courtroom.

The lowest average response resulted from the one answer given by the judge at Texas State court. He answered that language is "Seldom" (2) a barrier in the courtroom. His colleagues at Texas federal court came to similar conclusions. Their answered varied between "Never" (1) and "Usually" (4), resulting in an average response between the values two and three. Also, the responses most often give equal the numerical values two and three, thus stating that language is "Sometimes" (3) or "Seldom"(2) a barrier in the courtroom.

In three out of the four states (CA, FL, TX) the federal courts have a higher average response than the state courts. The exception here is New York.

4.1.4.3 Analysis by Court Type

The analysis by court type shows very similar results in both groups of courts. In both groups the answers provided by the judges varied greatly, which can be seen at the wide range of answers given in these groups. Also, in both groups the most frequent answer given to the question whether language is a barrier in the courtroom is "Sometimes" (3). Thus, the average responses that resulted from the answers provided by the judges in both groups are similar, and

do both approach the value three. Although in the comparison by state and court we saw that in three out of the four states (CA, FL, TX) the federal courts had a higher average response, it now turns out that the average value for the State courts is a little higher (2.8) than that for the federal courts (2.68).

Table 4.12. Language as a Barrier in the by Court Type

Survey Question IV:	Court	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
Do you consider language proficiency a barrier in the courtroom?						
	Federal	19	1.00	5.00	2.68	3
	State	15	1.00	5.00	2.80	3
	Total	34	1.00	5.00	2.73	3

Possible Answers:
5 =“Always”
4 =“Usually”
3 =“Sometimes”
2 =”Seldom”
1 =“Never”

4.1.4.4 Summary of Findings

To the question whether language is considered a barrier in the courtroom the answer most often given was “Sometimes” (3). Yet, the average responses produced in the different categories in most cases have a value a little lower than three. Thus, on average the judges’ answers can be located somewhere between “Seldom” (2) and “Sometimes”(3).

In the state of New York the average that resulted from the judges answers was the highest (3.14), in California and Texas the average was relatively low (around 2.5). The high average in New York is not only produced by the answers from one of the courts, but both state and federal court have a relatively high average compared to the other courts. Consequently, it

seems that on average language is considered to be a barrier in these courts more often than in other courts.

If we compare the groups of state courts and federal courts it turns out that the "Most Frequent Response," "Range" and "Average Response" produced are very similar. The most frequent response was "Sometimes"(3), the answers varied widely in both groups, and the average could be found in between the numerical values 2.68 and 2.8, indicating that on average language is "Sometimes"(3) or "Seldom"(2) a barrier in the courtroom.

4.1.5 Conclusion

From the analysis of the first four survey questions one can conclude that the language needs of Hispanics indeed are an issue in U.S. courts. The results for survey question number one indicate that on average at least "About Half"(3) of the defendants are of Hispanic background. In California and Florida the averages were particularly high. Only in New York judges estimated that "Some"(2) of their defendants were Hispanics. In general, the average response produced by the answers provided by federal court judges was slightly higher (3.42) than that produced by state court judges (3.12).

Of the Hispanic defendants on average between "About half"(3) and "Many"(4) have Spanish as their first language. The most frequent answer given to the question what percentage of defendants have Spanish as their first language was "Many"(4).

If we compare the different states, we find that Florida is the state with the highest average response for this question (4.08), and New York is the state the lowest average response value (3.00). In three of the four states (CA, NY, TX) the average responses produced in federal court exceed those provided by the answers of the judges in state court.

The average ratings given by the judges on the English language proficiency of their defendants were not very positive. In almost every case the average rating lies between the numerical values two and three, which indicates that on average the judges rated the English proficiency of their defendants between "Poor"(2) and "Fair"(3).

Only in the state of Texas the average rating that resulted from the answers was at the value three, caused by the high average that was produced by the answers given by the judges at Texas federal court (3.14).

In the comparison of individual courts it turned out that in three states (CA, FL, NY) the averages produced by the state courts were higher than those of the federal courts. The exception here is Texas, where the federal court had the higher average response value.

Although the language proficiency of the Hispanic defendants was on average rated as between "Poor"(2) and "Fair"(3), language is considered only "Seldom"(2) or "Sometimes"(3) a barrier to the courtroom proceedings.

In the state of New York the average that resulted from the judges answers was the highest (3.14), in California and Texas the average was relatively low (around 2.5). The "Most Frequent Response given to this question was "Sometimes" (3)..

4.2 Research Question II: At What Proficiency Level Does the English of a Defendant Have to Be in Order to Be Able to Stand Trial in Criminal Court without a Court Interpreter?

The results to the two parts of survey question five are presented in this chapter. The tables used are the same as in the previous analysis. Due to the nature of the answers that the judges could choose from in order to say how good English comprehension and expression have

to be, a slightly bigger emphasis is put on the "Most Frequent Response." In the previous chapter the focus was rather on the "Average Response."

4.2.1 Survey Question V a): How Good Does the English Listening Comprehension of a Defendant Have to Be in Order to Stand Trial without a Court Interpreter?

4.2.1.1 Analysis by State

When the judges were asked how good the listening comprehension of a non-native English defendant has to be in order to stand trial without an interpreter the answers given were very similar in all four states. In each case the responses ranged between the numerical values four and five. Thus, in all states the judges responded that the defendant has to be able to understand at least broadly what is said in the courtroom. If the defendant has questions concerning the proceedings he/ she can consult with his/her attorney.

Table 4.13 English Listening Comprehension Needed to Stand Trial without Interpreter by State

Survey Question Va):	State	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
With Respect to Listening Comprehension in English, the Defendant…..						
	CA	4	4.00	5.00	4.50	4/5
	FL	12	4.00	5.00	4.83	5
	NY	7	4.00	5.00	4.42	4
	TX	8	4.00	5.00	4.75	5
	Total	31	4.00	5.00	4.68	5

Answers:
5= must be able to understand everything that is said in the court, including legal terminology
4= must be able to understand broadly what is said in the courtroom. He can consult his attorney, if there are questions regarding the proceedings

Yet, there are slight differences when it comes to the most frequent response and the "Average Response" in each state. In Texas and in Florida the most frequent response given was that the defendant has "to be able to understand everything that is said in the courtroom, including legal terminology" (=5). In these two states also the "Average Response" approached the value five.

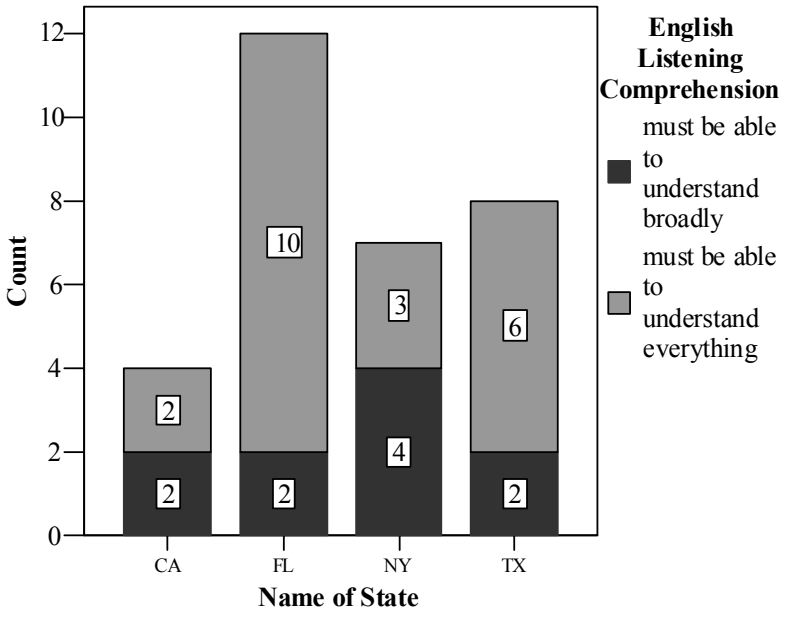

Figure 4.8 English Listening Comprehension Needed to Stand Trial without Interpreter by State

Figure 4.8 shows the actual count of responses. As can be seen, two judges in each state answered with "broadly" while six and ten respectively answered with "everything."

In California, two "Most Frequent Responses" could be recorded. Half of the judges said that the defendant has to be able to understand "broadly" what is said in the courtroom (4), and the other half said that the defendant has to be able to understand "everything"(5).

Only in New York the most frequent response was that the defendant has to be able to understand "broadly"(4). The average response value for this state is consequently the lowest. Figure 4.8 shows that four judges answered with "broadly" and three answered with "everything."

4.2.1.2 Analysis by State and Court

As mentioned previously in the analysis by state, no major differences can be found when it comes to the question of how good the English listening comprehension of a non-native English defendant has to be in order to be able to stand trial without an interpreter. We already noticed that all responses varied between "he has to be able to understand broadly" (4) and he has to be able to understand everything" (5). No further general trends can be found in this analysis.

Table 4.14 English Listening Comprehension Needed to Stand Trial without Interpreter by State and Court

Survey Question V a):	State/ Court	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
With Respect to Listening Comprehension in English, the Defendant….	CA Fed	2	5.00	5.00	5.00	5
	CA State	2	4.00	4.00	4.00	4
	FL Fed	7	4.00	5.00	4.71	5
	FL State	5	5.00	5.00	5.00	5
	NY Fed	3	4.00	4.00	4.00	4
	NY State	4	4.00	5.00	4.75	5
	TX Fed	7	4.00	5.00	4.71	5
	TX State	1	5.00	5.00	5.00	5
	Total	31	4.00	5.00	4.68	5

Answers:
5= must be able to understand everything that is said in the court, including legal terminology
4= must be able to understand broadly what is said in the courtroom. He can consult his attorney, if there are questions regarding the proceedings.

If we look at the highest average responses, we find that the answers returned from California federal court, Florida state court, and Texas state court all produced the highest average value possible**.** Then we have three courts with an average around the value of 4.7. These courts are Florida federal court, New York state court, and Texas federal court. Only two

courts have an average response, and also a most frequent response value of four. These two courts are California state court, and New York federal court.

If we compare state courts and federal courts we notice that in three out of the four states the averages produced by state courts are higher than those of the federal courts. The exception here is California. Let's look at figure 4.9. Again, it becomes clear how many more judges answered with "must be able to understand everything" instead of "must be able to understand broadly."

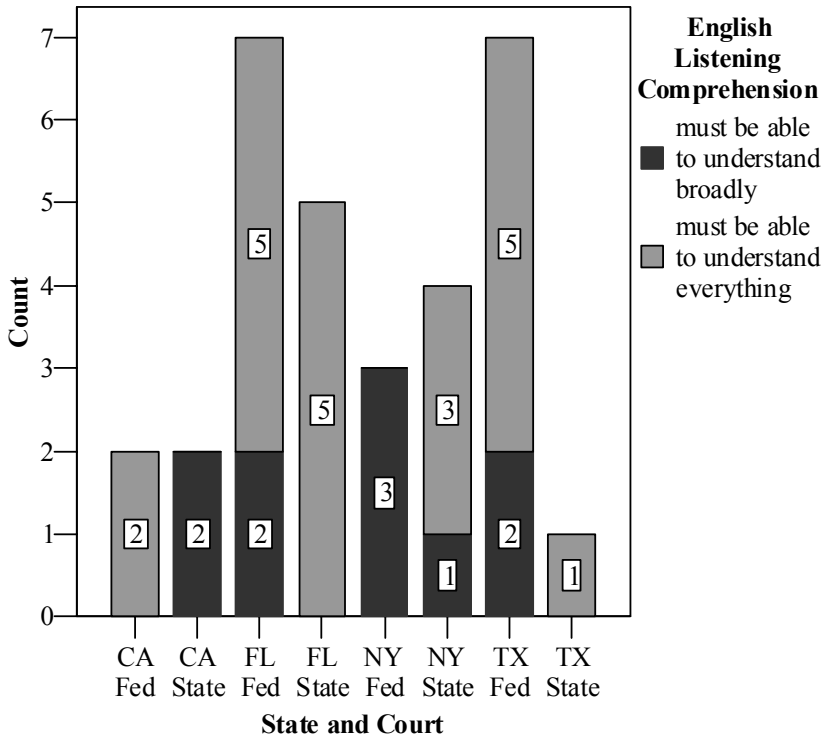

Figure 4.9 English Listening Comprehension Needed to Stand Trial without Interpreter by State and Court

4.2.1.3 Analysis by Court Type

As could be expected from the previous analysis no major differences appears between the federal and state court when it comes to the question how good the English listening comprehension of the defendant has to be in order to stand trial without an interpreter.

Table 4.15 English Listening Comprehension Needed to Stand Trial without Interpreter by Court Type

Survey Question Va):	Court Type	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
With Respect to Listening Comprehension in English, the Defendant…..						
	Federal	18	4.00	5.00	4.61	5
	State	13	4.00	5.00	4.77	5
	Total	31	4.00	5.00	4.68	5

Answers:
5= must be able to understand everything that is said in the court, including legal terminology
4= must be able to understand broadly what is said in the courtroom. He can consult his attorney, if there are questions regarding the proceedings

The range and the most frequent response are the same, and the average response values vary slightly. The most frequent responses in both categories indicate that the judges in federal and in state court responded most often that the defendant has to be able to understand everything that is said in court, including legal discourse.

4.2.1.4 Summary of Findings

In all categories the judges answered the question how good the English comprehension of the defendants has to be in order to stand trial without an interpreter with "has to broadly understand" (4) or with "has to understand everything"(5). It also becomes clear that the latter response was the one chosen most often.

In Florida and Texas the responses by the judges resulted in an average response closer to five, in California the average was exactly in between four and five and in New York the average was closer to four.

The state courts produced a slightly higher average response (4.74) than the federal courts (4.61). This is not surprising as in three out of the four states the state courts had a higher average than the federal courts. California was the exception. Again, it becomes clear that answer "understand everything" (5) was most often chosen.

4.2.2 Survey Question V b): How Good Does the English Verbal Expression of a Defendant Have to Be in Order to Stand Trial without a Court Interpreter?

4.2.2.1 Analysis by State

With respect to the level of English verbal expression that a non-native English defendant has to have in order to stand trial without an interpreter the opinions across the four different states, and within those states varied strongly.

Table 4.16 English Verbal Expression Needed to Stand Trial without an Interpreter by State

Survey Question V b):	State	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
With Respect to Verbal Expression in English, the Defendant…..						
	CA	3	1.00	5.00	3.33	1/4/5
	FL	12	3.00	5.00	4.17	4
	NY	7	2.00	4.00	3.57	4
	TX	9	3.00	5.00	4.11	5
	Total	31	1.00	5.00	3.94	4

Possible Answers:
5= must be able to answer questions like an English native
4= must be able to answer in whole sentences
3= must be able to communicate his ideas in simple terms
2= must be able to answer with yes or no
1= does not to have to be able to talk at all, as his attorney can answer for him

Although the most frequent response given by the judges has the numerical value four ("must be able to communicate in whole sentences"), the entirety of responses ranged within the values one and five.

The highest "Most Frequent Response," and the highest "Average Response" resulted from the answers provided by the judges in Texas. In the opinion of most judges in this state a defendant "must be able to answer questions like an English native" (5). In general, the answers in this state ranged between this response and "must be able to communicate his ideas in simple terms" (3). This puts Texas at the second place when it comes to the "Average Response" value for this question (4.11).

The highest "Average Response" was produced by the results from Florida (4.17). The range of answers is the same as in Texas. Yet, the most frequent response given by the judges in this state equals a numerical value of four. Most judges said that a defendant "has to be able to answer in whole sentences" in order to be able to stand trial without an interpreter. Thus, the "Average Response" here is minimally higher than that in Texas, yet the most frequent response is lower.

The same most frequent response as in Florida was produced by the results in New York. But, compared with the answers from Florida, the answers here could be located in a lower part of the range. The answers varied between the numerical values two and four, and thus, between "must be able to answer with yes and no" (2) and "must be able to answer in whole sentences"(4). The average value that resulted for the judges in New York is 3.57.

The state with the lowest average response value is California (3.33). Unfortunately, only three valid responses were produced for this question. All three answers vary strongly.

One judge stated that the defendant does not have to be able to talk at all; one judge answered that the defendant has to be able to answer in whole sentences, and one judge said that the defendant has to be able to answer questions like an English native. For further clarification, the individual counts for the responses and their relative proportions can be found in figure 4.10.

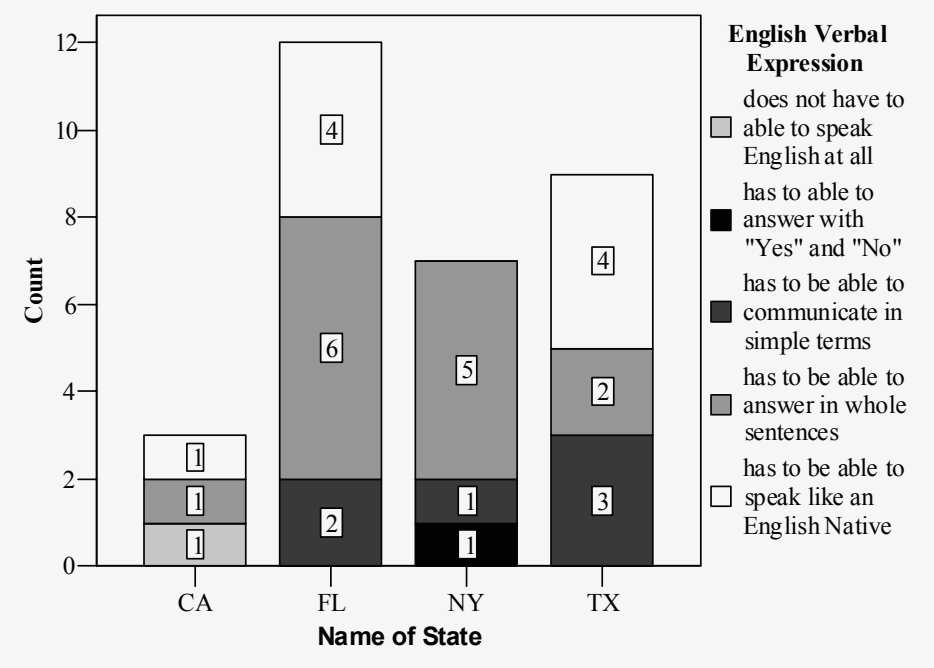

Figure 4.10 English Verbal Expression Needed to Stand Trial Without an Interpreter by State

4.2.2.2 Analysis by State and Court

As already noted in the analysis by state the answers provided by the judges vary greatly. Yet, as the analysis by state this analysis shows that in most courts the most frequent response varies between the values four and five.

Florida State Court and Texas Federal Court both have the value five as most frequent response, California State has four and five as most frequent response, and Florida Federal Court, New York State Court, and Texas State Court have the value four as most frequent response.

Table 4.17 English Verbal Expression Needed to Stand Trial without an Interpreter by State and Court

Survey QuestionVb):	State/ Court	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
With Respect to Verbal Expression in English, the Defendant…..	CA Fed	1	1.00	1.00	1.0000	1
	CA State	2	4.00	5.00	4.5000	4/5
	FL Fed	7	3.00	5.00	3.8571	4
	FL State	5	4.00	5.00	4.6000	5
	NY Fed	3	2.00	4.00	3.0000	2/3/4
	NY State	4	4.00	4.00	4.0000	4
	TX Fed	8	3.00	5.00	4.1250	5
	TX State	1	4.00	4.00	4.0000	4
	Total	31	1.00	5.00	3.94	4

Possible Answers:
5= must be able to answer questions like an English native
4= must be able to answer in whole sentences
3= must be able to communicate his ideas in simple terms
2= must be able to answer with yes or no
1= does not to have to be able to talk at all, as his attorney can answer for him

Compared to the state courts, the federal courts seem to have a lower average response value. At least this is true in three cases (CA Fed, FL Fed, NY Fed). New York federal court and California federal court stand out as they have very or relatively low most frequent and average response values.

4.2.2.3 Analysis by Court Type

As expected, the opinions among the judges differ slightly when it comes to the verbal expression of the non-native English defendant. While the most frequent answer given by both federal and state court judges is that the defendant has "to be able to answer in whole sentences" (4), the range of answers in the category federal court is much wider (3-5) and the average response value is much lower compared with the values produced by the judges in state court.

Table 4.18 English Verbal Expression Needed to Stand Trial Without an Interpreter by Court Type

Survey Question V:	Court Type	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
With Respect to Verbal Expression in English, the Defendant …						
	Federal	18	1.00	5.00	3.72	4
	State	13	3.00	5.00	4.23	4
	Total	31	1.00	5.00	3.94	4

Possible Answers:
5= must be able to answer questions like an English native
4= must be able to answer in whole sentences
3= must be able to communicate his ideas in simple terms
2= must be able to answer with yes or no
1= does not to have to be able to talk at all, as his attorney can answer for him

4.2.2.4 Summary of Findings

Thus, compared to the judgments on the English language comprehension needed by the non-native English defendant to stand trial, the judgments on the verbal expressions needed by the defendant vary greatly. All possible choices were used by the different judges. Although within the individual courts the answers in most cases range within the numerical values three and five, which means between "must be able to communicate in simple terms" (3) and "must be able to answer questions like an English native"(5), in two cases (NY federal court, CA federal court) the judges stated that much less verbal expression is needed for a defendant to stand trial without language assistance. Also, except in these two cases the average response value produced by the individual courts was higher than four. That is in most cases on average the judges said that the defendants have to be able "to answer in whole sentences"(4).

If we compare the four different states, the judges in Texas had the highest most frequent response with the value five. Their responses also resulted in one of the highest averages (4.11).

Only Florida had a higher average (4.17). New York's average value was 3.57, and the lowest average was created by the responses from California (3.33).

When looking at the two types of court, we found that in three cases (CA, FL, NY) the federal courts produced a lower average response than the corresponding state courts. Not surprisingly then, the group of state courts has a higher average value (4.23) than the group of federal courts (3.72). In both groups was the most frequent response given that defendants should be "able to answer questions in whole sentences" (4) in order to stand trail without the help of an interpreter.

4.2.3 Conclusion

According to the findings presented here the judges' opinions are much more uniform when it comes to the level of English listening comprehension than when it comes to the verbal expression in English. While the responses regarding the listening comprehension varied between the two highest choices possible, the answers provided for the question about the English verbal expression of the defendants varied greatly. Yet, also here the most frequent response given was the second highest choice (4) given, that is the judges most often said that the defendants have to be able to "answer questions in whole sentences" (4).

It is interesting to see that the results for both questions follow a similar pattern. For both questions the responses from Texas and Florida resulted in the highest averages, the responses from California and New York resulted in relatively lower averages.

Also, for both questions the responses from the state courts resulted in higher averages than those from the federal courts.

4.3 Research Question III: What Methods and Procedures do Judges Use in Order to Assess the English Proficiency of a Hispanic Defendant?

In order to answer the third research question survey questions VI a) and b) will be analyzed. In question a) the judges were asked to indicate the methods and procedures they use to assess the English of the Hispanic defendants they deal with in criminal court. In question b) the judges were then asked to list the specific information they need to know about the Hispanic defendants' background in order to determine their English proficiency.

The responses to both questions were grouped in different categories, which will be displayed in the tables used in this analysis. Each table shows the count and percentages of positive responses for each category within each group of judges. So, for instance, if in the table the number "50%"appears, it means that fifty percent of the judges in this particular group (state, court, court type) indicated that they use this method. Also, the "Total" at the end of the table shows the percentage of judges out of the entire group (out of 36) that stated that they used a particular method.

4.3.1 Survey Question 6a): Indicate the Methods/Procedures You Use to Assess the English Proficiency of a Hispanic Defendant in Criminal Court

4.3.1.1 Analysis by State

As table 4.19 shows, the judges surveyed here most often simply wait for the defendant or his counsel to request an interpreter. Eighteen out of thirty-six judges (50%) use this method in order to determine the need for an interpreter. About thirty-one percent of the judges indicated that they directly ask the defendant whether he/she needs an interpreter. And, about twenty-two percent of all judges stated that they engage the defendant in a short question and answer series to assess the need for language counsel.

Table 4.19 Methods Used by Judges to Determine Language Proficiency by State

Methods used by the judges:		Name of State				
		CA (out of 6)	FL (out of 12)	NY (out of 8)	TX (out of 10)	Total (out of 36)
Interpreters are appointed upon request of the defendant	Count	5	6	3	4	18
	% within State	**83.3**	**50.0**	**37.5**	**40.0**	**50.0**
Defendant is asked directly if he needs an interpreter	Count	0	3	3	5	11
	% within State	**.0**	**25.0**	**37.5**	**50.0**	**30.6**
Defendant is asked if he understands the English language	Count	0	2	1	1	4
	% within State	**.0**	**16.7**	**12.5**	**10.0**	**11.1**
Defendant is asked if he understands the proceedings	Count	1	0	0	1	2
	% within State	**16.7**	**.0**	**.0**	**10.0**	**5.6**
Defendant is asked a series of questions	Count	1	4	1	2	8
	% within State	**16.7**	**33.3**	**12.5**	**20.0**	**22.2**
Defendant is observed/ listened to	Count	1	0	1	2	4
	% within State	**16.7**	**.0**	**12.5**	**20.0**	**11.1**
Attorney is consulted	Count	1	1	2	2	6
	% within State	**16.7**	**8.3**	**25.0**	**20.0**	**16.7**

The responses from California show that 83.3% of the judges surveyed wait for the defendant to request an interpreter. Also, one judge each, or 16.7% of the judges in California answered that they ask the defendant whether he/she understands the proceedings; that they conduct a short question and answer session; that they observe the defendant; or that they consult with the attorney in order to find out whether he/she needs an interpreter.

The judges in Florida also answered most often that they simply wait until an interpreter is requested by the defendant (50%). About thirty-three percent of the judges in this state indicated that they use a series of questions and answers to determine the language proficiency of the defendant. Further, one fourth of the judges in Florida ask the defendant directly, if he/she needs an interpreter. Also, two judges (16.7%) responded that they ask the defendant whether he/she understands English, and one judge (8.3%) stated that he/she consults with the attorney in order to find out whether a defendant needs language counsel.

An equal number of judges in New York (37.5%) indicated that they wait for the request by the defendant, or that they ask the defendant directly whether he/she wants an interpreter. Twenty-five percent of the judges surveyed in this state responded that they consult with the defendant's attorney to find out, if an interpreter is needed. And, one judge each answered that he/she asks the defendant, if he/she understands English, that he/she engages the defendant in a short question and answer series, or that he/she merely observes the defendant to find out whether an interpreter is needed.

The judges in New York responded most often (50%) that they ask the defendant directly whether he/she needs an interpreter. But, just as in the other states also here many judges(40%) indicated that they wait for the defendant to request an interpreter. Two judges each (20%) answered that they engage the defendant in a short dialogue, that they observe the defendant, or

that they consult with the attorney in order to find out if he/she needs a court interpreter. One judge each (10%) responded that they ask the defendant whether he/she understands English, or whether he she understands the proceedings.

4.3.1.2 Analysis by State and Court

Table 4.20 Methods Used by Judges to Determine Language Proficiency by State and Court

Methods used by the judges:		**State and Court**								
		CA Fed (out of 2)	**CA State** (out of 4)	**FL Fed** (out of 7)	**FL State** (out of 5)	**NY Fed** (out of 3)	**NY State** (out of 5)	**TX Fed** (out of 9)	**TX State** (out of 1)	**Total (out of 36)**
Interpreters are appointed upon request of the defendant	**Count**	1	4	4	2	0	3	4	0	18
	% within Court	**50.0**	**100.0**	**57.1**	**40.0**	**.0**	**60.0**	**44.4**	**.0**	**50.0**
Defendant is asked directly if he needs an interpreter	**Count**	0	0	1	2	1	2	4	1	11
	% within Court	**.0**	**.0**	**14.3**	**40.0**	**33.3**	**40.0**	**44.4**	**100.0**	**30.6**
Defendant is asked if he understands English	**Count**	0	0	1	1	1	0	1	0	4
	% within Court	**.0**	**.0**	**14.3**	**20.0**	**33.3**	**.0**	**11.1**	**.0**	**11.1**
Defendant is asked whether he understands the proceedings	**Count**	0	1	0	0	0	0	1	0	2
	% within Court	**.0**	**25.0**	**.0**	**.0**	**.0**	**.0**	**11.1**	**.0**	**5.6**

(Table continued)

Defendant is asked a series of questions	**Count**	0	1	3	1	1	0	1	1	8
	% within Court	**.0**	**25.0**	**42.9**	**20.0**	**33.3**	**.0**	**11.1**	**100.0**	**22.2**
Defendant is observed/ listened to	**Count**	0	1	0	0	0	1	2	0	4
	% within Court	**.0**	**25.0**	**.0**	**.0**	**.0**	**20.0**	**22.2**	**.0**	**11.1**
Attorney is consulted	**Count**	0	1	1	0	2	0	2	0	6
	% within Court	**.0**	**25.0**	**14.3**	**.0**	**66.7**	**.0**	**22.2**	**.0**	**16.7**

The analysis by state and court provides us with a more detailed picture; yet, no general patterns between the individual courts could be found. In most courts the judges most often indicated that they either wait for the defendant to request an interpreter, or that they ask the defendant directly whether he/she wants an interpreter. One exception here is New York federal court. The judges at this court most often stated that they consult with the defense counsel to assess the need for an interpreter. Another exception is Texas state court. Here the one judge answered that he either asks the defendant directly or that he engages the defendant in a short question and answer series in order to find out whether an interpreter is needed.

4.3.1.3 Analysis by Court Type

The analysis by court type reveals that judges in state and federal court use the same methods in similar proportions. In almost every category the percentages vary only slightly between the two groups of courts.

Table 4.21 Methods Used by Judges to Determine Language Proficiency by Court Type

Methods used by the judges:		Type of Court		Total (out of 36)
		Federal Court (out of 20)	State Court (out of 16)	
Interpreters are appointed upon request of the defendant	Count	9	9	18
	% within Type of Court	**45.0**	**56.3**	**50.0**
Defendant is asked directly if he needs an interpreter	Count	5	6	11
	% within Type of Court	**25.0**	**37.5**	**30.6**
Defendant is asked if he understands English	Count	2	2	4
	% within Type of Court	**10.0**	**12.5**	**11.1**
Defendant is asked if he understands the proceedings	Count	1	1	2
	% within Type of Court	**5.0**	**6.3**	**5.6**
Defendant is asked a series of questions	Count	4	4	8
	% within Type of Court	**20.0**	**25.0**	**22.2**
Defendant is observed/ listened to	Count	2	2	4
	% within Type of Court	**10.0**	**12.5**	**11.1**
Attorney is consulted	Count	4	2	6
	% within Type of Court	**20.0**	**12.5**	**16.7**

In both groups nine judges responded that they appoint an interpreter upon the request of the defendant or his counsel. This means that 56.3% of the state court judges and 45% of the federal court judges chose this answer.

Also, a little higher is the percentage of state court judges that responded that they ask the defendant directly, if he/she needs an interpreter. This answer was given by 37.5% of state court judges and 25% of federal judges. Although the percentages are in the first two categories higher for the state judges, for both groups of judges these two possible answers are the ones most often chosen.

The next four answers that follow in the table have very similar percentages in both groups of judges. For instance, twenty percent of federal judges and twenty-five percent of federal judges answered that they engage in a short question and answer session in order to determine the English language proficiency of a defendant. A little different are the percentages for the category "The attorney is consulted…." This response was chosen by four federal judges (20%) and two state court judges (12.5%).

4.3.1.4 Summary of Findings

What seems to be interesting is the fact that judges across the four different states deal with the assessment of the defendants' English proficiency in very similar ways. Although a variety of methods are used, it becomes clear that the preferred way of dealing with the appointment of an interpreter is simply to wait until one is requested by the defendant (50% of judges responded that way).

Another method that the judges chose often is to directly ask the defendant, if he/she needs an interpreter. About thirty-one percent of all judges gave this answer. Also, about twenty-two percent of the judges indicated that they use a series of questions and answers to find out whether an interpreter is needed to assist the defendant.

These three methods mentioned here are the ones most often listed by the judges. Even though no clear patterns could be found by comparing the individual courts. It seems as if these methods rank among the top choices of judges at almost every court. What is interesting is that federal court judges and state court judges seem to use the same methods in almost the same proportions.

4.3.2 Survey Question VI b): Indicate What Specific Information You Need to Know about the Defendant's Background in Order to Assess his/Her English Proficiency

4.3.2.1 Analysis by State

Table 4.22 Information Necessary to Determine Language Proficiency by State

Information necessary to determine language proficiency		**Name of State**				
		CA (out of 6)	**FL (out of 12)**	**NY (out of 8)**	**TX (out of 10)**	**Total (out of 36)**
General Education Level	**Count**	0	1	0	1	2
	% within State	**.0**	**8.3**	**.0**	**10.0**	**5.6**
Years of English Education	**Count**	1	1	0	1	3
	% within State	**16.7**	**8.3**	**.0**	**10.0**	**8.3**
Years of Residency in U.S.	**Count**	0	3	0	1	4
	% within State	**.0**	**25.0**	**.0**	**10.0**	**11.1**
Language Spoken at Home/ at Work/ at School	**Count**	1	0	1	2	4
	% within State	**16.7**	**.0**	**12.5**	**20.0**	**11.1**
Professional History	**Count**	0	2	0	1	3
	% within State	**.0**	**16.7**	**.0**	**10.0**	**8.3**

Many of the judges answered to the previous survey question that they would appoint an interpreter upon request of the defendant. Also, a relatively high number of judges said they would simply ask the defendant directly, if he/she wanted an interpreter. As a "yes" as response to this question, or the request by the defendant seems to be sufficient for the judges to appoint an interpreter, many of these judges did not indicate that they need to know anything about the background of the defendant at all. This explains why so few answers were given to the question posed here. Yet, there were still a few judges that responded, so let's look at what their answers were.

About eleven percent of the judges indicated that they need to know how long the defendant has lived in the U.S. in order to determine whether he/she needs an interpreter or not. Another eleven percent of judges responded that they need to know in which domains (home/school/work) the defendant uses English. About eight percent of the judges answered that for them years of education in English matter in their decision to appoint an interpreter; and again another eight percent of judges said that they want to know about the professional history of the defendant. Finally, about six percent of the judges stated that they ask about the general level of education of the defendant in order to determine whether he/she needs an interpreter or not.

It seems as if the judges from Texas were relatively more interested in asking about background information of the defendant than judges in other states. Twenty percent of judges surveyed in this state responded that they find it important to know in which domains English is used by the defendant in order for them to make their "linguistic call."

Also, to some judges in Florida background information of the defendant does matter. Here twenty-five percent of the judges responded that they want to know how long the defendant

has lived in the U.S., and almost seventeen percent of the judges indicated that they find it important to know about the professional history of the defendant.

Almost seventeen percent of judges surveyed in California answered that they need to know about how many years of education in English the defendant has had in order to help them determine whether he/she needs an interpreter. And, another 16.7% of this group of judges indicated that they want to know in which domains the defendant uses English.

To the judges in New York background information seems to matter the least. Here about thirteen percent of the judges stated that they want to know in which domains the Hispanic defendant uses English.

4.3.2.2 Analysis by State and Court

Table 4.23 Information Necessary to Determine Language Proficiency by State and Court

Information necessary to determine language proficiency		State and Court								
		CA Fed(out of 2)	CA State (out of 4)	FL Fed (out of 7)	FL State (out of 5)	NY Fed (out of 3)	NY State (out of 5)	TX Fed (out of 9)	TX State (out of 1)	Total (out of 36)
General Education Level	Count	0	0	1	0	0	0	0	1	2
	% within Court	.0	.0	14.3	.0	.0	.0	.0	100.0	5.6
Years of English Education	Count	0	1	1	0	0	0	1	0	3
	% within Court	.0	25.0	14.3	.0	.0	.0	11.1	.0	8.3

(Table continued)

Years of Residency in U.S.	**Count**	0	0	3	0	0	0	0	1	4
	% within Court	**.0**	**.0**	**42.9**	**.0**	**.0**	**.0**	**.0**	**100.0**	**11.1**
Language Spoken at Home/ at Work/ at School	**Count**	0	1	0	0	1	0	1	1	4
	% within Court	**.0**	**25.0**	**.0**	**.0**	**33.3**	**.0**	**11.1**	**100.0**	**11.1**
Professional History	**Count**	0	0	2	0	0	0	0	1	3
	% within Court	**.0**	**.0**	**28.6**	**.0%**	**.0**	**.0**	**.0**	**100.0**	**8.3**

The analysis by State and Court shows that only judges at certain courts need background information about their defendants in order to determine whether these defendants need an interpreter or not. For instance, at Florida federal court judges are interested in knowledge on the background of the defendant. As the data here is relatively sparse, we will simply be satisfied with the statement that relatively few judges are interested in background information of their Hispanic defendants.

4.3.2.3 Analysis by Court Type

It seems as if the federal court judges have slightly higher percentages in some categories, as for example in the categories "Years of Residency," or "Professional History." Yet, due to the differences in total numbers also the state court judges have categories where they have a slightly higher percentage. No general pattern can be concluded from the information in this table.

Table 4.24 Information Necessary to Determine Language Proficiency by Court Type

Information necessary to determine language proficiency		Type of Court		
		Federal Court (out of 20)	State Court (out of 16)	Total (out of 36)
General Education Level	Count	1	1	2
	% within Type of Court	**5.0**	**6.3**	**5.6**
Years of English Education	Count	2	1	3
	% within Type of Court	**10.0**	**6.3**	**8.3**
Years of Residency in U.S.	Count	3	1	4
	% within Type of Court	**15.0**	**6.3**	**11.1**
Language Spoken at Home/ at Work/ at School	Count	2	2	4
	% within Type of Court	**10.0**	**12.5**	**11.1**
Professional History	Count	2	1	3
	% within Type of Court	**10.0**	**6.3**	**8.3**

4.3.2.4 Summary of Findings

Due to a lack of data our results with regard to this survey question are truly limited. The only general finding is that judges seem to be little interested in the background information of defendants when it comes to their assessment of the language proficiency of their Hispanic defendants.

4.3.3 Conclusion

Thus, from this analysis we can conclude that judges avoid assessing the language proficiency of their defendants at all. Although some judges determine the need for an interpreter through a short answer and question series (22.2%), or by observing the defendant

(11.1%), more often the judges simply wait for the request of the defendant (50%), or they simply ask directly whether the defendant needs an interpreter or not. (30.6%) Also, some judges consult with the defense counsel in that matter (16.7%). By using these methods, the judges do not need to make a linguistic assessment of the defendant at all. They simply appoint an interpreter if the need for one is expressed by the defendant or his/her attorney.

Although the methods used by judges to determine the need for an interpreter vary, it is interesting that both federal and state court judges show the same preferences when it comes to their assessment of the need for language counsel. By using direct questions, or by consulting with a party involved in the trial the judges avoid making a "linguistic call." Thus, there is also no need for them to know about the defendant's background information. That this is mostly so, is indicated by the lack of data for the second survey question dealt with here.

4.4 Research Question IV: Do Judges Believe that Guidelines Would Help Them in Making Their Linguistic Call? How Would They Imagine Such Guidelines?

4.4.1 Analysis by State

When asked whether guidelines, which could help them in the proficiency assessment of a non-native English defendant, would facilitate their work, judges in all four states respond negatively. While in general the answers within the different state groups seem to range widely, the most frequent response and the average response in all four states indicate that the judges would "disagree" (2) or even "disagree strongly"(1) with the notion that guidelines would help them in their work.

Table 4.25 Usefulness of a Set of Guidelines to Determine Language Proficiency by State

Survey Question VII:	State	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
A set of guidelines that would help me in my decision whether, or not a defendant needs an interpreter would facilitate my work						
	CA	6	1.00	5.00	2.17	1
	FL	12	1.00	4.00	1.91	2
	NY	8	1.00	4.00	1.75	1
	TX	9	1.00	4.00	1.89	1
	Total	35	1.00	5.00	1.91	1

Possible Answers:
5= I Strongly Agree
4= I Agree
3= I Am Undecided
2= I Disagree
1= I Strongly Disagree

In all states the average response can be found somewhere close to the value two ("I disagree"), with California being the only state where the value actually exceeds two by a little margin. Florida is the state with the highest most frequent response (2). In all other states the most frequent response is one, which stands for "I strongly disagree."

4.4.2 Analysis by State and Court

Although the results by State and Court give us now a more detailed picture, the results remain more or less the same. Most judges "strongly disagree"(1) with the idea that guidelines for the assessment of non-native English defendants would actually help them in their work. Yet, the more detailed analysis also gives a better idea of how different the opinions of the judges are.

The average responses now vary greatly between the value four ("I Agree") for Texas state court and the value one ("I Strongly Disagree") for New York state court. Thus, the judges

seem to have very different opinions on whether guidelines would actually help them or not. Within the different states these opinions vary greatly, too. No general pattern can be found.

Table 4.26 Usefulness of a Set of Guidelines to Determine Language Proficiency by State and Court

Survey Question VII:	State/ Court	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
Guidelines that would help me in my decision whether, or not a defendant needs an interpreter would facilitate my work	**CA Fed**	2	1.00	5.00	3.00	1/5
	CA State	4	1.00	4.00	1.75	1
	FL Fed	7	1.00	3.00	1.85	2
	FL State	5	1.00	4.00	2.00	1/2
	NY Fed	3	2.00	4.00	3.00	2/3/4
	NY State	5	1.00	1.00	1.00	1
	TX Fed	8	1.00	4.00	1.62	1
	TX State	1	4.00	4.00	4.00	4
	Total	35	1.00	5.00	1.91	1

Possible Answers:
5= I Strongly Agree
4= I Agree
3= I Am Undecided
2= I Disagree
1= I Strongly Disagree

4.4.3 Analysis by Court Type

This analysis now shows that the responses given by the federal court judges produced a slightly higher average response (2.05) than those of the state court judges (1.75). Nonetheless, the most frequent answer given in both categories is the judges "Strongly Disagree"(1) with the statement that guidelines on how to determine the language proficiency of their defendants would help them in their work. The range of responses is slightly higher for the federal judges. They used all possible choices to answer this question, whereas the state court judges only used four of the five possible choices.

Table 4.27 Usefulness of a Set of Guidelines to Determine Language Proficiency by Court Type

Survey Question VII:	Court Type	No. of Responses	Lowest Response	Highest Response	Average Response	Most Frequent Response(s)
Guidelines that would help me in my decision whether, or not a defendant needs an interpreter would facilitate my work						
	Federal	19	1.00	5.00	2.05	1
	State	16	1.00	4.00	1.75	1
	Total	35	1.00	5.00	1.91	1

Possible Answers:
5= I Strongly Agree
4= I Agree
3= I Am Undecided
2= I Disagree
1= I Strongly Disagree

4.4.4 Conclusion

In conclusion, it seems as if most judges doubt the usefulness of guidelines for the assessment of language proficiency of non-native English defendants in criminal court. This also explains why few judges answered survey question number twelve, in which they were asked to list the main issues that they would include in such a set of guidelines.

Yet, some judges replied to this question. Most of them made comments such as "if there is any doubt an interpreter should always be provided," or "if the defendant wants an interpreter he should get one."

Other judges stated that the defendant's background information such as length of residency in The U.S., work history, and level of education should always be considered in determining the need for an interpreter.

One judge wrote that a set of guidelines "should be easy to apply," as the judges were already overloaded with work, and another judge called such guidelines simply "a waste of time."

CHAPTER 5. DISCUSSION OF FINDINGS

The analysis in chapter four of this study yielded the following results:

1) Linguistic needs of Hispanics are an issue in U.S. courts.
2) Non-native English defendants in criminal court must at least be able to understand everything that is said broadly, and they must be able to answer in whole sentences in order to be able to stand trial without an interpreter.
3) Most judges appoint an interpreter upon the request of the defendant, or they ask the defendant directly whether he/she needs an interpreter. That way judges do not have to determine the language proficiency of the defendant, and they do not have to consider additional information about the defendant, such as the length of his/her residency in the U.S., or his/her level of education.
4) Most judges "strongly disagree" with the statement that a set of guidelines on how to determine the language proficiency of a defendant would help them in their work. That is why the judges provided little information when they were asked to list items that they would include in such guidelines.

5.1 Research Question I: Are the Linguistic Needs of the Growing Hispanic Population Truly an Issue in U.S. Courtrooms?

Let's start with the finding that language needs of Hispanic defendants are of importance in U.S. courtrooms. As expected from the information covered in chapters one and two of this study, it turns out that a large number of Hispanics enter the U.S. courtrooms in CA, FL, NY, TX. With the exception of the judges in New York, all judges stated that about half of the defendants they encounter are of Hispanic background. In New York some judges indicated that only some of the defendants they deal with are of Hispanic origin.

Between half and many of these defendants have Spanish as their native language. In Florida the number of Hispanic defendants with native language Spanish seems (on average) to be higher than the number of Hispanics with the same characteristic in New York. Yet, the number of these defendants seems to be high in state and federal courts alike.

When asked to rate the average English proficiency of the Hispanic defendants, most judges responded that the English is "poor" or "fair." Only the judges in Texas rated the English of their defendants on average as "fair." The lowest rating for the English proficiency of their defendants was given by the judges in California.

Surprisingly then, the judges most often stated that language is only "sometimes" a barrier in the courtroom. The responses given by the judges in Texas indicate that in their courtrooms language is considered relatively less often a barrier than in courtrooms in other states. In contrast, judges in New York indicated that there language is relatively more often considered a barrier in the courtroom.

5.2 Research Question II: At What Proficiency Level Does the English of a Defendant Have to Be in Order to be Able to Stand Trial in Criminal Court without a Court Interpreter?

When asked how good the English listening comprehension of the non-native English defendants in criminal court has to be in order to be able to stand trial without an interpreter, the judges almost uniformly responded that these defendants have to at least be able to "understand broadly what is said in court." Most judges even said that the defendants have to be able to understand everything that is said. Most judges do not want to take the risk of jeopardizing the constitutional rights of the defendants, which are granted by the Fifth, Sixth, and Fourteenth Amendments of the constitution.

With regard to the question of how good the verbal expression of the defendants has to be in order to be able to stand trial without an interpreter, the judges' opinions varied widely. Although most judges indicated that the defendants should be able to "answer in whole sentences," one judge even stated that a defendant does not have to be able to speak English at all. This, of course, was the exception.

5.3 Research Question III: What Methods and Procedures Do Judges Use in Order to Assess the English Proficiency of a Hispanic Defendant?

The most important question answered in the previous chapter was that of what methods judges use to determine whether an interpreter is needed or not. In the literature review section of this study we have read several times that these methods seem to be rather random, and that there are no or insufficient guidelines to help the judges in their language assessment.

It turns out that the methods the judges use do indeed vary, but the preferences are clear: in order to take no risks when it comes to the constitutional rights of the defendants, most judges either always appoint an interpreter, if one is requested by the defendant, or they ask the defendant directly whether he/she needs an interpreter or not.

But, one needs to ask what happens if the defendant, not conscious of his rights, does not request an interpreter, and the judge does not ask him/her if he/ she needs one. Will the judges request one anyway, if there is a doubt about the defendant's ability to participate actively in his/her trial? We do not know.

Also, about twenty percent of the judges responded that they engage the defendant in a short question and answer series in order to determine whether the defendant's English is good enough. The judgments resulting from this method could be rather random, as most judges only

have a limited knowledge when it comes to linguistics. Thus, here a set of guidelines could be helpful.

5.4 Research Question IV: Do Judges Believe that Guidelines Would Help Them in Making Their Linguistic Call? How Would They Imagine Such Guidelines?

Most judges disagreed with the statement that a set of guidelines, which could help them to determine the English language proficiency of a non-native English defendant, would facilitate their work. One judge even called such guidelines "a waste of time."

Although some judges did agree that such guidelines could be helpful to them, little information could be gathered on what such guidelines should include. In a few cases the judges simply stated something similar to "Every defendant that wants an interpreter gets one."

5.5 Conclusion

Although the responses provided by the judges create a rather positive picture when it comes to the language rights of Hispanic defendants in U.S. criminal courts—most judges indicated that an interpreter is provided, if one is requested—the results here also show that discretional abuse on part of the judges is still possible.

There are no guidelines that the judges follow, and they do not want a set of guidelines either. The methods the judges use in order to determine whether an interpreter is needed vary, and there is no one who can tell them whether their methods are good enough or not.

Also, even though most judges created the impression that they were very aware of the defendants' constitutional rights, it also seemed that they were only perfunctorily interested in language issues. My conclusion then is that more detailed research needs to be done on the topic

dealt with here, in order to ensure that the language rights of the growing number of Hispanic defendants are not jeopardized.

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APPENDIX: Survey

Language Proficiency Assessment of Hispanic Defendants in U.S. Courtrooms

Part I
Indicate your answer by placing an "x" in the box underneath the statement that best reflects your situation/judgement.

5) What percentage of the defendants you deal with in criminal court are of Hispanic background?

Very many (100-80%)	Many (79-60%)	About half (59-40%)	Some (39-20%)	Few (19-0%)
☐	☐	☐	☐	☐

6) What percentage of the Hispanic defendants have as their first (native) language Spanish?

Very many (100-80%)	Many (79-60%)	About half (59-40%)	Some (39-20%)	Few (19-0%)
☐	☐	☐	☐	☐

7) How would you rate the average English proficiency of these defendants?

Very good	Good	Fair	Poor	Very poor
☐	☐	☐	☐	☐

8) Do you consider language proficiency a barrier in the courtroom?

Always	Usually	Sometimes	Seldom	Never
☐	☐	☐	☐	☐

Part II
Indicate your answer by placing an "x" in the box in front of the statement that best reflects your opinion/experiences.

9) How good does the English of a defendant have to be in order to be able to stand trial without a court interpreter?

With respect to listening comprehension, the defendant…

☐ must be able to understand everything that is said in the court, including legal terminology

☐ must be able to understand broadly what is said in the court room. He can consult his attorney, if there are questions regarding the proceedings.

☐ must only be able to understand his attorney and his summary of the proceedings in the court room.

☐ does not have to be able to understand any English, if his attorney speaks Spanish.

☐ does not have to be able to understand any English.

With respect to verbal expression, the defendant…

☐ must be able to answer questions like an English native.

☐ must be able to answer in whole sentences.

☐ must be able to communicate his ideas in simple terms.

☐ must be able to answer with yes or no.

☐ does not to have to be able to talk at all, as his attorney can answer for him**.**

Part III

6a) Indicate the methods /procedures you use to assess the English proficiency of a Hispanic defendant? (e.g. I ask him several questions, I talk to his attorney…)

(1)_____

(2)_____

(3)_____

6b) Indicate the specific information you need to know about the defendant's background (e.g. years in U.S., education…)

(1)_____

(2)_____

(3)_____

(4)_____

(5)_____

Part IV

Indicate your answer by placing an "x" in the box underneath the statement that best reflects your opinion/experiences.

SA= Strongly Agree A= Agree U= Undecided D= Disagree SD=Strongly Disagree

7) A set of guidelines that would help me in my decision whether a defendant needs an interpreter or not would facilitate my work.

SA	A	U	D	SD
☐	☐	☐	☐	☐

8) Every Hispanic defendant that needs an interpreter in the U.S. has access to these services.

SA	A	U	D	SD
☐	☐	☐	☐	☐

9) The court interpreting services provided in my county are sufficient.

SA	A	U	D	SD
☐	☐	☐	☐	☐

10) The standards of interpreter formation and certification are high in the U.S.

SA	A	U	D	SD
☐	☐	☐	☐	☐

11) In my county the funding for interpreting services is sufficient

SA	A	U	D	SD
☐	☐	☐	☐	☐

Part V

12) Please, list the main issues, or areas of concern that should be included in a set of guidelines for assessing the English language proficiency of a Hispanic defendant.

_____

_____

_____

_____

13) Do you have any other comments on the topics "language proficiency testing" and "court interpreter services"?

_____

_____

_____

VITA

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