



North Carolina Law Review
September, 2000

Article

***1899 BETWEEN PRINCIPLES AND PRACTICE: THE NEED FOR CERTIFIED COURT
INTERPRETERS IN NORTH CAROLINA**

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North Carolina demographics are shifting rapidly to include increasing numbers of Latinos. Response to the changing population varies from constructive adaptation and supportive policies to hostile and nativist reactions that deny and deprive Latino residents of their human and legal rights. Often decisive in defining differences, language represents perhaps the most notable obstacle that arises as Latinos weave themselves into the tapestry of North Carolina communities. Many Latinos speak Spanish and have only limited proficiency in English, and in North Carolina, as elsewhere in the United States, an individual's inability to speak English often results in discrimination and disadvantages. Because Latinos may have a heightened need to seek redress of wrongs experienced due to their newcomer or outsider status, access to the courts through certified, competent court interpreters is central to the manner in which North Carolina undergoes this dramatic demographic transformation. The courts' response to Latino newcomers will influence how they are treated by individuals and institutions in the state. North Carolina should adopt a statutory approach expanding the availability of court interpreters to all legal proceedings and ensuring the competence of those who interpret.

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***1901 Introduction**

The symbolism is striking. In North Carolina's Research Triangle area, the last baby born in the twentieth century was John Hart Dickey, a descendant of John Hart, the oldest signer of the Declaration of Independence. [\[FN1\]](#) Minutes later, ushering in the twenty-first century, the Triangle's first baby was born, Juan David Serrano García, whose ancestors were from Mexico. [\[FN2\]](#) Sarah Lindenfeld filed the story of Dickey's birth for the News & Observer, while Lorenzo Pérez reported Serrano García's arrival. [\[FN3\]](#) A dramatically timed news bulletin, the births of John and Juan and the ethnic origins of the

News & Observer correspondents reflected the changing demographics of North Carolina. The newborns' arrivals marked both the end of one millennium and the beginning of a new one and also a shift in North Carolina's demographic composition. That John was followed by Juan symbolizes the larger changes that will occur in the years to come.

The transformation of North Carolina from principally Native American, White, and African-American to one with increasing numbers of Latino [\[FN4\]](#) residents has been underway since the early 1980s. [\[FN5\]](#) The demographic shift presents opportunities to establish policies that affect the future of North Carolina in profound and permanent ways. North Carolina must contemplate strategies to ***1902** accommodate this increasing cultural diversity. Enfranchising recently-arrived residents and allowing them fair access to the broad range of state institutions could create a sense of inclusion, dignity, and value for newcomers as well as long-term residents.

The transition to a more inclusive society will not be an easy task. There are many examples of symbolic and actual exclusion of new cultures. [\[FN6\]](#) Culture is emblematic of the collective persuasions, opinions, expectations, and ideals by which a group of people experience daily life. Language is perhaps the most visible facet of culture--defining differences and subjecting non-English speakers to disadvantage and discrimination in an English-speaking environment. [\[FN7\]](#) English remains the dominant national language, and those who are able to speak it are held in higher esteem than those who are not. [\[FN8\]](#) Nonetheless, a significant segment of the United States population speaks Spanish. [\[FN9\]](#) It is currently the second most widely spoken language in the United States and is becoming more widely spoken in North Carolina. [\[FN10\]](#) Appreciation of the state's changing ***1903** demographics and the attendant increase in the use of Spanish is necessary to successfully reconceptualize the state's identity and embrace the culture of all residents. North Carolina cannot make sufficient progress towards inclusion without appreciating the unique and often complex issues raised by language. [\[FN11\]](#)

This theory does not question the self-evident wisdom of encouraging mastery of English. Fluency in the language of the land undoubtedly enhances one's ability to negotiate the terms of daily life. [\[FN12\]](#) But certainly, society should accommodate transition periods--which may often span the lifetime of a generation--during which people acquire the necessary language skills. [\[FN13\]](#)

Central to Latinos' ability to assimilate is their linguistic access to the courts. English serves as the foundation of all political processes and governmental functions, [\[FN14\]](#) and thus the courts, a central institution of the American political system, function in English. The core of the legal system, including its ideas, beliefs, principles, and doctrines, is expressed in English. Denying non-English-speaking residents fair access to the courts disenfranchises those residents, diminishes respect for the judiciary, and undermines the rule of law ***1904** for newcomers and long-term residents alike. [\[FN15\]](#)

This Article explores the implications of language differences and the resulting disadvantages in the courts experienced by those who do not speak English, specifically Spanish speakers. [\[FN16\]](#) This Article argues that state-certified court interpreters are needed in legal proceedings to mitigate these disadvantages and identifies strategies to promote Latinos' access to, and participation in, the judicial system through certified court interpreters. Through interpreters, Spanish speakers would gain access to the courts without first requiring them to become proficient in English. Without exploring the efficacy of a bilingual judicial system and assuming that the judicial system will operate in English for years to come, failure to incorporate Spanish speakers into the legal system discriminates against newcomers and limits their participation in the American justice system. The use of certified court interpreters makes inclusion possible and affirms that individuals who lack proficiency in English are entitled to equal protection of the law. Court interpreters accommodate diversity by acknowledging pluralism in the body politic and by affirming that people of different ethnic backgrounds are entitled to respect and to meaningfully participate in social institutions. By using qualified interpreters and respecting the rights of Spanish-speaking newcomers generally, the courts could serve as a model for other institutions.

This Article has three objectives. First, the Article argues that language in the courts is a question of due process and access to the ***1905** courts is a political and social issue. Language barriers that exclude a group of people from the courts not only deny them an opportunity to resolve their legal claims, but also exclude them from a significant institution where public values are shaped and reflected. The importance of the ability to participate in the legal system relates to the second objective: underscoring the need for certified court interpreters and the ways in which current legal standards fail to fulfill that need. Third, and more practically, this Article attempts to illuminate some of the operant issues concerning the use of interpreters.

Part I explores how recent demographic trends in North Carolina have affected state institutions and organizations in their

efforts to accommodate Latino newcomers. [FN17] It contrasts constructive efforts to accommodate Latinos with public reactions that convey hostility and distrust. [FN18] Part I also examines antagonistic reactions to Latino newcomers in the law. Part II focuses on the current law in North Carolina concerning the rights of non-English speakers to court interpreters in legal proceedings. It contends that the law has contributed to the exclusion of Latino newcomers from the justice system. [FN19]

Against the backdrop of limited entitlements to court interpreters, Part III describes the importance of access to the courts for reasons that are both separate and interrelated. [FN20] Latinos are likely to suffer deprivation of legal rights and protections as a consequence of their status as newcomers or immigrants. [FN21] They are often subjected to discrimination in housing, employment, the criminal justice system, lending practices, and other ways that affect their health and safety. [FN22] Because Latinos may need the courts for *1906 resolution of their rights, the hardships that follow from the denial of legal rights are compounded by the language barrier. While linguistic access in other arenas, including health care, bilingual education, and voting rights, [FN23] is guaranteed, it may take legal action in the courts to enforce those guarantees. To deny rights in other spheres of society, including linguistic access rights, because Spanish speakers could not obtain fair access to the courts to enforce those rights is unjust. Courts play a significant role in all spheres of public and private life. In theory, courts provide the venue for the fair and impartial resolution of disputes and thus should exemplify the equitable treatment that Latinos should expect from other public and private institutions in North Carolina.

Part IV of this Article describes current state court practices with regard to the use of interpreters and reviews present efforts in North Carolina to develop a plan for foreign language interpreters. [FN24] This Part also explores what a state foreign language interpreter statute might entail.

*1907 Finally, Part V serves as guide to practicing attorneys. [FN25] It describes interpreter functions and qualifications and provides practical information for attorneys working with interpreters while representing non-English-speaking clients. [FN26] The rapid demographic changes in North Carolina compel the need for familiarity with the practical aspects of interpreter issues. Further, the legal profession is obliged to take the lead to safeguard due process rights, including those of non-English speakers who participate in the judicial system.

I. Demographic Trends: Response and Reaction

A. Demographic Changes in North Carolina

The demographic shift in North Carolina has been dramatic. Once comprised largely of Native Americans, Whites, and African-Americans, the state recently has become home to increasing numbers of immigrants, a large percentage of whom are Latino. [FN27] The Spanish-speaking population constitutes the largest segment of recent immigrants. [FN28]

In the past, the greatest density of the Spanish-speaking population was located in traditional gateway regions--the Southwest, New Jersey, New York, and Florida. [FN29] Recent immigration patterns, however, reveal a significant national shift in the Latino population. Within the last ten years, a number of states, including North Carolina, have joined the gateway region settlement patterns. [FN30] The Latino population in North Carolina is now increasing at a rate faster than in states long considered to be likely destinations *1908 for arriving immigrants. [FN31] Between 1990 and 1996, five of the thirty counties in the United States registering the largest increases in Latino population were located in North Carolina. [FN32]

Estimates of the size of the Latino population in North Carolina vary. All estimates, however, are deemed to be too low because of the historic failure to count minorities and inner-city populations, especially undocumented immigrants, accurately. [FN33] One study estimated the Latino population in North Carolina at nearly 350,000 as of January 1999. [FN34] Despite the inaccuracy of the estimated Latino population, the percentage of North Carolina's Spanish-speaking population undeniably has increased substantially. The United States Census Bureau calculated a 95% increase among Latinos in North Carolina from 1990 to 1997 compared to a 31% overall increase in the United States and a 35% increase in the South. [FN35] Examination of a broader time span provides an even more dramatic picture. From 1980 to 1997, the Latino population in North Carolina increased by 164%. [FN36] During the same period, the state's Native American population increased by 48%, the White population increased by 26%, and the African-American population increased by 25%. [FN37] The total population increased by 26%. [FN38]

*1909 Other demographic markers, including age and sex, suggest that the Latino population will continue to grow in this state. Currently, a majority of Latina females in North Carolina are in their prime childbearing age, which suggests the likelihood of sustained growth of the state's Latino population. [FN39] Moreover, census indicators demonstrate an increase in the number of Latinos who come to North Carolina with spouses and children, which suggests that Latino immigrants intend a more permanent move to the state. [FN40]

The majority of North Carolina's Latinos were born in the United States, Puerto Rico, or other United States territories. [FN41] A significant percentage of Latino migration to North Carolina originates from within the United States. Residents come principally from California, Texas, Florida, and New York; the next largest groups come from New Jersey, Virginia, and Georgia. [FN42] They are mostly Mexican (43%), Puerto Rican (26%, most of whom are in military communities), Central American, Cuban, South American, and Dominican. [FN43] More than two-thirds of Latinos who came to North Carolina between 1985 and 1990 are presumed to have been United States citizens when they arrived. [FN44] At least half of the Latino residents in the state do not speak English proficiently. [FN45]

Latinos have settled throughout North Carolina, in both rural and urban communities--expanding outward from the predominantly metropolitan areas along the Interstate 85 corridor and military bases [FN46]--with a proliferation of Latino-owned retail stores, churches, *1910 and restaurants marking their expanding presence. [FN47] They are attracted to North Carolina for many reasons. Latinos come with hopes of finding a peaceful environment and improved educational opportunities for their children. [FN48] The number of Latino children enrolled in North Carolina public schools is estimated at 33,000, an increase of 285% from 1990 to 1998. [FN49] Primarily, however, Latinos are attracted to the state's expanding economy and demand for labor. [FN50] Employers who experience difficulty in filling jobs in a tight labor market often recruit Latinos. [FN51] Consequently, Latinos often are employed in sectors experiencing critical labor shortages: agricultural field work, Christmas tree cultivation, the chicken processing industry, and hotel and food service industries. [FN52] Seventy-five percent of construction workers in the Charlotte-Mecklenburg area are Latino. [FN53] Many businesses in Siler City might have been forced to relocate had it not been for the influx of Latinos to Chatham County. [FN54] Latinos are also disproportionately represented on North Carolina's military bases. [FN55]

B. Accommodating the State's Changing Identity

The change in demographics has affected a wide range of state institutions and organizations that have been obliged to modify *1911 their operations in response to the state's transformation. In 1998, Governor James B. Hunt, Jr. created the Office of Hispanic/Latino Affairs and the North Carolina Governor's Advisory Council on Hispanic/Latino Affairs to "coordinate and develop state and local programs" and to "bring attention to issues affecting the Hispanic population in North Carolina." [FN56] The North Carolina Hispanic Chamber of Commerce was formed in 1995 and currently has more than 220 dues-paying members. It has two offices and is adding three additional offices across the state to serve an expanding constituency. [FN57] Further, through the Latino Initiative for Public Policy, twenty-four state officials and community leaders recently took a "fact-finding" trip to Mexico to educate themselves on the culture and experiences of Latino newcomers. [FN58]

Other sectors have attempted to adapt to the population shift as well. School districts are experimenting with strategies aimed at teaching Spanish-speaking students. [FN59] State health care delivery systems have formally recognized the challenges in serving Latino newcomers. The state's Division of Medical Assistance has required contracting agencies to make services accessible to non-English speakers. [FN60] The North Carolina Association of Local Health Care Directors has urged local public health agencies to provide interpreters free-of-charge to non-English-speaking and limited English proficient individuals who seek access to public health services. [FN61] In 1995, a group comprised of representatives from twenty-seven state-level public service agencies created a North Carolina Bilingual Resource Group and an Interpreter Task Force to assist public service agencies that furnish critically needed health and *1912 social services to Latino newcomers. [FN62] Training for interpreters in health and human services is already ongoing with scheduled events at many places throughout the year. [FN63] The Division of Motor Vehicles has made an effort to facilitate integration as well by publishing a Spanish-language manual and allowing non-English speakers to use translators to take the written test. [FN64]

In the legal arena, efforts to address the needs of Spanish-speaking residents are underway. The North Carolina Administrative Office of the Courts (AOC) has developed a two-year Foreign Language Services Project to facilitate court access for non-English speakers, with particular emphasis on the growing Latino population. [FN65] An entity within the Administrative Office of the Courts also has been established to coordinate and oversee foreign language interpretation.

[FN66] The project seeks to develop and implement a training and certification process for Spanish interpreters. [FN67] It also proposes to translate court forms into Spanish, prepare English-to-Spanish glossaries for court officials, publish informational brochures in Spanish, and educate both court officials and the general public on language and cultural differences. [FN68]

Other recent initiatives also reflect the growing recognition of *1913 the legal needs of Latino newcomers. Within the legal profession, the North Carolina Bar Association has sponsored a Hispanic Lawyers Committee to work with Latino clients. [FN69] All of the committee members are bilingual. [FN70] The increase in Spanish-speaking clients in North Carolina has already strained the group's resources. [FN71] Legal Services of North Carolina has formed a statewide Access for Spanish-Speaking Clients Committee to explore appropriate mechanisms to ensure that Spanish-speaking, indigent North Carolinians have access to legal services in their own language. [FN72]

C. Hostile Responses to the State's Changing Identity

Not all responses to the increasing Latino population, however, have aimed to include the newcomers. The growing Latino presence has often provoked hostility and aroused nativist antagonism [FN73] that can be measured both formally and informally. The 1996 Carolina Poll, conducted by the University of North Carolina at Chapel Hill School of Journalism, uncovered the same anxieties and distrust of Latino newcomers that exist in traditional gateway communities. [FN74] The poll suggests that North Carolinians generally do not welcome the increasing numbers of Latinos migrating to the state and are concerned about the migration's effect on jobs, housing, education, *1914 and other goods and services. [FN75] Approximately two-thirds of those North Carolinians interviewed indicated they would not welcome Latinos into their neighborhoods. [FN76]

This resentment finds expression in words and speech. Letters to the editor of local newspapers bemoan the presence of too many Latinos, both legal and undocumented. [FN77] Others lament that Latinos depress local wages and overcrowd schools. [FN78] Such negative responses result in formulaic conceptions of individuals that restrict their potential and possibilities. [FN79] The experience of rejection and negative stereotyping is likely to prevent Latinos from becoming fully enfranchised members of society. [FN80] Although Latinos occupy varied positions in the North Carolina economy--such as in the areas of social services, health care, education, government, construction, agriculture, forestry, fisheries, and the military--they are most often *1915 presumed to be farm workers or gardeners. [FN81] Latinos are often unable to escape the cultural stereotypes imposed on them. They are represented and resented incongruously: if they are employed, they are depriving native workers of jobs; if they do not work, they are considered lazy and unworthy and are perceived as living off of citizen taxpayers. [FN82]

The discourse of intolerance is accompanied by hostile reactions manifested in discernible behaviors indicating an unwillingness to include and incorporate Latino newcomers. People may flee from the public schools attended by large concentrations of Latino children. [FN83] Local communities may attempt to regulate language through the passage of English-only laws. [FN84]

*1916 Use of the Spanish language arouses fear and intolerance. [FN85] Complaints are lodged about bilingual choices in ATM machines and bilingualism in the marketplace. [FN86] More than half of the respondents to a North Carolina survey expressed discomfort about being around people who do not speak English. [FN87] The survey results reveal *1917 that hostility toward Spanish-speakers is greater than the hostility toward non-Latino immigrants in general. [FN88] Hostility is expressed across the state's population in terms of geography, employment status, age, race, sex, and educational background. [FN89] No less striking, North Carolina survey respondents made little effort to mask their animosity and hostility. [FN90]

One study of the North Carolina state courts documents hostility that finds expression in the reluctance to use court interpreters. [FN91] This reluctance stems "from a belief that most Hispanics in North Carolina feign ignorance of English in the courtroom" and from the opinion that interpreters "waste the state's money." [FN92] These attitudes suggest that Latinos are perceived as untruthful and undeserving by virtue of their language. The study suggests, in powerful terms, that to have a place in the legal system, Latinos must conform to the dominant culture, primarily by speaking English.

Motivations behind this animosity lie primarily in language barriers. The "foreignness" of language often leads to intolerance of the foreign language-speaking newcomer. [FN93] Language acts as an easy marker and facilitates the separation of non-English speakers from the dominant group. [FN94] When associated with the factors of race and class,

language differences contribute to the marginalization of the Latino population. [FN95] In the United States, where national identity is presumptively coupled with speaking English, apprehension has often contributed to the view that foreign languages threaten national *1918 unity. [FN96] The desire to protect the dominant language often leads to discrimination against those who do not speak it. [FN97] Where intolerance of foreign languages has been studied, including in North Carolina, the attitudinal findings are similar: to be included, one must speak English. [FN98]

D. Law as an Instrument of Hostile Responses

Hostile reaction finds further expression in law as a means of imposing normatively driven notions of state and national identity. The law has always established markers, often using ethnicity, to delineate the contours of our national identity. [FN99] Immigration laws have long shaped national identity and self-definition through racial and national origin quotas, properly understood in the context of larger political, economic, and social tensions. [FN100] For example, Jim *1919 Crow and anti-miscegenation laws sought, among other things, to systematically exclude African-Americans from public and private institutions as a means to stigmatize, label as "other," and deny them a sense of belonging to the dominant society. [FN101] Similarly, recent restrictions on immigrant access to public benefits disparately affect Mexicans and exclude them from full membership in society. [FN102]

The law has used language as a substitute for ethnicity to control who will be admitted or excluded from the dominant discourse. The English-as-Official-Language movement, which seeks to demand adoption of English as a condition for assimilation, pursues much of its agenda through efforts aimed at legislative change and constitutional amendments. [FN103] In 1987, North Carolina adopted an English-as-Official-Language proviso similar to statutes adopted by over twenty states. [FN104] Broad-based approval for English language laws among whites has its genesis in "a general perception that the [United States] is losing ground," and demonstrates "middle class Anglo fears and anxieties" which results in "mythical and simplistic stereotyped scapegoats." [FN105] These fears and anxieties are apparent in the reaction to Latino newcomers in North Carolina.

In addition to the hostility symbolized by the English-as-Official-Language movement, speaking Spanish often elicits specific punitive responses from the majority expressed vividly through stereotyping and discrimination in employment, housing, and a range of public accommodations. [FN106] The result is often an insidious effort to silence *1920 Spanish-speaking voices in ways that assure control of discourse and debate. [FN107] Maintaining dominance in language and communication is a way to assert control of social positions and political hierarchies. Moreover, this dominance determines the very ideas that may be expressed, who may express them, and the order and significance of expression. [FN108]

English-as-Official-Language statutes may seem like largely symbolic responses, but they are not without consequences. Such laws stir nativist attitudes and often lead to proposals to restrict bilingual services and enact more restrictive English-Only laws. [FN109] But more is at stake than the erection of linguistic barriers. In seeking to suppress the Spanish language, these laws contribute to "social and legal structures" which "turn differences that are both highly visible and irrelevant from the moral point of view into systematic social disadvantages." [FN110]

Reaction to foreign language speakers in the form of coerced conformity is, in fact, a response to a non-existent threat. Despite fears of resistance to assimilation and worries of language chasms threatening national unity, the evidence suggests that non-English-speaking newcomers do learn the language, that second generation Americans speak English fluently, and that the third generation is usually monolingual-English speaking. [FN111] Drucilla Cornell and *1921 William W. Bratton analyzed English-Only laws seeking to establish English as the "official" language of the government and private employer regulations that mandate speaking English in the workplace. [FN112] The authors concluded that "in light of the emerging role of English as a global lingua franca, the very suggestion of a threat is absurd." [FN113]

In fact, the suppression of Spanish in North Carolina may undermine the state's economic interests. Nationwide, Latinos account for approximately six percent of United States buying power. [FN114] During the 1990s, North Carolina's Latino buying power increased 177%, and it continues to increase at the third highest rate in the nation. [FN115] In 1988, Latinos contributed between \$1.3 billion to \$2.5 billion annually to the economy of eastern North Carolina, with an additional ripple effect of \$675 million to \$1.2 billion as the money changes hands. [FN116] Language barriers that frustrate the Spanish-speaking population's ability to participate economically may inhibit the continued development of the state's economy. [FN117] In addition, fluency in Spanish is likely to enhance North Carolina's ability to compete in domestic and international Latin American markets. [FN118] Given the importance of domestic and foreign multicultural communities,

the emphasis on English only may not be in the state's best interests. [\[FN119\]](#)

There is a compelling need to develop policies to intervene against the hostile reactions to Latino newcomers. The existence of negative and nativist attitudes during the current period of relative economic strength and prosperity is alarming. These attitudes likely will worsen if North Carolina's economy suffers slowed growth or a recession. Reconceptualizing the state's identity to include Latinos *1922 may act as a wedge against the possibility of heightened animosity and discriminatory backlash in the event of an economic downturn. Efforts to develop constructive and respectful relations between Latino newcomers and other North Carolinians may provide the additional benefit of improving North Carolina's stature and competitiveness in the global marketplace. [\[FN120\]](#) The market, however, should not be the principal motivator. Rather, the opportunity to create a state identity which values its residents regardless of ethnicity or cultural differences should drive North Carolina's response to the needs of its Latino residents.

II. Limited Legal Rights to Court Interpreters in North Carolina

A. Ad Hoc Court Interpreter Practices and Problems

The courts have not been immune to the effects of the increase in the Spanish-speaking population. Although no accurate data has been collected regarding the number of cases that involve Spanish speakers, the AOC calculates that about 50,000 Latinos were involved in civil and criminal court cases during the 1997-98 fiscal year. [\[FN121\]](#) The undercount of Latinos makes it difficult, if not impossible, to estimate the number of monolingual Spanish speakers and those not fully proficient in English who need court interpreters. [\[FN122\]](#) In 1997, one estimate calculated that non-English speakers constituted half of the number of Latino residents. [\[FN123\]](#) Thus, approximately 175,000 state residents cannot gain access to the courts without assistance. In fact, a 1997 report prepared for the AOC estimated the need for interpreters on 3,000 different occasions annually. [\[FN124\]](#) The number of residents in need of court interpreters is likely to increase. Demographic trends demonstrate a rapid rate of overall growth of North Carolina's Latino population. [\[FN125\]](#)

Currently, North Carolina has no state constitutional, statutory, *1923 or other regulatory entitlement to a foreign language interpreter. [\[FN126\]](#) Although the AOC is working to develop a state certification plan for court interpreters in criminal, juvenile, and domestic violence proceedings, at present, North Carolina has no certified state interpreters, nor does the AOC plan propose using court interpreters in general civil or administrative proceedings. [\[FN127\]](#) Currently, each state judicial district determines foreign language interpreting issues locally. [\[FN128\]](#)

The lack of uniform policies governing court interpreters presents significant problems for Spanish-speaking litigants and their attorneys. Courts often improvise and rely on whoever is available, including family members or unknown persons who happen to be present, to interpret. [\[FN129\]](#) In addition, interpreters often are not available for each session of court, thus causing significant delays in the resolution of cases. [\[FN130\]](#) Moreover, the lack of standards for court interpreters often produces faulty interpretations and misinformation to the court and the litigant alike. [\[FN131\]](#)

This district-by-district method has produced inconsistent determinations as to when the courts should provide interpreters and *1924 often has resulted in the denial of interpreters to non-English speakers who need them to participate in the proceedings. [\[FN132\]](#) The method has also resulted in the use of unqualified interpreters, thereby undermining both the integrity of judicial proceedings and the rights of Spanish-speaking litigants. [\[FN133\]](#) Moreover, the absence of uniform regulations has allowed unscrupulous individuals to hold themselves out as interpreters who can give assistance in legal matters. [\[FN134\]](#)

B. Sources of Law Governing Court Interpreters in North Carolina

No North Carolina court has established a right to an interpreter. Although several North Carolina cases address the issue of court interpreters, they do not shed light on the rights of non-English-speaking litigants to an interpreter. [\[FN135\]](#) The North Carolina Supreme Court in *State v. Torres* [\[FN136\]](#) affirmed the courts' inherent authority to appoint an interpreter. [\[FN137\]](#) In *State v. Call*, [\[FN138\]](#) however, the court emphasized that the "decision to appoint an interpreter rests within the sound discretion of the trial court." [\[FN139\]](#) Other North Carolina cases reveal more about the problems of competency and qualifications of an interpreter than about the right to have one. [\[FN140\]](#)

*1925 1. Federal Constitutional Principles

There is no state constitutional, statutory, or regulatory entitlement to an interpreter; however, the entitlement to a foreign language interpreter in state court originates from federal constitutional principles and relevant federal statutes. [FN141] Although no constitutional provision explicitly provides the right to an interpreter, several court decisions clearly recognize a criminal defendant's right to a court interpreter under the United States Constitution. [FN142] Most of these decisions derive from the Fifth and Fourteenth Amendment Due Process Clauses, as well as from the Sixth Amendment right to confront and cross-examine witnesses and to have effective assistance of counsel. [FN143] In *United States ex rel. Negrón v. New York*, [FN144] frequently cited as the most significant case regarding court interpretation, [FN145] the Court of Appeals for the Second Circuit stated that a criminal defendant must be able to communicate with his lawyer with a reasonable degree of rational understanding and that *1926 Spanish-speaking criminal defendants are entitled to the services of an interpreter. [FN146] In *Negrón*, Rogelio Nieves Negrón, a Puerto Rican convicted of murder, had a limited education, [FN147] did not speak or understand English, and could not communicate with his court-appointed lawyer, who spoke no Spanish. [FN148] Although the testimony of two Spanish-speaking witnesses was interpreted for the jury, the testimony of English-speaking witnesses was not interpreted for the defendant, except for summaries during court recesses. [FN149] According to the court, failure to provide such services violated Negrón's Fourteenth Amendment right to due process and Sixth Amendment right to be meaningfully present at trial. [FN150] Other federal courts thus have instructed that indictments and other critical documents must be translated into a criminal defendant's native language to assure that the defendant is fully informed of the nature of the charges. [FN151]

2. Discretionary Application of Constitutional Principles

Application of constitutional provisions has not resulted in the appointment of a court interpreter for every non-English-speaking criminal defendant. In addition to determining whether the defendant has a legal right to a court interpreter, a judge must decide whether the particular defendant's level of proficiency in English impairs her Sixth Amendment rights, particularly the right to the assistance of counsel. [FN152] Courts possess wide discretion in making this *1927 determination. [FN153] Factors considered include "the defendant's understanding of the English language, and the complexity of the proceedings, issues, and testimony." [FN154] A judge sometimes will rely on a short colloquy with the defendant to explore her English-speaking skills. [FN155]

In North Carolina, as elsewhere, the trial courts are vested with discretion to determine whether a defendant is proficient in English despite the courts' lack of training either in interpretation or the foreign language itself. [FN156] A study of the North Carolina state courts illustrates the problem through the following exchange between a defendant and a judge.

Judge: Buenos días.

Defendant: Beunos días [sic].

Judge: [while nodding] You doing alright today?

Defendant: [nods] Yes. [FN157] Based on this brief exchange, the judge did not assign an interpreter, mistakenly concluding that the defendant spoke English. [FN158]

3. Expanding Constitutional Principles to Civil Matters

No court has determined that a constitutional right to an interpreter exists in civil proceedings. One California court expressly *1928 held that indigent civil litigants are not entitled to have court interpreters appointed for them at public expense. [FN159] Notwithstanding this decision, fundamental notions of fairness, due process, and access to the courts seem to require the appointment of an interpreter in civil proceedings. [FN160] In civil cases, litigants seek to enforce or protect constitutional rights and pursue or defend other significant interests. Civil domestic violence proceedings, custody matters, eviction proceedings, and creditor-debtor proceedings implicate an individual's life, liberty, and property. [FN161] Procedural protections, including the right to an interpreter, may be warranted in these situations. [FN162]

Courts have imposed due process requirements on judicial mechanisms, functions, and practices that thwart access to courts or otherwise deprive litigants of important legal protections. [FN163] A line of *1929 decisions starting with *Griffin v. Illinois* [FN164] underscores the United States Supreme Court's concern with access to the courts. [FN165] *Griffin* held that a state's refusal to furnish trial transcripts of criminal proceedings to indigent defendants was unconstitutional because it effectively denied the poor access to appellate review. [FN166] Following *Griffin*, the Court in *Douglas v. California* [FN167] construed post-conviction access rights to the courts to be "meaningless rituals" without the right to appointed counsel. [FN168] In *Mayer v. Chicago*, [FN169] *Griffin* was extended to appeals from convictions for petty offenses involving "quasi criminal" conduct and offenses where imprisonment was not an issue. [FN170]

The Court's concern with access has not been limited to criminal defendants. Access was the Court's primary concern in

Boddie v. Connecticut. [\[FN171\]](#) In Boddie, the Court enjoined a state statutory filing fee requirement for divorce actions which essentially precluded indigents from bringing such actions. [\[FN172\]](#) Although Boddie has not been extended to all civil cases, it may continue to apply when fundamental interests are at stake and when courts have exclusive control over the issues involved. [\[FN173\]](#) In Lassiter v. Department of Social Services of Durham County, [\[FN174\]](#) the Court held that an indigent's right to appointed counsel in parental termination proceedings should be *1930 determined on a case-by-case basis and subject to appellate review. [\[FN175\]](#) In M.L.B. v. S.L.J., [\[FN176\]](#) the Court extended Griffin to non-criminal matters and held that appeals from trial court decrees terminating parental rights could not be conditioned on payment of record preparation fees. [\[FN177\]](#) Moreover, in Lewis v. Casey, [\[FN178\]](#) the Court suggested that under certain circumstances, other than criminal proceedings, the inability to communicate in English also may constitute a denial of court access requiring remediation. [\[FN179\]](#)

Based on the Court's decisions in Boddie and M.L.B., which struck down rules that impeded access to an appeal when fundamental family interests were at stake, and based on Mayer, which prohibited rules interfering with access in quasi-criminal matters, court interpreters accordingly should be provided in a range of non-criminal matters including divorce, custody, termination of parental rights, and civil domestic violence matters, as well as mental health proceedings. [\[FN180\]](#) Providing court interpreters in family law related matters and cases that implicate liberty interests would be consistent with the Court's heightened commitment to access to the courts in those areas. The Court's concern for language impediments expressed in Lewis, coupled with Lassiter's instructions to determine access issues on a case-by-case basis, should require a trial court to consider carefully whether an interpreter should be appointed in any civil matter in which a party cannot speak English.

*1931 4. Federal Statutory Sources

In addition to federal constitutional principles, the federal Court Interpreter Act [\[FN181\]](#) (the "Act") requires the use of interpreters in criminal and civil actions filed by the United States in federal district courts when a party's ability to comprehend proceedings or otherwise communicate with counsel is inhibited. [\[FN182\]](#) The Act also requires that the courts use a certified interpreter unless one is not reasonably available, in which case the non-certified interpreter is required, at a minimum, to be competent. [\[FN183\]](#) Certification exists in Spanish, Haitian, Creole, and Navajo, [\[FN184\]](#) and "[f]ederal Courts anticipate providing certification in Cantonese, Mandarin, and Korean." [\[FN185\]](#) The Act does not apply in state court proceedings. [\[FN186\]](#)

The Act identifies limited circumstances in which an interpreter is required in civil actions. The requirement is restricted to those proceedings "conducted in, or pursuant to the lawful authority and jurisdiction of a United States district court." [\[FN187\]](#) Thus, when the United States does not commence civil actions in district court, the right to the appointment of a court interpreter does not apply. Assuming the ability to trace operative federal funding, some scholars have argued that Title VI of the Civil Rights Act of 1964 [\[FN188\]](#) may also create the right to an interpreter in all legal proceedings. [\[FN189\]](#)

C. Appellate Process Problems

Enforcing the limited rights to interpreters that exist at the trial court level is difficult to do through the appellate process. Despite the lack of trial court training to determine language proficiency, *1932 appellate courts are likely to defer to the trial court's discretion concerning the appointment of an interpreter. [\[FN190\]](#) Despite their lack of training in this field, trial court judges are afforded wide discretion in determining whether an appointed interpreter is competent. [\[FN191\]](#) Judges may rely on factors such as place of birth, bilingualism, and past experience teaching the foreign language to be interpreted in determining an interpreter's competency. [\[FN192\]](#) Given the complexity of court interpretation, however, these factors may not reveal whether an interpreter is actually qualified. [\[FN193\]](#)

Appellate issues are complicated by the fact that trial records are transcribed only in English. [\[FN194\]](#) The English language record cannot capture errors in interpretation; therefore, ascertaining the consequences of interpreter errors is difficult. [\[FN195\]](#) Appellate courts in other jurisdictions have noted their inability to resolve challenges to the accuracy of interpretation from an English-only record. [\[FN196\]](#) Efforts to find alternative means to preserve interpretation for the record have been unsuccessful. In State v. Call, [\[FN197\]](#) when an interpreter was used, the defendant's attorney requested to tape record the proceedings pursuant to Rule 15 of the North Carolina General Rules of Practice for Superior and District Courts which permits the use of *1933 tape recorders in criminal trials. [\[FN198\]](#) The North Carolina Supreme Court declined to assign error to the trial court's refusal to allow the tape recording, noting that the limiting provisions of Rule 15 allow trial courts to "prohibit or terminate electronic media and still photography coverage of public judicial proceedings." [\[FN199\]](#)

D. Comparative Rights: North Carolina's Statute Governing Interpreters for the Deaf

North Carolina does have an expansive statute governing the right to interpreters for the deaf that includes interpreter qualifications. [FN200] Deaf persons are entitled to an interpreter in any civil or criminal proceeding in any superior or district court of the state, including juvenile proceedings, special proceedings, proceedings before a magistrate, legislative committee hearings, and administrative hearings. [FN201] The comprehensive protection afforded to deaf persons stands in sharp contrast to the absence of similar protections for non-English speakers. A deaf person presumably did not choose to be deaf and thus bears no fault in any resulting inability to communicate in court without the assistance of a sign language interpreter. Whether a Spanish-speaking person has full control over the process of acquiring proficiency in English, however, cannot be determined easily. There are many variables, including the length of time a person has been in the country, the individual's purpose for being in the country, and the adequacy of the person's opportunities to learn English. [FN202] Community, family, and other issues of culture and identity also affect the pace and degree to which a person *1934 acquires proficiency in English. [FN203] Nonetheless, attitudes documented in studies and surveys suggest a presumption of fault when a Spanish-speaking person needs or wants an interpreter. [FN204]

III. The Importance of Access to the Courts for Latino Newcomers

A. Heightened Need for Legal Remedies

1. The Likelihood of Rights Deprivations

Limited legal rights to court interpreters often results in limited access to justice. Vulnerable to discrimination based on their national origin and lack of proficiency in English, Latino newcomers often suffer denial of their legal rights. As a result, they are likely to need the courts for protection of their rights. Linguistic obstacles all but eliminate the power of the courts to halt discriminatory and illegal practices.

Current data suggests that Latinos in North Carolina are particularly susceptible to injustices that require legal remedies. The North Carolina Department of Labor documents a significant rise in fatal occupational injuries to Latino workers assigned to risky jobs made more dangerous by language barriers. [FN205] Wrongful denial of worker's compensation is widespread among farm laborers, construction workers, and textile employees in the Latino community. [FN206] Some restaurant employers withhold wages, overtime pay, and benefits and often fire workers who demand their due compensation. [FN207] Safety conditions and wage-and-hour violations are *1935 ongoing concerns, but without meaningful opportunities to access judicial remedies, they are likely to remain unaddressed.

In the housing sector in North Carolina, Latinos often face exorbitant rents and uninhabitable living conditions as a result of discrimination by private landlords. [FN208] Despite the general protection of the United States and North Carolina Constitutions against discrimination, as well as the protection afforded by specific state statutes and municipal ordinances prohibiting discrimination in housing, Latinos are the fastest-growing target of discrimination in the housing market. [FN209] Discrimination in housing constricts larger economic, educational, and social possibilities. [FN210] It contributes to the physical and symbolic isolation of Latino newcomers and reduces opportunities to participate fully in public life, which includes learning English. The legal protections against housing discrimination are rendered useless for those who cannot raise them in the forum in which they are designed to be used--the courts.

In addition, law enforcement agencies may unfairly target Latinos through discriminatory profiling. [FN211] Latinos also may be arrested because of confusion caused by the inability to speak English. [FN212] Latinos have been charged disproportionately with driving *1936 while impaired violations. [FN213] In Durham County, statistics reveal that in 1999, while Latinos comprised only five percent of the population, they made up twenty-six percent of the arrests for driving while impaired. [FN214] Because of language barriers, Latinos are subject to longer stays in jail, even for minor traffic offenses, higher bail fees, and an inability to locate certified court interpreters. [FN215] Because they are known often to carry cash, Latinos are also frequently victims of armed robbery and home invasions. [FN216] As a result of widespread victimization, Spanish-speaking residents often find themselves in involuntary relationships with the legal system arising out of offenses and infractions committed against them. However, they may not be able to gain access to the legal system where those issues might be resolved because of the very language barriers which triggered the need for the courts in the first place.

2. Enforcing Linguistic Access Rights and Other Legal Protections

In the health care setting, Latinos may be entitled to interpreters in order to obtain health-related services under North Carolina's Medicaid managed-care program and under federal law. [\[FN217\]](#) Public *1937 school children with limited proficiency in English have rights to an appropriate education, which requires schools to modify instructional methods to overcome language barriers. [\[FN218\]](#) Electoral rights laws may require bilingual voting materials. [\[FN219\]](#) Title VI of the Civil Rights Act provides some assurance for language assistance in social services settings. [\[FN220\]](#) But these entitlements are not self-executing and those seeking to enforce them often are met with ambivalence and reluctance. [\[FN221\]](#) Linguistic access to the courts may be no more important than linguistic access to health care, education, social services, or voting. But courts may be the only recourse to assure non-English-speaking residents linguistic access rights in other spheres. As Kenneth Karst noted, "[I]t is not just the enactment of the law that serves to unify the society but the enforcement of the law in actual cases." [\[FN222\]](#) Courts are central to the possibilities of plurality in a variety of community and institutional settings.

Language barriers to the courts embody the paradox that characterizes the legal treatment of non-English-speaking residents. These residents may be extended the benefit of statutory and constitutional provisions designed to promote their well-being, dignity, and inclusion, such as health care access, fair housing, fair labor standards, voting rights, consumer protection, and access to public education. At the same time, however, non-English-speaking residents are prevented from exercising those rights because they are denied effective access to the courts. Perhaps the greater irony is that while language is an undeniable impediment to the assimilation of Spanish-speaking newcomers, Latinos are often prevented from learning English because of prejudice, discrimination, and isolation. [\[FN223\]](#)

*1938 B. Principles of Inclusion and the Rule of Law

1. The Power of the Courts

In addition to the importance of the need to access the courts to remedy specific violations or to enforce rights, the significance of the judicial system as arbiter of human rights, values, and ideals makes access to the courts essential. Access to full standing in the courts is considered a noble principle, one that is affirmed in both the United States and North Carolina Constitutions [\[FN224\]](#) and is linked to the principle of the Rule of Law. [\[FN225\]](#) Whether either principle has true meaning or is "invoked . . . for purely hortatory purposes" is debatable. [\[FN226\]](#) Both principles are admittedly abstract, but do possess practical meaning. Access to the courts has functional meaning for a criminal defendant who may appear in court involuntarily. She faces charges for which she must answer, and her linguistic participation in the process is required. For a criminal defendant, access to the courts means the ability to communicate in English in order to mount a defense. For a civil litigant, access to the courts permits the adjudication of rights or determinations of disputes that may involve constitutional protections, liberty interests, property rights, and fundamental family issues.

The importance of access to the judicial system transcends the practical meanings and the individual need for legal protection. Courts are powerful institutions. The denial of access to the court due to language barriers marginalizes new residents. Courts define and decide membership issues--i.e., who can participate in the public and private life of the community--not only through decisions about controversies where membership is directly raised, but by recognizing or denying the right to be heard. [\[FN227\]](#) Judges illuminate and *1939 communicate social values. [\[FN228\]](#) When court procedures assure a non-English-speaking litigant's participation in the judicial process despite language differences, the legal identity of that individual is recognized. [\[FN229\]](#) Legal identity, as a form of public identity, has the potential to leverage the power of participation in the public sphere in more expansive ways than the courts alone can provide. [\[FN230\]](#)

2. Legal Challenges, Access to the Courts, and Empowerment

Access to the courts does not guarantee that legal rights and protections will be enforced. By pursuing their rights, however, non-English-speaking newcomers may facilitate the process of inclusion. Eric Yamamoto notes that asserting rights through the courts requires those with decision-making power to provide "justification" for their acts, and that such legal actions "may transform social concerns into recognized rights, thereby recharging political movements." [\[FN231\]](#) Kimberlé Crenshaw has described the transformative possibilities of demanding rights that call upon society to fulfill its promises and obligations to the powerless. [\[FN232\]](#)

The assertion of rights is difficult in the face of linguistic barriers. Courts operate in English: evidence, arguments, principles, and doctrines are expressed in English. The English language serves as the primary means of communication between and among adversaries and the judge. Mastery of the English language is a precondition for engagement in the legal system.

For Spanish-speaking newcomers, however, language may not be the sole barrier to participation. Other obstacles, including lack of familiarity with or fear of the legal system, may be closely linked to the relationship between language and culture, requiring closer examination of the broad range of impediments to participation in the judicial system. [\[FN233\]](#)

*1940 Determining who has access to the courts and how that access is obtained is at least as much a political decision as it is a legal one. [\[FN234\]](#) While recognizing the difficulties of elevating access principles to notions of "legal utopia," it is nevertheless important to encourage and facilitate access to the courts for non-English-speaking residents who may choose or be required to use the courts as a vehicle for expressing views silenced in other political processes. [\[FN235\]](#) Latinos' voices may be silenced not only because they cannot be heard in *1941 English, but because they also are without a political voice. [\[FN236\]](#) Latino immigrants who cannot vote are limited in their ability to participate in the political process. [\[FN237\]](#) Thus, their need for judicial protection may be heightened because the remedies traditionally provided through the political process are foreclosed to them. [\[FN238\]](#)

The argument that courts should be made available to Latinos is compelling and extensive. Removing linguistic barriers to provide access to the courts through the use of certified and qualified interpreters is not an unreasonable burden on the courts. Cornell and Bratton define "reasonableness" as being "capable of recognizing and harmonizing our pursuit of the good with . . . [[persons] having equal dignity. Applying that definition, it is unreasonable . . . to treat Latinos/as as anything other than free persons who bestow value on their language." [\[FN239\]](#) Thus, the public values served by the judicial system should be available to those whose linguistic competencies are predominantly in their own native language.

While providing linguistic access to the courts implicates more fundamental issues than the opportunities of non-English speakers to seek legal protection, focusing on access alone highlights the problem. In the legal system, linguistic barriers undermine the courts' ability to fulfill their sanctioned functions of determining guilt or innocence and resolving civil disputes. [\[FN240\]](#) Courts that deny linguistic accessibility to non-English-speaking residents also deny those residents value and dignity and undermine the public confidence upon which the courts' legitimacy depends.

Access to the courts has value only when it provides an effective *1942 presence in the courts. Yet access to the courts is not an end in itself--it is a means. The end is fairness and justice. [\[FN241\]](#) In the context of language rights in the courts, interpreters are required to create the same conditions and opportunities in the courts for non-English speakers as those experienced by English speakers. [\[FN242\]](#) The issue, in the end, is not whether one has a voice, but whether one's voice is heard.

IV. A Proposal for a State Statutory Right to Court Interpreters

A. The North Carolina Administrative Office of the Courts' Foreign Language Services Project

North Carolina's current court interpretation practices and procedures for non-English speakers can best be described as ad hoc. There are no standards governing whether or when an interpreter is appointed, nor are there uniform measures to determine court interpreter competency. [\[FN243\]](#) Currently, the AOC is developing a two-year Foreign Language Services Project to address these problems and facilitate non-English speakers' access to the courts, with particular emphasis on the growing Latino population. [\[FN244\]](#) With its focus on training and certification and its link to the National Consortium for State Court Interpreter Certification, the AOC plan potentially can provide the groundwork for necessary legislative *1943 changes. [\[FN245\]](#) The AOC's plan aims to ensure statutory entitlement to and standards for court interpretation and to provide necessary resources to assure proper implementation of the right to court interpreters. [\[FN246\]](#)

B. Other States' Efforts

Despite these proposed AOC measures, North Carolina's efforts must be broadened to provide effective access to the courts for the state's growing Latino population. By comparison, some state constitutions and statutes offer far greater rights to an interpreter, providing North Carolina with examples of various approaches to codifying non-English speakers' rights to court interpreters. [\[FN247\]](#) These rights include the appointment of interpreters in civil and administrative actions as well as in criminal, juvenile, and mental health proceedings. [\[FN248\]](#) At least six states have adopted professional standards or certification processes, or, at a minimum, have required competent interpreters. [\[FN249\]](#)

Leslie Dery describes three categories of state statutes that *1944 address court interpreters in criminal cases. [\[FN250\]](#) The first category includes statutes that provide for little more than the exercise of judicial discretion, including consideration of the court's needs as well as the needs of the non-English speaker, in the decision to appoint an interpreter. [\[FN251\]](#) The second category includes statutes that mandate the appointment of an interpreter for those who are not proficient in English. [\[FN252\]](#) These statutes, however, require a finding by the judge that a person needs an interpreter before the right attaches. [\[FN253\]](#) The third category is the broadest. These statutes provide interpreters not only when a person is not proficient in English, but also consider other factors that might indicate the need for an interpreter, such as the degree to which a person's ability to be understood or communicate is limited by virtue of speaking a language other than English and the fact that the person uses another language as a primary mode of communication. [\[FN254\]](#)

Difficulties with the first category are apparent. As a general rule, courts do not possess the language skills to assess English proficiency. [\[FN255\]](#) Further, they are not provided with guidelines to make these determinations. [\[FN256\]](#) The second category presents similar difficulties. Determining linguistic competency requires formal linguistic training. [\[FN257\]](#) Judges rarely have such training to guide them in the exercise of discretion. Statutes falling into the third category are promising because they expand the basis for appointing a court interpreter and thus provide more guarantees to the non-English-speaking community. These statutes consider not only the level of English proficiency but also whether the person can be understood by the judge, jurors, and other court participants. [\[FN258\]](#) They may grant non-English speakers the same rights to qualified interpreters as belong to the deaf. [\[FN259\]](#)

*1945 Dery suggests that individuals should be able to determine their need for an interpreter and that this self-assessment should be dispositive. [\[FN260\]](#) This process would provide non-English speakers and limited English speakers with an active role in the proceedings and would acknowledge their ability to make such self-assessments. [\[FN261\]](#) Nonetheless, there are concerns with this approach. Some non-English-speaking litigants, particularly those who may speak some basic English, may think that they are better off without an interpreter. Despite an appropriate self-assessment indicating the need for an interpreter, a non-English speaker may fare better by avoiding the stigma of being a non-English-speaking foreigner. [\[FN262\]](#)

C. A Proposal for North Carolina's Approach

North Carolina should adopt a statutory entitlement to court interpreters that incorporates a broad basis for appointment and includes factors in Dery's third category, without deeming the inability to speak English as a disability. Such an approach should incorporate proposed guidelines from the National Center on State Courts which suggest that courts conduct a voir dire of the litigant to measure proficiency when she does not request an interpreter but appears to have a limited ability to speak English. [\[FN263\]](#) Stand-by interpreters should be allowed when individuals initially opt not to use an interpreter but a need arises subsequently or in situations when English proficiency is not fully developed. One North Carolina Court of Appeals decision in which an interpreter was appointed to interpret intermittently for an individual with a speech impediment provides some basis for the appointment of stand-by interpreters. [\[FN264\]](#)

*1946 Currently, North Carolina's AOC pilot project proposes the use of court interpreters only in criminal, juvenile, and domestic violence cases. [\[FN265\]](#) The AOC suggests additional study to consider the need for court interpreters in domestic violence hearings, other civil cases including small claims, estates, and matters occurring in the clerk's office, and alternative dispute resolution matters. [\[FN266\]](#)

North Carolina should adopt a statute that creates a right to an interpreter in all legal proceedings. The Model Court Interpreter Act [\[FN267\]](#) provides that a certified court interpreter should be appointed for all legal proceedings and administrative proceedings defined as a "civil, criminal, domestic relations, juvenile, traffic or an administrative proceeding in which a non-English-speaking person is a principal party in interest or a witness." [\[FN268\]](#) North Carolina's statutes governing interpreters for deaf persons-- which provide for the rights of the deaf to a qualified interpreter in legal proceedings--serve as an excellent model. [\[FN269\]](#) These provisions compare favorably with the Model Court Interpreter Act and broadly define a legal proceeding to include any civil or criminal proceeding in any superior or district court as well as juvenile proceedings, special proceedings, proceedings before the magistrate, and administrative proceedings. [\[FN270\]](#) Also included in the statutes are proceedings before legislative committees, subcommittees, legislative research or study committees or subcommittees, or commissions authorized by the General Assembly. [\[FN271\]](#) Interpreters are provided in arrest situations, as well as for deaf parents of juveniles who are brought to court for any reason. [\[FN272\]](#)

The AOC's plan for the training and certification of interpreters *1947 is crucial to the success of the program. Currently, courts determine interpreter qualifications, assuming any determination is made at all. [FN273] Proper assessment procedures are complicated, time-consuming, and presume formal training in linguistics or advanced language studies and experience in the fields of interpretation and administration. [FN274] Although the discretion currently afforded to the local courts reflects the desire of judges to control court proceedings, such control may be curtailed if the judge is unable to understand what the parties are saying. [FN275] Consequently, North Carolina should require courts to use certified interpreters unless none are available, in which case the judge must find that the interpreter used is nonetheless qualified. Without this requirement, the constitutional principles that safeguard non-English-speaking persons' rights of access to the courts are jeopardized. [FN276]

North Carolina's statutes governing interpreters for the deaf also serve as a model for certification issues. Unless a finding is made that no certified interpreter is available, the statute requires the use of qualified interpreters as determined by a Department of Health and Human Services certification process. [FN277] In that event, the trial judge still must find that any proposed interpreter is qualified. [FN278] The statute, which presumes that communication and interpretation are accomplished through sign language, requires competent interpretation in other modes in addition to sign language to protect those deaf persons who do not sign but instead rely on aural/oral means for communication. [FN279] By analogy, this provision may justify a statutory requirement that interpreter qualifications and competence for a particular individual require not only that the interpreter speak the person's language but also speak the same dialect.

A comprehensive interpreter statute should address the circumstances in which litigants may waive the right to an interpreter. Waivers of the right to a court interpreter should be statutorily *1948 required to be in writing and on the record. North Carolina's statute for court interpreters for the deaf provides the right for deaf persons or the court to remove an interpreter for her inability to provide effective interpretation or because services have been waived. [FN280] Waivers, however, must be in writing, and failure to request an interpreter does not constitute a waiver. [FN281] Non-English speakers should have the same statutory protections.

A North Carolina interpreter statute should also regulate the manner in which a record of foreign language testimony is to be made. Complications arise as a result of the lack of record of the foreign language testimony. The North Carolina Supreme Court decision in *State v. Call* discussed in Part II reflects some of the difficulties that arise under current rules when attorneys for non-English speakers attempt to tape record proceedings. [FN282] A statute or rule that requires the audio taping of all court interpretations can remedy this problem. This provision should include recording of witness interpreting as well as proceedings interpreting for the benefit of the litigant. The recording of testimony interpretation preserves for review any interpretive errors made during trial, while the recording of proceedings as interpreted for the benefit of the litigant ensures the ability to review whether the litigant was meaningfully present, through accurate interpretation, at her trial.

North Carolina must also address the ethical issues of court interpretation. The Model Code of Professional Responsibility for Interpreters in the Judiciary [FN283] recognizes that interpreters are officers of the court "who fulfill an essential role in the administration of justice." [FN284] This Model Code covers a range of interpreter duties, including disclosure of qualifications and training, conflicts of interest, professional demeanor, confidentiality, and the duty to report ethical violations. [FN285] North Carolina's statute that provides interpreters for the deaf likewise reflects the view that the use of court interpreters implicates ethical obligations. [FN286] It protects what would otherwise be *1949 privileged communication by a deaf person by extending the privilege to the interpreter and requires that an interpreter take an oath or affirmation before acting in legal proceedings. [FN287] The North Carolina Supreme Court therefore should adopt a code of ethics binding upon all people who interpret in or for the courts.

D. Permanent, Continuous, and Adequate Funding

At present, the AOC's plan is funded through grant support because of a lack of state funding. [FN288] Effective administration of court interpretation, translation, and related services requires permanent, continuous, and adequate state funding. The AOC's plan should recommend that the North Carolina General Assembly expand the funding presently available for court interpreters for indigent criminal defendants and for parties to juvenile proceedings so that interpretation is available in other actions where payment might be authorized from AOC funds. [FN289] Pursuant to the statute governing interpreters for the deaf in civil, criminal, juvenile, and special proceedings, interpreters may be paid for by funds appropriated to the AOC. [FN290] If an interpreter is used before a legislative body, the General Assembly will pay the

interpreter's fees. [FN291] Likewise, when interpreters for the deaf serve in proceedings before an administrative agency, the agency is responsible for payment of the interpreter's fees. [FN292] A statute governing interpreters for non-English speakers might should provide the same compensation scheme. Alternatively, the courts' authority to direct payment from funds appropriated to the AOC for interpreters for indigent defendants in criminal matters could be extended to indigent litigants in civil matters. For non-indigent litigants, the courts could follow the payment system currently authorized by [Rule 706 of the Rules of Evidence](#) when a court appoints an expert. [FN293] [Rule 706\(b\)](#) provides that a court-provided interpreter is "entitled to reasonable compensation in whatever sum the court may allow" in criminal proceedings and civil suits involving payments for property takings. In other civil suits, "compensation shall be paid by the parties in such *1950 proportion and at such time as the court directs." [FN294]

E. Technical Developments, Data Collection

Funding should also be available for technological improvements in the courtroom which could provide for telephone or language line interpreting. [FN295] Telephonic or other electronic communication that facilitates court interpreting requires certain equipment and the development of policies and guidelines to ensure proper use of the service. [FN296] This alternative approach would ameliorate the current shortage of qualified, certified court interpreters in a range of foreign languages. [FN297]

Little data or other reliable information related to the number of cases requiring court interpreters exist. Current records only reflect the AOC's payroll records for interpreter services. [FN298] The AOC does not track the number of interpreters that actually are used in court proceedings or the number of instances when interpreters are needed; thus, AOC records "grossly underestim[ate] the true need for court interpreting." [FN299] Accurate data collection would track interpretation needs more precisely, include information on the number of interpretations performed, and identify areas in the State where the need is the greatest.

In formulating a plan to address the needs of non-English speakers, the AOC has embarked on an important mission worthy of public support. The North Carolina courts and legislature have the opportunity to build on the AOC's efforts to accommodate non-English speakers in ways that reflect positive values and ideals about human rights and the dignity of all state residents.

*1951 V. Practical Overview of Court Interpreter Issues

The proposition that non-English speakers should have meaningful access to the courts raises issues of principle and practice. As a matter of principle, access to the courts defines legal and public identity and promotes inclusion. [FN300] As a matter of practice, access for a non-English speaker implies the use of a medium through which she can understand and be understood. Court interpreters serve as that medium and act as the instruments through which non-English speakers may assert their rights and be recognized by the legal system. [FN301] Given the significance of the principle and the complexity of the practice, court interpreters must be trained and qualified for the task. [FN302] Anything less results in an abrogation of either the principle or practical sphere of access to the courts. [FN303]

An understanding of the functions, qualifications, and responsibilities of court interpreters is essential to facilitate access to the courts for non-English speakers. [FN304] To expect court interpreters to solve all the problems faced by non-English speakers in the courts is unrealistic. The proper use of competent interpreters nevertheless promises to increase the likelihood that non-English-speaking persons will be able to present or defend their cases fairly. [FN305] This Part illuminates some of the practical issues associated with the use of interpreters.

A. Complexities of Court Interpretation

Once the right or responsibility to work with an interpreter is established, an attorney must acquire familiarity with the functions and qualifications of court interpreters. [FN306] Interpreting has been defined as the "unrehearsed transmitting of a spoken or signed *1952 message from one language to another." [FN307] Interpreting must be distinguished from translation, which involves transforming written text from one language to another. [FN308] Interpreters must render the language of the original speaker's "source language" into the listener's "target language." [FN309]

Interpreting is a complicated task because applied linguistics is a discrete and sophisticated body of knowledge. [FN310] Costly mistakes may easily impair the fair operation of the law. Interpretation for court proceedings is a particularly

specialized form that requires specific training. [\[FN311\]](#) Errors may include mistakes in vocabulary, grammar, and tense, which may result from the interpreter's lack of familiarity with local idioms. These errors may affect and control context and meaning. [\[FN312\]](#) As part of a litigation strategy, parties and their attorneys consciously and unconsciously construct speech characteristics. [\[FN313\]](#) These constructions can be entirely undone by subtle changes in interpretation. [\[FN314\]](#) Even minor changes in interpretation can result in fragmented or hedged speech forms that negatively affect the credibility of the speaker. [\[FN315\]](#)

Susan Berk-Seligson, who has conducted ethnographic studies of the use of court interpreters, illustrates the unintended results that may occur when interpreters are used. In a case involving the transport of undocumented aliens across the United States border, the prosecuting attorney questioned the witness as to how many undocumented aliens had crossed the border with him:

*1953 Attorney: Approximately how many?

Interpreter: ¿Aproximadamente Cuántos?

Witness: Un promedio de veintiuno.

Interpreter: Uh, probably, an average of twenty-one people. [\[FN316\]](#) Berk-Seligson notes that what the witness has actually said in Spanish is "an average of twenty-one." [\[FN317\]](#) She explains the way in which the seemingly minor change of the witness' response through interpretation weakens the response:

The interpreter has added three sorts of elements to her interpretation of the original answer: a hesitation form ("uh"), a hedge ("probably"), and a noun that can be construed by listeners as existing as the head of an underlying phrase whose English interpretation is "twenty-one people." In the question/answer given above, both the hesitation form and the hedge serve to make the answer less sure, less definite, and the witness less strongly committed to his affirmation. [\[FN318\]](#)

Despite the best intentions of friends, family, bilingual clerks, or other court employees who assist in the absence of qualified interpreters, non-English speakers are at a disadvantage without the assistance of a certified court interpreter when relating their testimony and understanding the proceedings. [\[FN319\]](#) Attorneys or judges do not always appreciate the level of difficulty involved in competent interpretation. [\[FN320\]](#)

B. Standards and Qualifications Governing Court Interpreters

Federal and some state rules of evidence governing the qualification of experts govern court interpreter qualifications. [\[FN321\]](#) *1954 Under the Federal Rules of Evidence, an interpreter must demonstrate that she is qualified by virtue of her "knowledge, skill, experience, training, or education." [\[FN322\]](#) Interpreters used pursuant to the federal Court Interpreters Act [\[FN323\]](#) are required to pass an examination. [\[FN324\]](#) Some states have adopted comparable systems to determine qualifications and standards for interpreter certification, including oral and written examinations. [\[FN325\]](#) Other states have implemented state codes of responsibility for court interpreters. [\[FN326\]](#)

Many courts are willing to accept an individual as an interpreter on the basis that she can communicate in two languages. [\[FN327\]](#) But more than fluency in two languages should be required. [\[FN328\]](#) Language skills and professional qualifications are essential. Standards for interpreters can be summarized as falling into three categories: accuracy, honesty, and professionalism. [\[FN329\]](#) Accuracy requires that a court interpreter be able to speak both languages at "a certain level of *1955 proficiency . . . [[B]eing bilingual is only the starting point." [\[FN330\]](#) An interpreter should have a good grasp of the principles of grammar in both languages, including a well-developed vocabulary that encompasses formal, casual, and colloquial usage. [\[FN331\]](#) She must possess bicultural sensitivity because interpretation requires understanding of the cultures, as well as the languages. [\[FN332\]](#) An interpreter also must understand geographic differences in meanings and dialect. [\[FN333\]](#) Michael Shulman demonstrates the type of errors that may result when an interpreter is not familiar with a dialect or the context of a statement. [\[FN334\]](#) In one case, a statement made by a Cuban man --" ¡Hombre, ni tengo diez kilos!" which meant "[m]an, I don't even have ten cents"--was incorrectly translated as "[m]an, I don't even have ten kilos" resulting in his wrongful conviction on drug charges. [\[FN335\]](#)

Competence requires that an interpreter state exactly what has been expressed in the source language without editing, summarizing, omitting, or adding. [\[FN336\]](#) At the same time, the interpreter must conserve the language level, style, tone, and intent of the speaker. [\[FN337\]](#) Minor alterations may impact the fact-finder. [\[FN338\]](#) Voice quality and accent are two of a number of linguistic characteristics that bear on the perceptions and attitudes of a listener toward the speaker. [\[FN339\]](#) Studies by linguistics experts suggest that grammatical constructions, including verb form, impersonal construction, and passive or active voice are often deliberate choices, selected by the speaker to enhance credibility or avoid blame. [\[FN340\]](#)

Berk-Seligson illustrates the challenges of interpretation by reviewing a portion of a trial transcript in which a defense attorney asks several questions to a material witness testifying against his client. [FN341] Each repetition of the question contained an identical structuring of the particular phrase: "You were apprehended by the *1956 border control." [FN342] Berk-Seligson explains that the attorney's use of repetition and the passive voice were designed to establish that the witness was apprehended and to place focus on the witness as having been apprehended. [FN343] In this transcript, however, the interpreter failed to interpret the repeated phrase in the passive voice and instead, on occasion, used the active voice, "the border patrol apprehended you," which placed focus on the border patrol. [FN344] Berk-Seligson explains that the alteration shifts the focus of the action away from the witness and may tend to place more blame on the border control than the witness, thus undermining the design and purpose of the defense attorney's questions. [FN345]

Characteristics of speech and language influence the listener's judgment of factors such as persuasiveness, credibility, competence, and intelligence. [FN346] Politeness, formality, hesitation, or hedging may also influence the degree to which the listener accords credibility to the speaker. [FN347] Interpreters have considerable control and influence over these issues. [FN348]

Honesty requires that interpreters be forthcoming about their qualifications and disclose any barriers they may have in providing accurate interpretation or in complying with professional responsibilities. [FN349] Interpreters should be confident enough and willing to ask permission for a recess to consult a dictionary or other source to clarify the meaning of a word. [FN350] They should abide by the Model Code of Professional Responsibility for Interpreters, which should include the obligation to refrain from giving advice, to refer legal questions to attorneys, to remain impartial, to keep privileged information confidential, to avoid making false interpretation, and to inform the court when they have made errors as soon as they become *1957 clear. [FN351]

Professionalism requires the interpreter to avoid conflicts of interest and act in a manner that is consistent with the responsibilities of a court official. [FN352] The interpreter must be sufficiently familiar with the legal process and proceedings and specialized legal vocabulary. [FN353] If an objection is made during the course of a hearing, not only must the objection be interpreted, but the interpreter must be aware of the need to tell the witness immediately but unobtrusively not to answer until the judge has ruled on the objection. [FN354] Interpreters who may be used in other fields, such as medicine or social work, are often without the skills necessary to function in court proceedings because they lack familiarity with the legal process and vocabulary. [FN355]

Interpreters should never summarize or correct factual errors made in the source language. [FN356] Interpreters receiving rambling or non-responsive answers to a question must allow the court to determine whether the answer is admissible and whether the witness needs to be admonished or otherwise controlled. [FN357] The interpreter should do no more and no less than interpret the answer of the witness exactly as it has been stated. [FN358]

C. Court Interpreter Functions and Responsibilities

The functions and responsibilities of interpreters are complex. They must work in two modes: consecutive and simultaneous. [FN359] Consecutive interpretation requires an interpreter to first listen to the witness's testimony and then interpret it after the witness has spoken. [FN360] This mode of interpretation is used most frequently when a non-English-speaking witness is testifying. Consecutive interpretation provides the English version of the testimony for the *1958 record. [FN361] It requires proficient listening skills and keen memory in order to avoid having the witness speak in very short phrases, which is likely to distort meaning. [FN362] The interpreter should take notes and develop a signal to prompt the witness to suspend talking at brief intervals. [FN363]

On the other hand, simultaneous interpretation is performed as the foreign language is spoken. [FN364] This function is used when the litigant does not speak English and allows for contemporaneous understanding of what is being said, thus permitting the litigant's participation in the courtroom activity. [FN365] The interpreter sits beside the non-English-speaking party to communicate unobtrusively in the target language. [FN366] Interpretation into the foreign language for the benefit of the litigant is not included in the record. [FN367]

Court interpreters also can assist communication between an attorney and non-English-speaking clients immediately before, during, or immediately after a proceeding, [FN368] which can be conducted either in the simultaneous or consecutive mode.

[\[FN369\]](#) Interpreters also may be called upon to perform sight translation, which requires an oral account in the target language of written documents in a source language, such as any documents that might be introduced during the course of the trial. [\[FN370\]](#)

D. Attorney Responsibilities

Attorneys working with non-English-speaking clients outside the courtroom must be cognizant of their professional responsibility to communicate with their clients. [\[FN371\]](#) First, they must assess a client's *1959 ability to communicate in English. Although some communication in English with a client may be possible, unless all that is communicated in English is fully understood, the attorney must communicate through an interpreter to assure that every word is understood. [\[FN372\]](#) If an interpreter is needed, an attorney should locate a qualified interpreter who is fluent in both languages, familiar with the requisite dialect, competent, unbiased, and free of conflicts with the parties or the issues being litigated.

Many states, including North Carolina, provide statutory protection for attorney-client communication, even when an interpreter is present. [\[FN373\]](#) To protect this privilege, the client may need to demonstrate that she has a reasonable expectation of confidentiality. [\[FN374\]](#) Moreover, an attorney should be present during all conversations between a client and an interpreter. [\[FN375\]](#) The client should be informed that the services of an interpreter are necessary and that confidentiality will attach to any communication made when the attorney is working with both the interpreter and the client. [\[FN376\]](#)

Preparation is required when working with an interpreter. The attorney should provide an interpreter with materials or background information to assist with the interpretation. [\[FN377\]](#) A court interpreter may wish to speak with the attorney representing the non-English-speaking litigant and review the charges or complaint, pleadings, transcripts, and other reports that are expected to be introduced into evidence. [\[FN378\]](#) The interpreter may also wish to speak with the client to ascertain accents, dialect, and other geographically specific language issues. [\[FN379\]](#)

When speaking through an interpreter, attorneys should converse directly with the non-English speaker and maintain direct eye contact as is appropriate in most verbal exchanges or communication. [\[FN380\]](#) The interpreter should serve as a facilitator only. *1960 Questions should be structured to allow ideas and communication to develop fully. Attorneys should avoid closed-ended questions that mask miscommunication and interpretational errors. [\[FN381\]](#) Furthermore, attorneys should use common sense should to determine if the interpreter is summarizing or paraphrasing and insist on full and complete interpretation without any side conversations during the interpreting. [\[FN382\]](#)

Working with an interpreter is time-consuming. What is said by each individual is repeated at least once from the target language to the source language and vice versa. Working with an interpreter requires that ample time be allowed for each interview. Conversation should be maintained at intervals that are short enough to allow the interpreter to keep pace. Note pads should be provided to the interpreter to assist in capturing everything that is said in the source language. Ideally, interpreters should work in forty-five minute intervals because fatigue sets in beyond that point. [\[FN383\]](#)

Attorneys should request in-court interpretation services whenever it appears that the client cannot communicate beyond a basic level in English. To waive the use of an interpreter, a client should be able to describe accurately in English events and circumstances over time and should have sufficient skills to know when they need to clarify terms or concepts. [\[FN384\]](#) The client should have the capacity to understand when language or terms are confusing, have double meaning, or are otherwise unclear. [\[FN385\]](#) The client should have sufficient understanding of the language to recognize efforts to contradict, damage, or undermine testimony through cross-examination. [\[FN386\]](#) Failure to request an interpreter for a client or a witness when needed may constitute ineffective assistance of counsel. [\[FN387\]](#)

*1961 Attorneys are obligated to object to the court's failure to provide an interpreter, to the quality of interpretation, and to mistakes during interpretation. They are also required to determine whether codefendants should receive their own interpreters. [\[FN388\]](#) Attorneys should conduct a voir dire of the client, probing the level at which she speaks and understands English to demonstrate to the trial court, on the record, the need for an interpreter. [\[FN389\]](#) Biographic information should be elicited from the client, including the length of time that the client has lived in the country, her conversational language, her level of education, and her employment information. [\[FN390\]](#) Even when a party is not entitled to an interpreter, as in a civil proceeding, the attorney is responsible for securing the services of an interpreter in order to communicate with the client and adequately prepare and present the case. [\[FN391\]](#)

E. Courtroom Issues

In the courtroom, the judge should administer an oath requiring the court interpreter to swear or affirm "to faithfully, accurately and impartially interpret the proceedings using her best skills and judgment." [\[FN392\]](#) An interpreter should sit at the counsel table with the non-English-speaking party to assure that she is "linguistically present" and understands the proceedings. [\[FN393\]](#) During the proceedings, if the interpreter is required to intervene to ask a question or request a response to be repeated, the attorney should ask that the interpreter *1962 be identified to avoid confusion in the record. [\[FN394\]](#) Because the trial record is only in English, [\[FN395\]](#) attorneys should bring a tape recorder or videotape camera with sound recording to preserve errors for appeal. [\[FN396\]](#)

Attorneys who are bilingual still should use interpreters and refrain from both representing a client in court proceedings and interpreting. Interpreting requires intense concentration and undermines the trial attorney's ability to pay attention to all aspects of the trial. [\[FN397\]](#) Other court personnel who are bilingual may become involved with interpretation. Bilingual clerks or court officers who are present during court proceedings and who become aware of errors in interpretation can send a note to the bench, but should do so unobtrusively. [\[FN398\]](#) Difficulties may also arise if bilingual jurors believe that they heard testimony that differs from the interpretation provided. Bilingualism, however, should not be a reason to disqualify a juror at the outset. [\[FN399\]](#) If the interpreter is qualified, there is no reason to anticipate that a juror will hear a different version of source language. Moreover, a bilingual juror can assist with important corrections if a problem develops. [\[FN400\]](#) Judges can provide, without being obtrusive, appropriate mechanisms for jurors to question what may be faulty interpretation and can instruct the jurors as to which rendition upon which they are to rely. [\[FN401\]](#)

Attorneys must consider when and how to make objections to interpreters and interpretation. If the interpreter is treated as an expert witness, the state or federal rules of evidence will govern. [\[FN402\]](#) If *1963 the interpreter is treated as an officer of the court, as proposed by the Model Code of Professional Responsibility for Interpreters in the Judiciary, [\[FN403\]](#) objections would take place before the judge, and in some circumstances, the court would appoint a second certified interpreter to provide an opinion. [\[FN404\]](#) Objections to errors must be made as soon as they are noted or suspected. [\[FN405\]](#) To protect the integrity of the record, attorneys should guard against overlapping conversations, assure appropriate pace, and be particularly cognizant of interpreter fatigue. [\[FN406\]](#)

The developing standards of professionalism in the field of interpretation in the courts represent significant efforts to improve court access for non-English speakers. Unless judges, attorneys, and court personnel are familiar with the best practices and procedures for working with interpreters, theories and principles about inclusion of newcomers and access to the courts lose cogency and value. Concern for the practical implications of court interpretation contributes to the realization of these goals.

Conclusion

North Carolina's demographic transformation requires a reconceptualization of state identity that must include tolerance of non-English-speaking newcomers. Emerging differences, including linguistic differences, should be appreciated and respected. As a core institution, the court not only affects the rights of many Spanish-speaking newcomers, but also has the capacity to model the redefinition of the state's identity. The courts must ensure access for practical and expressive purposes. By entitling non-English speakers to an effective voice in the legal system, courts provide not only valuable recognition of and respect for the ways in which people differ, but also emphasize the need and desire to maintain native language and culture.

Ultimately, by providing for these differences the courts acknowledge and improve the possibilities for sharing values between cultural groups and fulfilling our vision of a harmonious populace. That there is much shared between Latino newcomers and long-term residents can be easily discerned by comparing the last baby of the *1964 twentieth century, John Hart Dickey, and the first baby of the twenty-first century, Juan David Serrano García, who have more in common than the historic timing of their births. Their identities have been stamped with nearly identical meanings and values assigned by their parents. In each case, their parents, as the newspaper accounts reveal, cared little about the historic context of the timing of their births. Instead, each baby was simply a vessel of parental love and hope for the future. John Hart Dickey's father stated: "I would take him any day of the year. [December 31st] was just as good as any." [\[FN407\]](#) Juan David Serrano García's father said: "I only want the best for our son. A good education, and that he grows up to be kind." [\[FN408\]](#) John and Juan are entitled to equal value and worth as persons. That is the important moral to be derived from the contextual

symmetries and comparison of their births.

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[FN1]. See Sarah Lindenfeld, Last Baby of 1900s Has a Name of Fame, News & Observer (Raleigh, N.C.), Jan. 2, 2000, at 4B. The Research Triangle area of North Carolina includes Cary, Chapel Hill, Durham, Morrisville, Raleigh, and the Research Triangle Park.

[FN2]. See Lorenzo Pérez, Triangle's First 2000 Baby, News & Observer (Raleigh, N.C.), Jan. 2, 2000, at 1B.

[FN3]. See supra notes 1-2.

[FN4]. I chose to use the term "Latino" in this Article. People from South and Central America and some parts of the Caribbean, however, use several terms to refer to themselves. The term "Hispanic" is often used and is derived from "hispanoamericanos," or people from lands in the New World colonized by Spain. See Angel R. Oquendo, Re-[Imagining the Latino/a Race](#), 12 *Harv. BlackLetter J.* 93, 97 (1995). The term Latino comes from "latinoamericanos," or Latin Americans, and refers to people from lands colonized by countries such as France, Spain, and Portugal, whose languages are derived from Latin. See *id.* Nevertheless, there exists some debate about which term is appropriate. I use the term Latino because "it is a Spanish word. It accentuates the bond between the Latino/a community and the Spanish language." [Id. at 98.](#)

[FN5]. See James H. Johnson, Jr. et al., A Profile of Hispanic Newcomers to North Carolina, Popular Gov't, Fall 1999, at 2, 3 (presenting quantitative evidence of a significant increase in the state's Latino population); see also infra notes 56-72 and accompanying text (detailing the responses of several state institutions to the state's markedly changing demographic composition).

[FN6]. See generally Kenneth L. Karst, [Paths to Belonging: The Constitution and Cultural Identity](#), 64 *N.C. L. Rev.* 303, 305 (1986) (discussing ways in which cultural differences are viewed as threats, resulting in the targeting of people who look foreign or who speak a different language).

[FN7]. See Oquendo, supra note 4, at 124 ("[T]he primary focus for anti-Latino/a sentiment in the United States has been the Spanish language.").

[FN8]. See Juan F. Perea, [Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English](#), 77 *Minn. L. Rev.* 269, 351 (1992) [hereinafter Perea, Demography and Distrust] (noting a hierarchy among languages and a lack of prestige afforded to those who do not speak the dominant language).

[FN9]. See Deborah Escobedo, Proposition 187 & 227: Latino Immigrant Rights to Education, Hum. Rts., Summer 1999, at 13, 13 (reporting that three million students nationwide are identified as having limited English proficiency (LEP) and that Spanish-speaking students constitute the single largest group, or 73%, of all LEP students in the country); Athena D. Mutua, [Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm](#), 53 *U. Miami L. Rev.* 1177, 1205-06 (1999) (observing that Spanish is the "most widely spoken language in the United States after English, and the number of Spanish speakers is growing"); Lisa J. Soto, The [Treatment of the Spanish Language and Latinos in Education in the Southwest, in the Workplace, and in the Jury Selection Process](#), 3 *Hispanic L.J.* 73, 75 (1997) (noting that according to the 1990 Census, the number of people speaking a language other than English in their homes increased from 23 million in 1980 to 32 million in 1990, and that Latinos and Asians constituted the highest percentages within that group).

[FN10]. See Matthew Eisley, State Training Interpreters for Court, News & Observer, (Raleigh, N.C.), May 29, 2000, at 1B (noting that North Carolina's Spanish-speaking population has doubled in the last decade); see also Perea, Demography and Distrust, supra note 8, at 351 n.448 (noting that the United States is either the fourth or fifth largest Spanish-speaking country in the world) (citing Thomas Weyr, *Hispanic U.S.A.* 3 (1988)); Karla C. Robertson, Note, [Out of Many, One: Fundamental Rights, Diversity, and Arizona's English-Only Law](#), 74 *Denv. U. L. Rev.* 311, 320 n.104 ("The United States ranks as the fourth largest Spanish speaking country in the world following three others: Mexico, Spain, and Colombia, all of whose dominant national language is Spanish.").

[FN11]. See Christopher David Ruiz Cameron, [How the García Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy](#), 10 *La Raza L.J.* 261, 278-79 (1998) (examining the importance of language issues to Latinos as a "fundamental aspect of ethnicity," an "indicator of social statuses and personal relationships," and "the historic basis upon which Anglo society discriminates against Latinos") (quoting Joshua Fishman, *The Sociology of Language: An Interdisciplinary Social Science Approach to Language in Society*, in 1 *Advances in the Sociology of Language*, 217, 219 (Joshua Fishman ed., 1971)).

[FN12]. See Drucilla Cornell & William W. Bratton, [Deadweight Costs and Intrinsic Wrongs of Nativism: Economics, Freedom, and Legal Suppression of Spanish](#), 84 *Cornell L. Rev.* 595, 629 (1999) (discussing economic incentives to learn the majority language and illustrating that the lack of English proficiency presents economic barriers by quoting the following lyrics from Dominican singer Juan Luis Guerra: "pues no hablamos inglés/ni a la Mitsubishi/ ... ni a la Chevrolet" translated as "[s]ince we don't speak English, got no Mitsubishi, got no Chevrolet").

[FN13]. See *id.* at 610. Cornell and Bratton note that recent Latino immigrants follow the same path to language acquisition as immigrants at the turn of the century. First-generation Latino immigrants tackle the initial challenge of learning English as a second language, usually read English fluently within ten years, and speak it fluently within fifteen years. Second-generation Latinos speak English fluently, and third-generation Latinos are usually monolingual English speaking. See *id.*

[FN14]. See William M. O'Barr, *The Study of Language and Politics*, in *Language and Politics* 1, 7-10 (William M. O'Barr & Jean F. O'Barr eds., 1972) (exploring the relationship between language and politics and noting that language is "a resource in the political process" and that "language and politics [are] in mutual interaction").

[FN15]. See Suellyn Scarnecchia, [State Responses to Task Force Reports on Race and Ethnic Bias in the Courts](#), 16 *Hamline L. Rev.* 923, 932-33 (1993). With the release of the Minnesota State Task Force Report on race and ethnic bias in the courts, Scarnecchia reviews the findings of the five state task force reports that preceded it (Michigan, Washington, New York, Florida, and New Jersey). See *id.* at 923-24. She notes that these reports overwhelmingly demonstrate that the lack of accessibility, responsiveness, fairness, and diversity undermines confidence in the courts and makes minorities reluctant to seek judicial relief or participate in the judicial system. See *id.* at 932-33; see also Juan F. Perea, [Hernandez v. New York: Courts, Prosecutors and the Fear of Spanish](#), 21 *Hofstra L. Rev.* 1, 56-57 (1992) [hereinafter Perea, *Fear of Spanish*] (arguing that preemptively excluding Spanish-speaking bilingual persons from juries for which Spanish language testimony is likely to be offered may affect the perceptions of impartiality and public confidence with regard to jury verdicts).

[FN16]. Although the diversity of newcomers spans the globe, Spanish-speaking residents constitute the largest segment of the immigrant population; thus, this Article focuses on Spanish and Spanish-speakers. Southeast Asians are also entering North Carolina in significant numbers. See generally Johnson et al., *supra* note 5, at 2 (noting that immigrants from Mexico, other Latin American countries, and Southeast Asia constitute the majority of newcomers to the state, with Latinos making up the largest segment of this group).

[FN17]. This Article focuses on Latino newcomers who have recently arrived to the state and who may not be proficient in English. Many Latinos who are long-term residents of North Carolina or elsewhere in the United States have different concerns than those addressed here. See Ed Pons, *Latinos and the Legal Profession: Challenge and Opportunity*, N.C. St. B.J., Spring 2000, at 8, 9 ("A Latino whose family has been in North Carolina for more than one or two generations is unlikely to present any special challenge to ... the court system.").

[FN18]. See *infra* notes 27-120 and accompanying text.

[FN19]. See *infra* notes 121-204 and accompanying text.

[FN20]. See *infra* notes 205-42 and accompanying text.

[FN21]. See *infra* notes 205-16 and accompanying text.

[FN22]. See *infra* notes 205-16 and accompanying text; Kevin R. Johnson, [Race, the Immigration Laws, and Domestic Race](#)

[Relations: A "Magic Mirror" into the Heart of Darkness, 73 Ind. L.J. 1111, 1138-39 \(1998\)](#) (noting that immigration laws sanctioning those who employ undocumented persons have led to discrimination against both Latinos and Asians); Ingrid V. Eagly, [Community Education: Creating a Vision of Legal Services Practice, 4 Clinical L. Rev. 433, 454-55 n.104 \(1998\)](#) (citing United States General Accounting Office, Pub. No. GAO/GGD-90-62, Immigration Reform: Employer Sanctions and the Question of Discrimination (1990), which reports on a "'widespread pattern' of national origin discrimination in employment, especially discrimination against Latinos"); Rachel F. Moran, [What if Latinos Really Mattered in the Public Policy Debate?, 10 La Raza L.J. 229, 241 n.41 \(1998\)](#) (reviewing statistics from the Bureau of the Census and the 1990 Census that showed disparities in income between Latino and non-Latino families, and noting that "'Latinos of Mexican origin, like Blacks and Native Americans, are at a double disadvantage because they have limited education and also earn below-average rates of return on the skills they possess'") (quoting Reynolds Farley, Blacks, Hispanics, and White Ethnic Groups: Are Blacks Uniquely Disadvantaged?, 80 Am. Econ. Rev. 237, 240 (1990)); Deval L. Patrick et al., [The Role of Credit Scoring in Fair Lending Law--Panacea or Placebo?, 18 Ann. Rev. Banking L. 369, 385-86 \(1999\)](#) (discussing the United States Department of Justice's challenges to lending practices which discriminate against people of certain racial and national origin); J. Mark Powell, [Fair Housing in the United States: A Legal Response to Municipal Intransigence, 1997 U. Ill. L. Rev. 279, 304-05 n.179 \(1997\)](#) (referencing a study commissioned by the Department of Housing and Urban Development that found that over half of African-Americans and Latinos who "rent or buy a home are treated differently than whites with the same qualifications"); Adam N. Bram, Note, [Public Participation Provisions Need Not Contribute to Environmental Injustice, 5 Temp. Pol. & Civ. Rts. L. Rev. 145, 148 n.23 \(1996\)](#) (noting that "[60%] of African-Americans and Latinos live in communities with uncontrolled toxic waste sites," and that "65% of African-Americans and 80% of Latinos live in counties with substandard air quality") (citations omitted); Jennifer A. Larrabee, Note, ["DWB \(Driving While Black\)" and Equal Protection: The Realities of Unconstitutional Police Practices, 6 J.L. & Pol'y 291, 309 n.92 \(1997\)](#) (citing sources that report that a "disproportionate number of blacks and Latinos are targeted for traffic stops").

[\[FN23\]](#). See infra notes 217-22 and accompanying text (discussing linguistic rights in other areas).

[\[FN24\]](#). See infra notes 243-99 and accompanying text.

[\[FN25\]](#). See infra notes 300-406 and accompanying text.

[\[FN26\]](#). See Roseann Dueñas González et al., Fundamentals of Court Interpretation 25 (1991) ("Legal interpretation refers to interpretation that takes place in a legal setting such as a courtroom or an attorney's office, wherein some proceeding or activity related to law is conducted. Legal interpretation is subdivided into (1) quasi judicial and (2) judicial interpreting or what is normally referred to as court interpreting.") (bold in original).

[\[FN27\]](#). See Johnson et al., supra note 5, at 3.

[\[FN28\]](#). Asians, particularly Southeast Asians, are also entering the state in significant numbers. See Johnson et al., supra note 5, at 2; see also Ned Glascock, Small World, News & Observer (Raleigh, N.C.), Feb. 2, 2000, at 1E [[hereinafter Glascock, Small World] (noting that the United States Census Bureau estimates that the Asian and Pacific Islander population has almost doubled in North Carolina between 1990 and 1998, reaching nearly 100,000). Hmong is the second most frequently spoken foreign language in North Carolina after Spanish. See id. Diversity of language among Asians is probably greater than among Latinos. See Mutua, supra note 9, at 1206 n.124 (noting that Asian immigrants come from many different countries and often speak different languages).

[\[FN29\]](#). See Johnson et al., supra note 5, at 2.

[\[FN30\]](#). See id. at 3.

[\[FN31\]](#). See id. at 3 n.4.

[\[FN32\]](#). Those five North Carolina counties are Wake, Mecklenburg, Forsyth, Guilford, and Durham. See id.

[\[FN33\]](#). See Steven W. Bender, [Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace, 45 Am. U. L. Rev. 1027, 1031 n.13 \(1996\)](#) (citing Census Bureau statistics which estimate that in 1990, Latinos were undercounted by 5.2%); Benjamin J. Razi, Comment, [Census Politics Revisited: What To Do When the Government](#)

[Can't Count?](#), 48 *Am. U. L. Rev.* 1101, 1105, 1108-09 (1999) (noting that the United States Census has consistently undercounted the population in general but that minorities, including Latinos, have been significantly and disproportionately undercounted); Ned Glascock, *Low Census Count Feared*, *News & Observer* (Raleigh, N.C.), Jan. 26, 2000, at 1B [hereinafter Glascock, *Low Census Count*]; see also North Carolina Governor's Advisory Council on Hispanic/Latino Affairs, *1st Year Report* (1999) [hereinafter *Governor's Advisory Council*], at 19 (on file with the North Carolina Law Review) (recommending that the governor allocate resources to ensure a reliable count of Latinos in the 2000 Census).

[FN34]. See FaithAction Center, *Estimates of the 1999 Hispanic Population in North Carolina*, (visited Apr. 14, 2000) <<http://s1001.infi.net/~faithact/hispanic.html>> (on file with the North Carolina Law Review) [hereinafter FaithAction Report]; Ned Glascock, *Delegates Get Preview for Mexico Trip*, *News & Observer* (Raleigh, N.C.), Jan. 11, 2000, at 1B [hereinafter Glascock, *Delegates*].

[FN35]. See Johnson et al., *supra* note 5, at 3.

[FN36]. See *id.*; see also FaithAction Report, *supra* note 34, at <<http://s1001.infi.net/~faithact/hispanic.html>> (estimating a 355% increase in the overall statewide Latino population from 1990 to 1998).

[FN37]. See Johnson et al., *supra* note 5, at 3.

[FN38]. See *id.*

[FN39]. See *id.*

[FN40]. See *id.*; see also Ned Glascock, *Hispanic Economic Role Large, Study Says*, *News & Observer* (Raleigh, N.C.), Feb. 27, 1999, at 3A [hereinafter, Glascock, *Economic Role*] (reporting that the traditional Latino migrant nature of North Carolina's work force is becoming more permanent).

[FN41]. See *Governor's Advisory Council*, *supra* note 33, at 28.

[FN42]. See *id.*

[FN43]. See Johnson et al., *supra* note 5, at 6.

[FN44]. See *id.* Current information about nationality will not be available until after the 2000 Census.

[FN45]. See Justin Brown et al., *Should the North Carolina Administrative Office of the Courts Certify Language Interpreters?* 4 (1997) (on file with the North Carolina Law Review). No surveys have been conducted in North Carolina to measure English proficiency among Latinos. The Policy Analyst of Minority Affairs of the State of North Carolina, Office of the Governor, suggests that between 40%-70% of Latinos lack proficiency in English. See Telephone Interview with David West, Policy Analyst of Minority Affairs, State of North Carolina, Office of the Governor (Apr. 13, 2000). He bases this estimate on the state's Division of Public Instruction figures, which calculated that in 1997-98, there were about 33,000 Latino school children in the public schools, see *infra* note 49 and accompanying text, 40% of whom had limited English proficiency. See Telephone Interview with David West, *supra*.

[FN46]. See Johnson et al., *supra* note 5, at 4-5; see also FaithAction Report, *supra* note 34, at <<http://s1001.infi.net/~faithact/hispanic.html>> (providing estimates of county-by-county increases in the Latino population in North Carolina).

[FN47]. See Vicki Cheng, *Spanish Speakers Eager To Do Business*, *News & Observer* (Raleigh, N.C.), Apr. 9, 2000, at 5B (discussing business classes for Latinos planning to open food markets and other enterprises catering to Latinos); Glascock, *Small World*, *supra* note 28, at 1E (noting the expansion of Latino restaurants, dance clubs, and church services); Associated Press, *Professors to Track Latino Immigration*, *News & Observer* (Raleigh, N.C.), Oct. 11, 1999, at 3A.

[FN48]. See Karin Schill, *Livin' La Vida Buena*, *News & Observer* (Raleigh, N.C.), Oct. 24, 1999, at 1E.

[FN49]. See Governor's Advisory Council, *supra* note 33, at 28 (estimating the figure at about 33,000 for the 1997-98 year). More recent estimates place the figure at 37,000 for the 1999-2000 year, a 30% increase in one school year. See Gregory Malhoit, Letter to the Editor, More Help for Non-English Speakers, *Gavel to Gavel, News & Observer* (Raleigh, N.C.), Mar. 13, 2000, at 10A.

[FN50]. See Johnson et al., *supra* note 5, at 6; Yonat Shimron, Churches Exhorted to Help Latinos, *News & Observer* (Raleigh, N.C.), Feb. 7, 1999, at 1B (reviewing a report released by the Faith in Action Institute, based in Greensboro, North Carolina that confirmed that immigrants move to the state because of its sound economy).

[FN51]. See Neal Templin, Hotels Pursuing Immigrants To Fill Jobs, *News & Observer* (Raleigh, N.C.), July 16, 1999, at 2D.

[FN52]. See Shimron, *supra* note 50, at 1B.

[FN53]. See Governor's Advisory Council, *supra* note 33, at 29.

[FN54]. See *id.*

[FN55]. See *id.*

[FN56]. *Id.* at 3.

[FN57]. See Schill, *supra* note 48, at 1E. At present, the offices are located in Morrisville (Research Triangle Park) and Wilmington, with plans to open additional offices in Fayetteville, Charlotte, and Asheville. See Telephone Interview with Amos Barretto, Vice President of the North Carolina Hispanic Chamber of Commerce (Apr. 14, 2000).

[FN58]. See Glascock, Delegates, *supra* note 34, at 1B.

[FN59]. See Eleanor Howe, Helping Hispanics in Transition: An Interview with H. Nolo Martinez, *Popular Gov't*, Fall 1999, at 13, 13.

[FN60]. See Jane Perkins, Overcoming Language Barriers to Health Care, *Popular Gov't*, Fall 1999, at 38, 40.

[FN61]. See *id.*; Memorandum from A. Dennis McBride, State Health Director, North Carolina Department of Health and Human Services, to Local Health Directors (Jan. 25, 1999) (on file with the North Carolina Law Review) (noting that any agency or program supported in whole or in part with federal funds must provide interpreter services at no cost to non-English-speaking clients); North Carolina Association of Local Health Directors, Resolution on Language Services in Public Health (Jan. 14, 1998) (on file with the North Carolina Law Review) (resolving to support health agencies taking responsibility for improving non-English speakers' access to health care).

[FN62]. See N.C. Bilingual Resource Group, State Certification of Interpreters: Recommendations of the NC Interpreter Task Force (July 1999) (on file with the North Carolina Law Review). The group provides a Spanish language and cultural training initiative, bilingual materials, translation services, and consultation on bilingual issues.

[FN63]. See North Carolina Area Health Education Centers Spanish Language and Cultural Training Initiative, Training for Interpreters in Health and Human Services (1999) (on file with the North Carolina Law Review).

[FN64]. The North Carolina Department of Motor Vehicles (DMV) first published the drivers license manual in April 1996. Two subsequent printings of the manual have been distributed and a third printing is underway. Approximately 75,000 to 100,000 copies of the manual were distributed at each printing. DMV officials note that as a result of the manuals, customers are better prepared because they have resources in their native languages. DMV examiners report that the successful use of the manuals promotes highway safety by teaching newcomers the meaning and significance of roadway signs and signals. See Telephone Interview with Larry Daniel, Assistant Director of Drivers License Section, N.C. DMV (Apr. 14, 2000); see also Christina Nifong, Immigrants' Dream is a License to Drive, *News & Observer* (Raleigh, N.C.), Aug. 19, 1999, at 1E.

[FN65]. See Pons, *supra* note 17, at 10; Letter from Judge Thomas W. Ross, Former Director, North Carolina Administrative Office of the Courts, to J. Edwin Pons, Deputy County Manager, Guilford County Administrative Offices 1 (Dec. 10, 1999) (on file with the North Carolina Law Review).

[FN66]. See Letter from Judge Thomas W. Ross, Former Director, North Carolina Administrative Office of the Courts, to J. Edwin Pons, Deputy County Manager, Guilford County Administrative Offices 1 (Nov. 2, 1999) (on file with the North Carolina Law Review).

[FN67]. See *id.*

[FN68]. See *id.*

[FN69]. See Committee Puts Focus on Hispanic Population, N.C. Law., Nov./ Dec. 1998, at 4, 4; Pons, *supra* note 17, at 10.

[FN70]. See Committee Puts Focus on Hispanic Population, *supra* note 69, at 4.

[FN71]. See *id.*

[FN72]. The statewide legal services committee is exploring models to best assure that Spanish-speaking legal services clients have access to lawyers and will issue recommendations for legal services programs statewide. See Telephone Interview with Gina Reyman, Program Director, North Central Legal Services (Feb. 18, 2000).

[FN73]. See Leslie V. Dery, [Disinterring the "Good" and "Bad Immigrant": A Deconstruction of the State Court Interpreter Laws for Non-English Speaking Criminal Defendants](#), 45 U. Kan. L. Rev. 837, 839 (1997) (discussing how language, race, ethnicity, and religion set apart immigrants from the cultural majority and engender feelings of fear and hostility); Perea, Demography and Distrust, *supra* note 8, at 278 (using nativism to mean "intense opposition to an internal minority on the grounds of its foreign (i.e., 'un-American') connections") (quoting John Higham, *Strangers in the Land* 4 (2d ed. 1988)).

[FN74]. See Johnson et al., *supra* note 5, at 2. The term "gateway communities" is used to refer to border areas or other places where immigrants first enter and settle--for example, Los Angeles, California. See Francis Lee Ansley, [Rethinking Law in Globalizing Labor Markets](#), 1 U. Pa. J. Lab. & Employment L. 369, 397 (1998). Communities with large concentrations of immigrants are often at the center of the immigration debate which reflects nativist anxieties: whether "these others/outsideers cost 'us' more than 'they' contribute." Berta Esperanza Hernández-Truyol, [Natives, Newcomers and Nativism: A Human Rights Model for the Twenty-First Century](#), 23 Fordham Urb. L.J. 1075, 1095 (1996).

[FN75]. See Johnson et al., *supra* note 5, at 9.

[FN76]. See *id.*

[FN77]. See Letter to the Editor, Just Too Many Folks, News & Observer (Raleigh, N.C.), Jan. 24, 2000, at 10A; Patsy McCormick, Must We Accept Excessive Immigration?, News & Observer (Raleigh, N.C.), Feb. 26, 2000, at 19A; Ron Woodard, Letter to the Editor, Uphold Immigration Law, News & Observer (Raleigh, N.C.), Apr. 23, 2000, at 10A.

[FN78]. See Herbert Berry, The Key to Growth Control: Immigration Limits, News & Observer (Raleigh, N.C.), Feb. 11, 1999, at 21A; Jan Touma, Letter to the Editor, Limit Immigration, News & Observer (Raleigh, N.C.), Oct. 4, 1999, at 10A; Ron Woodard, Letter to the Editor, Limit Immigration, News & Observer (Raleigh, N.C.), Mar. 9, 1999, at 10A.

[FN79]. See Manuel Mendoza, Study Finds Negative Images of Hispanics on U.S. TV, News & Observer (Raleigh, N.C.), Apr. 7, 1999, at 9E (discussing a study by the Tomás Rivera Policy Institute, a California-based research organization, which found that Latinos are usually depicted as criminals, victims, immigrants, or low-level workers on television); see also Ned Glascock, Rally Divides Siler City, News & Observer (Raleigh, N.C.), Feb. 20, 2000, at 1B [hereinafter Glascock, *Rally Divides*] (reporting on a rally organized by former Klansman David Duke, where Latinos were decried as "nothing but trouble" and accused of bringing drugs and crime to the community); Glascock, Small World, *supra* note 28, at 1E (reporting on Fernando Rodriguez, the founder of the North Carolina Hispanic Professional Society). Rodriguez, who has a master's degree and Ph.D. in reproductive physiology and is the scientific and laboratory director of the Chapel Hill Fertility Center,

elaborated on the discrimination he and his family have suffered. See Glascock, *Small World*, supra note 28, at 1E. He recounted waiting in a supermarket checkout line with his wife with two carts of food when he heard someone in line question how he and his wife could afford so many groceries. See *id.* The woman at the checkout counter replied, "They're probably smuggling drugs or something." *Id.* Rodriguez noted that, "They assumed that when they see a Latino, that Latino will be uneducated and can't speak the language." *Id.*

[FN80]. See T. Alexander Aleinikoff & Rubén G. Rumbaut, [Terms of Belonging: Are Models of Membership Self-Fulfilling Prophecies?](#), 13 *Geo. Immigr. L.J.* 1, 19-20 (1998) (noting that immigrant children may respond to the message that "they are not, and may never become full-fledged members" of society by experiencing depression and pessimism about the possibilities of improving their situation through, for example, education).

[FN81]. See Johnson et al., supra note 5, at 8-9.

[FN82]. See Robert S. Chang & Keith Aoki, [Centering the Immigrant in the Inter/national Imagination](#), 10 *La Raza L.J.* 309, 328 (1998) (pointing out that immigrants are presented as both taking jobs away from "those who belong here" and abusing public benefits); Bill Ong Hing, [Don't Give Me Your Tired, Your Poor: Conflicted Immigrant Stories and Welfare Reform](#), 33 *Harv. C.R.-C.L. L. Rev.* 159, 159, 176 (1998) (detailing the efforts to pass a welfare reform law that denied many immigrants access to public benefits by manipulating the number of immigrants on welfare and promoting the myth that immigrants take jobs from natives); Harry Valetk, Note, ["I Cannot Eat Air!": An Economic Analysis of International Immigration Law for the 21st Century](#), 7 *Cardozo J. Int'l & Comp. L.* 141, 145-46 (1999) (noting that studies suggest that "opposition to immigration rises and falls with the unemployment rate" and suggesting that Americans may be concerned with immigrants taking away jobs from native workers or requiring more public assistance than natives); W.G. Runciman, *Always With Us? Why There Does Not Have To Be An Underclass*, *Times Literary Supp.*, Dec. 11, 1998, at 13, 13 (commenting on the double bind of immigrants stigmatized by their host society). In North Carolina, for example, hostility toward Latinos has prompted at least one county to demand that the Immigration and Naturalization Service remove unspecified and unidentified undocumented immigrants, who, along with other immigrants, "siphoned" limited county resources. See Letter from Rick Givens, Chairman, Board of Commissioners of Chatham County, North Carolina, to Donald Young, District Director, U.S. Immigration and Naturalization Service 1 (Aug. 18, 1999) (on file with the North Carolina Law Review); see also Glascock, *Delegates*, supra note 34, at 1B (reporting that five months later, Givens stated that he continued to agree with the sentiments expressed in the letter). It should be noted that the county commissioner who signed the letter has since expressed remorse for his actions after a fact-finding trip to Mexico. See Ned Glascock, *Mexico Trip "Humbling"* for *Official, News & Observer* (Raleigh, N.C.), Feb. 16, 2000, at 1A.

[FN83]. See Glascock, *Rally Divides*, supra note 79, at 1B (noting that 41% of Siler City elementary school children are Latino); Sumathi Reddy, *Parents Fear Ethnic Shift in Chatham*, *News & Observer* (Raleigh, N.C.), Sept. 22, 1999, at 1A ("Many parents, mostly white, say having so many Spanish-speaking students in the school is hurting their children's education and causing students and teachers to transfer to other, whiter county schools.").

[FN84]. See Ned Glascock, *English Only Proposal is Defeated in Pitt County*, *News & Observer* (Raleigh, N.C.), Jan. 12, 2000, at 3A [hereinafter Glascock, *English Only*]. In Pitt County, North Carolina, which has seen a dramatic increase in Latino residents, the county commissioners proposed an English-only law for government business. The proposal was defeated. See Letter to the Editor, *Stick With English*, *News & Observer* (Raleigh, N.C.), Feb. 10, 2000, at 20A (decrying the defeat of Pitt County's proposed English-only law).

[FN85]. See Herbert Perry, *Letter to the Editor, Make English the Law*, *News & Observer* (Raleigh, N.C.), Mar. 6, 1998, at 14A (complaining that Latinos are overwhelming "our culture" by not learning English and calling for a national language provision); see, e.g., [Garcia v. Spun Steak Co.](#), 998 F.2d 1480, 1483 (9th Cir. 1993); [Gonzalez v. Salvation Army](#), 985 F.2d 578 (11th Cir. 1993) (unpublished table decision), aff'g No. 89-1679-CIV-T-17, 1991 U.S. Dist. LEXIS 21692, at *7 (M.D. Fla. June 23, 1991); [Garcia v. Gloor](#), 618 F.2d 264, 266 (5th Cir. 1980). In all three cases, the circuit courts upheld English-only rules against bilingual employees. See [Spun Steak](#), 998 F.2d at 1490; [Gonzalez](#), 985 F.2d at 578; [Gloor](#), 618 F.2d at 266. These cases illustrate that speaking Spanish is often viewed as an offense consciously designed to intimidate English-only speakers. In *Gloor*, the employer prohibited employees from conversing on the job in Spanish except when talking with Spanish-speaking customers. See [Gloor](#), 618 F.2d at 266. The policy was implemented in large part because the employer believed that English-speaking customers felt uncomfortable hearing employees speak to each other in a language they could not understand. See [id.](#) at 267. In *Spun Steak*, the employer required its employees to speak English only partially out of

concern that bilingual employees could "harass and ... insult other workers in a language they could not understand." [998 F.2d at 1483](#). As Ruiz Cameron notes, "[t]his was a serious charge and, if true, merited a serious response. But just what were the offending words or phrases?" Ruiz Cameron, *supra* note 11, at 290. This is never disclosed in the Spun Steak decision, an "omission [that] encourages readers to assume the worst about bilingual speakers and their motivations. It makes the outlawed language seem mysterious and perhaps evil." *Id.* at 291. In [EEOC v. Synchro-Start Products, Inc., 29 F. Supp.2d 911, 912 \(N.D. Ill. 1999\)](#), the court noted that no court has held that English-only rules could never violate Title VII and that courts have continued to scrutinize the rule for disparate impact. The court pointed out that those courts that have denied such claims have limited their holdings to situations where the employee has the ability to speak English. In *Synchro-Start*, the rule was applied to employees who spoke no English or who had limited English proficiency, and on this basis the court refused to dismiss the claim. See *id.* at 912-13.

[FN86]. See [Hernandez v. United States, 500 U.S. 352, 371 \(1991\)](#) (noting that "language differences can be a source of division" and describing a range of responses to foreign language which includes distance and alienation, ridicule, and scorn); Aida Hurtado et al., [Becoming The Mainstream: Merit, Changing Demographics, and Higher Education in California, 10 La Raza L.J. 645, 676 \(1999\)](#) (noting that foreign language is often characterized as a "violation of the American ideal" and incites fear that we will become a "nation disunited"); Linda Kelly, [Stories From the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act, 92 Nw. U. L. Rev. 665, 679 \(1998\)](#) (noting that fear of foreign languages denigrates Spanish-speaking people to inferior positions); The View from College Campuses: Editorial Condemns Bilingualism in the Marketplace, *News & Observer* (Raleigh, N.C.), Dec. 12, 1999, at 32A.

[FN87]. See Johnson et al., *supra* note 5, at 9.

[FN88]. See *id.*

[FN89]. See *id.* at 9, 10 tbl.2.

[FN90]. See *id.* at 11. Johnson and his co-authors note that when respondents in polls are asked questions about African-Americans, they often temper their responses in order to avoid appearing racist. The authors point out that an "alarming" aspect of the spring 1996 Carolina Poll examining attitudes about Latinos in the state was the failure of any such tempering of negative opinions expressed about Latinos. See *id.*

[FN91]. See Brown et al., *supra* note 45, at 13.

[FN92]. *Id.* at 13-14.

[FN93]. See *supra* note 86; see also Perea, *Demography and Distrust*, *supra* note 8, at 329 (reviewing the historical treatment of language including the period from 1910 to 1914 when national loyalty was equated with conformity to the English-speaking culture). Perea also reviews the history of the Official English movement and argues that it was triggered by nativist reactions during times of national stress. See *id.* at 340.

[FN94]. See *supra* note 86; see also Perea, *Demography and Distrust*, *supra* note 8, at 360 (noting that the Spanish language serves as a "close proxy for Hispanic national origin"). Perea further points out that language is used as a symbol to "assert and enforce the dominance of the core culture and to marginalize all other American cultures." *Id.* at 369.

[FN95]. See Karst, *supra* note 6, at 333-34 (1996) (stating that assimilation is associated with economic class).

[FN96]. See Perea, *Demography and Distrust*, *supra* note 8, at 271-72 (reviewing the legal history of the interaction of the dominant culture and other American cultures with regard to language, examining historical attitudes that "national unity depends on linguistic homogeneity," and noting that "American identity is coterminous with the contours of America's dominant culture").

[FN97]. See Karst, *supra* note 6, at 351-52 ("A distinctive language sets a cultural group off from others, with one consistent unhappy consequence throughout American history: discrimination against members of the cultural minority.").

[FN98]. See Dery, *supra* note 73, at 852 n.72 (noting a "general atmosphere of intolerance and insensitivity toward the use

of foreign languages") (quoting Alice Pousada, *Interpreting for Language Minorities in the Courts*, in *Georgetown University Round Table On Languages and Linguistics 1979: Language in Public Life* 186 (James E. Alatis & G. Richard Tucker eds., 1979)); Juan F. Perea, [Los Olvidados: On the Making of Invisible People](#), 70 *N.Y.U. L. Rev.* 965, 965-66 (1995) [hereinafter Perea, *Los Olvidados*] (noting that the sound of Spanish being spoken offends and frightens many English-only speakers about losing power over their "own" country and marks the Spanish-speaker as an outsider); see also Johnson et al., *supra* note 5, at 8 (noting North Carolinians' discomfort around those who do not speak English); Perea, *Demography and Distrust*, *supra* note 8, at 279 (noting that English is considered the only language signifying true American identity); Peter W. Schroth, [Language and Law](#), 46 *Am. J. Comp. L.* 17, 17 (Supp. 1998) (observing that 99% of the United States population "speaks English 'well' or 'very well' by self-description and 86% neither speaks nor understands any other language" but that recently "over twenty of the fifty states have felt their English-speaking ethnicity sufficiently threatened to require state statutes or state constitutional provisions declaring English their official language").

[FN99]. See Perea, *Demography and Distrust*, *supra* note 8, at 277. Perea provides an excellent historical overview of the law's use of ethnicity, among other characteristics, to define "the people." For example, Perea points out that the use of ethnicity has resulted in the Communist witch hunts of the McCarthy era, see *id.* at 278, legal restrictions on the German-American culture and German language during World War I, see *id.* at 329, immigration restrictions through English literacy tests, see *id.* at 332, and the association of foreign language with disloyalty and subversive activities, see *id.* at 338.

[FN100]. See Hiroshi Motomura, [Whose Immigration Law?: Citizens, Aliens, and the Constitution](#), 97 *Colum. L. Rev.* 1567, 1591 (1997) (reviewing Gerald L. Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (1996)) Motomura observes that "immigration decisions give citizens the chance to choose new citizens and decide who 'we' are as Americans." *Id.*

[FN101]. See Karst, *supra* note 6, at 320-21.

[FN102]. See Kevin R. Johnson, [Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class](#), 42 *UCLA L. Rev.* 1509, 1516 (1995).

[FN103]. See Cornell & Bratton, *supra* note 12, at 611-16; Perea, *Demography and Distrust*, *supra* note 8, at 278; Schroth, *supra* note 98, at 17.

[FN104]. See [N.C. Gen. Stat. § 145-12 \(1999\)](#); Cornell & Bratton, *supra* note 12, at 613; Schroth, *supra* note 98, at 17. In addition to proclaiming a state language, the statute bestows the label of state officialdom on flora and fauna, reptile and rock, beverage, boat, and more. See [N.C. Gen. Stat. §§ 145-1 to 145-12 \(1999\)](#).

[FN105]. Rachel F. Moran, [Irritation and Intrigue: The Intricacies of Language Rights and Language Policy](#), 85 *Nw. U. L. Rev.* 790, 793 n.14 (1991) (reviewing Bill Piatt, *¿Only English?: Law and Language Policy in the United States* (1990)) (quoting C. Schmid & R. Brischetto, *Social Basis of Support and Opposition for the English Only Movement Among Anglos and Latinos* 2 (Aug. 8, 1989) (paper presented at the Annual Meetings of the Society for the Study of Social Problems) (on file with the Northwestern University Law Review)).

[FN106]. See Angelo N. Ancheta, [Community Lawyering](#), 1 *Asian L.J.* 189, 216 (1994) (reviewing Gerald Lopez, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1992)) (noting discrimination against immigrants in areas including education, housing, and public accommodations); Perea, *Los Olvidados*, *supra* note 98, at 965-66 (identifying a range of responses, including "loss of job, instant scapegoating, and identification as outsiders"); see also Marta B. Varela, [The First Forty Years of the Commission on Human Rights](#), 23 *Fordham Urb. L.J.* 983, 988 (1996) (noting that the law recognized a need for "protection against discrimination in employment, housing, and public accommodations"). For a discussion of English-only laws, see Cornell & Bratton, *supra* note 12, at 611-16; Moran, *supra* note 105, at 792- 94, 796-98; Ruiz Cameron, *supra* note 11, at 275-81; Carol Schmid, Comment, [Language Rights and the Legal Status of English-Only Laws in the Public and Private Sector](#), 20 *N.C. Cent. L.J.* 65, 65 (1992).

[FN107]. See Dery, *supra* note 73, at 849-50; Perea, *Demography and Distrust*, *supra* note 8, at 352-53.

[FN108]. See Dery, *supra* note 73, at 849; Perea, *Demography and Distrust*, *supra* note 8, at 352-353 ("Discourse itself, the expression of ideas, and the ordering of discourse, who gets to express ideas, who gets to express them first, and which ideas

get expressed, also reflect hierarchy and relationships of power in society.").

[FN109]. For a discussion of how English-as-Official-Language statutes disadvantage minorities, see Schmid, *supra* note 106, at 66. Schmid notes that "after the passage of North Carolina's Official English statute, the DMV stopped giving drivers license tests in languages other than English, as it had previously. It was not until the intervention of the North Carolina Civil Liberties Union that the statute was amended" to require the DMV to continue testing in other languages. *Id.* at 66 n.7; see also Glascock, *English Only*, *supra* note 84, at 3A (describing Pitt County's recent efforts to pass English-only laws).

[FN110]. Cass R. Sunstein, *The Anticaste Principle*, 92 *Mich. L. Rev.* 2410, 2429 (1994).

[FN111]. See Cornell & Bratton, *supra* note 12, at 610.

[FN112]. See *id.* at 600. Public laws that seek to raise English to "official" status are referred to as "Official English" laws. Employer regulations that require employees to speak only English in the workplace are referred to as "Workplace English" regulations. See *id.*

[FN113]. *Id.* at 692.

[FN114]. See Governor's Advisory Council, *supra* note 33, at 28.

[FN115]. See *id.*

[FN116]. See Glascock, *Economic Role*, *supra* note 40, at 3A.

[FN117]. See William Bratton, *Law and Economics of English Only*, 53 *U. Miami L. Rev.* 973, 975 (1999) (noting that requiring Official English could deter Latinos from economic activity).

[FN118]. See Cornell & Bratton, *supra* note 12, at 625 (arguing that suppressing Spanish would negatively affect opportunities in Latin American markets).

[FN119]. See Scott Syfert, *Globalization and the Practice of International Business Law in North Carolina*, N.C. St. B.J., Winter 1999, at 6, 7 (emphasizing the growing need for and opportunities to practice international law in North Carolina and reflecting on the global business developments in the state).

[FN120]. See Johnson et al., *supra* note 5, at 11.

[FN121]. See Natalie P. McNeal, *Courts Work To Bridge Language Gap*, *News & Observer* (Raleigh, N.C.), Mar. 3, 1999, at 1B.

[FN122]. See Glascock, *Low Census Count*, *supra* note 33, at 1B.

[FN123]. See Brown et al., *supra* note 45, at 4 n.10 (citing United States Census Bureau: North Carolina Statistics 1990 and 1995); Telephone Interview with Katie Pomerantz, North Carolina Hispanic Ombudsman (Mar. 21, 1997) (referencing a 1996 North Carolina Health Department estimate of the Latino population)); Telephone Interview with David West, *supra* note 45.

[FN124]. See Brown et al., *supra* note 45, at 3.

[FN125]. See *id.* at 4.

[FN126]. See, e.g., *N.C. Gen. Stat. § 7A-314(f) (1999)* (authorizing payment of a reasonable fee for court-appointed interpreters in criminal cases but not requiring the court to appoint interpreters). Other North Carolina statutes may be construed as authorizing payment for interpreters for indigents in a range of proceedings including abuse and neglect, see *id.* § 7B-602 (1999); termination of parental rights, see *id.* § 7B-1101 (1999); and juvenile proceedings, see *id.* § 7B-2000 (1999). None of these provisions, however, require or entitle a party to an interpreter. The North Carolina Rules of Evidence

also allow a court to appoint an expert "on its own motions" and "of its own selection." [N.C. R. Evid. 706](#). The Rules, however, do not require the appointment of an interpreter. See *id.*

[\[FN127\]](#). See *infra* notes 244-46, 265 and accompanying text.

[\[FN128\]](#). See North Carolina Administrative Office of the Courts, Frequently Asked Questions (visited Apr. 6, 2000) <<http://www.aoc.state.nc.us/www/public/aoc/faq.html#12>>.

[\[FN129\]](#). In early March 2000, the author observed a state district court judge ask a Spanish-speaking person who was waiting in the courtroom for her case to be called to interpret in an unrelated matter. The would-be "interpreter" was a stranger to the Spanish-speaking litigant for whom she "interpreted." The judge never inquired as to the potential interpreter's bilingual abilities or other interpretation skills. The author's informal written and telephone surveys of interpreter issues conducted with Legal Services of North Carolina field offices revealed ad hoc practices which, on occasion, involved the use of both Spanish-speaking children and prisoners brought over from the jail to interpret. (Written surveys on file with the North Carolina Law Review).

[\[FN130\]](#). See Letter from J. Edwin Pons, to Daniel G. Clodfelter, Moore & VanAllen 1 (Nov. 16, 1999) (providing affidavits compiled by the Hispanic Lawyers Committee of the North Carolina Bar Association) (on file with the North Carolina Law Review).

[\[FN131\]](#). See Brown et al., *supra* note 45, at 2. For example, in a state court proceeding, "[M]y husband hit me in the face and then he kicked me!" could be interpreted for the court as "[T]hey're having marital problems." *Id.*

[\[FN132\]](#). See *id.*; *infra* notes 157-62 and accompanying text.

[\[FN133\]](#). See Brown et al., *supra* note 45, at 2.

[\[FN134\]](#). See Pons, *supra* note 17, at 10 (describing the "unauthorized, and wholly incompetent, practice of law" whereby "interpreters" advise defendants what to do so that they can "move the matter along" and collect another fee). These "interpreters" charge excessive fees and not only lack appropriate interpreter skills, but often engage in the unauthorized practice of law. See *id.*

[\[FN135\]](#). See [State v. Call](#), 349 N.C. 382, 406, 508 S.E.2d 496, 508-09 (1998); [State v. Torres](#), 322 N.C. 440, 443, 368 S.E.2d 608, 611 (1988); [Wise v. Short](#), 181 N.C. 320, 322-23, 107 S.E. 134, 136 (1921); [State v. Sandlin](#), 61 N.C. App. 421, 428, 300 S.E.2d 893, 897 (1983); [State v. McClellan](#), 56 N.C. App. 101, 102, 286 S.E. 873, 874-75 (1982).

[\[FN136\]](#). [322 N.C. 440, 368 S.E.2d 609 \(1988\)](#).

[\[FN137\]](#). See [id. at 443, 368 S.E.2d at 611](#). In *Torres*, the defendant argued that the "trial court erred in denying his motion to have his court-appointed interpreter replaced" because he questioned the qualifications of the interpreter. *Id.* In denying the defendant's appeal on this issue, the North Carolina Supreme Court emphasized the court's inherent authority and discretion to appoint an interpreter without discussing or referencing a defendant's right to an interpreter. See *id.*

[\[FN138\]](#). [349 N.C. 382, 508 S.E.2d 496 \(1998\)](#).

[\[FN139\]](#). [Id. at 406, 508 S.E.2d at 508](#) (holding that it was not an abuse of discretion to appoint a particular Spanish-speaker as an interpreter for a state's witness).

[\[FN140\]](#). See *id.* ("Any person who is competent to perform the duty assumed may be appointed an interpreter."); [Torres](#), 322 N.C. at 443-44, 368 S.E. 2d at 611; [Sandlin](#), 61 N.C. App. at 428, 300 S.E.2d at 897. Although trial courts are not trained in the skill of interpretation, they nonetheless determine interpreter competency. Birth place, bilingualism, and prior experience as an interpreter were key factors in *Call* and *Sandlin*, although the trial courts possessed no knowledge as to the quality of the past experience. See [Call](#), 349 N.C. at 406-07, 506 S.E.2d at 506; [Sandlin](#), 61 N.C. App. at 428, 300 S.E.2d at 897-98.

[\[FN141\]](#). The Sixth Amendment states in part that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be

confronted with the witnesses against him ... and to have the Assistance of Counsel for his defense." [U.S. Const. amend. VI](#); see also [28 U.S.C. § 1827-1828 \(1994 & Supp. IV 1998\)](#) (requiring the use of interpreters in criminal and civil actions filed by the United States in federal district courts); Mollie M. Pawlosky, Note, When Justice is Lost in the "[Translation](#)": [Gonzalez v. United States, An "Interpretation" of the Court Interpreters Act of 1978](#), 45 *DePaul L. Rev.* 435, 441-42 (1996) (describing the constitutional approach to the right to an interpreter); Michael B. Shulman, Note, [No Hablo Inglés: Court Interpretation as a Major Obstacle to Fairness for Non-English Speaking Defendants](#), 46 *Vand. L. Rev.* 175, 183-84 (1993) (reviewing the development of a constitutional right to an interpreter).

[FN142]. See [United States v. Carrion](#), 488 F.2d 12, 15 (1st Cir. 1973) (per curiam); [United States ex rel. Negrón v. New York](#), 434 F.2d 386, 389 (2d Cir. 1970). The United States Supreme Court has never directly addressed the issue of whether there is a right to an interpreter in any court proceeding. But see [Perovich v. United States](#), 205 U.S. 86, 91 (1907) (concluding that when a criminal defendant's right to a state-appointed interpreter was not raised, the decision whether or not to appoint an interpreter was within the court's discretion).

[FN143]. See [Negrón](#), 434 F.2d at 389; [Carrion](#), 488 F.2d at 14.

[FN144]. [434 F.2d 386 \(2d Cir. 1970\)](#).

[FN145]. See Moran, supra note 105 (citing Negrón as the leading case); Heather Pantoga, [Injustice In Any Language: The Need for Improved Standards Governing Courtroom Interpretation in Wisconsin](#), 82 *Marq. L. Rev.* 601, 618 (1999) (citing Negrón for the "well-established proposition" that non-English-speaking criminal defendants have a right to an interpreter); Pawlosky, supra note 141, at 441 (observing that the Negrón court was one of the first federal district courts to conclude that the Sixth Amendment requires the provision of interpreters to non-English-speaking defendants at the government's expense). In Negrón, the Court of Appeals for the Second Circuit affirmed the district court's granting of Negrón's writ of habeas corpus based on the failure to provide him with a court interpreter. See [Negrón](#), 434 F.2d at 390, 391.

[FN146]. See [id.](#) at 389.

[FN147]. See [id.](#)

[FN148]. See [id.](#) at 388.

[FN149]. See [id.](#)

[FN150]. See [id.](#) Not only is Negrón one of the early cases recognizing the right to an interpreter in criminal trials, it was the impetus for the 1978 federal Court Interpreters Act. See Bill Piatt, [Attorney as Interpreter: A Return to Babble](#), 20 *N.M. L. Rev.* 1, 3 (1990).

[FN151]. See [United States v. Quesada Mosquera](#), 816 F. Supp. 168, 175-76 (E.D.N.Y. 1993) (mem.); see also [De La Rosa v. United States](#), No. CIV.A. 94- 7632, 1995 WL 251302, at *2 (E.D. Pa. Apr. 25, 1995) (citing Quesada Mosquera and noting that, in a particular case, a court may order the government to provide a written translation of court documents); [United States v. Nissim](#), No. 92 Cr. 425 (LMM), 1994 U.S. Dist. LEXIS 108, at *7 (S.D.N.Y. Jan. 10, 1994) (allowing the defendant's plea to be vacated in part for failure to translate the indictment and complaint); [United States v. Aleman](#), 417 F. Supp. 117, 121-22 (S.D. Tex. 1976) (vacating in part the defendant's guilty plea because the criminal complaint was inaccurately interpreted).

[FN152]. See [Quesada Mosquera](#), 816 F. Supp. at 172 (stating that important Sixth Amendment rights include the right to be "meaningfully present," which implies more than physical presence, and require that a defendant be informed about the proceedings and possess sufficient ability "to consult with his lawyer with a reasonable degree of rational understanding") (citations omitted); see also [United States v. Tapia](#), 631 F.2d 1207, 1209- 10 (5th Cir. 1980); Charles M. Grabau & Llewellyn Joseph Gibbons, [Protecting the Rights of Linguistic Minorities: Challenges to Court Interpretation](#), 30 *New Eng. L. Rev.* 227, 267-68 (1996); Pantoga, supra note 145, at 612.

[FN153]. See [Perovich v. United States](#), 205 U.S. 86, 91 (1907); [United States v. Mata](#), 1999 U.S. App. LEXIS 14033 (4th Cir. June 25, 1999) (per curiam) (unpublished decision); [United States v. Coronel-Quintana](#), 752 F.2d 1284, 1291 (8th Cir.

[1985](#)); [United States v. Salsedo, 607 F.2d 318, 320 \(9th Cir. 1979\)](#); [United States v. Carrion, 488 F.2d 12, 14 \(1st Cir. 1973\)](#) (per curiam); [United States v. Barrios, 457 F.2d 680, 682 \(9th Cir. 1972\)](#); [United States v. Rodriguez, 424 F.2d 205, 206 \(4th Cir. 1970\)](#) (per curiam); [United States v. Sosa, 379 F.2d 525, 527 \(7th Cir. 1967\)](#); [Quesada Mosquera, 816 F. Supp. at 174](#).

[FN154]. [Coronel-Quintana, 752 F.2d at 1291](#); see also [Carrion, 488 F.2d at 14](#) (noting that "[t]he right to an interpreter rests most fundamentally ... on the notion that no defendant should face the Kafkaesque spectre of an incomprehensible ritual which may terminate in punishment").

[FN155]. See [Pantoga, supra note 145, at 612](#) ("It is unlikely a judge, questioning a defendant for a brief period of time, would be able to determine the level of proficiency a defendant has in the English language.").

[FN156]. See [Susan Berk-Seligson, The Bilingual Courtroom 29 \(1990\)](#); [Dueñas González et al., supra note 26, at 61](#) (noting that "it is a contentious point ... that judges are expected to decide upon linguistic competency" and "[j]udicial officers are not necessarily trained linguists.") (quoting [M. R. Frankenthaler, Spanish Translation in the Courtroom, Social Action & the Law § 6.4, at 53-54 \(1980\)](#)).

[FN157]. [Brown et al., supra note 45, at 1-2](#).

[FN158]. See [id. at 2](#).

[FN159]. See [Jara v. Municipal Court, 578 P.2d 94, 95 \(Cal. 1978\)](#) (en banc). Several courts and legal scholars rely on [Jara](#) for the proposition that a right to an interpreter in civil proceedings does not exist. See, e.g., [Gomez v. Myers 627 F. Supp. 183, 189 \(E.D. Tex. 1985\)](#) (order); [Jose Julian Alvarez-González, Law, Language and Statehood: The Role of English in the Great State of Puerto Rico, 17 Law & Ineq. J. 359, 408 & n.40 \(1999\)](#) (noting that constitutional or statutory claims by non-English speakers seeking to require accommodation in communicating in a language other than English have not been particularly successful) (citing [Jara, 578 P.2d 94 \(Cal. 1978\)](#)); [Schroth, supra note 98, at 33 n.76](#) (citing [Jara](#) for the proposition that in civil cases, "in the absence of a statute, there is no right to an interpreter and no constitutional violation if none is appointed").

[FN160]. See [Bender, supra note 33, at 1029 n.3](#) (citing [Jara](#) as holding that in California, there is no constitutional basis for supplying an interpreter in state civil cases); [Grabau & Gibbons, supra note 152, at 263](#) (suggesting that in civil actions there may be a "First Amendment right to an interpreter"); [Franklyn P. Salimbene, Court Interpreters: Standards of Practice and Standards for Training, 6 Cornell J.L. & Pub. Pol'y 645, 647 \(1997\)](#) (noting that several state court reports on bias in the judiciary have supported using interpreters in both criminal and civil proceedings).

[FN161]. See [Andrew Scherer, Gideon's Shelter: The Need to Recognize the Right to Counsel for Indigent Defendants in Eviction Proceedings, 23 Harv. C.R.-C.L. L. Rev. 557, 564-69 \(1988\)](#) (discussing the devastating consequences of eviction and the need for appointed counsel for indigent defendants in eviction proceedings).

[FN162]. See [Mathews v. Eldridge, 424 U.S. 319, 334 \(1976\)](#). Some private interests are affected by legal action in ways that may implicate liberty and property interests. The [Mathews](#) Court established an analytic framework for determining the procedural due process protections that must be put into place in civil hearings to avoid the wrongful deprivation of such interests. See [id. at 334](#); see also [Morrissey v. Brewer, 408 U.S. 471, 481 \(1972\)](#) ("[D]ue process is flexible and calls for such procedural protections as the particular situation demands.").

[FN163]. See [Robert T. Drapkin, Protecting the Rights of the Mentally Disabled in Administrative Proceedings, 39 Cath. Law. 317, 318 \(2000\)](#) (arguing that due process protections which include representation by guardian-ad-litem should be extended to recipients and applicants for benefits); [Lisa E. Martin, Comment, Providing Equal Justice for the Domestic Violence Victim: Due Process Protection and the Victim's Right to Counsel, 34 Gonz. L. Rev. 329, 338, 345-46 \(1988/89\)](#) (discussing whether the Fourteenth Amendment requires appointed counsel for domestic violence victims to assure their fundamental right of access to the courts); [infra notes 164-70 and accompanying text](#).

[FN164]. [351 U.S. 23 \(1955\)](#).

[FN165]. See [M.L.B. v. S.L.J., 519 U.S. 102, 128 \(1996\)](#) (declaring a right to counsel in parental termination cases); [Mayer](#)

[v. City of Chicago, 404 U.S. 189, 199 \(1971\)](#) (declaring a right to counsel in appeals from convictions of petty offenses); [Boddie v. Connecticut, 401 U.S. 371, 383 \(1971\)](#) (striking down a state filing fee requirement in divorce cases); [Douglas v. California, 372 U.S. 353, 357 \(1963\)](#) (recognizing the right to counsel in criminal appeals); Griffin, 351 U.S. at 19 (requiring the state to provide trial transcripts to indigent defendants in criminal appeals).

[FN166]. See Griffin, 351 U.S. at 19.

[FN167]. [372 U.S. 353 \(1963\)](#).

[FN168]. See [id.](#) at 358.

[FN169]. [404 U.S. 189 \(1971\)](#).

[FN170]. See [id.](#) at 196-97 (citing [Williams v. Oklahoma City, 395 U.S. 458, 459 \(1969\)](#) (rejecting the argument that indigents convicted of petty offenses should not be granted transcripts on appeal at the state's expense)); see also [M.L.B., 519 U.S. at 128](#) (holding that indigents may not be denied access to the complete record when filing an appeal).

[FN171]. [401 U.S. 371 \(1971\)](#).

[FN172]. See [id.](#) at 374; [United States v. Kras, 409 U.S. 434, 444-45 \(1973\)](#); [Ortwein v. Schwab, 410 U.S. 656, 661 \(1973\)](#); see also [Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 31-32 \(1981\)](#) (holding that, although the Constitution did not require appointment of counsel for indigent defendants in parental status termination proceedings, a determination should be made on a case-by-case basis based on the strength of the parents' interests and the weakness of the state's interests).

[FN173]. See [Kras, 409 U.S. at 444-45](#); [Ortwein, 410 U.S. at 661](#).

[FN174]. [452 U.S. 18 \(1981\)](#).

[FN175]. See [Lassiter, 452 U.S. at 31-32](#).

[FN176]. [519 U.S. 102 \(1996\)](#).

[FN177]. See [id.](#) at 127-28.

[FN178]. [518 U.S. 343 \(1996\)](#).

[FN179]. See [Lewis v. Casey, 518 U.S. 343, 357 \(1996\)](#). The Court of Appeals for the Ninth Circuit had held that non-English-speaking inmates were entitled to bilingual legal assistants and law clerks in order to protect their access to the courts concerning matters of fundamental constitutional rights. See [Casey v. Lewis, 43 F.3d 1261, 1267-68 \(9th Cir. 1994\)](#), rev'd sub nom. [Lewis v. Casey, 518 U.S. 343 \(1996\)](#). Although the Supreme Court reversed the Ninth Circuit, the Court nonetheless found that the failure to provide adequate legal assistance to non-English-speaking inmates by denying them access to bilingual legal assistance may have "sufficed to claim injury ... and hence standing to demand remediation." [Lewis, 518 U.S. at 357](#).

[FN180]. See [Boddie, 401 U.S. at 374](#); [M.L.B., 519 U.S. at 116-17, 120](#); see also [Mayer v. City of Chicago, 404 U.S. 189, 197 \(1971\)](#) (holding that indigents must not be "priced out" of the appeals process). In domestic violence matters, civil orders of protection can result in immediate arrest upon violation of its terms and thus should be considered in the "quasi criminal" category controlled by Mayer. See supra note 126 (listing statutory provisions that may provide for payment for court interpreters in certain proceedings when the court appoints them, but does not provide for the right to interpreters).

[FN181]. [28 U.S.C. § § 1827-1828 \(1994 & Supp. IV 1998\)](#).

[FN182]. See [28 U.S.C. § § 1827\(d\)\(1\), 1828\(a\)](#). Some courts that have addressed the Act seem to have reached certain conclusions on the assumption that the use of a court interpreter is discretionary. See Pawlosky, supra note 141, at 447.

[FN183]. See [28 U.S.C. § 1827\(b\)\(2\), \(d\)\(1\)](#).

[FN184]. See Shulman, *supra* note 141, at 180; William E. Hewitt, National Ctr. for State Courts, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* 90 (1995). Telephone language lines provide expanded possibilities for locating certified, if not competent, interpreters in additional languages. See *infra* notes 295-97 and accompanying text.

[FN185]. Grabau & Gibbons, *supra* note 152, at 255 n.114.

[FN186]. See [28 U.S.C. § 1827\(j\)](#).

[FN187]. *Id.*; see also Grabau & Gibbons, *supra* note 152, at 240 n.40 (noting that the statute only provides a right to court interpretation in civil actions initiated by the United States).

[FN188]. [42 U.S.C. § § 2000d to 2000d-7 \(1994\)](#).

[FN189]. See Berk-Seligson, *supra* note 156, at 34.

[FN190]. See *supra* notes 152-58 and accompanying text.

[FN191]. See [State v. Call, 349 N.C. 382, 407, 508 S.E.2d 496, 512 \(1998\)](#); see also Dueñas González et al., *supra* note 26, at 192-207 (describing the skills and training needed to supervise court interpreters, including formal training in linguistics and advanced language studies).

[FN192]. See [Call, 349 N.C. at 407, 508 S.E.2d at 512 \(1998\)](#); [State v. Torres, 322 N.C. 440, 444, 368 S.E.2d 609, 611 \(1988\)](#) (relying also on the interpreter's education and interpretation experience); [State v. Sandlin, 61 N.C. App. 421, 428, 300 S.E.2d 893, 897 \(1983\)](#).

[FN193]. See *infra* notes 322-40 and accompanying text (describing interpreter qualifications and responsibilities).

[FN194]. See Grabau & Gibbons, *supra* note 152, at 294-96; Shulman, *supra* note 141, at 185-86.

[FN195]. See Berk-Seligson, *supra* note 156, at 200.

[FN196]. See [United States v. Anguloa, 598 F.2d 1182, 1185 n.3 \(9th Cir. 1979\)](#) (noting the difficulty "in attempting to evaluate the accuracy of interpretations"); [United States v. Urena, 834 F. Supp. 1282, 1286 \(D. Kan. 1993\)](#), *aff'd* [27 F.3d 1487 \(10th Cir. 1994\)](#) ("[T]he court cannot resolve the accuracy of the translation by reviewing the transcript."); see also Grabau & Gibbons, *supra* note 152, at 294-96 (noting that appellate judges often complain about the deficiency in the trial record and their inability to review the interpretation at trial); Shulman, *supra* note 141, at 187 (noting that when a non-English-speaking person testifies, only the interpreter's words are recorded, and the defendant has no opportunity to correct any errors by showing what he actually said because his spoken words are not in the record). For an in depth discussion of appellate cases on the rights to interpreters, see generally Pawlosky, *supra* note 141, at 435-50.

[FN197]. [349 N.C. 382, 508 S.E.2d 496 \(1998\)](#).

[FN198]. See [id. at 408, 508 S.E.2d at 512](#).

[FN199]. *Id.* (quoting Gen. R. Pract. Super. and Dist. Ct. 15(b)(1)).

[FN200]. See N.C. Gen. Stat. § 8B (1999).

[FN201]. See *id.* § 8B-2.

[FN202]. See Bill Ong Hing, [Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society](#), 81 Cal. L. Rev. 863, 878 (1993) (noting that even before coming to the United States, some immigrants are exposed to American culture). Hing also includes an appendix of

examples of immigrant assimilation studies comparing patterns of assimilation among Asian groups that reveal some differences related to the length of residence, government efforts in resettlement, and reasons for leaving the home country. See [id. at 924- 25](#); see also Dery, *supra* note 73, at 856 ("To say that one ought to know English as a resident of the United States is to ignore the realities of life for those who, generally through no fault of their own, do not have command of the English language and are made to suffer for that lack.") (citing Alicia Pousada, *Interpreting for Language Minorities in the Courts*, in *Georgetown University Round Table On Languages and Linguistics 1979: Language in Public Life* 186 (James E. Alatis & G. Richard Tucker eds., 1979)).

[\[FN203\]](#). See Cornell & Bratton, *supra* note 12, at 610-11.

[\[FN204\]](#). See *supra* notes 92-98 and accompanying text (describing the hostility toward Spanish speakers and the belief that Latinos "feign" ignorance of English); see also Berk-Seligson, *supra* note 156, at 146 (noting studies that demonstrate that non-English speakers are viewed less favorably than English speakers); see also Dueñas González et al., *supra* note 26, at 37-40 (noting opposition faced by language minorities); Dery, *supra* note 73, at 856 (recognizing that immigrants who do not acquire English language proficiency are deemed to be at fault).

[\[FN205\]](#). See Joanne Scharer, *How Well is it Working?*, *News & Observer* (Raleigh, N.C.), Aug. 15, 1999, at 21A (reporting that inexperienced Latino workers are especially at risk of fatal occupational injuries due to the language barrier and the prevalence of Latinos in high risk jobs).

[\[FN206\]](#). See Howe, *supra* note 59, at 15.

[\[FN207\]](#). The North Carolina Occupational Safety and Health Project interviewed over 100 workers and heard stories of ongoing economic abuse of Latino workers. See Sabrina Jones, *Abuse of Latino Workers Discussed*, *News & Observer* (Raleigh, N.C.), Dec. 9, 1999, at 1D; Sabrina Jones, *Report: Latino Workers Exploited*, *News & Observer* (Raleigh, N.C.), Nov. 16, 1999, at 1D.

[\[FN208\]](#). See Anita R. Brown-Graham, *Housing Discrimination against Hispanics in Private Rental Markets*, *Popular Gov't*, Fall 1999, at 45, 46.

[\[FN209\]](#). See *id.* at 45-46.

[\[FN210\]](#). See *id.* at 50.

[\[FN211\]](#). The North Carolina Governor's Advisory Council on Hispanic/Latino Affairs' recommendations for public safety and crime control demonstrate the concern over discriminatory profiling of Latinos. The committee recommended that state law enforcement officers who are already required by [section 114- 10 of the North Carolina General Statutes](#) to keep certain statistics on age, race, and sex regarding traffic law enforcement should also keep statistics on ethnicity. See [N.C. Gen. Stat. § 114-10 \(1999\)](#); Governor's Advisory Council, *supra* note 33, at 20. Statistics recently released do not demonstrate a disproportionate number of minorities being stopped by the North Carolina Highway Patrol. See N.C. Highway Patrol Web site (visited Aug. 25, 2000) <http://sbi.jus.state.nc.us/TSS_01/Rpt/information.htm> (copy on file with the North Carolina Law Review). The initial reports, however, do not show where the traffic stops were made, and thus, racial or ethnic variations in the state cannot be compared. The statistics also do not include traffic stops made by local police officers and sheriffs' deputies. The study did show that a disproportionate number of black males were arrested. See Craig Jarvis, *Traffic Stops Aren't Linked to Race, First Report Shows*, *News & Observer* (Raleigh, N.C.), Mar. 3, 2000, at 3A. A disproportionate number of Latino males--14%--were also arrested. See N.C. Highway Patrol Web site (visited Aug. 25, 2000) <http://sbi.jus.state.nc.us/TSS_01/Rpt/information.htm> (copy on file with the North Carolina Law Review).

[\[FN212\]](#). In one case, a non-English-speaking Latino who was rushing to take his pregnant wife to the hospital was stopped by the police, who mistakenly thought he was fleeing from a fight. Unable to explain his situation, he was arrested. The judge noted that had he been able to communicate with the police, he might never have been arrested. See Ned Glascock, *Judge Sends Offenders to English Class*, *News & Observer* (Raleigh, N.C.), Mar. 1, 2000, at 1A. It is interesting, if not problematic, that instead of finding lack of probable cause or otherwise dismissing the case, the judge granted the defendant a deferred judgment contingent on his completion of English classes. See *id.*

[FN213]. See Michelle Francis Robertson & James Smith, Communication Problems Contribute to Latino DWIs, True Bill, Mar. 1999, at 1.

[FN214]. See *id.* at 1, 8.

[FN215]. See Jen Gómez, Latinos Voice Bail Concerns to Prosecutor, News & Observer (Raleigh, N.C.) (Durham Edition), Apr. 28, 2000, at 3B.

[FN216]. Latinos carry or keep cash because many lack access to banks in part due to language barriers, lack of familiarity with banking services, and because they may lack social security or tax-payer identification numbers. Social security or taxpayer identification numbers are required to establish savings accounts with banking institutions. See Telephone Interview with George Hausen, Associate Director, Legal Services of North Carolina (May 31, 2000) (former compliance officer for CCB Financial Corp.). Although for purposes of establishing checking accounts, banks may accept other forms of identification that definitively establish a person's identity, many banks still request social security or taxpayer identification numbers. See *id.* This results in widespread misconceptions among the Latino community about their eligibility to use any banking services. See *id.* As a result of these misconceptions, Latinos often turn to check cashing facilities that charge high service fees. The Self-Help Credit Union in Durham, North Carolina, has established a Latino credit union in an effort to address these issues. See Rah Bickley, Latino Credit Union at 1.1 Million, News & Observer (Raleigh, N.C.), Oct. 15, 1999, at 2D.

[FN217]. See Perkins, *supra* note 60, at 40-43. In addition to contractual obligations of managed care plans contracting with the North Carolina state medicaid agency, Title VI, the Hill Burton Act, and Federal Block Grant Programs provide entitlement to linguistic access to health care in certain settings. See Perkins, *supra* note 60, at 41-42.

[FN218]. See [20 U.S.C. § 1703\(f\) \(1994\)](#); [Lau v. Nichols, 414 U.S. 563, 567-68 \(1974\)](#).

[FN219]. See [42 U.S.C. § § 1973b\(f\)\(4\), 1973aa-1a \(1994\)](#).

[FN220]. See [42 U.S.C. § 2000d \(1994\)](#); Moran, *supra* note 105, at 802.

[FN221]. See Moran, *supra* note 105, at 800-01 (noting that state and local election officials begrudge the costs of providing bilingual election materials and do not take seriously their obligation to implement bilingual voting rights). Similarly, federal officials have diluted their role in enforcing educational opportunities for limited English proficient school children. See *id.* at 803-04.

[FN222]. Karst, *supra* note 6, at 374.

[FN223]. See Shimron, *supra* note 50, at 1B; see also Cornell & Bratton, *supra* note 12, at 659 (noting that discrimination against Latinos is the most significant impediment to Latino assimilation).

[FN224]. The United States Constitution provides that "[n]o state shall ... deny to any person within its jurisdiction the equal protection of the laws." [U.S. Const. amend. XIV, § 1](#). Similarly, the North Carolina Constitution states that "[n]o person shall be denied the equal protection of the laws." [N.C. Const. art. I, § 19](#). More specifically, the North Carolina Constitution provides that "[a]ll courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay." [N.C. Const. art. I, § 18](#).

[FN225]. See John V. Orth, [Exporting the Rule of Law, 24 N.C. J. Int'l. L. & Com. Reg. 71, 82 \(1998\)](#) (noting that the meaning of the Rule of Law includes the notion that rights and liabilities are resolved in the courts).

[FN226]. [Id. at 74 n.21](#) (noting that the Rule of Law has been dismissed "as one of several 'cheerfully meaningless slogans'" (quoting Grant Gilmore, *The Ages of American Law* 106 (1997))).

[FN227]. See Perea, Fear of Spanish, *supra* note 15, at 54. Perea notes that courts "'personify and create identities throughout the law.'" *Id.* (quoting Joseph Vining, *Legal Identity* 145 (1978)).

[FN228]. See Florentino P. Feliciano, [The Application of Law: Some Recurring Aspects of the Process of Judicial Review and Decision Making](#), 37 *Am. J. Juris.* 17, 46-47 (1992).

[FN229]. See Perea, *Fear of Spanish*, supra note 15, at 55.

[FN230]. See *id.* (noting that if a judge will listen to an individual, there is a chance that the individual's views will be given public value and significance).

[FN231]. Eric K. Yamamoto, [Efficiency's Threat to the Value of Accessible Courts for Minorities](#), 25 *Harv. C.R.-C.L. L. Rev.* 341, 412 (1990).

[FN232]. See Kimberlé Williams Crenshaw, [Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law](#), 101 *Harv. L. Rev.* 1331, 1357-58, 1366 (1988).

[FN233]. For example, many individuals from other countries are dissuaded from calling the police to report crimes because of a particularized fear they have of the police based on experiences in their home countries. See Catherine F. Klein & Leslye E. Orloff, [Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law](#), 21 *Hofstra L. Rev.* 801, 1020-21 (1993). Others are unfamiliar with the judicial process and with evidentiary standards used by United States courts or may be reluctant to appeal to the courts as a result of previous experiences with the legal system in their home countries. See *id.* at 1020. Judicial systems in other countries often have evidentiary standards in which oral testimony or the testimony of certain categories of people are routinely dismissed or otherwise disregarded. Some newcomers may be accustomed to dealing with a legal system in which outcomes are a function of economic privilege or in which corruption and political influence, rather than due process of law, are the norms. See *id.* at 1021. Some newcomers with questions or concerns about their immigration status may choose to ignore legal remedies for fear of making themselves known to the Immigration and Naturalization Service resulting in the possibility of deportation. See Karen Brandon, *Immigrants Afraid to Use Government Services*, *News & Observer* (Raleigh, N.C.), Jan. 7, 1999, at 5A (noting that thousands of immigrants are afraid to use government services to which they are entitled for fear it will adversely affect their immigration status). Finally, relatively few newcomers are aware of the legal services programs that might be available to assist them. See Pawlosky, supra note 141, at 466 (noting that Latinos may generally distrust and fear law enforcement officials based on experiences in some Latin American countries, which may, in turn, curb their willingness to access the United States's judicial system). These issues have been thoroughly explored primarily by battered immigrant women's advocates who document the barriers faced by battered immigrant women in obtaining police protection, filing criminal charges, and instituting civil actions for protection orders. See United States Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination* 75 (1993) (noting that many newcomers had seen the influence of economic privilege and corruption on judicial outcomes in their home countries); Stacy Brustin, [Expanding Our Vision of Legal Services Representation-The Hermanas Unidas Project](#), 1 *Am. U. J. Gender & L.* 39, 46 (1993) (observing the lack of familiarity with and trust of legal services programs); Kelly, supra note 86, at 678-79 (reporting a fear of calling the police and fear of deportation); Klein & Orloff, supra, at 1020 (discussing the lack of familiarity with the legal system and its attendant evidentiary standards); Tien-Li Loke, Note, [Trapped in Domestic Violence: The Impact of United States Immigration Laws on Battered Immigrant Women](#), 6 *B.U. Pub. Int. L.J.* 589, 590-91 (1997) (examining practices and beliefs related to family systems and culturally-based consequences of divorce); Leslye E. Orloff et al., With [No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women](#), 29 *Fam L.Q.* 313, 315 (1995) (noting that battered immigrant women do not seek free legal assistance because they fear the legal system).

[FN234]. See O'Barr, supra note 14, at 19.

[FN235]. See Yamamoto, supra note 231, at 349, 427.

[FN236]. See Berta Esperanza Hernandez-Truyol & Kimberly A. Johns, [Global Rights, Local Wrongs, and Legal Fixes: An International Human Rights Critique of Immigration and Welfare "Reform,"](#) 71 *S. Cal. L. Rev.* 547, 563 (1998) (observing that immigrants lack the political power to address nativist reactions to them).

[FN237]. See Gerald L. Neuman, [Aliens as Outlaws: Government Services, Proposition 187, and the Structure of Equal Protection Doctrine](#), 42 *UCLA. L. Rev.* 1425, 1428 (1995) (noting that "political processes tend to ignore the interests of

those who do not vote").

[FN238]. See Michael R. Curran, [Flickering Lamp Beside the Golden Door: Immigration, the Constitution, and Undocumented Aliens in the 1990s](#), 30 Case W. Res. J. Int'l L. 57, 79 n.51 (1998) (citing [United States v. Carolene Products Co.](#), 304 U.S. 144, 152 n.4 (1938) and noting the need for more searching judicial inquiry where the political process does not operate to protect minorities).

[FN239]. Cornell & Bratton, *supra* note 12, at 689.

[FN240]. See Robert L. Kidder, Language and Litigation in South India, in Language and Politics, *supra* note 14, 240-41. Kidder states that a "mere shift from English to local languages" in the courts would not appreciably improve the image of the courts which he studied, but notes that a (narrow) conception of language leads to the conclusion that linguistic barriers are harmful to the court's ability to function and undermine trust in the institution. *Id.*

[FN241]. See Hans-Werner Wabnitz, Access to Court: Examples of World Bank Projects Which Include Activities to Facilitate Access to Court, Sept. 25, 1999 (visited May 15, 2000) <http://papers.ssrn.com/paper.taf?ABSTRACT_ID=191555>; see also William N. Eskeridge, Jr. & Gary Peller, The [New Public Law Movement: Moderation as a Postmodern Contextual Form](#), 89 Mich. L. Rev. 707, 746 (1991) ("[T]he legitimacy of law rests upon its normative content and not its procedural pedigree."); Peter A. Joy, [Political Interference with Clinical Legal Education: Denying Access to Justice](#), 74 Tul. L. Rev. 235, 263 (1999) (describing access to the courts as a "precondition for justice").

[FN242]. The goal has been stated as "bring[ing] the non-English-speaking person to the same level as an English-speaking person." Eta Trabling, Certified Court Interpreter, Remarks at the Durham, North Carolina Police Station (Feb. 1, 2000); see also Dueñas González et al., *supra* note 26, at 17 ("The goal of a court interpreter is to enable the judge and jury to react in the same manner to a non-English-speaking witness as they do with one who speaks English.").

[FN243]. See Brown et al., *supra* note 45, at 1 (noting that "the lack of a uniform standard for court interpreting in North Carolina District Courts threatens the integrity of the state's judicial system"). The report also notes the absence of any standards concerning interpreter qualifications, the lack of record keeping regarding the use of interpreters, and differing responses by counties to the need for interpreters. See *id.* at 3-4.

[FN244]. See Pons, *supra* note 17, at 10.

[FN245]. See *supra* notes 65-68 and accompanying text.

[FN246]. See *supra* notes 65-68 and accompanying text.

[FN247]. See Alice J. Baker, [A Model Statute to Provide Foreign-Language Interpreters in the Ohio Courts](#), 30 U. Tol. L. Rev. 593, 608 n.89 (1999) (noting that state statutes often require courts to appoint interpreters where there is any risk of loss of liberty) (citing [Idaho Code § 9-205 \(1998\)](#); [725 Ill. Comp. Stat. Ann. 140/3 \(West 1992\)](#); [Kan. Stat. Ann. § 75-4352\(a\) \(1997\)](#); [Ky. Rev. Stat. Ann. § 30A.410 \(Michie 1998\)](#); [Wash. Rev. Code Ann. § 2.42.170 \(West Supp. 1999\)](#); [Vt. R. Crim. P. 28](#); [W. Va. R. Crim. P. 28\(b\)](#); [Wyo. R. Crim. P. 28](#)). Baker also found that some states appoint interpreters, either as a matter of right or in civil cases if the non-English speaker is indigent. See Baker, *supra*, at 610 n.95 (citing [Idaho Code § 9-205 \(1998\)](#) (providing that the district court fund will pay an interpreter's fees in all cases); Iowa Code Ann. § 622A.3.2 (West 1998) (providing that the court will appoint interpreters for indigent non-English speakers); [Kan Stat. Ann. § 75-4352\(a\) \(1997\)](#) (providing that non-English speakers are not required to pay an interpreter's fees); [Ky. Rev. Stat. Ann. § 30A.410 \(Michie 1998\)](#) (providing that the state treasury will cover an interpreter's fees in all cases); [Wis. Stat. Ann. § 885.37\(1\)\(b\) \(West 1999\)](#) (providing that the court will provide an interpreter for indigent non-English speakers)); see also Piatt, *supra* note 150, at 4 (discussing the various approaches taken by the federal courts, federal statutes and state statutes to providing interpreters).

[FN248]. See Baker, *supra* note 247, at 608; Grabau & Gibbons, *supra* note 152, at 263 n.147; Francisco Araiza, *Se Habla Everything: The Right To An Impartial, Qualified Interpreter*, Wis. Law., Sept. 1997, at 16.

[FN249]. Several states including Arkansas, California, Massachusetts, Minnesota, New Jersey, New Mexico, New York,

Oregon, Utah, and Washington have some state-sponsored testing for court interpreters, although not all meet what are generally considered to be model criteria for determining interpreter qualifications. See Hewitt, *supra* note 184, at 90-91; Dery, *supra* note 73, at 879 n.220; Grabau & Gibbons, *supra* note 152, at 255 n.112; Salimbene, *supra* note 160, at 649 n.18.

[FN250]. See Dery, *supra* note 73, at 859-60.

[FN251]. See *id.* (deconstructing state interpreter statutes to demonstrate the need for reform in this area).

[FN252]. See *id.* at 860.

[FN253]. See *id.*; see also *supra* notes 152-58 and accompanying text (discussing the problems resulting from the trial court's discretion to determine language proficiency issues).

[FN254]. See Dery, *supra* note 73, at 865-71.

[FN255]. See Dueñas González et al., *supra* note 26, at 61; see also *supra* notes 152-58 and accompanying text (discussing the problems resulting from the trial court's discretion to determine language proficiency issues).

[FN256]. See Dueñas González et al., *supra* note 26, at 61.

[FN257]. See *id.*; *infra* notes 321-58 and accompanying text.

[FN258]. See Dery, *supra* note 73, at 860.

[FN259]. See *supra* note 200-04 and accompanying text. North Carolina statutes requiring interpreters for the deaf provide comprehensive rights to an interpreter. See [N.C. Gen. Stat. § 8B-2 \(1999\)](#). The Americans with Disabilities Act (ADA) prohibits discrimination against individuals who have one or more physical or mental disabilities. See [42 U.S.C. § § 12131-12134 \(1994\)](#). Under the ADA, persons with disabilities may require sign language interpreters or other auxiliary services for individuals with hearing impairments, visual impairments, or other disabilities. Title II of the ADA applies to state and local government facilities, including courts, which must be accessible to individuals with disabilities. See [42 U.S.C. § 12132](#).

[FN260]. See Dery, *supra* note 73, at 857-59, 895.

[FN261]. See *id.* at 857.

[FN262]. This stigmatization is not simply perceived. The resentment in the courtroom and elsewhere toward non-English speakers is palpable. See *supra* notes 73-98 and accompanying text.

[FN263]. See Hewitt, *supra* note 184, at 126.

[FN264]. See [State v. McLellan, 56 N.C. App. 101, 102, 286 S.E.2d 873, 875 \(1982\)](#). In *McLellan*, the victim witness could only pronounce certain words and the interpretation was limited to those words which were unintelligible to an attorney, the defendant, or a juror. See [id. at 102, 286 S.E.2d at 875](#).

[FN265]. See North Carolina Administrative Office of the Courts, Overview of Proposed Judicial Branch Foreign Language Services Project 1 (prepared July 1999) [hereinafter AOC Overview] (on file with the North Carolina Law Review). Funds for interpreters in domestic violence proceedings have been allocated for indigent litigants on a non-recurring basis from August 2000 to August 2001. See 2000 N.C. Sess. Laws. 67.

[FN266]. See AOC Overview, *supra* note 265, at 1.

[FN267]. See Model Court Interpreter Act, in Hewitt, *supra* note 184, at 217- 34.

[FN268]. *Id.* § 1-2, in Hewitt, *supra* note 184, at 218.

[FN269]. But see Dery, *supra* note 73, at 861. Dery argues that equating speaking a foreign language with a disability or handicapping condition is inappropriate and results in further subjugation by the system. She similarly objects, as do many within the deaf community, to categorizing hearing-impaired persons as handicapped. See *id.* at 870 n.171. Although neither speaking Spanish nor communicating in sign language is a handicapping condition, the statutory rights to qualified interpreters for the deaf are comprehensive and constructive. Foreign language speakers are entitled to no less.

[FN270]. See [N.C. Gen. Stat. § 8B-2\(a\), \(c\) \(1999\)](#).

[FN271]. See *id.* [§ 8B-2\(b\)](#).

[FN272]. See *id.* [§ 8B-2\(d\), \(e\)](#).

[FN273]. See [State v. Call, 349 N.C. 382, 406, 508 S.E.2d 496, 512 \(1998\)](#). The court declared that "the decision to appoint an interpreter rests within the sound discretion of the trial court. Any person who is competent to perform the duty assumed may be appointed an interpreter." *Id.* (quoting [State v. Torres, 322 N.C. 440, 443-44, 368 S.E.2d 609, 611 \(1988\)](#)).

[FN274]. See Dueñas González et al., *supra* note 26, at 184, 192-200.

[FN275]. See Brown et al., *supra* note 45, at 15.

[FN276]. See Dueñas González et al., *supra* note 26, at 54 (citing findings that there is no legal difference between the unconstitutionality of failing to provide an interpreter and the unconstitutional use of an unqualified interpreter).

[FN277]. See [N.C. Gen. Stat. § 8B-1\(3\)](#).

[FN278]. See *id.*

[FN279]. See *id.*

[FN280]. See *id.* [§ 8B-2\(g\)](#).

[FN281]. See *id.* [§ § 8B-3, 8B-4](#).

[FN282]. See [State v. Call, 349 N.C. 382, 390, 508 S.E.2d 496, 512 \(1998\)](#) (inhibiting a non-English speaker's right to review testimony by allowing the judge discretion to prohibit tapings); *supra* notes 138, 197-99 and accompanying text.

[FN283]. See Model Code of Professional Responsibility for Interpreters in the Judiciary Preamble, in Hewitt, *supra* note 184, at 199.

[FN284]. *Id.*

[FN285]. See Model Code of Professional Responsibility for Interpreters in the Judiciary, in Hewitt, *supra* note 184, at 199-210.

[FN286]. See [N.C. Gen. Stat. § § 8B-5, 8B-7 \(1999\)](#).

[FN287]. See *id.* [§ 8B-7](#).

[FN288]. Funds have been received from the North Carolina State Bar IOLTA program and from the Z. Smith Reynolds Foundation. See Pons, *supra* note 17, at 10; Letter from Judge Thomas W. Ross to J. Edwin Pons, *supra* note 66, at 1.

[FN289]. See [N.C. Gen. Stat. § § 7A-314\(f\), 7A-450, 7B-602, 7B-1101, 7B-2000 \(1999\)](#).

[FN290]. See *id.* [§ 8B-8\(b\), \(c\) \(1999\)](#).

[\[FN291\]](#). See id. § 8B-8(d).

[\[FN292\]](#). See id. § 8B-8(e), (f).

[\[FN293\]](#). See [N.C. R. Evid. 706\(b\)](#).

[\[FN294\]](#). Id.

[\[FN295\]](#). See Hewitt, *supra* note 184, at 179-92. Telephone interpreting uses the everyday telephone attached to a speaker phone in the court so that everything said in the courtroom is heard by the interpreter on the telephone who interprets through the phone handset which is then broadcast in the courtroom over a speaker phone. As Hewitt explains, "telephone interpreting ... is nearly synonymous with AT&T Language Line Service." Id. at 180. Hewitt reviews telephone interpretation and notes that "it is a promising approach for improving access to interpretation services, but courts need to be wary about the limitations of services that are currently available." Id. at 179. Technological responses to interpreter needs are beyond the scope of this Article, but for a general discussion of the topic, see Hewitt, *supra* note 184, at 179-94; Grabau & Gibbons, *supra* note 152, at 320-33.

[\[FN296\]](#). See Hewitt, *supra* note 184, at 189-92; Grabau & Gibbons, *supra* note 152, at 327.

[\[FN297\]](#). See Grabau & Gibbons, *supra* note 152, at 320.

[\[FN298\]](#). See Brown et al., *supra* note 45, at 3, 11-12.

[\[FN299\]](#). Id.

[\[FN300\]](#). See *supra* notes 224-29 and accompanying text.

[\[FN301\]](#). See Dueñas González et al., *supra* note 26, at 25.

[\[FN302\]](#). See Hewitt, *supra* note 184, at 16.

[\[FN303\]](#). See Dueñas González et al., *supra* note 26, at 16; Hewitt, *supra* note 184, at 17. Hewitt states that:

If interpretation is improper, defendants may misunderstand what is taking place; the evidence heard by judge and jury may be distorted, if not significantly changed. When poor interpretation occurs, the English speaking members of the court and the non-English speaking litigants or witnesses virtually do not attend the same trial.
Id. at 17.

[\[FN304\]](#). See Dueñas González et al., *supra* note 26, at 6.

[\[FN305\]](#). See id.

[\[FN306\]](#). See *infra* notes 371-91 and accompanying text (discussing attorneys' professional responsibility obligations).

[\[FN307\]](#). Hewitt, *supra* note 184, at 31.

[\[FN308\]](#). See id. at 33.

[\[FN309\]](#). Id. at 31. Spanish is the source language when a Spanish-speaking witness is testifying. The interpreter translates the Spanish into English, the target language, for the presiding judge. English is the source language when an English-speaking witness is testifying and Spanish is the target language when the English is translated for a Spanish speaking litigant.

[\[FN310\]](#). See id. at 37-45. Hewitt suggests that a job analysis should include minimal educational and experiential requirements, detailed inventory of tasks interpreters perform, and knowledge, skills, and abilities required by interpreters.

See *id.*

[FN311]. See *id.*; see also Dueñas González et al., *supra* note 26, at 201-09. Dueñas González reviews the complexity of legal language and the implications for court interpreters who face "a formidable task, first in deciphering the meaning of sometimes obscure, convoluted, or deliberately vague language, and secondly in conveying that message in exactly the same manner as it was spoken." *Id.* at 272.

[FN312]. See Grabau & Gibbons, *supra* note 152, at 311-17.

[FN313]. See Berk-Seligson, *supra* note 156, at 97-98.

[FN314]. See *id.* at 96. Most of Berk-Seligson's book is devoted to demonstrating the subtle changes that take place when the words spoken in the source language are interpreted into the target language. See Berk-Seligson, *supra* note 156, *passim*.

[FN315]. See *id.* at 146-99.

[FN316]. *Id.* at 131.

[FN317]. *Id.*

[FN318]. *Id.*

[FN319]. See Dueñas González et al., *supra* note 26, at 51-52.

[FN320]. See *infra* notes 321-70 and accompanying text.

[FN321]. See, e.g., [Fed. R. Evid. 604](#); [N.C. R. Evid. 604](#); see also R. Doak Bishop, [International Litigation in Texas: Texas Rules of Evidence and Recent Changes in the Texas Rules of Civil Procedure](#), 36 *Baylor L. Rev.* 131, 151-53 (1984) (noting that Texas's rules required interpreters to be qualified as experts); Constance Emerson Crooker, *An Interpreter Checklist*, *Champion*, June 1998, at 17 (discussing federal standards of interpreter qualification); Ennio M. Colon Garcia et al., [The Linguistic Factor](#), 32 *Revista Juridica de la Universidad Interamericana de Puerto Rico* 310, 320 (1998) (noting that the Puerto Rico Rules of Evidence require qualified interpreters); Angela McCaffrey, [Don't Get Lost in Translation: Teaching Law Students to Work with Language Interpreters](#), 6 *Clinical L. Rev.* 347, 372 (2000) (explaining that in Minnesota, an interpreter is subject to the expert qualification rules and must take an oath to translate accurately); Stephen A. Saltzburg, *Non-English-Speaking Witnesses and Leading Questions*, *Crim. Just.*, Summer 1998, at 37 (noting that under [Rule 604 of the Federal Rules of Evidence](#), interpreters are subject to the same qualification standards as expert witnesses).

[FN322]. [Fed. R. Evid. 702](#); see also [N.C. R. Evid. 702\(a\)](#) (establishing essentially identical requirements at the state level).

[FN323]. [28 U.S.C. §§ 1827-1828 \(1994 & Supp. IV 1998\)](#).

[FN324]. See [§ 1827\(b\)\(1\)](#).

[FN325]. California, New Jersey, and Washington have model testing programs, developed and implemented according to statewide policies to assure qualifications of court interpreters. See Hewitt, *supra* note 184, at 90-91. Applicants are required to demonstrate proficiency in all modes of interpretation. See *id.* Further, the tests are scrutinized by a battery of independent experts and professionals; data measuring reliability and validity is kept by the administering agency. See *id.*

[FN326]. See Hewitt, *supra* note 184, at 90-91.

[FN327]. See Dueñas González et al., *supra* note 26, at 51. In [State v. Call](#), 349 N.C. 382, 508 S.E.2d 496 (1998), the North Carolina Supreme Court upheld the trial court's determination that the interpreter was competent despite any demonstration or discussion of training in court interpretation skills or inquiry into professional responsibility and ethical issues. See *id.* at 406-07, 508 S.E.2d at 512. The trial court had relied on the fact that the interpreter was from a Latin American country, that his first language was Spanish, that he taught Spanish at a community college, and that he had previously translated and was

"familiar" with several dialects. See *id.* There was no showing that the interpreter had skills in interpretation, the number of times he had interpreted, or that his past court experiences were accurate, honest, or professional. See *id.* In fact, because there are no rules governing the use of interpreters, it is not uncommon for Spanish-speakers to hold themselves out as interpreters and solicit business from Latino defendants in the halls of the North Carolina Courts. See Pons, *supra* note 17, at 10. Past interpreting experience is no indication of competence or ethics. See *supra* note 134 and accompanying text.

[FN328]. See Grabau & Gibbons, *supra* note 152, at 258-59.

[FN329]. Salimbene, *supra* note 160, at 649.

[FN330]. *Id.* at 662 (citing the New Jersey Supreme Court Task Force on Interpreter & Translation Services, Equal Access to the Courts for Linguistic Minorities, 64 (1985)); see Grabau & Gibbons, *supra* note 152, at 258-59.

[FN331]. See Salimbene, *supra* note 160, at 662-63.

[FN332]. See *id.* at 663.

[FN333]. See *id.* at 662-63.

[FN334]. See Shulman, *supra* note 141, at 176.

[FN335]. *Id.*

[FN336]. See Salimbene, *supra* note 160, at 649-50.

[FN337]. See *id.* at 650-53.

[FN338]. See Grabau & Gibbons, *supra* note 152, at 311.

[FN339]. See *id.* at 311-12.

[FN340]. See Berk-Seligson, *supra* note 156, at 98-100, 104-05, 116; Dueñas González et al., *supra* note 26, at 273-74.

[FN341]. See Berk-Seligson, *supra* note 156, at 107-11.

[FN342]. *Id.*

[FN343]. See *id.*; see also Grabau & Gibbons, *supra* note 152, at 315 (describing differences in effect between active and passive voice).

[FN344]. Berk-Seligson, *supra* note 156, at 107-11.

[FN345]. See *id.*; see also Miguel A. Mendez, [Lawyers, Linguistics, Story-Tellers, and Limited English-Speaking Witnesses](#), 27 N.M. L. Rev. 77, 83- 87 (1997) (examining how particular choice of words and speech in the courtroom affect fact finders).

[FN346]. See Berk-Seligson, *supra* note 156, at 20-25.

[FN347]. See *id.* at 146-97; Dueñas González et al., *supra* note 26, at 275-80; Grabau & Gibbons, *supra* note 152, at 311-17.

[FN348]. See Dueñas González, *supra* note 26, at 280.

[FN349]. See Salimbene, *supra* note 160, at 654-56.

[FN350]. See Model Code of Professional Responsibility for Interpreters in the Judiciary Canon 9, in Hewitt, *supra* note 184,

at 201 ("Interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.").

[FN351]. See Model Code of Professional Responsibility for Interpreters in the Judiciary, in Hewitt, *supra* note 184, at 199-210.

[FN352]. See Salimbene, *supra* note 160, at 657.

[FN353]. See Grabau & Gibbons, *supra* note 152, at 259.

[FN354]. See *id.* at 287.

[FN355]. See Hewitt, *supra* note 184, at 16 ("Court interpretation ... is a highly specialized form of interpreting that cannot be effectively performed without commensurate specialized training and skills. Arguably, it is the most difficult form of interpreting."). Hewitt also describes the training of court interpreters, which includes instruction and information about the courts and court procedure. See *id.* at 57-58.

[FN356]. See *id.* at 281.

[FN357]. See *id.* at 200-01.

[FN358]. See *id.*; see also Grabau & Gibbons, *supra* note 152, at 280 (noting that "[t]he interpreter's rendition should ... not exaggerate the tone and emotions of the speaker").

[FN359]. See Hewitt, *supra* note 184, at 31.

[FN360]. See *id.* at 32.

[FN361]. See *id.* at 34.

[FN362]. See Dueñas González et al., *supra* note 26, at 379-83; Salimbene, *supra* note 160, at 660-61; see also *supra* note 346-48 and accompanying text (describing the influence an interpreter can have on the effect of the testimony).

[FN363]. See Hewitt, *supra* note 184, at 32; Salimbene, *supra* note 160, at 661.

[FN364]. See Hewitt, *supra* note 184, at 32.

[FN365]. See *id.* at 34.

[FN366]. See Salimbene, *supra* note 160, at 661.

[FN367]. See Berk-Seligson, *supra* note 156, at 200. Berk-Seligson reviews appellate cases involving the use of interpreters and notes that foreign language testimony is not entered into the court record. Only testimony, questions, remarks, or comments made in the English are recorded. See *id.* at 31; see also Hewitt, *supra* note 184, at 34 ("The interpreter's speech ... is not part of the record.").

[FN368]. See Hewitt, *supra* note 184, at 34.

[FN369]. See *id.* at 142 (noting that "when an interpreter is used to assist in attorney-client consultations, the term 'defense' interpretation is sometimes used").

[FN370]. See *id.* at 33.

[FN371]. An attorney must refrain from working on "a legal matter which the lawyer knows or should know he or she is not competent to handle" and a lawyer should have "preparation adequate under the circumstances." N.C. Rev. R. [Prof. Conduct 1.1](#) (emphasis added). In addition, a lawyer must "keep a client reasonably informed about the status of a matter" and

"explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." *Id.* at 1.4.

[FN372]. See Piatt, *supra* note 150, at 5-8.

[FN373]. See [N.C. Gen. Stat. § 8B-5 \(1999\)](#). North Carolina's statutory requirements for interpreters are currently limited to interpreters for the deaf.

[FN374]. See Grabau & Gibbons, *supra* note 152, at 271-72.

[FN375]. See *id.*

[FN376]. See *id.*

[FN377]. See *id.* at 277-78.

[FN378]. See Hewitt, *supra* note 184, at 134.

[FN379]. See Grabau & Gibbons, *supra* note 152, at 277.

[FN380]. See Hewitt, *supra* note 184, at 145.

[FN381]. See *id.* at 126.

[FN382]. See *id.* at 138; see also Dueñas González et al., *supra* note 26, at 16 (advocating that interpreters should interpret verbatim); Salimbene, *supra* note 160, at 650 (arguing that interpreters should render "precisely, adding or omitting nothing, and stating as nearly as possible what has been stated in the language of the speaker").

[FN383]. See *id.* at 139.

[FN384]. See *id.* at 125-26.

[FN385]. See *id.*

[FN386]. See *id.*

[FN387]. See [Commonwealth v. Wallace, 641 A.2d 321, 328 \(Pa. Super. Ct. 1994\)](#) (holding that defendant's trial counsel was ineffective for failing to request that the trial court appoint a sign language interpreter); Piatt, *supra* note 150, at 5 (citing [Peeler v. State, 750 S.W.2d 687, 691 \(Mo. Ct. App. 1988\)](#) (holding that a hearing-impaired defendant's trial counsel had been constitutionally ineffective for failing to request the services of an interpreter at the defendant's trial)); see also Gregory G. Sarno, Annotation, [Ineffective Assistance of Counsel: Use or Nonuse of Interpreter at Prosecution of Foreign Language Speaking Defendant, 79 A.L.R.4th 1102](#), passim (1990) (analyzing court decisions regarding an attorney's failure to make or misuse of interpreter requests); Gregory G. Sarno, [Ineffective Assistance of Counsel: Use or Nonuse of Interpreter at Prosecution of Hearing-Impaired Defendant, 86 A.L.R.4th 698](#), passim (1991) (discussing circumstances in which lawyers improperly employed interpreters).

[FN388]. See Pawlosky, *supra* note 141, at 459-60.

[FN389]. See Hewitt, *supra* note 184, at 126.

[FN390]. But see Pawlosky, *supra* note 141, at 460-61 (noting that the inclusion of this information in the judicial opinion may not be appropriate).

[FN391]. See *supra* notes 371-72 and accompanying text.

[FN392]. Grabau & Gibbons, supra note 152, at 279-80 n.239 (citing [Ark. Code Ann. § 16-89-104](#) (Michie 1987); [Cal. Evid. Code § 751](#) (West 1995); [Colo. Rev. Stat. § 13-90-207\(1\)\(a\)](#) (1987); [D.C. Code Ann. § 31-2707](#) (1993); [Fla. Stat. Ann. § 90.606\(3\)](#) (West 1997); [Ind. Code Ann. § 34-1-14- 3\(d\)](#) (Michie 1986); [Kan. Stat. Ann. § 75-4354](#) (Supp. 1994); [Haw. R. Evid. 604](#)); see also [Mass. Gen. Laws ch. 221C, § 4\(a\)](#) (West 1992) (providing that an interpreter shall be sworn to "make a true and impartial interpretation using his best skill and judgment"); Mass. Code Prof. Conduct for Ct. Interpreters, § 1.03(7); Model Code of Professional Responsibility for Interpreters in the Judiciary § 6, in Hewitt, supra note 184, at 230.

[FN393]. See Salimbene, supra note 160, at 661.

[FN394]. See Hewitt, supra note 184, at 136.

[FN395]. See id. at 132.

[FN396]. See Grabau & Gibbons, supra note 152, at 294-96. But see [State v. Call, 349 N.C. 382, 408, 508 S.E.2d 496, 512 \(1998\)](#) (denying an attorney the opportunity to tape record trial proceedings where an interpreter was used).

[FN397]. See Piatt, supra note 150, at 10; see also Dueñas González et al., supra note 26, at 51 (noting that the differing tasks required of attorneys and interpreters cannot be simultaneously executed).

[FN398]. See Hewitt, supra note 184, at 136 .

[FN399]. See Grabau & Gibbons, supra note 152, at 304-08. On the other hand, the Court in [Hernandez v. New York, 500 U.S. 352 \(1991\)](#), allowed peremptory challenges to be used to exclude bilingual Latino jurors based on the prosecutor's explanation that his challenges were not based on race. See [id. at 359](#). The Court did note that "a policy of striking all who speak a given language, without regard to the particular circumstances of the trial or the individual responses of the jurors, may be found by the trial judge to be a pretext for racial discrimination." [Id. at 371](#). For a useful discussion criticizing the decision in Hernandez, see Perea, Fear of Spanish, supra note 15, 51-60.

[FN400]. See Grabau & Gibbons, supra note 152, at 307-08.

[FN401]. See id. at 304-06.

[FN402]. See id. at 288-90; see also supra notes 322-24 (discussing the requirements of the federal and state rules of evidence).

[FN403]. See Model Code of Professional Responsibility for Interpreters in the Judiciary Preamble, in Hewitt, supra note 184, at 199.

[FN404]. See Grabau & Gibbons, supra note 152, at 290-91.

[FN405]. See id. at 292.

[FN406]. See Hewitt, supra note 184, at 133, 139.

[FN407]. Lindenfeld, supra note 1, at 4B.

[FN408]. Pérez, supra note 2, at 1B.

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